

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

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Case No. 2010CP4001172

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Willis Weary, 00283431,

Respondent,

v.

State of South Carolina,

Petitioner.

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APPENDIX

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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) COURT OF GENERAL SESSIONS  
)

2006-GS-40-0006

State of South Carolina

vs.

)  
)  
) TRANSCRIPT OF RECORD  
) (Trial)  
)

Willis L. Weary,

)  
)  
) Defendant.  
)

February 28, 2007, March 1 and 2, 2007  
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

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1                    Wednesday, February 28, 2007

2                    *THE COURT:* You say you gave him notice?

3                    *MS. FENT:* He was here this morning and  
4 Mr. Hayes talked to him and told him to be back at  
5 2:00.

6                    *THE COURT:* Where is the defendant?

7                    *MS. FENT:* They were bringing him up from  
8 holding. I left Mr. Deysach's phone number in my  
9 office. Otherwise, I would have grabbed the phone,  
10 tried to give him a call.

11                   *THE COURT:* Do you see him out there?

12                   *THE CLERK:* No, Your Honor.

13                   *MS. FENT:* Would you like me to run upstairs and  
14 get his phone number?

15                   *THE COURT:* He's in the phone book.

16                   (Pause)

17                   *MR. DEYSACH:* I'm sorry, Your Honor.

18                   *THE COURT:* Don't do it again.

19                   *MR. DEYSACH:* I thought that's when the jury was  
20 coming back. I didn't know that's when you would be  
21 taking the bench.

22                   *THE COURT:* Well, the jury is here. I'm here.  
23 Where is your client?

24                   *MR. DEYSACH:* He should be in holding.

25                   *THE COURT:* Has anybody gone to get the --

1           MR. HAYES: Your Honor, I saw the deputies.  
2 They were on their way down to bring him up.

3           THE COURT: What's his name?

4           MS. FENT: Willis Weary.

5           (Pause)

6           THE COURT: Mr. Deysach, are you aware that it  
7 appears that the indictment has changed?

8           MR. DEYSACH: I am aware of that, but I haven't  
9 viewed the changed one. If I may. Thank you.

10          THE COURT: It's the indictment.

11          MR. DEYSACH: Right. The change has been --

12          THE COURT: Probably to avoid a motion.

13          MR. DEYSACH: Right. It was my understanding  
14 that the change was made and then presented to the  
15 Grand Jury, not that I have ...

16          MS. FENT: It was initially alleged that it  
17 occurred in the nighttime. We added the and/or to  
18 prior convictions for burglary and/or housebreaking.  
19 And I did notify him I was going to do that, and then  
20 I did present that to the Grand Jury.

21          THE COURT: So which is it? Which is it?  
22 Nighttime or 2 in the morning?

23          MS. FENT: Well, actually we had alleged both  
24 because we can prove either/or.

25          THE COURT: Okay. I thought it was an or, and I

1 just -- we have to know by the time we give  
2 instructions.

3 MS. FENT: Well, my understanding, Your Honor,  
4 is we could allege --

5 THE COURT: I beg your pardon. I wouldn't give  
6 it to them ...

7 MS. FENT: Okay.

8 THE COURT: All right. Well, let's wait on your  
9 client.

10 (Pause)

11 THE COURT: Do you have Voir Dire?

12 MR. DEYSACH: Yes, Your Honor. I had it with me  
13 and then I guess I left it in my office. I only have  
14 four requested Voir Dire. One was whether or not any  
15 of the jurors or any of their -- related by blood or  
16 marriage to a member of law enforcement --

17 THE COURT: That's standard.

18 MR. DEYSACH: -- or the Solicitor's Office;  
19 whether or not they've been the victim, or anybody by  
20 blood or marriage or a victim of a violent crime.  
21 The only one that was a little bit different for this  
22 case, whether or not any of them lived in an  
23 apartment complex.

24 THE COURT: You want to know where?

25 MR. DEYSACH: Whether any of the jurors live in

1 an apartment complex.

2 THE COURT: And then what?

3 MR. DEYSACH: Pardon?

4 THE COURT: And then what if 12 of them stand up  
5 and say yes.

6 MR. DEYSACH: Then I know that.

7 MS. FENT: May I have a moment with Mr. Deysach  
8 on a certain issue?

9 (Pause)

10 MS. FENT: May we approach?

11 (Whereupon, a bench conference is had)

12 MR. DEYSACH: Your Honor, is it all right if his  
13 family is involved in our conference?

14 THE COURT: Jessie, take him into the -- let him  
15 speak with the family privately with you in the jury  
16 room.

17 DEPUTY: Yes, sir.

18 THE COURT: In the jury room.

19 (Pause)

20 THE COURT: All right. Is the State ready to  
21 proceed?

22 MS. FENT: We are, Your Honor.

23 THE COURT: Is the defense ready to proceed?

24 MR. DEYSACH: We are, Your Honor.

25 THE COURT: It's my understanding that there is

1 a statement of some sort.

2 MS. FENT: Yes, Your Honor.

3 MR. DEYSACH: There is.

4 THE COURT: And, yes, sir, Mr. Deysach.

5 MR. DEYSACH: Oh. There is a statement. We  
6 would ask for a Jackson v. Denno hearing in which the  
7 State would demonstrate that that statement was  
8 voluntarily given.

9 THE COURT: Ms. Fent, call your first witness,  
10 Jackson v. Denno.

11 MS. FENT: We call Investigator McRoberts.

12 DAVID MCROBERTS, after being duly sworn,  
13 testifies as follows:

14 THE CLERK: Please have a seat there, sir.  
15 State your full name for the record.

16 WITNESS: Sergeant David McRoberts.

17 DIRECT EXAMINATION

18 BY MS. FENT

19 Q Sergeant McRoberts, with whom are you employed?

20 A The Richland County Sheriff's Department.

21 Q And how long have you been with them?

22 A Fourteen years.

23 Q Okay. Were you assigned a burglary case against an  
24 individual by the name of Willis Weary?

25 A Yes, I was.

1 Q Rather, I guess initially there was not a suspect.  
2 Is that correct?

3 A That's correct.

4 Q Initially, at the beginning of the case?

5 A Yes, ma'am.

6 Q Okay. And at what point and how did Willis Weary  
7 become developed as a suspect?

8 A At the point of entry in the apartment there was a  
9 broken window and blood was left on the inside on the  
10 blind that leaned up against the window. And that  
11 blood was collected by our lab and sent to SLED.

12 Q Okay. And as a result of that sample being sent to  
13 SLED, did you get notification or information  
14 regarding that?

15 A Yes. They sent us a letter saying that the blood  
16 matched that of Mr. Willis Weary.

17 Q Okay. And how did they get that match? How did they  
18 come up with that suspect?

19 A They matched it through our CODUS system. It's a  
20 database that's kept up which has all convicted  
21 felons or anybody's blood who is a convicted felon  
22 stored in the database. I think Mr. Weary gave a DNA  
23 sample when he was released from the Department of  
24 Corrections. That's where that comparison came from.

25 Q Okay. So at this point then at the time that you get



1 the information that there is a CODUS hit, what's the  
2 next step that you take knowing that you have a  
3 suspect on a CODUS hit?

4 A The next step is to get a warrant.

5 Q Okay. And did you obtain a warrant on Willis Weary?

6 A I did.

7 Q Did you find out where he was located, where you  
8 could find him?

9 A I ran his name through our jail database and it  
10 popped up that he was already in jail on other  
11 charges unrelated.

12 Q Okay. In Alvin S. Glenn?

13 A Yes, ma'am.

14 Q So obtained the warrants. And do you know the date  
15 that you obtained those warrants?

16 A December 15th of 2005.

17 Q Okay. December 15th, 2005. And are the warrants  
18 then served on him that day?

19 A Yes, ma'am.

20 Q Okay. Subsequent to that how do you make contact  
21 with Willis Weary?

22 A At the first available opportunity I went down to  
23 pick him up and pretty much just let him know that  
24 I'm the investigator on the case and that I wanted to  
25 see if he had anything to tell me.

1 Q Okay. What was the date that you went to go pick him  
2 up at Alvin S. Glenn?

3 A That was on January 23rd.

4 Q 2006?

5 A 2006.

6 Q Okay. And you yourself went to Alvin S. Glenn and  
7 picked him up or someone else did?

8 A I went down and picked him up.

9 Q Okay. And brought him where?

10 A Back to the Sheriff's Department on Two Notch Road.

11 Q Okay. And do you recall if he was in handcuffs the  
12 whole time or how you handled him physically from the  
13 transportation at the Sheriff's Department?

14 A We have belly chains, much like the ones they use  
15 around here, that fit around their waist.

16 Q Okay. And did he remain on that chain the whole time  
17 that he was in your custody?

18 A Yes, ma'am.

19 Q Okay. Are they able to move their arms enough to  
20 write and sign?

21 A Yes. If they can't reach the paper, then I'll undo  
22 one of them.

23 Q At the Sheriff's Department do you recall where you  
24 took him to get a statement?

25 A To my cubicle.

1 Q Okay. It's just an open -- it's not a closed room  
2 with just the two of you?

3 A Right.

4 Q An open space, a lot of people with a lot of  
5 cubicles?

6 A Right.

7 Q And what was basically the process that you then  
8 undertook to get his statement?

9 A The first thing I did was read him his Miranda  
10 warnings.

11 Q Okay. And do you have that form with you?

12 A Yes.

13 (WHEREUPON, State's Exhibit No. 1 is marked for  
14 identification.)

15 Q I hand you back what's been marked as State's Exhibit  
16 No. 1 and ask you to identify that for the record?

17 A This is the written Miranda warning that I gave him  
18 that day.

19 Q Okay. On that form then what information are you  
20 documenting? What information are you putting on  
21 there?

22 A The Miranda warning itself and then the waiver of the  
23 Miranda saying he is willing to talk to me which is  
24 at the bottom.

25 Q Okay. That little stuff looks to be preprinted.

1 What information are you writing onto that form?

2 A I'm signing it as a witness. And there was another  
3 person who witnessed it. And then Mr. Weary signed  
4 it on both sides where he says he understands his  
5 warnings and he was willing to talk to me.

6 Q Okay. And is the date and the time documented on the  
7 form as to when you're reading him his rights?

8 A Yes. It was on January 23rd, 2006, at 12:15 in the  
9 afternoon.

10 Q Okay. And can you then go through for the Court in  
11 terms of how you read each individual right? Do you  
12 read the whole form and have him acknowledge all the  
13 rights at the end, or do you read each individual  
14 right and have him acknowledge it as you go through?

15 A I read the whole thing and explained it to him. And  
16 I checked it off. After each sentence I read to him  
17 I check it off. And I asked him if he understood it,  
18 and he did.

19 COURT REPORTER: I didn't hear what you said.  
20 I'm sorry.

21 A I read him the entire warnings and then asked him if  
22 he understood it at the end and he said yes.

23 COURT REPORTER: Thank you.

24 Q And then there is a portion acknowledging I guess  
25 that they understand their rights and then a second

1 portion that's entitled "Waiver of Rights". Describe  
2 those two portions.

3 A The waiver of rights pretty much says that you've  
4 either read this statement or had somebody read it to  
5 you and you understand it and you're willing to talk  
6 and answer questions. And it says: "I know what I'm  
7 doing. No promises have been made to me. No  
8 pressure or coercion of any kind has been used  
9 against me."

10 Q And who signed under that waiver of rights?

11 A Mr. Weary signed. I signed. And then I had a  
12 witness.

13 Q And do you recall who your witness was?

14 A If I'm not mistaken, it was Investigator Downie.

15 Q Terry Downie?

16 A Yes.

17 Q Okay. So he has now acknowledged to you that he  
18 wants to give up his rights and give you a statement?

19 A Yes.

20 Q And so what do you do next?

21 A Next I asked him what happened at the apartment or  
22 why his blood would be on the inside of that window  
23 on the blind. And he was very cooperative. I mean,  
24 he told me everything.

25 Q Explain to us the procedures. Because you did

1 eventually document or type out a written statement  
2 that he signed, correct?

3 A Yes.

4 Q Okay. Do you all have a discussion first and then  
5 you commit it to paper, or do you just automatically  
6 start typing what the defendant says?

7 A Well, of course there is a brief discussion, I mean,  
8 basically what happened. And once he told me what  
9 had happened and why his blood was in there, then I  
10 took it down in written, typed form.

11 Q Okay. And the form of that statement, is it just a  
12 statement of the defendant's I guess version, or is  
13 it a question-answer form?

14 A It's question-answer.

15 Q When you're finished taking the statement, what do  
16 you then do with regards to the signing of the  
17 statement and finalizing the statement?

18 A After we get finished I asked him if there is  
19 anything in the statement that I need to change, if  
20 he wants to change anything, and I get him to sign  
21 it. And I give him a copy at the end.

22 Q Did he indicate that there was anything he wanted to  
23 change?

24 A No, ma'am.

25 Q Was there anything that he indicated he wanted to

1 add?

2 A No. That's the last question I asked.

3 Q Is there anything else you want to add to this  
4 statement, and his answer was ...?

5 A No, that's it.

6 Q Okay. Do you have a copy of the statement?

7 A Yes.

8 Q Or the original I guess. This is the original?

9 A That's the original.

10 (WHEREUPON, State's Exhibit No. 2 is marked for  
11 identification.)

12 Q I'm going to hand you what's marked as State's  
13 Exhibit No. 2. And if you can identify that for the  
14 record?

15 A This is the statement that Mr. Weary gave me on  
16 January 23rd.

17 Q And how many pages does it consist of?

18 A About two and a half pages.

19 Q And where on this two and a half pages are Mr.  
20 Weary's signatures?

21 A On each page, the bottom of each page.

22 Q The bottom of the first page, second page and the  
23 third page?

24 A Yes.

25 Q And you also signed?

1 A I signed it and then I had Investigator Downie  
2 notarize it.

3 Q Okay. At any point did you make any promises to Mr.  
4 Weary to get him to give you this statement?

5 A No, ma'am.

6 Q Did you coerce him in any way to give you this  
7 statement?

8 A No, ma'am. He was more than willing to talk to me.  
9 He was very cooperative.

10 Q Did you force him in any way to give you this  
11 statement?

12 A No, ma'am.

13 Q Make any promises to him?

14 A No, ma'am.

15 Q Threaten him?

16 A No, ma'am.

17 Q He indicated -- or what did he indicate to you after  
18 you read him each of the rights on State's Exhibit  
19 No. 1?

20 A That he was willing to talk to me about the break-in.

21 Q Did he understand each right that you read to him?

22 A Yes, ma'am.

23 Q Did he ever ask for an attorney?

24 A No, ma'am.

25 Q Did he say that he was represented by counsel?



1 A No, ma'am.

2 Q In fact, did you specifically ask him, do you have an  
3 attorney?

4 A There may have been discussion at the very beginning  
5 when I first he read him that form if he was  
6 represented. He said, no, he wasn't; he didn't know.

7 Q He did not have an attorney?

8 A Right.

9 Q And he did not want one?

10 A No.

11 Q Did he appear to be under the influence of any  
12 alcohol or drugs?

13 A No. He had been in jail for a while. So he didn't  
14 have any access to drugs or anything.

15 Q And he wasn't -- was he acting as if he was under the  
16 influence of any alcohol or drugs?

17 A No, ma'am.

18 Q Were you aware between the time that the warrants  
19 were served upon the defendant on December 15th and  
20 when you went to get this statement from him on  
21 January 23rd, were you aware of any bond settings?

22 A No, ma'am.

23 Q You did not appear at any bond settings?

24 A No, ma'am.

25 Q And were you ever contacted by a lawyer?

1 A No, ma'am.

2 Q Aware of any attorney representing Mr. Weary on this  
3 burglary first charge?

4 A Not until after you and I spoke.

5 Q Which was ...?

6 A It was later.

7 Q After the January 23rd statement?

8 A Right.

9 Q Okay. Do you have Exhibit 1?

10 (Witness hands document to Ms. Fent)

11 MS. FENT: I have no further questions at this  
12 time.

13 THE COURT: Mr. Deysach.

14 MR. DEYSACH: Thank you very much, Your Honor.

15 CROSS EXAMINATION

16 BY MR. DEYSACH

17 Q Good afternoon, Investigator.

18 A Good morning.

19 Q You testified that you obtained the warrant against  
20 my client on December the 15th, 2005, correct?

21 A Correct. That's when the warrants were faxed down to  
22 bond court, when I found out he was still in jail.

23 Q Did you serve him with those warrants?

24 A No, sir.

25 Q Do you know who did serve him?

1 A It would have been, if I look on the warrant, it says  
2 Gallegos, Investigator Gallegos.

3 Q Do you know what date those warrants were served?

4 A I'm assuming on December 15th.

5 Q Do you have your investigative report with you?

6 A Yes, sir, I do.

7 Q Let me ask you to refer to that. It's just one page.  
8 Do you see the second entry?

9 A Yes, sir.

10 Q The date on that is the 9th of January, '06?

11 A Yes, sir.

12 Q Would you agree with me that it's under that heading  
13 that you write you had had Mr. Weary served while he  
14 was in jail?

15 A That's correct.

16 Q So if you were to look at your notes you would think  
17 that he was served on January 9th?

18 A If you look at the notes like that, yes, sir.

19 Q Okay. But your testimony was you were not present  
20 for that service?

21 A No, sir.

22 Q But you were present on the 23rd?

23 A Yes, sir.

24 Q And on the 23rd you personally went down to the  
25 detention center to pick up Mr. Weary?

1 A Yes, sir.

2 Q Did you go with anybody else?

3 A No, sir.

4 Q Just you. How did it come that you made contact with  
5 Mr. Weary? How did that happen?

6 A I didn't actually make contact with him until I met  
7 him in the cell that day. You've got to call the  
8 operations center and tell them you're going to come  
9 down and pick them up, and I went down there and  
10 picked him up. I'd never laid eyes on him before. I  
11 picked him up in the transport side of the sallyport.

12 Q Okay. So he is not in his dorm at the time. He is  
13 in another area of the jail when you pick him up?

14 A Correct.

15 Q Did you tell him where he was going?

16 A Yes, sir.

17 Q Okay. Does he at any point at that time tell you  
18 about whether or not he was represented?

19 A No, sir.

20 Q Never asked for an attorney at that point?

21 A No, sir.

22 Q And you told him you were going to go question him  
23 about a burglary?

24 A Yes, sir.

25 Q Did you testify that he had cuffs on the whole time?

1 A It's policy that the person has the cuffs on during  
2 transport. If I took the handcuffs off at the  
3 office, I mean, I could have. I didn't make a note  
4 of that.

5 Q Okay.

6 A The only time I would have is if he was unable to  
7 sign the form.

8 Q All right. And so you might have loosened the cuff  
9 for him to sign and then put the cuff back on?

10 A Correct.

11 Q I know you had some witnesses on the waiver. And I  
12 think you testified that Officer Downie was both the  
13 witness as to the waiver and the statement?

14 A I believe it's him. I'm not 100 percent.

15 Q Okay. I think it's pretty clear on the statement?

16 A Right.

17 Q But maybe not so on the waiver?

18 A Right.

19 Q Okay. Were those witnesses there just for the  
20 signing by Mr. Weary? Is that what they're  
21 witnessing, his significant? Or are they witnessing  
22 you giving him the Miranda warnings?

23 A They're witnessing that he was read the Miranda  
24 warnings and that he understood them.

25 Q Did they witness you read the Miranda warnings?

1 A Yes, sir.

2 Q And then they witnessed him answering yes, that he  
3 understood them?

4 A Correct.

5 Q And they're witnessing also that he waived those  
6 rights?

7 A Yes.

8 Q Okay. As to the witness, the notary for the  
9 statement, do they -- kind of the same question; are  
10 they there for your conversation, or are they just  
11 watching Willis Weary sign?

12 A They come up and they say, are you Willis Weary? Is  
13 this your statement? Do you swear it's the truth?  
14 And he answered yes.

15 Q Okay. And so they don't watch you do the  
16 conversation. They don't witness Mr. Weary actually  
17 telling you what you reduced to writing?

18 A Investigator Downie's cube is approximately two down  
19 from where mine was at that time. I mean ...

20 Q So I think I understand your answer is he's not  
21 there --

22 A He's not sitting there presently listening for the  
23 whole statement, no.

24 Q He could have been eavesdropping or he might have  
25 overheard, but that you really don't know?

1 A Right.

2 Q And so that's where you are. You're in a cubicle?

3 A Correct.

4 Q You're not in an interrogation room --

5 A No.

6 Q -- or anything like that?

7 A No.

8 Q And tell me again what your testimony is about

9 whether or not Willis Weary ever asked for an

10 attorney. I think Ms. Fent asked you did he say

11 anything about an attorney and you recounted

12 something where he looked down and said something or

13 another. But I want to make sure that I understand

14 what your testimony is, whether or not he asked for

15 an attorney at any time during this --

16 A He did not ask for an attorney.

17 Q Okay.

18 A He was not even sure if he was represented.

19 Q So he told you he wasn't sure if he was represented

20 on this burglary charge?

21 A Correct.

22 Q Okay. But you told him -- making sure of it -- you

23 told him that he didn't need his attorney, that if he

24 didn't have an attorney, one would be provided for

25 him, right?

1 A That's explained to him in the Miranda warnings, yes.

2 Q Okay. And so when you told him -- when he told you  
3 he didn't even know he had an attorney, did you tell  
4 him then that if he didn't have one, one would be  
5 provided for him free of charge?

6 A I explained that to him in the initial Miranda  
7 warning.

8 Q What was his response?

9 A That he understood it.

10 Q Okay. So are you trying to say that your question  
11 about -- the statement that Willis Weary made about  
12 not even sure if he had an attorney on this charge  
13 was made sometime other than when you were reading  
14 him those Miranda warnings?

15 A It was made during the time that I was talking to  
16 him.

17 Q Okay. Before the Miranda warnings? After the  
18 Miranda warnings? Do you remember?

19 A I read him his Miranda and he said that he was not  
20 sure if he had an attorney on this charge.

21 Q So after the whole Miranda warnings or just after  
22 that particular warning about the attorney?

23 A After the whole thing.

24 Q The whole thing?

25 A Yeah.



1 Q And so he just kind of spontaneously told you, I'm  
2 not even sure if I have an attorney. It wasn't in  
3 response to any particular question?

4 A He was more than willing to give a statement that  
5 day.

6 Q Okay. So when he made that statement, it was not in  
7 response to any particular question from you? Or was  
8 it?

9 A I was explaining his Miranda warnings and that's what  
10 he told me.

11 Q When? I guess my question is when? If you don't  
12 remember, that's a fine answer.

13 A I can't tell you. I don't remember when he said it.  
14 I mean, he said it during the Miranda warning.

15 Q And you don't remember if it was in response to the  
16 warning about the attorney or not?

17 A I asked him several times, you know, if he understood  
18 the Miranda warnings and he said yes.

19 Q Did Mr. Weary get a copy of his statement?

20 A Yes. I gave him one that day.

21 MR. DEYSACH: I do not have any more questions.  
22 I'm not sure if they have any more witnesses, Your  
23 Honor.

24 THE COURT: We'll find out. Anything on  
25 redirect?

1 MS. FENT: No, Your Honor.

2 THE COURT: You may come down, sir. Where are  
3 those exhibits? Call your next witness.

4 MS. FENT: I have no further witnesses on this  
5 issue, Your Honor.

6 THE COURT: Anything from the defense?

7 MR. DEYSACH: Yes, Your Honor.

8 THE COURT: Any witnesses?

9 MR. DEYSACH: I do.

10 THE COURT: Call your witness.

11 MR. DEYSACH: I'd call Nicole Singletary.

12 THE COURT: Nicole Singletary.

13 NICOLE SINGLETARY, after being duly sworn,  
14 testifies as follows:

15 THE CLERK: Please have a seat there. State  
16 your full name for the record.

17 WITNESS: Nicole Singletary.

18 DIRECT EXAMINATION

19 BY MR. DEYSACH

20 Q Thanks for being here, Ms. Singletary. Did you ever  
21 have occasion to represent Mr. Willis Weary, my  
22 client?

23 A Yes, I did.

24 Q What capacity did you represent him in?

25 A I was his attorney on the charges that he had at that

1 time. It was an ABHAN, a malicious injury to  
2 personal property, and also on the burglary first.

3 Q Did you ever have an opportunity to meet with Mr.  
4 Weary?

5 A Yes, I did.

6 Q Do you know what date that you met him on?

7 A I do recall the last date that I met him on, and that  
8 was January the 18th of 2006.

9 Q How are you able to recall that date as the date that  
10 you met him?

11 A Well, it's a practice in our office every time we  
12 visit our clients to actually come back and notate it  
13 in the database that we use in our office as the  
14 times that we actually meet our clients. So what I  
15 did was I went back and pulled back one of the  
16 printouts and it showed that the last time I visited  
17 him was on January the 18th of 2006.

18 Q And so that's how you -- you visited him and then you  
19 marked it down in a file or in a database?

20 A Yes, I did.

21 Q Okay. Do you have any notes from that meeting?

22 A From that meeting, not particularly.

23 Q Well, let me ask you, do you have any advice that you  
24 as a policy would give all of your clients when you  
25 meet with them?

1 A Well, typically when we meet our clients what we do  
2 is prior to us coming down there meeting our clients,  
3 they get a letter. Basically the letter says not to  
4 talk to any inmates about their case, not to talk to  
5 any police officers and that if anyone asks them any  
6 questions in reference to their case that what they  
7 need to do is tell them to get in contact with their  
8 lawyer.

9 And also what I also do, too, is give them my  
10 business card. And on my business card it basically  
11 says the same thing. It tells all our clients not to  
12 speak to anyone and that if any police officers or  
13 anyone approach them about their case tell them to  
14 get in contact with us.

15 Q Do you have one of those business cards with you?

16 A No, I do not have one of those business cards with  
17 me.

18 Q That's all right. But I think what you're telling  
19 people is on the back of that business card is  
20 certain advice that you give to clients?

21 A Yeah. Basically it tells the client that they should  
22 not speak to anyone at all. They should not give any  
23 statements. They should not give any samples, such  
24 as blood, hair or anything.

25 Q Okay. What does it say they should do?

1 A What they should do is tell that individual to  
2 contact their attorney. In this case that would be  
3 me.

4 Q Were you ever contacted on January 23rd?

5 A No, I was not.

6 Q Do you have any reason to believe that you didn't  
7 give that type of advice to Mr. Weary at that time?

8 A No, I don't. With all my clients I typically give  
9 them a business card. They get that letter prior to  
10 us going down there and visiting them nine times out  
11 of ten. And it basically tells them not to speak to  
12 anyone at all and for those individuals to contact  
13 us.

14 Q Let me ask you what the Public Defender's policy is  
15 on the representation of clients who are served with  
16 additional warrants while they're already represented  
17 by the Public Defender's Office?

18 A What typically happens is if a client brings that to  
19 my attention, what I would tell them is, is that I am  
20 going to go back to the office and I'm going to get  
21 with the individual who actually opens up the files  
22 in our office, tell them about the additional charge  
23 and we will actually open up a file.

24 Q Okay. So instead of waiting for a bond hearing or an  
25 appointment from another judge, would you go ahead

1 and try to initiate the process more quickly?

2 A Yes.

3 Q And do you have any reason to believe that that's not  
4 what would have happened in Willis' case?

5 A Not at all, because we did have two files open in our  
6 office at different points for Willis Weary.

7 Q I do not have any more questions for this witness.

8 CROSS EXAMINATION

9 BY MS. FENT

10 Q Ms. Singletary, you said you don't have any notes in  
11 particular with regard to that meeting on  
12 January 18th?

13 A No, I do not.

14 Q Okay. So nothing in regards to that that you did in  
15 fact tell him these things?

16 A Well, I don't have notes, but I know that I do tell  
17 all my clients when I meet them not to talk to anyone  
18 at all and tell them that if any police officers come  
19 to talk to them for them to actually give away the  
20 business card that I gave them and tell the police  
21 officers to get in contact with me.

22 Q And you're testifying that this is a general  
23 practice, but you don't have any notes with regard to  
24 your particular meeting with Willis Weary?

25 A Yes.

1 Q Okay.

2 A That's my testimony.

3 Q And I think that your testimony before was that you  
4 do this nine times out of ten?

5 A No.

6 Q You said that on direct, that nine times out of ten  
7 that you would do this?

8 A No. I said nine times out of ten they get the  
9 letter. As soon as a file is opened up in our office  
10 there is a letter that's generated. That letter goes  
11 to all of our clients and that letter says Nicole  
12 Singletary has been appointed as your attorney. We  
13 ask that you please --

14 Q So if it's nine times out of ten, you have no  
15 information that Mr. Weary was not number ten and he  
16 didn't get that letter, correct? He could have not  
17 gotten that letter?

18 A That's not true because of the fact that the dates  
19 that we have the files being opened up was one file  
20 was opened up on September the 30th of 2005 and the  
21 other file was opened up on December the 19th of  
22 2005. So when I -- his case was actually transferred  
23 to me from another attorney.

24 Q Ms. Durant was actually his attorney in December?

25 A Yes.

1 Q Okay. Because she was -- yeah. She was originally  
2 on the case, correct?

3 A Yes.

4 Q Okay. And then when did you come in?

5 A I became his attorney officially on January the 4th.

6 Q Okay. And all of this stuff that you talked about,  
7 this is just advice that you give your clients,  
8 correct?

9 A Yes. It's advice.

10 Q It's our advice that you not talk to anyone without  
11 us being present, correct?

12 A Yes.

13 Q It's our advice that you not give any blood samples,  
14 saliva samples without talking to us first, correct?

15 A Yes.

16 Q All of that, his right to talk to someone is his  
17 right and not yours to assert. It's his, correct?

18 A Yes. But we always tell them not to speak to anyone.

19 Q Correct. That's your advice?

20 A Yes.

21 Q And he could choose to ignore that advice if he wants  
22 to?

23 A Yes.

24 MS. FENT: No further questions.

25 THE COURT: Anything further?



1           MR. DEYSACH: Not from this witness, Your Honor.

2           THE COURT: Ms. Singletary, you may come down.

3 Thank you very much. Call your next witness?

4           MR. DEYSACH: I would call my client, Willis  
5 Weary.

6           THE COURT: Mr. Weary, come around.

7 WILLIE WEARY, after being duly sworn, testifies  
8 as follows:

9           THE CLERK: Please have a seat up here, sir, and  
10 state your full name for the record.

11          THE WITNESS: Willis Weary.

12                           DIRECT EXAMINATION

13 BY MR. DEYSACH

14 Q    Okay. Mr. Weary, this is a hearing about the  
15 conditions under which you gave that statement. And  
16 I'm not going ask you, or I don't want you to answer  
17 any questions about what was actually stated in the  
18 statement. I'm just trying to talk about the  
19 conditions that were in place, what it was like when  
20 you gave that statement.

21 A    Okay.

22 Q    First of all, have you ever met Ms. Singletary?

23 A    Yes, sir.

24 Q    Do you remember when?

25 A    It was around January the 18th, like she said.

1 Q Do you remember if it was before or after  
2 Investigator McRoberts --

3 A It was before.

4 Q Do you remember getting any advice from her?

5 A Yes, sir.

6 Q Do you remember what that advice was?

7 A Not to talk to nobody, not to make statements or  
8 nothing like that.

9 Q Did she give you one of those cards?

10 A Yes, sir.

11 Q Did you read it?

12 A Yes, sir.

13 Q Did it tell you anything that you should do if you  
14 are approached by the police?

15 A Yes, sir.

16 Q What was that?

17 A It told me to contact her.

18 Q All right. Now I want to talk about January 23rd.

19 Do you remember when Mr. McRoberts came to visit you?

20 A Yes, sir.

21 Q Do you remember where you were when you met him?

22 A When the C.O. called me and told me I had to go out,  
23 and I ain't knowed where I was going at the time.

24 But then I was sitting up front in the holding cell  
25 and --

1           THE COURT: Sir, he's going to have to speak up  
2 or slow down or something. You need to speak so I  
3 can hear you and understand you. You understand?

4           WITNESS: Yes, sir.

5           THE COURT: Do you understand?

6           THE WITNESS: Yes, sir.

7           THE COURT: Okay.

8   Q     Please, like as he said, do what the judge says.

9   A     Yes, sir.

10   Q    Speak clearly and slowly and try to just answer the  
11 question that I'm asking. Do you remember where you  
12 were when you met Mr. McRoberts?

13   A     Yes, sir. Up front in the holding cell where they  
14 transported me.

15   Q     Was he with anybody?

16   A     No, sir.

17   Q     What did you guys do text?

18   A     When he came he was like -- he shook my hand. He was  
19 like, I'm Officer McRoberts. And I was telling him  
20 about how I had a lawyer and stuff. And he was like,  
21 I'll let you use the phone when we get to the  
22 Sheriff's Department. So we was riding down there  
23 and he was just talking about how he knows more than  
24 one person involved and all that. Basically we was  
25 just talking on the way down there.

1 Q Okay. So it's your testimony that you had already  
2 said something to him about wanting to contact an  
3 attorney?

4 A Yes, sir. At first.

5 Q Okay. And after you said that, did you initiate any  
6 more conversation with him?

7 A No. We was just riding and listening to music at one  
8 point in time.

9 Q Okay. When you got to the police station, did the  
10 interrogation continue?

11 A No. It didn't even start right then. The first I  
12 did was use the phone and called my girlfriend.

13 Q Okay. So did you use the phone for any other  
14 purpose?

15 A Yeah. I was -- I had got her to call Ms. Nicole on  
16 three-way. But when I called, a guy answered the  
17 phone and said they couldn't put me through to her  
18 because she wasn't in her office right then. And I  
19 tried to get him to transfer me to her voice mail.  
20 He said he couldn't do it right then.

21 Q Okay. Did you tell Mr. McRoberts that you were  
22 trying to get in touch with her?

23 A Yeah. I told him I had a public defender at the  
24 time.

25 Q Let's see.

1 A He asked me was it a real lawyer. I was like, a  
2 public defender.

3 Q And so there was a kind of a lack of understanding  
4 about whether or not a public defender was a lawyer  
5 or something like that?

6 A I just told him the public defender when he asked me  
7 that question.

8 Q Okay. Where were you when the statement was taken?

9 A At his desk.

10 Q Was there anybody else there?

11 A No, sir. Not at the time.

12 Q When he read you those warnings, did he read you  
13 those warnings?

14 A Yes, sir. He read them.

15 Q Did you say anything to him about wanting to assert  
16 any of those rights at that time?

17 A Did I -- did I serve?

18 Q Well, let me ask the question again, make it more  
19 understandable. He read you your rights?

20 A Yes, sir.

21 Q What did you say after he read you those rights?

22 A I was still on the phone I think. I think I just  
23 signed it.

24 Q Okay. How long were you there?

25 A I can't remember how long I was there.

1 Q Did he make you any promises in return for giving  
2 your statement?

3 A Yes, sir.

4 Q What did he promise?

5 A He promised me that he would contact the solicitor  
6 and drop the charge of what it supposed to have been.  
7 And he promised me that I'd be home before my baby  
8 was born and all of this stuff, you know. Basically  
9 he made me just feel comfortable with him just to  
10 open up with him and stuff.

11 Q Okay. All right. I don't have any more questions,  
12 Your Honor.

13 THE COURT: Cross examination.

14 MS. FENT: Do you have the exhibits, Your Honor?

15 CROSS EXAMINATION

16 BY MS. FENT

17 Q So you're saying that while the investigator was  
18 reading you these rights he was letting you talk on  
19 the phone at the same time?

20 A Yes, ma'am.

21 Q Okay. So you're chatting, trying to -- are you  
22 talking to your girlfriend at this time?

23 A Yes, ma'am.

24 Q Okay. And he is reading you the rights and you're  
25 just kind of talking with the girlfriend and not

1 really paying attention?

2 A Yes, ma'am. I was on the phone with her.

3 Q With her. And the investigator is letting you do  
4 that, talk to your girlfriend while he is reading you  
5 these rights?

6 A Yes, sir. Yes, ma'am I mean. I'm sorry.

7 Q And State's Exhibit No. 1, that is your signature,  
8 correct, right there?

9 A Yes, ma'am.

10 Q Speak up.

11 A Yes, ma'am.

12 Q And on the bottom under the waiver of rights, that is  
13 your signature?

14 A Yes, ma'am.

15 Q Okay. State's Exhibit No. 2 on page 1, is that your  
16 signature?

17 A Yes, ma'am.

18 Q On page 2, is that your signature?

19 A Yes, ma'am.

20 Q And again at the bottom, is that your signature?

21 A Yes, ma'am.

22 Q So you signed that page twice?

23 A Yes, ma'am.

24 Q Page 3, is that your signature?

25 A Yes, ma'am.

1 Q And you signed that page twice?

2 A Yes, ma'am.

3 Q Those are both your signatures?

4 A Yes, ma'am.

5 Q Question: "Is there anything else you want to add to  
6 this statement?" And you say no. Is that right?

7 A Yes, ma'am.

8 Q And you can read?

9 A Yes. Yes, ma'am. I can read.

10 Q On State's Exhibit No. 1 it says: "You have the  
11 right to talk to a lawyer for advice before we ask  
12 you any questions and to have a lawyer with you  
13 during any questioning." Is that correct?

14 A Yes, ma'am. But I tried to get in contact with her.  
15 They couldn't put me through to her.

16 Q Okay. But that is your signature, correct?

17 A Yes, ma'am.

18 Q And that is your signature under the waiver, correct?

19 A Yes, ma'am.

20 Q Saying that "I have read this statement of my rights  
21 and I understand what my rights are. I am willing to  
22 talk and answer questions." Correct?

23 A Yes, ma'am.

24 Q Okay. Again, on page 1 of State's Exhibit No. 2, on  
25 the top of that statement, it repeats all these



1 rights again. Is that correct?

2 A Yes, ma'am.

3 Q And you signed those, correct?

4 A Yes, ma'am.

5 Q Okay. And you're saying that Investigator McRoberts  
6 told you that if you gave a statement he would call  
7 me about dropping the charges?

8 A He was going to drop it to what it was supposed to  
9 be.

10 Q From the burg first, he was going to call me about  
11 dropping the burglary?

12 A Yes, ma'am. He said -- he acted like --

13 Q That was the only question that I had, was did he  
14 promise you that he was going to call me about  
15 dropping the charges?

16 A Yes, ma'am.

17 Q And you are looking at a minimum of 15 years on this  
18 burglary first charge, correct?

19 A Yes, ma'am.

20 Q Up to life, correct?

21 A Yes, ma'am.

22 MS. FENT: No further questions, Your Honor.

23 MR. DEYSACH: No further questions of this  
24 witness.

25 THE COURT: You may come down.

1 MR. DEYSACH: One last witness, Your Honor.

2 THE COURT: Oh, sure. Call your witness.

3 MR. DEYSACH: Chiquita Hampton.

4 CHIQUITA HAMPTON, after being duly sworn,  
5 testifies as follows:

6 THE CLERK: Please have a seat up there, ma'am.  
7 State your full name for the record.

8 WITNESS: Chiquita Hampton.

9 DIRECT EXAMINATION

10 BY MR. DEYSACH

11 Q Good afternoon, Ms. Hampton.

12 A How are you doing?

13 Q What's your relationship to my client, Willis Weary?

14 A I'm his girlfriend and his baby's mama.

15 Q Okay. Make sure you speak up so that the court  
16 reporter and the judge can hear you when I ask you  
17 questions. Just briefly, Ms. Hampton, do you  
18 remember receiving a phone call from Mr. Weary back  
19 on January 23rd?

20 A Yes.

21 Q Do you know where -- did he tell you where -- did you  
22 know where he was when he gave you that -- when he  
23 made that call?

24 A Yes. He was at the police station.

25 Q Did you try to do a three-way to contact anybody?

1 A Yes, I did.

2 Q Who did you try to contact?

3 A Ms. Nicole.

4 Q What was -- were you able to?

5 A No. She wasn't in her office.

6 MR. DEYSACH: I don't have anything further.

7 CROSS EXAMINATION

8 BY MS. FENT

9 Q What did you do on January 23rd? This is  
10 January 23rd of 2006, correct?

11 A Yes, ma'am.

12 Q What did you do on January 2006 before Mr. Weary  
13 called you?

14 A What did I do?

15 Q Yeah. What did you do that day?

16 A What did I do?

17 Q Yeah.

18 A About what?

19 Q What were you doing that day, on January 23rd, 2006?

20 A Before he called? Nothing. Just at the house.

21 Q What did you do on January 22nd, 2006, the day before  
22 he called you?

23 A Nothing.

24 Q January 24th, 2006?

25 A Nothing.

1 Q This is over a year ago, right?

2 A Mm-hmm (affirmative).

3 Q How do you know it was January 23rd, 2006?

4 A That he called me?

5 Q Yeah.

6 A Because it was.

7 THE COURT: I didn't hear what you said. I  
8 can't hear what you're saying.

9 A He called me on that date.

10 MS. FENT: She said "because it was."

11 THE COURT: Is that what you said?

12 A Mm-hmm (affirmative).

13 THE COURT: Okay.

14 Q And you said you're the defendant's baby's mama?

15 A Mm-hmm (affirmative).

16 Q How many children do you have by him?

17 A One.

18 MS. FENT: No further questions.

19 MR. DEYSACH: No further questions and no more  
20 witnesses.

21 THE COURT: All right. Come on down now.  
22 Anything further from the State?

23 MS. FENT: No.

24 THE COURT: All right, Mr. Deysach.

25 MR. DEYSACH: Thank you very much, Your Honor.

1 I am seeking to exclude his statement, my client's  
2 statement on the following bases, that it was taken  
3 in violation of his right to counsel, that he  
4 asserted his right to counsel and the officer  
5 continued to interrogate him.

6 The officer testified, not relying on any notes  
7 or anything like that, that my client said he didn't  
8 even know who his attorney was. The testimony shows  
9 that he met that attorney five days, less than a week  
10 before this interrogation took place. And yet, it's  
11 the officer's testimony that he didn't know who his  
12 attorney was.

13 The officer is unable to remember certain  
14 details of that exchange but seems to remember my  
15 client's refusal to ask for an attorney very clearly.  
16 And I just find that -- I don't know -- I guess funny  
17 that he's unable to remember exactly how or when he  
18 gave a certain statement but is without a doubt sure  
19 without even relying on any notes from that  
20 conversation that he did in fact make such a  
21 statement.

22 Your Honor, I've put up his attorney to verify  
23 that she did meet with him five days prior to this  
24 interrogation, that she did give him that advice. I  
25 guess she said that it's her policy to give that

1        advice, that there is no reason for her to believe  
2        that she gave anything other than give that advice to  
3        Mr. Weary and that if he would have talked about the  
4        burglary that she would have told him what the policy  
5        was about starting up a file.

6        I'm not asserting that he was officially  
7        appointed under the Sixth Amendment. There was no  
8        bond hearing yet. He'd only been served with the  
9        warrant at that time. But under the Fifth Amendment  
10       right to counsel, the evidence shows that he  
11       requested his attorney. He told you he requested an  
12       attorney. His girlfriend remembers the call from the  
13       jail or from the police station where she tried to  
14       contact Ms. Singletary who understandably wasn't in  
15       her office at the time. As I said, you know,  
16       oftentimes a lawyer, especially one as busy as her,  
17       would be somewhere besides her office unable to take  
18       a call that she didn't expect.

19       So there is three witnesses that I've put up  
20       that show, at least tend to show, Mr. Weary who  
21       absolutely says that he asked for an attorney, that  
22       he was given that advice five days before, that he  
23       did assert his right to an attorney, that  
24       Ms. Singletary of course gave it to him and that  
25       Ms. Hampton tried to contact that attorney while he

1 was sitting there in front of the police officer the  
2 whole time.

3 Your Honor, the State has to prove that this was  
4 a voluntary statement by a preponderance of the  
5 evidence. I don't believe that they've carried that  
6 burden. It is their burden to show it by a  
7 preponderance of the evidence. And when you've got  
8 basically a swearing contest between my client and  
9 the police officer, plus the supporting evidence that  
10 I have put up with Ms. Singletary and Ms. Hampton, I  
11 do not see how they have carried that burden at all.  
12 And I would ask that you consider suppressing it. I  
13 ask that you would suppress his statement.

14 *THE COURT:* Ms. Fent.

15 *MS. FENT:* Your Honor, I have a couple of cases  
16 I would like to tender to the Court, and I have  
17 copies for Mr. Deysach. The first one is Moran vs.  
18 Burdine, a United States Supreme Court case. And  
19 basically it goes into a lot of information that I  
20 think is important in terms of society's interest in  
21 obtaining statements from defendants, balancing that  
22 out with their right to counsel and basically says,  
23 talks about the fact that it is the defendant's right  
24 to assert. It's not any third person's right to  
25 assert, including an attorney. It is the defendant

1 alone. And as long as he is read all of his rights  
2 and he fully understands and comprehends his rights,  
3 then it is his right to invoke or proceed.

4 *THE COURT:* Or remain silent.

5 *MS. FENT:* Without representation. Correct.  
6 And while I realize the defendant testified and said  
7 that he told McRoberts he wanted to get in touch with  
8 Ms. Singletary, Sergeant McRoberts says that's not  
9 what happened, that he brought him over, he brought  
10 him to the cubicle, that he read him each right. He  
11 checked the list off as he read each right to him.  
12 He asked him if he understood all of these rights.  
13 There was a question about, do you want an attorney;  
14 at that point when they get to the attorney, do you  
15 want an attorney, do you have an attorney? I don't  
16 think I'm represented. You know, I want to proceed.  
17 And he signs under that waiver of rights that he  
18 wants to proceed and to give a statement.

19 As you look at the statement, it's a three-page  
20 statement. It not a short, I'm unsure. He goes on  
21 for three pages of information. At the top of the  
22 first page of that statement the rights are written  
23 again and he signs each page twice, acknowledging I  
24 want to give this statement, this is freely and  
25 voluntarily given, and I am not requesting an



1 attorney at this point. And that I believe is  
2 sufficient to show a knowing, voluntary statement.

3 MR. DEYSACH: Just briefly, Your Honor. The  
4 point I think I might have skipped over that I wanted  
5 to make in the first place was that once my client  
6 asked for an attorney, all the questioning has to  
7 stop at that point. So they can't keep asking him  
8 whether or not he wants an attorney or they can't ask  
9 him again after he has asserted his right to an  
10 attorney.

11 So while he may have signed the waiver, if he  
12 says that he wants an attorney before that and they  
13 continue to ask him questions after that, the  
14 statement should be suppressed, that once he asks for  
15 an attorney, the questioning stops.

16 THE COURT: I don't think it's clear, at least  
17 it's not clear to the Court, that he asked for an  
18 attorney or have an attorney or asked to have an  
19 attorney present when he was accompanying the  
20 officer.

21 The first right that was read to him is his  
22 right to remain silent. If I accept the testimony of  
23 his attorney, Ms. Singletary, that she advised him to  
24 remain silent and he chose not to remain silent, I  
25 think he does so at his peril.

1           He had an attorney on the prior case. He says  
2 he attempted, or through his girlfriend attempted, to  
3 reach Ms. Singletary. There's no corroboration of  
4 that from Ms. Singletary or some sort of telephone  
5 messaging service. If he'd left a message, there  
6 would be some evidence of that. And I always have to  
7 take it -- and these situations are difficult, but I  
8 always have to look to the credibility of the  
9 witnesses as well as what hard evidence is produced.

10           And as you know, this is a very low threshold,  
11 preponderance of the evidence. All this does is make  
12 it admissible. It doesn't mean the jury -- the whole  
13 issue of voluntariness still is an issue for the  
14 jury, not for me. At least it is -- let me back up.  
15 It is for me a preponderance of the evidence. It is  
16 not for me as to the same burden the State requires  
17 before a jury.

18           I find there were no extraordinary circumstances  
19 in this case, no prolonged period of interrogation.  
20 I find that he was fully informed of his rights not  
21 only by the officer but as witnessed by his signature  
22 on not only the waiver but the statement. And again,  
23 these statements indicate that they're done freely  
24 and voluntarily. So when you talk about  
25 preponderance of the evidence, I have to consider

1 this evidence also. This is evidence. It's a  
2 willingness to make a statement.

3 As I say, he was not only informed of his rights  
4 by the officer, but he was fully informed of his  
5 rights at some time in the past by Ms. Singletary,  
6 fully informed. He says he understood that. And the  
7 mere fact that he says he -- it's somewhat  
8 corroborated by the last witness that he attempted to  
9 get in touch with Ms. Singletary I don't think  
10 over -- or negates his willingness to go forward and  
11 produce the statement in cooperation with the  
12 officer. I may be wrong. But if I view the totality  
13 of the circumstances, that's the way I see it.

14 Therefore, I have carefully considered all the  
15 evidence which has been offered by the State and the  
16 defendant, and I am convinced by a preponderance of  
17 the evidence and so find that before the alleged  
18 statement was obtained from the defendant the  
19 defendant was fully advised of his rights under the  
20 Fifth and the Sixth Amendments to the Constitution of  
21 the United States, that the defendant was advised of  
22 the Constitutional safeguards required by Miranda v.  
23 Arizona, that the defendant was advised prior to any  
24 interrogation he had the right to remain silent, that  
25 he was advised prior to any interrogation if he

1 waived his right to remain silent and made a  
2 statement that such statement could and would be used  
3 against him in a court of law, and that the defendant  
4 was advised prior to any interrogation that he had  
5 the right to employ or select an attorney of his own  
6 choice, that if he did not have money, funds or  
7 resources to employ an attorney that the court would  
8 appoint and provide an attorney for him if he so  
9 desired without cost or expense to him, and that he  
10 had the right to have his attorney present with him  
11 at all times during all interviews and all  
12 interrogations, that he was advised prior to any  
13 interrogation he had the right to consult with his  
14 attorney before interrogation, and the defendant was  
15 advised prior to the interrogation he had the right  
16 to interrupt and terminate the interrogation at any  
17 time, he had the further right to stop answering  
18 questions at any time during the interrogation, and  
19 the defendant was advised prior to any interrogation  
20 that if the interrogation -- during the interrogation  
21 if he desired an attorney the interrogation would  
22 cease until an attorney was provided for him, he  
23 would be given an opportunity to consult with his  
24 attorney prior to further interrogation, that the  
25 defendant knowingly and intelligently waived his

1 rights under the Fifth and Sixth Amendments of the  
2 Constitution of the United States and the  
3 Constitutional safeguards required by *Miranda v.*  
4 *Arizona*, and that the alleged statement obtained from  
5 the defendant was freely and voluntarily given  
6 without duress, without coercion, without undue  
7 influence, without reward, without promise or hope of  
8 reward, without promise of leniency, without the  
9 threat of injury, without compulsion or inducement of  
10 any kind, and that such alleged statement was the  
11 voluntary product of the free, unconstrained will of  
12 the defendant.

13 The Court finds all of the foregoing conclusions  
14 by a preponderance of the evidence. I, therefore,  
15 find that the statement is admissible into evidence.

16 All right. Is the State ready to proceed?

17 *MS. FENT:* We are ready.

18 *THE COURT:* Ready for the jury?

19 *MR. DEYSACH:* Sure. I do have a few more  
20 pre-trial motions. If you want to pick the jury  
21 first or you want to hear what I've got first.

22 *THE COURT:* Yeah. I want to hear what you've  
23 got.

24 *MR. DEYSACH:* Okay. I'm going to give you I  
25 guess, Your Honor, another chance to suppress some

1 evidence, Your Honor. At the same time as the  
2 interrogation they retrieved a DNA sample from Mr.  
3 Weary through saliva. And I would seek to -- I would  
4 object to the introduction of that evidence on the  
5 same grounds, that he asked for an attorney prior to  
6 being asked for consent. I don't think we need to go  
7 through the whole -- I wish I'd have said something  
8 before the Jackson v. Denno. But I would seek to  
9 suppress that DNA sample on the same grounds.

10 THE COURT: What's the State's position? What  
11 is the DNA evidence in this case anyway?

12 MS. FENT: He left a -- cut himself on the point  
13 of entry, the glass.

14 THE COURT: Okay.

15 MS. FENT: He bled on the miniblinds. They  
16 collected that sample. They CODUS hit. And then we  
17 subsequently got, at the same time he gave his  
18 written statement, he also signed a consent to search  
19 for DNA and --

20 THE COURT: Was it warrantless?

21 MR. DEYSACH: Yes. It was warrantless. It was  
22 after the signing of a consent form.

23 MS. FENT: It's at the same time that he gave  
24 his statement. The officer, the investigator --  
25 excuse me. Sergeant McRoberts asked him, will you

1 also give consent to give a buccal swab, and he  
2 signed and gave his consent for the buccal swab.

3 THE COURT: Well, you've got to put something  
4 up.

5 MS. FENT: I call Sergeant McRoberts.

6 (WHEREUPON, State's Exhibit No. 3 is marked for  
7 identification.)

8 THE COURT: Mr. Deysach, what else do you have?

9 MR. DEYSACH: I have --

10 THE COURT: I just don't want to keep the jury  
11 here until 5:00 and then decide we're going to pick a  
12 jury.

13 MR. DEYSACH: Yes, Your Honor.

14 THE COURT: I'm thinking about letting the jury  
15 go and come back in the morning while we finish this  
16 pre-trial this afternoon.

17 MR. DEYSACH: Yes, sir. I'll tell you what I'm  
18 planning on asking for. And it shouldn't be too much  
19 more.

20 THE COURT: I really don't care. I'm trying to  
21 schedule.

22 MR. DEYSACH: Yes, Your Honor.

23 THE COURT: I want you to put anything on the  
24 record that you think is important to your client.

25 MR. DEYSACH: Okay. I would renew discovery

1 motions first of all. I wish I'd already done that.  
2 I want to renew discovery motions. I want to make  
3 sure that I have all the --

4 *THE COURT:* What about -- go ahead.

5 *MR. DEYSACH:* Okay. This CODUS hit that they  
6 get from the Department of Corrections, I wanted to  
7 keep that out.

8 *THE COURT:* Well, we're going to sanitize that  
9 testimony like you wouldn't believe.

10 *MR. DEYSACH:* These are just things I wanted to  
11 cover before the trial. You know, I had some -- I  
12 wanted to make sure I had the resume or the CV of the  
13 DNA expert, which I don't have that yet; make sure  
14 that if there are any statements, written statements  
15 from the victim, I don't have anything like that. So  
16 I wanted to make sure if there was one that it was  
17 turned over to me. Other than that --

18 *THE COURT:* Why don't we just bring this jury  
19 back in the morning, --

20 *MR. DEYSACH:* -- I think that's all I have.

21 *THE COURT:* -- finish this up this afternoon.

22 *MS. FENT:* Whatever Your Honor thinks. There  
23 is --

24 *THE COURT:* Well, they've been sitting there all  
25 day. They've been sitting there all day with nothing



1 to do. I'm just putting myself in the place of the  
2 jurors.

3 MS. FENT: Sure. And that's why I'm fine with  
4 whatever.

5 THE COURT: I'd be ready to pull my hair out and  
6 say what in the world do they have us up here for?  
7 Given the witness list, it appears that this case can  
8 be tried in two days.

9 MS. FENT: Or shorter. We are always, you know,  
10 putting more people on the list than we're actually  
11 going to call. You know, a lot of these people don't  
12 have much --

13 THE COURT: All right. Jim, release that jury.  
14 Tell the jury to be back at 9:30 in the morning.  
15 We'll be ready to do opening arguments at 9:30.  
16 We'll do all the pre-trial this afternoon. But I  
17 need to find out about this interpretation. All  
18 right. You may proceed. The jury will be back at  
19 9:30. Go ahead.

20 MS. FENT: Do you wish to advise him that he's  
21 still under oath or --

22 THE COURT: Do you understand that, sir?

23 WITNESS: Yes, sir.

24 THE COURT: All right. You're still under oath.

25 DAVID MCROBERTS, after being recalled and

1 reminded he is still sworn, testifies as follows:

2 DIRECT EXAMINATION

3 **BY MS. FENT**

4 Q Sergeant McRoberts, I'm going to hand you what's been  
5 marked as State's Exhibit No. 3 and ask you if you  
6 recognize that?

7 A It's a Richland County Sheriff's Department Consent  
8 to Search for DNA Evidence Form.

9 Q Who is it specifically in regard to?

10 A Willis Laverne Weary.

11 Q Can you explain to the Court basically how and when  
12 you obtained that, if it was before or after the  
13 written statement, and how it progressed?

14 A I don't remember if it was before or after I took the  
15 statement. But I read it to him. And it says: "I,  
16 Willis Laverne Weary, do hereby consent to the search  
17 of my person without a search warrant by Sergeant  
18 McRoberts of the Richland County Sheriff's  
19 Department. The investigator is authorized by me to  
20 take from my person any materials or any other  
21 property which he or she may desire. This search  
22 shall be made of my person for the purpose of  
23 obtaining a buccal swab, oral, for DNA evidence. I  
24 am aware that any evidence obtained as a result of  
25 this search can be used against me in a court of law.

1 This written permission has been given by me to the  
2 above-named investigator" -- which was myself --  
3 "freely, voluntarily and without threats or promises  
4 of any kind."

5 And then Mr. Weary signed it, and myself and a  
6 witness signed it.

7 Q And just a cursory look at the witness signature, it  
8 looks like the same person who witnessed your Advice  
9 of Rights form?

10 A Yes.

11 Q Okay. But there is no times notated on that consent,  
12 correct?

13 A No, ma'am.

14 Q Okay. And you're saying that you do not have a  
15 recollection of at what point you did this, if you  
16 did it before or after you advised him of his rights?

17 A Yeah. I'm not -- normally it would have been done  
18 afterwards just because the conversation and the  
19 statement always comes first. But this only takes a  
20 few seconds to do because all you do is take like a  
21 big, long Q-tip and put it in your mouth, two of them  
22 together, and just swab it from cheek to cheek.

23 Q Okay. You're saying that the defendant did sign a  
24 consent to search, correct?

25 A Yes.

1 Q To give a buccal swab?

2 A Yes.

3 Q And was that then done?

4 A Yes, ma'am.

5 Q Okay. Who was that done by at that time?

6 A It was done my me.

7 Q Okay. And then what did you do with that swab I  
8 guess?

9 A Well, you said it was done. He actually puts the  
10 swabs in his mouth. And then when he's done he gives  
11 it back to me. I put it in a small white box  
12 container, drop it into evidence.

13 Q So you handed him the swab and he put the swab in his  
14 own mouth?

15 A Yes.

16 Q Okay. No further questions.

17 THE COURT: Mr. Deysach.

18 MR. DEYSACH: I don't have any questions but I  
19 just have some argument.

20 THE COURT: All right.

21 MR. DEYSACH: Ready to hear it? Sorry.

22 THE COURT: You may come down. All right, sir.  
23 Anything from the defendant?

24 MR. DEYSACH: Nothing from the defendant. No  
25 witnesses or anything.

1           **THE COURT:** Okay.

2           **MR. DEYSACH:** Your Honor, he just testified he  
3 didn't know whether or not Willis Weary signed this  
4 before or after he got the advice of rights. Willis  
5 Weary is in custody at the time. He is entitled to  
6 the Miranda warnings on self-incrimination, on right  
7 to an attorney, all those things which are not  
8 present in this consent form.

9           And so I don't see how by a preponderance of the  
10 evidence more likely than not that he signed this  
11 after the waiver of rights when the officer himself  
12 did not remember. He said usually I do it this way  
13 but since this is so short, maybe I didn't. So I  
14 would ask that you suppress that DNA evidence.

15           I would add, Your Honor, that they did do a  
16 Schmerber hearing later and did collect DNA evidence  
17 from him. So the probative value of this particular  
18 DNA sample is not very high when they've got another  
19 sample. Basically, if they have this sample, then  
20 they've got two samples they can use. And if you  
21 suppress this sample, then they've really got one  
22 sample they can use.

23           So I don't -- you know, I don't think that the  
24 probative value of this particular sample is, like I  
25 said, very high. But the main crux of my argument is

1 he needed to be advised of all those same rights that  
2 are in Miranda as he was in custody before he gave  
3 this consent. Because, I mean, the question is, do  
4 you consent? You know. And that's a question.  
5 That's an interrogation. He answers yes and he  
6 doesn't get the advice of rights. That's the crux of  
7 my argument.

8 *THE COURT:* Ms. Fent.

9 *MS. FENT:* Your Honor, Sergeant McRoberts'  
10 recollection was that he normally does it after the  
11 statement. The defendant was given the form. He  
12 signed the form. He put the swab into his own mouth,  
13 together with the totality of the circumstances in  
14 terms of him being read his rights, waiving his  
15 rights, the whole situation was such that he was  
16 voluntarily, knowingly consenting to this as well as  
17 giving up his rights.

18 *THE COURT:* I just had a question not too long  
19 ago! What about inevitable discovery? In other  
20 words, we've got a warrantless search which is  
21 defective DNA evidence. If in the normal course of  
22 police investigations that would have been  
23 discovered, why would that not make it something that  
24 ought to be admissible?

25 *MR. DEYSACH:* Is that rhetorical, or are you

1           referring to me, sir?

2           *THE COURT:* Well, it's musings.

3           *MR. DEYSACH:* Okay.

4           *THE COURT:* I understand your argument that it's  
5           not clear whether the request to take the DNA was  
6           made before or after, after the advice of rights, and  
7           that therefore we ought to protect the defendant's  
8           right and assume that it was taken before any waiver  
9           of rights was granted. You know, I always ask  
10          lawyers to show me some case law, which I'm not going  
11          to put that burden on you.

12          But I don't think based on again where that goes  
13          to the totality of the circumstances, I don't see --  
14          I mean, it appears that the defendant was in some  
15          sort of a cooperative mood. And maybe he thought  
16          this was exculpatory. I don't know. You haven't  
17          made much of an argument about promises, threats,  
18          promises of leniency. I don't know if that would  
19          have entered into discussion.

20          But if that evidence in the normal course of  
21          police investigative activity would have been  
22          reasonably -- would have been sought; as you say,  
23          there was a Schmerber hearing, and that evidence  
24          would have been inevitably discovered anyway, I don't  
25          think it's such that, or the law is such that I

1 should exclude it at this stage. And I understand  
2 why they need these -- anyway, I understand the CODUS  
3 procedure and I respect it.

4 **MR. DEYSACH:** Just to be heard briefly, you  
5 know, I would just say that, I mean, they did get the  
6 DNA. So they did discover it. I don't know why, you  
7 know. And I'm just asking to exclude -- you know  
8 what I'm asking to exclude. I've already made that  
9 point. My on answer was, like I said, it was  
10 discovered. And so when you use the inevitable  
11 discovery rule, then, you know, it almost appears as  
12 if they're getting two bites at the apple with the  
13 DNA. And I respect your ruling, Your Honor, and I'll  
14 move on.

15 **THE COURT:** It's the same DNA. It's the same  
16 DNA. It's the same DNA. I assume it would have the  
17 same result as the result of the test.

18 **MR. DEYSACH:** Yes, Your Honor. But I do want to  
19 point out something else, and I'm moving on.

20 **THE COURT:** Go ahead. You're doing a good job.

21 **MR. DEYSACH:** Okay. That this is something  
22 different than the CODUS procedure. You know, they  
23 had his DNA from prison. Then they get it by  
24 consent, you know, your ruling that I knew I was  
25 taking exception to, and then through a Schmerber



1 order. Okay.

2 So what you've just allowed is the first or  
3 really the second sample that was taken. I don't  
4 have a motion as to the one taken pursuant to the  
5 Schmerber order. But now, regarding this CODUS hit,  
6 I would ask that any mention -- I don't know if she  
7 was planning on mentioning it or not, but I would ask  
8 that any mention of that CODUS hit be excluded from  
9 the trial.

10 THE COURT: I agree with you. Ms. Fent.

11 MS. FENT: Your Honor, could I be heard just  
12 briefly?

13 THE COURT: Yeah. I'm going to let you be  
14 heard. I want to say before you make the argument  
15 that the officer's testimony was just laced with  
16 inadmissible testimony about he'd been in prison  
17 before and that's how he got it and all of that sort  
18 of thing.

19 MS. FENT: Right.

20 THE COURT: I mean, --

21 MS. FENT: For purposes of the hearing, I  
22 believe that that information is pertinent.

23 THE COURT: That's fine.

24 MS. FENT: So that you know the terms of the  
25 investigation. I have no -- you know, the fact that

1 he's been in prison was not coming out. I was even  
2 going to stay away from the fact that he went to  
3 Alvin S. Glenn or picked him up at Alvin S. Glenn,  
4 just you made contact with him.

5 *THE COURT:* Yes, ma'am.

6 *MS. FENT:* Now, in terms of the CODUS hit, when  
7 this gentleman's apartment is burglarized, I mean,  
8 there is nobody caught at the scene. Nobody is  
9 running away from the scene. There are zero  
10 suspects. There is a blood sample that's left on the  
11 blinds.

12 The victim, you know, ultimately as we're  
13 sitting here, or even arrested, I mean, the victim  
14 doesn't know this defendant. There is no reason for  
15 him to be in this home. There is zero suspects. So  
16 they get this DNA swab, the blood sample off the  
17 miniblind. You know, Richland County -- or SLED;  
18 excuse me -- you know, puts that into CODUS and they  
19 get a hit. We get a suspect.

20 *THE COURT:* All he has to say is we determined.  
21 He doesn't have to say why or how, unless Mr. Deysach  
22 questions him about it.

23 *MS. FENT:* Well, and my --

24 *THE COURT:* Somebody on that jury may know -- I  
25 mean, may know darn well what CODUS is and will tell

1           that jury that the only reason he's in CODUS is  
2           because he's a convicted felon.

3           *MS. FENT:* Well, in terms of calling it CODUS,  
4           if we could say just a database of known DNA samples.  
5           Because there is inherently, Your Honor, out there,  
6           there is a, you know, mistrust of law enforcement.  
7           And if you think about the evidence presented that,  
8           gosh, they just know that it's his blood and they go  
9           talk to him to get a statement, there is nothing  
10          tying him to it; they could conceivably go back to  
11          that jury room and say, you know, why would this  
12          Sergeant pick him out of all the other people in our  
13          city to bring him in to get his DNA swab?

14          I mean, I understand that being in CODUS, that  
15          information that he's in the database of known  
16          contributors, it is prejudicial. It is. But it is  
17          the reality of how this entire case is broken. There  
18          is nothing else linking him to this apartment.

19          *THE COURT:* Except their investigation.

20          *MS. FENT:* And I am afraid that in a vacuum,  
21          just saying we've got this DNA swab --

22          *THE COURT:* I can't tell you how to say it.

23          *MS. FENT:* Well, that's my fear, is I don't want  
24          it to be said wrong and then there is a --

25          *THE COURT:* Mistrial.

1           *MS. FENT:* Right.

2           *THE COURT:* Sure. I'm sure as clever as you are  
3 you can present that evidence without tainting the  
4 jury about Mr. Weary's criminal past. That's the  
5 prejudicial that overrides the probative evidence.

6           *MS. FENT:* The other aspect of this case is that  
7 they are going to hear that this is a burglary first  
8 because he has two prior burglaries. They will hear  
9 that. They will hear it in the indictment. We will  
10 mention it in opening. And it's the finding -- we  
11 are going to present the prior convictions. It's  
12 part of our burden of proof of making it a burg  
13 first. So in that light and the fact that in this  
14 particular trial actually the jury is already going  
15 to hear that he has two prior burglaries. And, you  
16 know, the additional information is that he's in a --

17           *THE COURT:* Now she's saying it's almost  
18 cumulative to say that he's in CODUS. Or it's less  
19 prejudicial than it would otherwise if he had a pure,  
20 clean record.

21           *MR. DEYSACH:* I would say a couple of things.  
22 One, just because he's been convicted of these  
23 offenses doesn't mean he was sent to the Department  
24 of Corrections. I think that that's the inference  
25 that would be made. I think that my concern is that

1 people may think that people who have to give DNA  
2 samples are sex offenders. You know, when they start  
3 talking about a database of convicted offenders and  
4 DNA and that type of material that there is the  
5 possibility that they would think even worse than  
6 what the actual case is.

7 And so I would say it is cumulative, that not  
8 only is he a prior burglar but he's a prior burglar  
9 who didn't get probation, you know. Because I think  
10 you have to go to the Department in order to give  
11 that DNA sample. I may be wrong.

12 I would also say another thing, that, you know,  
13 I'm relying on this case about fingerprints. It's a  
14 South Carolina case. I believe it's State v. Rich,  
15 where without the person who actually takes the  
16 fingerprint to say, hey, this is John Doe's  
17 fingerprint that you don't have -- there is a hearsay  
18 problem, you know, that you're basically taking  
19 somebody's word for it that that's Willis Weary's  
20 DNA.

21 And you're saying the prejudicial value of this  
22 piece of evidence is diminished; we've got two other  
23 DNA samples, you know, that the probative value is  
24 even more diminished. I mean, there is two other DNA  
25 samples.

1           And I would agree with you, Your Honor, I think  
2           you alluded to it, that if I start impeaching their  
3           investigation about, oh, why are you picking on  
4           Willis Weary, you know, that I would be kicking open  
5           the door, the door would fly open, that she would  
6           have every opportunity to say, you know, because we  
7           checked the SLED database, law enforcement has his  
8           DNA on file because of his past, that then it would  
9           become an issue.

10           And I respect and I understand that, that I  
11           could potentially make it admissible. But I would  
12           ask with the two other DNA samples and without me  
13           impeaching their investigation that you would not  
14           allow it.

15           **THE COURT:** I'll grant your motion to the extent  
16           that the CODUS designation should not be used in the  
17           testimony of the officer. There are other ways that  
18           he can testify, that he determined that there was a  
19           match and that that's --

20           **MS. FENT:** Are you saying that -- I just want to  
21           make sure that --

22           **THE COURT:** Just don't use the word --

23           **MS. FENT:** Can he use the word "database"  
24           without using CODUS? And let me make clear, they are  
25           collecting samples at the probation department today.

1 It's not a Department of Corrections thing. If  
2 you're convicted of burglary or ABHAN designated  
3 offenses, it's not a Department of Corrections  
4 database.

5 THE COURT: Let's just don't put more prejudice  
6 into the record than you have to. Because somebody  
7 else may look at this case. And if I determine --  
8 and I think both of you admit it's prejudicial.

9 MS. FENT: Conceivably. And really, every piece  
10 of evidence that the State puts in against the  
11 defendant is prejudicial.

12 THE COURT: Right. And I have to determine  
13 whether it's more prejudicial than probative, and I  
14 say it is in my opinion. Otherwise, you know,  
15 otherwise the door is wide open for you just to nail  
16 this, any defendant, with his past record. And  
17 that's not what the court's all about. That's not  
18 what a trial is about. He has got to be tried on  
19 this matter. And as much of his prior history that's  
20 not exposed to this jury, the better off are you if  
21 you want to maintain -- if you get a conviction, if  
22 you want to hold a conviction. I don't believe in a  
23 conviction at any cost.

24 MS. FENT: I agree, Your Honor. I just -- I  
25 sincerely --

1           THE COURT: Figure it out.

2           MS. FENT: -- feel that, you know, I should be  
3 entitled -- I'm just fighting for the evidence --

4           THE COURT: Well, show me a case. Show me a  
5 case. All right. What else?

6           MR. DEYSACH: I think I don't see anything on my  
7 list, Your Honor.

8           THE COURT: How about witnesses' records?

9           MR. DEYSACH: Yes. I do need -- I would like to  
10 see the records of any witnesses.

11          THE COURT: Impeachable offenses if there are  
12 any.

13          MR. DEYSACH: Pardon? Impeachable offenses?

14          THE COURT: Right. And discovery.

15          MR. DEYSACH: Yeah. I alluded to it earlier.  
16 But I do want to renew the discovery motion, make  
17 sure I've got everything I'm supposed to have.

18          THE COURT: Let's find out.

19          MS. FENT: I have gone through Sergeant's case  
20 jacket, and everything that he's shown in his case  
21 jacket has been delivered to the attorney.

22          THE COURT: What about the witnesses' records?

23          MS. FENT: Witnesses' records, I just need to  
24 get the date of birth, and I'll rap that.

25          THE COURT: Okay. Have them in the morning?



1 MS. FENT: Absolutely.

2 THE COURT: Anything else?

3 MR. DEYSACH: Your Honor, I would have the  
4 State's witnesses sequestered, the ones that are  
5 sequestrable. I don't see any of them here right  
6 now, but tomorrow.

7 THE COURT: I don't know who they are either.

8 MS. FENT: The victim is present and is  
9 excluded. And my lead investigator, Sergeant  
10 McRoberts, he just has to be in here.

11 THE COURT: No problem. No problem with that.  
12 All right. Anything further? Be ready to open in  
13 the morning at 9:30. Anything else in terms of  
14 standard Voir Dire with the exception of the  
15 apartment complex? Is that what you wanted?

16 MR. DEYSACH: Yes, Your Honor. You know, I'd  
17 almost -- not all judges are the same.

18 THE COURT: I hope not.

19 MR. DEYSACH: I want to make sure you ask about  
20 law enforcement. The Solicitor's Office, if people  
21 know the Solicitor's Office.

22 THE COURT: I'll do all of that.

23 MR. DEYSACH: Victims. And then, like I said,  
24 the weird one was the apartment complex one.

25 THE COURT: Any objection to that?

1           *MS. FENT:* I didn't hear the one about if  
2 anybody lived in the apartment complex. I have no  
3 problem with that.

4           *THE COURT:* He said in any apartment complex.

5           *MS. FENT:* Oh. In any apartment complex?

6           *THE COURT:* Not just the complex. He wants to  
7 know who are homeowners and who are renters.

8           *MS. FENT:* Okay. We might have the whole entire  
9 panel stand up. I don't know. But that's fine.

10          *MR. DEYSACH:* It may not be awful, Your Honor.

11          *THE COURT:* Well, you've won a couple.

12          *MR. DEYSACH:* Pardon me?

13          *THE COURT:* You've won a couple.

14          *MR. DEYSACH:* Yes. Yes, Your Honor. We don't  
15 mind.

16          *THE COURT:* All right. 9:30?

17          *MS. FENT:* Yes, sir.

18                 (Whereupon, the proceedings are concluded for  
19 the day, to be reconvened tomorrow morning)  
20  
21  
22  
23  
24  
25

Thursday, March 1, 2007

(WHEREUPON, State's Exhibit No. 4 is marked for identification.)

(WHEREUPON, State's Exhibit No. 5 is marked for identification.)

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4           identification.)

5           (WHEREUPON, State's Exhibit No. 18 is marked for  
6           identification.)

7           (WHEREUPON, State's Exhibit No. 19 is marked for  
8           identification.)

9           (WHEREUPON, State's Exhibit No. 20 is marked for  
10          identification.)

11          (WHEREUPON, State's Exhibit No. 21 is marked for  
12          identification.)

13          (WHEREUPON, State's Exhibit No. 22 is marked for  
14          identification.)

15          (WHEREUPON, State's Exhibit No. 23 is marked for  
16          identification.)

17          **THE COURT:** All right, counsel. Anything before  
18          we bring the jury?

19          **MR. DEYSACH:** I was going to ask you to revisit  
20          the Schmerber order that was issued by Judge Johnson.  
21          At the time -- or actually Judge Manning. At the  
22          time that DNA sample was requested we hadn't had a  
23          ruling on whether or not the consented-to DNA sample  
24          would be admitted. I think, you know, there may have  
25          been a close call yesterday when we argued over it.

1 Maybe it wasn't so close.

2 THE COURT: Wait a minute. Were you involved in  
3 the Schmerber hearing --

4 MR. DEYSACH: I was.

5 THE COURT: -- in front of Judge Manning?

6 MR. DEYSACH: I was involved, although I didn't  
7 really get a chance to argue before the judge ruled  
8 at the time. The only thing I'm asking, Your Honor,  
9 --

10 THE COURT: Did he make specific findings?

11 MR. DEYSACH: I would have to look at the  
12 transcript to know. But all I'm saying now is that  
13 the necessity of that evidence, that factor that's to  
14 be considered by the judge at that time has now  
15 diminished. I think at the time it was represented  
16 that maybe they would need that DNA sample or else  
17 they wouldn't have another DNA sample to use based on  
18 what a trial court might rule.

19 Now that factor, as I say, the necessity for  
20 that evidence has been diminished and that maybe you  
21 would revisit that judge's order and consider  
22 suppressing that second DNA sample, as we've already  
23 admitted to the consented-to DNA sample.

24 THE COURT: Well, of course I don't know what  
25 the results of any DNA sample were. And that's why I

1 was probing your recollection of Judge Manning's  
2 order. If he made the relevant finding or the  
3 required findings, I don't know that I can go beyond  
4 that. In other words, there are four factors he had  
5 to consider, and if he made those findings,  
6 regardless of whether there would have been a prior  
7 sample and whether there was an urgent, lack of a  
8 better word, a need for the second sample, the only  
9 portion under State v. Register that I assume that  
10 you're questioning is that there is a clear  
11 indication that material evidence relevant to the  
12 question of fact the suspect's guilt will be found.  
13 I'm not even sure it fits into that category.

14 In other words, if -- I don't know if it matters  
15 legally whether there had been six or seven prior DNA  
16 tests from whatever source. If me made an  
17 independent finding at the time this sample was  
18 requested and made the State v. Register findings, I  
19 don't know that I can exclude that just because there  
20 was prior DNA. Am I following you, or am I on the  
21 wrong page?

22 MR. DEYSACH: No. We're basically on the same  
23 page. That one of the factors to be considered in  
24 deciding, work material evidence, I believe I was  
25 looking at *In Re: Schneider*, it's more of the same

1 thing.

2 THE COURT: Schneider just says that you can do  
3 it with a warrant.

4 MR. DEYSACH: They list some factors that the  
5 judge may or may not consider, I guess may consider  
6 when deciding whether or not material evidence can be  
7 found. What I'm saying is that what Judge Manning  
8 had to consider and what you have to consider are  
9 slightly different because at the time I think that  
10 there was a concern that, you know, maybe this DNA  
11 sample that was consented to was consented to outside  
12 of the Miranda or something like that. So the State  
13 needed that evidence more.

14 I'm saying there's a diminishing factor which  
15 goes to the materiality. And I am asking you to kind  
16 of, like I say, go behind Judge Manning, and even  
17 though at that time it may have been an appropriate  
18 ruling, to kind of fix it.

19 THE COURT: Well, that begs the question of  
20 whether Judge Manning was aware that there had been a  
21 prior sample, if you can recall that.

22 MR. DEYSACH: I think he knew. I think we did  
23 say -- I recall saying it.

24 THE COURT: Let me hear from the State.

25 MS. FENT: Judge Manning specifically asked us,

1 because he was getting confused on there was the  
2 CODUS hit and then there was the consent and then he  
3 specifically said, how many times have you gotten  
4 this guy's sample? And we said, you know, his sample  
5 has really been gotten twice, that the CODUS hit,  
6 because they had to give it up to the CODUS database  
7 and then the consent. So we were asking for a third  
8 sample based on the Schmerber order.

9 The order was signed by Judge Manning. It was  
10 filed. It was held -- the motion was held on  
11 June 19th, 2006, and the motion or the order was  
12 filed in the Clerk's Office as part of the clerk's  
13 record.

14 THE COURT: Have you seen that?

15 MR. DEYSACH: I have seen the order.

16 (Off the record)

17 THE COURT: Well, let me just say for the  
18 record, A, I don't believe I have the authority to --  
19 although it would not contravene a prior Circuit  
20 Judge's order because this order merely directs that  
21 the sample be taken, what you're asking me to do is  
22 to I guess rule secondly or thirdly whatever may be  
23 related to Schmerber; I mean, to test the  
24 admissibility. It's on the record. If I'm wrong  
25 there will be a place -- I'm going to have to deny



1 your motion. Anything further?

2 MR. DEYSACH: I don't have anything else, Your  
3 Honor.

4 THE COURT: Are you ready for the jury?

5 MS. FENT: I just have two brief things, Your  
6 Honor. One is I have shown the previous convictions,  
7 the certified convictions of the two prior burglaries  
8 that we'll be offering into evidence. There is  
9 concern on my behalf. I want to be fair to the  
10 defendant. The indictment, he was actually indicted  
11 for a burglary in the first degree. He pled to a  
12 reduced charge of burglary second. And on that  
13 sentencing sheet it's going to have the -- you know,  
14 to show that he actually pled to the burglary second.  
15 So we don't want the jury to know about the burglary  
16 first. That has the sentence on it, you know, how  
17 many years that he got. So I have offered and shown  
18 to the defense attorney a possible stipulation that  
19 we could present the stipulation instead of the two  
20 actual convictions, the certified convictions.

21 THE COURT: Or you could redact.

22 MS. FENT: I'm sorry?

23 THE COURT: Or you could redact.

24 MS. FENT: Well, I'll show them to Your Honor.

25 I think it's --

1           **THE COURT:** Mr. Deysach.

2           **MR. DEYSACH:** I would love it to be redacted. I  
3 don't think that I would have to stipulate in order  
4 to cure this problem if you deem that there is a  
5 problem. I would argue that there is, you know. I  
6 don't want the jury to see a burglary first  
7 accusation which is what that indictment represents.  
8 They've also got a sentencing sheet. It seems like  
9 they could show just the sentencing sheet. We could  
10 redact the sentence, not knowing what type of  
11 sentence he got. But we could certainly just, you  
12 know, if we redacted just the words "first degree"  
13 out of the --

14           **THE COURT:** Was that --

15           **MR. DEYSACH:** Pardon?

16           **THE COURT:** Doesn't the statute say any  
17 conviction for a burglary? I mean, it doesn't say  
18 first, second or third.

19           **MS. FENT:** Correct. I just -- you know,  
20 elements --

21           **MR. DEYSACH:** It makes the offense seem -- it  
22 makes it seem like the client may have gotten some  
23 sort of deal, that maybe the jury could infer he  
24 was -- I mean, it shows that he was accused of a  
25 burglary first. So I guess at some point somebody

1 from law enforcement thought he committed a burglary  
2 first and then it's a reduction to a burglary second.  
3 So it makes his conviction seem more serious than I  
4 think it would be appropriate for the jury to know.

5 *THE COURT:* All right. Well, --

6 *MS. FENT:* On the sentencing sheets I have,  
7 there's a number of things that might be difficult to  
8 redact because it indicates that he pled to a  
9 lesser-included offense.

10 *THE COURT:* We're not going to use the  
11 indictment. We're not going to use the indictment.  
12 The statute says convictions.

13 *MS. FENT:* These are certified convictions.  
14 They are certified documents from the Clerk's Office.

15 *THE COURT:* I understand that. But he is  
16 indicted for one thing; he's convicted of another.  
17 He's indicted for burglary first, convicted of  
18 burglary second. Right?

19 *MS. FENT:* Correct. But the proper document,  
20 the entire certified document is going to reflect  
21 what he was originally charged with and that he pled  
22 to a lesser offense.

23 *THE COURT:* Well, you're making it more  
24 difficult than it needs to be. The statute said the  
25 burglary is committed by a person with a prior record

1 of two or more convictions for burglary. Now you  
2 want to add the indictments for burglary first. I  
3 understand what they say.

4 MS. FENT: Correct. So I am not --

5 THE COURT: Go ahead and put it on the record.

6 MS. FENT: Well, the entire document --

7 THE COURT: You don't need to be right here in  
8 my face.

9 MS. FENT: The entire certified document, Your  
10 Honor, is a three-page document. It is the  
11 indictment that is signed and reflects that he was  
12 charged with burglary in the first degree.

13 THE COURT: Is there a sentencing sheet?

14 MS. FENT: The sentencing sheet reflects  
15 burglary in the first degree and it's checked off  
16 pled to a lesser-included charge.

17 THE COURT: All right.

18 MS. FENT: And includes the sentence on the  
19 sentencing sheet.

20 THE COURT: It's your risk if the appellate  
21 courts feel that entering the indictment along with  
22 the sentencing sheet is not appropriate. We'll put  
23 them in. We'll put them in.

24 MS. FENT: Well, without the stipulation, we  
25 will present then the entire sentencing sheets.

1           THE COURT: Put them in.

2           MR. DEYSACH: Your Honor.

3           THE COURT: If you say it's prejudicial, it  
4 probably is more prejudicial than just putting the  
5 sentencing sheets in.

6           MR. DEYSACH: That's --

7           THE COURT: Unless you want to stipulate.

8           MR. DEYSACH: No. I don't care to.

9           THE COURT: Okay.

10          MR. DEYSACH: You know. And I'd argue I think  
11 what you've just put on the record, and I just wanted  
12 that preserved, that it's more prejudicial than it  
13 would be probative, if anything, to put those  
14 indictments in, and that the best thing to do would  
15 be to put the sentencing sheets in. And unless I  
16 started -- you know, I don't even know how it opened  
17 the door to having put the indictments in, just the  
18 charging document.

19          THE COURT: Well, the simple thing to do would  
20 be to stipulate. If you won't stipulate, I'm going  
21 to allow them in. Let's get a jury. What else?

22          MS. FENT: Well, Your Honor, in terms of the  
23 defendant's statement, Mr. Deysach didn't bring this  
24 up yesterday; but also to protect, make sure that Mr.  
25 Weary is getting a fair trial, there is a number of

1 things that he mentioned in his statement that had to  
2 do with other offenses, smoking reefer with another  
3 individual and a bunch of information that he gave  
4 regarding other crimes. So I redacted the statement  
5 last night, and I'll just let him review that so that  
6 we can offer that, the redacted statement, into  
7 evidence.

8 (WHEREUPON, State's Exhibit No. 24 is marked for  
9 identification.)

10 (WHEREUPON, State's Exhibit No. 25 is marked for  
11 identification.)

12 THE COURT: Any problem?

13 MR. DEYSACH: Not with the statement.

14 THE COURT: All right. Ready for the jury?

15 MS. FENT: Yes, Your Honor.

16 THE COURT: Ready for the jury, Mr. Deysach?

17 MR. DEYSACH: I am, Your Honor.

18 THE COURT: Bring the jury.

19 THE CLERK: Yes, sir.

20 THE COURT: 10 and 5.

21 MR. DEYSACH: I get 10, right, Your Honor?

22 THE COURT: Yeah.

23 (Pause)

24 THE COURT: Good morning, ladies and gentlemen.

25 Welcome to the Court of General Sessions for the

1 Fifth Judicial Circuit for Richland County. This is  
2 our criminal court that you're being asked to come  
3 and sit on the jury today. We call our civil  
4 division of our court system the Court of Common  
5 Pleas. We call the criminal division obviously the  
6 Court of General Sessions. These are names that have  
7 been with us since Colonial times and we've just  
8 elected not change the names of our court. So those  
9 of you who are selected to sit on a jury today will  
10 be sitting on a criminal case.

11 And I'm going to tell you a little bit about it  
12 in just a few minutes. I'm going to read to you what  
13 the indictment says and what it charges the defendant  
14 with. But before I do that I want to introduce -- I  
15 want to explain to you -- and I'm sure you know this;  
16 all you have to do is watch Law and Order, the  
17 prosecuting entity in the state of South Carolina is  
18 known as the Solicitor's Office. Some places they're  
19 the District Attorney. Some places it's the State's  
20 attorney, but they're all the same. They are the  
21 prosecuting entity.

22 And any case that is brought before this court  
23 is prosecuted by our state Solicitor's Office which  
24 is represented by Mr. Barney Giese. He is your  
25 publicly elected solicitor for the Fifth Judicial

1 Circuit. So I need to know from you if any member of  
2 the jury panel is related by blood or connected by  
3 marriage or have a close personal relationship with  
4 Mr. Barney Giese?

5 What we want to do during this brief question  
6 and answer period is find out if any of you have any  
7 conflicts or any reason why maybe it would not -- you  
8 would not feel comfortable in sitting on this  
9 criminal jury. So I'll ask again if any member of  
10 the jury panel is related by blood or marriage or  
11 employment or is a close personal acquaintance of Mr.  
12 Barney Giese's. Yes, ma'am. And your name, please?

13 JUROR: Stacey Fooshe. I am --

14 THE COURT: Whoa. Wait a minute. I'm not sure  
15 I like this, but we are trying an experiment here in  
16 Richland County. And I apologize for asking you your  
17 name. What we're going to try to do is see how  
18 jurors react when we just identify jurors by number.  
19 So, if any of you have a -- and then I'll ask you  
20 when we're finished if you like this system or you'd  
21 rather just go by names. But anyway, so if I ask a  
22 question -- and the lady has stood up now and she  
23 is -- what's your number?

24 JUROR: 137.

25 THE COURT: Oh, okay. I was looking up in the



1 D's.

2 JUROR: There was a name change. It should be  
3 around the M's.

4 THE COURT: All right. So this is going to  
5 sound funny. But, Ms. 137, what do you need to tell  
6 me?

7 JUROR: I am not personal friends with him, but  
8 my husband is a lobbyist and he knows him personally.  
9 And I've met him a few times, but I am personally  
10 not, you know; but my husband is.

11 THE COURT: Well, let me ask you this, Ms. 137.  
12 Would the fact that your husband has either a  
13 personal or a business or professional relationship  
14 with Mr. Giese, would that in any way interfere with  
15 your ability to give both the State and Defendant a  
16 fair and impartial trial?

17 JUROR: No.

18 THE COURT: All right. Thank you very much.  
19 Anybody else? And I'm going to ask that same  
20 question. If you respond to any of the questions I  
21 ask, I'll ask if you feel that that would interfere  
22 with your judgment or your ability to give the State  
23 and defendant a fair and impartial trial.

24 All right. Well, obviously Mr. Giese is -- he  
25 personally is not going to prosecute this case. The

1 assistant solicitors who will present the case to the  
2 jury are Ms. Margaret Fent and Mr. Scott Hayes. I'll  
3 ask if you'll stand, please. I need to know if any  
4 member of the jury panel is related by blood or  
5 marriage or a close personal acquaintance of either  
6 Ms. Margaret Fent -- and, Ms. Fent, I will take the  
7 liberty of saying that your husband is Mr. Matthew  
8 Bodman, Matthew Bodman who is an attorney here in  
9 Columbia.

10 So I need to know if any member of the jury  
11 panel is related by blood or connected by marriage or  
12 employment or a close personal acquaintance of  
13 Ms. Margaret Fent or Mr. Scott Hayes? Anybody know  
14 either of these two attorneys that work for the  
15 Solicitor's Office? All right. Thank you very much.

16 Necessarily law enforcement is involved in any  
17 criminal case. So I'll need to ask if any member of  
18 the jury panel or any member of your family is  
19 employed by law enforcement. That may be either the  
20 Richland County Sheriff's Office, the City of  
21 Columbia Police Department, any military police  
22 department, SLED, the State Law Enforcement Division,  
23 FBI, Secret Service, any law enforcement agency that  
24 either you or a member of your family are involved  
25 in? Yes, ma'am, on the front row, if you'd just --

1 JUROR: 186.

2 THE COURT: All right. Let me get your number.

3 THE BAILIFF: Please stand.

4 THE COURT: Let me find you on my list. Yes,  
5 ma'am.

6 JUROR: I'm employed with the Department of  
7 Corrections.

8 THE COURT: Are you?

9 JUROR: I am. And my husband is a warden.

10 THE COURT: And where are you employed, ma'am?

11 JUROR: I'm with the Department of Corrections  
12 recruiting. My husband is a warden at Tiger River.

13 THE COURT: So you're in sort of administrative  
14 offices?

15 JUROR: Right. I'm in recruiting and  
16 employment, HR.

17 THE COURT: Ms. 186, would that fact in any way  
18 interfere with your ability to give both the State  
19 and defendant a fair and impartial trial?

20 JUROR: Not at all.

21 THE COURT: Thank you very much. Somebody else.  
22 Just go ahead and stand if you --

23 JUROR: No. 8.

24 THE COURT: No. 8. The reason I ask you to  
25 stand is so the court reporter can hear what you have

1 to say. So, yes, sir, Mr. 8.

2 JUROR: I have a cousin that works for SLED, an  
3 investigator.

4 THE COURT: All right. Would that fact in any  
5 way interfere with your ability to give both the  
6 State and defendant a fair and impartial trial?

7 JUROR: No, sir.

8 THE COURT: Thank you very much. Anybody else?  
9 You would have thought out of a group this size you'd  
10 have more people working in law enforcement. All  
11 right. Let me take that one step further. Any  
12 member of the jury panel a regular contributor to or  
13 supporter of or give your time to groups that  
14 regularly support law enforcement or are involved in  
15 groups that are involved in victims' rights, things  
16 like that, groups such as Mothers Against Drunk  
17 Driving or Students Against Drunk Driving or Citizens  
18 Against Violent Activities or something like that or  
19 even to the point of Sister Care or any of the groups  
20 that have as their function the promotion of or  
21 support of these groups that are involved in either  
22 law enforcement or victim's rights? Let me even take  
23 that even to the point of contributing to the  
24 Sheriff's Association or the Troopers' Association,  
25 any of those groups that might be considered as

1 supportive of law enforcement.

2 I'm surprised. I always tell jurors that you  
3 know you if you support the Troopers' Association you  
4 get one of those little stickers to go on the back of  
5 your car. Do you know what? You won't get a ticket.  
6 Strike that from the record. I don't think that's  
7 true.

8 All right. Now, what I hold in my hand, ladies  
9 and gentlemen, obviously is a piece of paper, but  
10 this is what's known as an indictment. This is the  
11 formal document that charges an individual, a  
12 defendant, with a crime in this state. This is not  
13 evidence of anything. It is merely a formal charging  
14 document by which this case is brought into court.  
15 And I'm going to read to you what the indictment says  
16 and what the defendant is charged with.

17 Let me first introduce the defendant to you.  
18 Let me say again that the mere fact that a defendant  
19 is charged in this state or anywhere in the United  
20 States is not evidence of anything. Every individual  
21 that's charged in the United States and in this state  
22 is innocent until proven guilty. That's a very  
23 important part of our law, that there is a  
24 presumption of innocence today and until the end of  
25 this trial or even when the jury adjourns to

1 deliberate. There's a presumption of innocence. So  
2 I don't want you to take anything from what I tell  
3 you or the mere fact that an individual is charged as  
4 evidence of that individual's guilt.

5 The defendant in this case today is Mr. Willis  
6 Weary. Will you stand and face the jury, please.  
7 Any member of the jury panel related by blood or  
8 connected by marriage to Mr. Weary? He is the person  
9 on your right now. So, Mr. Deysach, his lawyer has  
10 the suit on. I'll introduce him to you in a minute.  
11 Any member of the jury panel related by blood,  
12 connected by marriage or employment or a close  
13 personal acquaintance of Mr. Willis Weary, the  
14 gentleman with the striped shirt on? Does anybody  
15 know Mr. Weary? All right.

16 Mr. Weary is represented in this matter by  
17 Mr. Ian Deysach, an attorney practicing law here in  
18 Columbia. So I'll ask if any member of the jury  
19 panel is related by blood, connected by marriage or  
20 employment or a close personal acquaintance of  
21 Mr. Ian Deysach or perhaps have been represented by  
22 him in the past or are represented by him at the  
23 present? Any member of the jury panel? Thank you  
24 very much, Mr. Deysach.

25 The indictment, as I said, is the formal

1 charging document and charges the defendant, Willis  
2 Weary, on August the 20th, 2005 entering the -- he's  
3 charged with burglary in the first degree, with  
4 entering the dwelling of Jose' Gonzalez without  
5 consent with the intent to commit a crime in the  
6 dwelling of Jose' Gonzalez, and that the defendant,  
7 having a prior record of two or more convictions for  
8 burglary or housebreaking, and that the event, the  
9 alleged event occurred during the nighttime in  
10 violation of the statutes and laws of the state of  
11 South Carolina. Those are the charges that bring Mr.  
12 Weary into court.

13 Now, during the course of the trial there may be  
14 several witnesses. And so I need to know if any  
15 member of the jury panel is related to or has any  
16 connection with any of the potential witnesses in  
17 this case. And if the witnesses are present I'll ask  
18 them to please stand so that you can identify them.

19 Jose' Roberto Gonzales. Mr. Gonzalez. Any  
20 member of the jury trial related by blood or marriage  
21 or employment or a close personal acquaintance of Mr.  
22 Gonzalez? All right. Thank you very much, sir.  
23 Robert Oates, the Richland County Sheriff's  
24 Department. Some of these witnesses are not here,  
25 will come in from time to time. I just ask if they

1 are here if they'll stand. I don't believe that  
2 there are going to be many more that are present at  
3 the present time. Terry Downie, the Richland County  
4 Sheriff's Department. The same question as to all.  
5 If you know them, just please stand. Michael P.  
6 Smith with the Richland County Sheriff's Department.  
7 Sergeant William McRoberts with the Richland County  
8 Sheriff's Department. John Barron with the Richland  
9 County Sheriff's Department. Tena Goff with the  
10 Richland County Sheriff's Office. Beverly Crane,  
11 Richland County Sheriff's Office. And Joy Delatorre  
12 with the Richland County Sheriff's Office.

13 Solicitor, where did this alleged event take  
14 place?

15 MS. FENT: 2532 Crofton Way.

16 THE COURT: Crofton?

17 MS. FENT: Yes, sir.

18 THE COURT: And is that a house or an apartment?

19 MS. FENT: An apartment complex.

20 THE COURT: Apartment. What's the apartment  
21 complex name?

22 MS. FENT: I'm not sure, Your Honor.

23 THE COURT: All right. Well, maybe our jurors  
24 can -- I'll ask.

25 MS. FENT: Chimneys, Your Honor.



1           **THE COURT:** The Chimneys. All right. This  
2           alleged event, as I said, took place August the 20th,  
3           2005, at The Chimneys apartment complex on Crofton  
4           Road or Croft Road. The reason I tell you that is  
5           because I need to know if any member of the jury  
6           panel knows anything about this case or has heard  
7           anything about this case, read anything about this  
8           case, saw, talked to a neighbor about this case.  
9           Some of you may live in that apartment complex for  
10          all I know and you may have heard about it around the  
11          apartment complex somehow, in the parking lot or  
12          something. Any member of the jury panel -- just to  
13          jog your memory, it's two years ago I realize -- but  
14          know anything about this, heard anything about it?  
15          Okay.

16                 Any member of the jury panel live in an  
17          apartment complex? Yes, ma'am. And just give me  
18          your number, please.

19                 **JUROR:** 31.

20                 **THE COURT:** Ms. 31. You don't live in this  
21          apartment complex?

22                 **JUROR:** No, sir.

23                 **THE COURT:** Okay. Thank you, ma'am. Anybody  
24          else? Yes, sir. Just give me your number.

25                 **JUROR:** 67.

1           THE COURT: Mr. 67. Okay. Anybody else? Has  
2 any member of the jury panel or any member of your  
3 family ever been the victim of a burglary or an  
4 unlawful entry into your dwelling? All right. I'll  
5 start on my left. Gracious. Don't everybody stand  
6 at once. My goodness.

7           JUROR: 153.

8           THE COURT: All right. Let me just find your  
9 name. Ms. 153, how long ago? Can you tell me just  
10 briefly about it?

11          JUROR: It didn't occur in this state. It was  
12 in New York.

13          THE COURT: That's all right.

14          JUROR: And it was my sister. And it was 20  
15 years ago. Her home was burglarized.

16          THE COURT: All right. Would the fact that  
17 you -- were you living there at the time? Were you  
18 living --

19          JUROR: I was living in the state at the time.

20          THE COURT: Okay. Would the fact that your  
21 sister had this experience, would that fact in any  
22 way interfere with your ability to give both the  
23 State and defendant a fair and impartial trial?

24          JUROR: No.

25          THE COURT: Thank you very much, Ms. 153. Let's

1 just stay on the front row.

2 JUROR: 219.

3 THE COURT: 219. All right, sir. And what with  
4 was your experience?

5 JUROR: About eight years ago a burglary at a  
6 house I was living in.

7 THE COURT: All right. Would that fact in any  
8 way interfere with your ability to give this  
9 defendant and the State a fair and impartial trial?

10 JUROR: No.

11 THE COURT: You sure about that?

12 JUROR: I don't think so.

13 THE COURT: Okay. Well, --

14 JUROR: 139.

15 THE COURT: 139. Yes, ma'am.

16 JUROR: I had a first cousin. In the late part  
17 of last year his home was burglarized.

18 THE COURT: Who was it?

19 JUROR: My first cousin.

20 THE COURT: First cousin. Was that here in  
21 Richland County?

22 JUROR: It was.

23 THE COURT: Ma'am, would that fact in any way  
24 interfere with your ability to give both the State  
25 and the defendant a fair and impartial trial?

1 JUROR: No, sir.

2 THE COURT: Thank you very much. Yes, sir.

3 JUROR: 82.

4 THE COURT: Yes, sir.

5 JUROR: My car was broken into in my driveway.

6 THE COURT: How long ago?

7 JUROR: Last year.

8 THE COURT: Would that fact in any way interfere  
9 with your ability to give the State and defendant a  
10 fair and impartial trial?

11 JUROR: No, sir.

12 THE COURT: Thank you very much, sir. Yes,  
13 ma'am, in the white jacket.

14 JUROR: No. 62. My house was burglarized about  
15 17 years ago, not in this state.

16 THE COURT: Not in this state?

17 JUROR: No, sir.

18 THE COURT: Would that fact in any way interfere  
19 with your ability to give both the State and  
20 defendant a fair and impartial trial?

21 JUROR: No, sir.

22 THE COURT: Thank you very much. Yes, ma'am.

23 JUROR: No. 50. My house was burglarized twice  
24 about 20 years ago; probably would not interfere with  
25 my ability to deal with this case. It would if it

1 were the Columbia City Police.

2 THE COURT: All right. Thank you very much.

3 And I won't inquire any further about it.

4 JUROR: 226.

5 THE COURT: Yes, ma'am.

6 JUROR: My house was burglarized five years ago.

7 THE COURT: Would that fact in any way interfere  
8 with your ability to give both the State and  
9 defendant a fair and impartial trial?

10 JUROR: No, sir.

11 THE COURT: Thank you very much. Yes, ma'am.

12 JUROR: No. 137. My house was broken into about  
13 eight years ago.

14 THE COURT: All right. Would that fact in any  
15 way interfere with your ability to give the State and  
16 defendant a fair and impartial trial?

17 JUROR: No, sir.

18 THE COURT: Thank you very much. Yes, ma'am.

19 JUROR: 83.

20 THE COURT: Yes, ma'am.

21 JUROR: My mother's home was broken into about  
22 20 years ago and some things were taken. My house  
23 they attempted to break into about two years ago but  
24 did not get in.

25 THE COURT: Would that fact in any way interfere

1 with your ability to give both the State and the  
2 defendant a fair and impartial trial?

3 JUROR: No.

4 THE COURT: Thank you, ma'am. Yes, ma'am.

5 JUROR: 152.

6 THE COURT: Yes, ma'am.

7 JUROR: About three months ago my daughter's car  
8 was broken into and stolen. She got it back but it  
9 was in pretty bad damage.

10 THE COURT: Would that fact in any way interfere  
11 with your ability to give both the State and the  
12 defendant a fair and impartial trial?

13 JUROR: No, sir.

14 THE COURT: Thank you very much, Ms. 152. All  
15 right. Let me ask if any member of the jury panel or  
16 any member of your family has been charged -- this is  
17 sort of the reverse -- charged with a burglary or a  
18 crime of this sort? No. 8.

19 JUROR: Me?

20 THE COURT: I'm trying to remember numbers. I  
21 can remember names but I can't remember numbers.  
22 Yes, ma'am, with the red sweater.

23 JUROR: 73. 73.

24 THE COURT: 73?

25 JUROR: Mm-hmm (affirmative). My brother has

1           been charged a couple of times.

2           THE COURT: How long ago was that?

3           JUROR: Probably within the year.

4           THE COURT: Within the last year?

5           JUROR: Yeah.

6           THE COURT: All right. Again, would that fact  
7 in any way interfere with your ability to give both  
8 the State and the defendant a fair and impartial  
9 trial in this case?

10          JUROR: No.

11          THE COURT: All right. Yes, sir.

12          JUROR: 32.

13          THE COURT: 32?

14          JUROR: Yeah.

15          THE COURT: You're No. 32?

16          JUROR: Mm-hmm (affirmative).

17          THE COURT: Okay.

18          JUROR: My cousin, last year, three burglaries.

19          THE COURT: I couldn't quite hear you.

20          JUROR: I had a cousin who did burglary three  
21 times last year.

22          THE COURT: Okay. And would that fact in any  
23 way interfere with your ability to give the State and  
24 this defendant a fair and impartial trial?

25          JUROR: No.

1           THE COURT: All right. Yes, ma'am.

2           JUROR: 137. I had an uncle, it was probably  
3 about eight to ten years ago in Minnesota, breaking  
4 and entering.

5           THE COURT: Again, would that fact --

6           JUROR: No.

7           THE COURT: -- interfere with your ability to  
8 give both the State and defendant a fair and  
9 impartial trial?

10          JUROR: (Shakes head negatively).

11          THE COURT: All right. All right. That  
12 question was sort of -- was related directly to a  
13 burglary. Let me just ask maybe one further  
14 question. Any member of the jury panel or any member  
15 of your family been the victim of any other violent  
16 crime? In other words, those of you who have already  
17 stood and told me about the burglary, I understand  
18 that. You don't have to stand again. But anybody  
19 else that's been a victim of some other violent  
20 crime? Any member of the jury panel? Yes, ma'am, on  
21 the front row. And I can't remember your number.

22          JUROR: 153.

23          THE COURT: 153. Yes, ma'am.

24          JUROR: I was mugged in New York City in 1985.

25          THE COURT: All right. Would that fact in any



1 way interfere with your ability to give both the  
2 State and the defendant a fair and impartial trial in  
3 this case?

4 JUROR: No, sir.

5 THE COURT: All right. I was going to try and  
6 make a joke about being mugged in New York City but  
7 I'm at a loss for words.

8 JUROR: You can though.

9 THE COURT: Oh, sure. Yes, ma'am.

10 JUROR: 152.

11 THE COURT: Yes, ma'am.

12 JUROR: This has been a while. It was in 1965.  
13 I had a 16-year-old brother to get shot and killed by  
14 a 17-year-old.

15 THE COURT: I'm sorry. Would that fact in any  
16 way interfere with your ability to give the State and  
17 defendant a fair and impartial trial in this case?

18 JUROR: No, sir.

19 THE COURT: Anybody else? All right. Is there  
20 any other reason, given the nature of the crime or  
21 any other reason that any member of the jury panel  
22 might feel they could not give the State and the  
23 defendant a fair and impartial trial? Any other  
24 reason, other than those specific questions I have  
25 asked you?

1 All right. Anything further from the State?

2 MS. FENT: Nothing, Your Honor.

3 THE COURT: Anything further from the defendant?

4 MR. DEYSACH: I just wondered if maybe you  
5 wanted to ask if anybody knew the interpreter.

6 THE COURT: Well, he is not a witness.

7 MR. DEYSACH: Okay.

8 THE COURT: If you want me to, I will.

9 Mr. Hunt, will you stand? Any member of the jury  
10 panel related by blood or connected by marriage to  
11 Mr. Hunt?

12 MS. FENT: Brit.

13 THE COURT: Brit Hunt. Mr. Hunt as you see has  
14 a microphone on. The victim in this case or the  
15 witness in this case, Mr. Gonzalez, is a non-English  
16 speaking individual. And Mr. Hunt is a certified  
17 court interpreter. And what he is doing even as I  
18 speak, he is translating into Spanish what I am  
19 saying which is being relayed -- we're all high tech  
20 up here -- by I guess radio waves or something to the  
21 witness who you see also is wearing a headset. So,  
22 that's what Mr. Hunt is doing here. And the defense  
23 counsel asked if any member of the jury panel knows  
24 Mr. Brit Hunt or had any relationship with him prior  
25 to today. Well, yes, ma'am.

1 JUROR: I'm No. 172.

2 THE COURT: And how do you know Mr. Hunt?

3 JUROR: I'm a reporter at The State Newspaper  
4 and I've interviewed him for newspaper articles.

5 THE COURT: Okay. Thank you very much. I  
6 didn't know you were famous. Anything further?

7 MR. DEYSACH: Not from the defendant.

8 THE COURT: Give us a jury, Mr. Truitt.

9 THE CLERK: Ladies and Gentlemen of the Jury, if  
10 I call out your number, please come forward to this  
11 microphone standing here to my right. State your  
12 occupation and remain standing there until I give you  
13 further instructions. If you have any books, coats,  
14 umbrellas, et cetera, personal items, bring those  
15 with you if I call out your number. First juror,  
16 number 177, 1-7-7.

17 (White male)

18 THE COURT: Again, I know it will take a little  
19 getting used to. But if you'll just state your  
20 number. You don't have to state your name.

21 JUROR: Just number and occupation?

22 THE CLERK: Yes, sir.

23 THE COURT: Yes, sir.

24 JUROR: 177, employed with Spirit Telecom.

25 THE COURT: Spirit Telecom.

1           THE CLERK: Stand there, please. Right there is  
2 fine. What says the State?

3           MS. FENT: Please present this juror.

4           THE CLERK: What says the defense?

5           MR. DEYSACH: Please seat the juror.

6           THE CLERK: Sir, if you would, please have a  
7 seat over here in the jury box as directed by the  
8 bailiff. Number 67, 6-7.

9           (White male)

10          JUROR: Number 67, a bartender at Corner Pocket.

11          THE CLERK: What says the State?

12          MS. FENT: Please present the juror.

13          THE CLERK: What says the defense?

14          MR. DEYSACH: Please seat the juror.

15          THE CLERK: Sir, please have a seat over here in  
16 the jury box. Number 114, 1-1-4.

17          (White male)

18          JUROR: 114. I'm a truck operator.

19          THE CLERK: What says the State?

20          MS. FENT: Please present the juror.

21          THE CLERK: What says the defense?

22          MR. DEYSACH: Please excuse this juror.

23          THE CLERK: Sir, if you would please return to  
24 the back of the courtroom there where you see that  
25 bailiff standing. Number 85, 8-5.

1 (White female)

2 JUROR: I'm juror number 85, and I'm employed at  
3 Palmetto Health Baptist Medical Center.

4 THE CLERK: What says the State?

5 MS. FENT: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. DEYSACH: Please excuse this juror.

8 THE CLERK: Ma'am, if you would please return to  
9 the back of the courtroom where you see the bailiff.  
10 Number 55, 5-5.

11 (White male)

12 JUROR: I'm number 55. I'm a self-employed  
13 businessman.

14 THE CLERK: What says the State?

15 MS. FENT: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. DEYSACH: Please seat this juror.

18 THE CLERK: Sir, if you would please have a seat  
19 over here in the jury box as directed by the bailiff.  
20 226, 2-2-6.

21 (Black female)

22 JUROR: 226. I'm employed by Target.

23 THE CLERK: What says the State?

24 MS. FENT: Please excuse this juror.

25 THE CLERK: Ma'am, if you would please return to

1 the back of the courtroom there where you see the  
2 bailiff. 236, 2-3-6.

3 (White female)

4 JUROR: 236. I work at Midlands Technical  
5 College.

6 THE CLERK: What says the State?

7 MS. FENT: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. DEYSACH: Please excuse this juror.

10 THE CLERK: Ma'am, if you would please return to  
11 the back of the courtroom there where you see the  
12 bailiff. Number 83, 8-3.

13 (White female)

14 JUROR: 83. I'm with Family Connection of South  
15 Carolina.

16 THE CLERK: What says the State?

17 MS. FENT: Please present the juror.

18 THE CLERK: What says the defense?

19 MR. DEYSACH: Please excuse this juror.

20 THE CLERK: Ma'am, if you would please return to  
21 the back of the courtroom there where you see the  
22 bailiff. Number 50, 5-0.

23 (White female)

24 JUROR: Number 50. I am an attorney with the  
25 Department of Labor, Licensing and Regulation.

1 THE CLERK: What says the State?

2 MS. FENT: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. DEYSACH: Please excuse the juror.

5 THE CLERK: Ma'am, if you would please return to  
6 the back of the courtroom where you see the bailiff.  
7 Number 8. 8.

8 (White male)

9 JUROR: Number 8. I'm employed with the South  
10 Carolina International Guard.

11 THE CLERK: What says the State?

12 MS. FENT: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. DEYSACH: Please excuse this juror.

15 THE CLERK: Sir, if you would please return to  
16 the back of the courtroom there where you see the  
17 bailiff. Number 41, 4-1.

18 (White male)

19 JUROR: Number 41. I work for Midlands Center.

20 THE CLERK: What says the State?

21 MS. FENT: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. DEYSACH: Please seat this juror.

24 THE CLERK: Sir, if you would please have a seat  
25 here in the jury box. Number 227, 2-2-7.

1 (Black female)

2 JUROR: Number 227. Employed by Kroger.

3 THE CLERK: What says the State?

4 MS. FENT: Please excuse this juror.

5 THE CLERK: Ma'am, if you would please return to  
6 the back of the courtroom there where you see the  
7 bailiff. 62, 6-2.

8 (White female)

9 JUROR: I'm a stay-at-home mom.

10 THE CLERK: What says the State?

11 MS. FENT: Please present this juror.

12 THE CLERK: What says the defense?

13 MR. DEYSACH: Please excuse this juror.

14 THE CLERK: Ma'am, please return to the back of  
15 the courtroom there where you see the bailiff. 31,  
16 3-1.

17 (Black female)

18 JUROR: I'm juror 31 and I'm employed at Aiken  
19 Center.

20 THE CLERK: What says the State?

21 MS. FENT: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. DEYSACH: Please seat the juror.

24 THE CLERK: Ma'am, if you would please have a  
25 seat over here in the jury box as directed by the



1 bailiff. Number 219, 2-1-9.

2 (White male)

3 JUROR: Number 219. I'm a software developer  
4 for Computer Science Corporation.

5 COURT REPORTER: For what? I'm sorry. I didn't  
6 hear.

7 JUROR: Computer Science Corporation.

8 COURT REPORTER: Okay. Thank you.

9 THE CLERK: What says the State?

10 MS. FENT: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. DEYSACH: Please excuse the juror.

13 THE CLERK: Sir, if you would please return to  
14 the back of the courtroom there where you see the  
15 bailiff. 186, 1-8-6.

16 (Oriental female)

17 JUROR: I'm 186. I'm in HR with the Department  
18 of Corrections.

19 THE CLERK: What says the State?

20 MS. FENT: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. DEYSACH: Please excuse the juror.

23 THE CLERK: Ma'am, if you would please return to  
24 the back of the courtroom where you see the bailiff.  
25 I have nine for the defense, Mr. Deysach, and two for

1 the State, Ms. Fent. Number 32, 3-2.

2 (Black male)

3 JUROR: 32, employed by Candy Brothers.

4 THE CLERK: What says the State?

5 MS. FENT: Please excuse the juror.

6 THE CLERK: Sir, if you would please return to  
7 the back of the courtroom there where you see the  
8 bailiff. Number 2. Number 2.

9 (White male)

10 JUROR: I'm juror number 2. I'm a captain with  
11 the City of Columbia Fire Department.

12 THE CLERK: What says the State?

13 MS. FENT: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. DEYSACH: Please seat the juror.

16 THE CLERK: Sir, please have a seat here in the  
17 jury box. Number 77, 7-7.

18 (White male)

19 JUROR: Number 77, pastor of Southside Baptist  
20 Church.

21 THE CLERK: What says the State?

22 MS. FENT: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. DEYSACH: Please seat the juror.

25 THE CLERK: Please have a seat here in the jury

1 box, sir. Number 9. 9.

2 (White male)

3 JUROR: Juror number 9. I'm employed with  
4 Carolina Framing.

5 THE CLERK: What says the State?

6 MS. FENT: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. DEYSACH: Please seat the juror.

9 THE CLERK: Please have a seat here in the jury  
10 box. Number 152, 1-5-2.

11 (Black female)

12 JUROR: Juror 152. I'm a nurse.

13 THE CLERK: What says the State?

14 MS. FENT: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. DEYSACH: Please seat the juror.

17 THE CLERK: Please have a seat here in the jury  
18 box, ma'am. 73, 7-3.

19 (Black female)

20 JUROR: Number 73. I work at Seniors in  
21 Blythewood.

22 THE CLERK: What says the State?

23 MS. FENT: Please excuse this juror.

24 THE CLERK: Ma'am, if you would return to the  
25 back of the courtroom there where you see the

1 bailiff. Four, Ms. Fent. Number 1. 1.

2 (Black female)

3 JUROR: Juror number 1. I'm a physical  
4 therapist.

5 THE CLERK: What says the State?

6 MS. FENT: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. DEYSACH: Please seat the juror.

9 THE CLERK: Please have a seat here in the jury  
10 box, ma'am. Number 212, 2-1-2.

11 (White female)

12 JUROR: Number 212, employed by the University  
13 of South Carolina.

14 THE CLERK: What says the State?

15 MS. FENT: Please excuse this juror.

16 THE CLERK: Ma'am, if you would please return to  
17 the back of the courtroom where the bailiff is.  
18 Number 175, 1-7-5.

19 (White female)

20 JUROR: 175. I'm a real estate attorney, sole  
21 practitioner.

22 THE CLERK: State challenge for cause?

23 MS. FENT: No, sir.

24 THE CLERK: What says the defense?

25 MR. DEYSACH: I'll excuse this juror.

1           THE CLERK: Ma'am, if you would please return to  
2 the back of the courtroom there where the bailiff is.  
3 Number 10, 1-0.

4           (Black female)

5           JUROR: I'm juror number 10. I'm employed with  
6 Gilchrist Children's Home.

7           THE CLERK: State challenge for cause?

8           MS. FENT: No, sir.

9           THE CLERK: Defense challenge for cause?

10          MR. DEYSACH: No, sir.

11          THE CLERK: Please have a seat here in the jury  
12 box, ma'am. Number 153, 1-5-3.

13          (Black female)

14          JUROR: Juror 153, registered nurse.

15          THE CLERK: State challenge for cause?

16          MS. FENT: No, sir.

17          THE CLERK: Defense challenge for cause?

18          MR. DEYSACH: No, sir.

19          THE CLERK: Please have a seat here in the jury  
20 box.

21          THE COURT: Draw one alternate.

22          THE CLERK: Yes, Your Honor. Number 33, 3-3.

23          (White female)

24          JUROR: Number 33. I'm a retired high school  
25 teacher.

1           THE CLERK: What says the State?

2           MS. FENT: Please present this juror.

3           THE CLERK: What says the defense?

4           MR. DEYSACH: Please seat the juror.

5           THE CLERK: Ma'am, if you would please have a  
6 seat here in the jury box. Thirteen, Your Honor.

7           THE COURT: All right. From the State, any  
8 objection to the jury selection process?

9           MS. FENT: No, Your Honor.

10          THE COURT: From the defense?

11          MR. DEYSACH: No, Your Honor.

12          THE COURT: All right. Ladies and gentlemen,  
13 just on both sides, members who have been selected  
14 for the jury and those of you who weren't selected  
15 for the jury, let me just take an informal poll.  
16 Those of you who think you prefer this method of  
17 identifying jurors by number as opposed to name, just  
18 raise your right hand. Okay. Unscientific, but it  
19 tells me something.

20          All right. Ladies and gentlemen of the jury  
21 panel who were not selected for the trial of this  
22 case, I'm going to ask you now to return to the jury  
23 assembly room. But before you do that I do want to  
24 take this brief opportunity to thank you for being  
25 willing to come and serve on this jury. Jury service

1 is sometimes an inconvenient duty that we all have to  
2 perform, and I want you to know that your presence  
3 here, even though as I understand it you haven't been  
4 real busy this week, but your presence here has done  
5 a lot. We cannot work without you. We cannot run  
6 the court system without you.

7 I tell jurors all the time this system can do  
8 without me; it can do without these lawyers, but it  
9 cannot do without you. You're such an important and  
10 vital part of our judicial system here in Columbia  
11 and South Carolina and the United States. The system  
12 breaks down without you being willing to come and sit  
13 and hear these cases. So again, let me thank you on  
14 behalf of the court system. I now excuse you, ask  
15 you to return to the jury assembly room. I don't  
16 know if there are going to be any further cases this  
17 week, but we'll see. Thank you for coming.

18 All right, Mr. Clerk. Please swear the jury.

19 **THE CLERK:** Yes, Your Honor. Ladies and  
20 Gentlemen of the Jury, please stand and raise your  
21 right hands to be sworn. Please answer "I do" or "I  
22 will" at the end of my statement. Do you swear or  
23 affirm that you shall well and truly try and true  
24 deliverance make between the State of South Carolina  
25 and the defendant at the bar whom you shall have in

1 charge a true verdict give according to the law and  
2 the evidence, so help you God? Thank you. Please  
3 have a seat.

4 **THE COURT:** All right, ladies and gentlemen. I  
5 want to just take a brief moment to talk with you  
6 before we actually begin the trial. I want to tell  
7 you that this trial probably will be different from  
8 what you might expect. Many people do not have the  
9 chance to sit in actual court sessions as you're now  
10 doing and may think from watching television or  
11 movies or reading books that trials are frequently  
12 full of a lot of action and high trauma, like what  
13 we've seen down in Florida, those types of things.

14 And that may be true at times, but this trial I  
15 want to caution you is not for entertainment. It is  
16 a fundamental part of our democracy, a search for the  
17 truth in an effort to make sure that justice is done  
18 between these parties. And searching for the truth  
19 and making sure that justice is done is often a slow,  
20 deliberate and repetitive process, the opposite of  
21 what you may have seen on television on or in movies  
22 or read in books.

23 And the courtroom is a place of honor dedicated  
24 to the protection and preservation of citizens'  
25 rights through what many have called the greatest



1 justice system ever devised. The parties appearing  
2 before you are advocates for the parties they  
3 represent but first and foremost they are officers of  
4 this court sworn to uphold the integrity and fairness  
5 of the judicial system and to help you in a search  
6 for the truth. You should expect them to be  
7 professional, competent and ethical in the  
8 representation of their client's interest.

9 And remember that you also have just taken an  
10 oath to try this case and reach a fair and just  
11 verdict, so you also are expected to be professional,  
12 reasonable and ethical. So I want to thank you for  
13 accepting this important responsibility of jury  
14 service and for your contribution to our justice  
15 system today.

16 Now, as I explained earlier, we're about to go  
17 into the case of or try the case of The State vs.  
18 Willis Weary. Now, what I say now is intended to  
19 serve as an introduction of the case and is not a  
20 charge on the law of the case, but I will instruct  
21 you later as to actually what the law is at the time  
22 when you retire to consider your verdict. This is  
23 merely an explanation of the procedure we'll follow  
24 during the trial of the case so you may know better  
25 what's going on from time to time.

1           As I said, the defendant is charged with  
2 burglary in the first degree. This indictment is  
3 simply the charge by which the case is brought into  
4 court. It's not evidence of any of the allegations  
5 that it contains. The defendant has pled not guilty  
6 to this indictment, and the State therefore has the  
7 burden of proving all of the elements of the  
8 indictment to you beyond a reasonable doubt. And it  
9 will be your duty, ladies and gentlemen, to decide  
10 whether the State has met that burden.

11           Your purpose as jurors is to find and determine  
12 the facts. You are the sole judges of the facts. If  
13 at any time I make a comment regarding the facts,  
14 please disregard those comments. You are to  
15 determine the facts from the testimony you hear and  
16 any other evidence that's introduced into court.  
17 It's up to you to determine what inferences you feel  
18 may be properly drawn from that evidence.

19           It's especially important that you perform your  
20 duty of determining the facts diligently and  
21 conscientiously because ordinarily there is no way to  
22 correct an erroneous determination of the facts by a  
23 jury.

24           On the other hand and with equal emphasis, the  
25 same law that makes you the judges of the facts makes

1 me the judge of the law. The law as I explain it to  
2 you is the only law you may consider. You must  
3 accept it and follow it even though you may disagree  
4 with it. I cannot tell you what the facts are. You  
5 should not disagree with me about what the law is or  
6 what the law should be.

7 Your job is to take the law as I explain it to  
8 you and apply it to the facts as you find them from  
9 the testimony of the witnesses and any other evidence  
10 that's introduced, and after doing that you will  
11 render your verdict, a true and just verdict under  
12 the solemn oath you just took as jurors.

13 And until I advise you to begin your  
14 deliberations you must not discuss this case with  
15 anyone, including your fellow jurors, family, friends  
16 or anyone involved in the case. And after the case  
17 is submitted to you, you must discuss it only in the  
18 jury room with your fellow jurors. It's important  
19 that you keep an open mind and not decide any issue  
20 in this case until all the evidence has been  
21 presented, the parties have made their closing  
22 arguments and I have instructed you on the law of  
23 South Carolina as it applies to this case.

24 It's your solemn responsibility to determine the  
25 guilt or innocence of the defendant and your verdict

1 must be based solely on the evidence as it is  
2 presented to you in this trial and on the law as I  
3 instruct you at the close of the trial.

4 Now, in just a moment the solicitor will make  
5 what is called an opening statement in which the  
6 solicitor will explain to you what the issues in the  
7 case are or at least what the solicitor thinks the  
8 issues are in the case. The attorney for the  
9 defendant will probably also make an opening  
10 statement although he is not required to do so.

11 What the attorneys tell you during their opening  
12 statements is not evidence in this case. It is only  
13 their contention as to what the issues are and what  
14 the evidence will show. The evidence in the case  
15 will be presented to you by the testimony of sworn  
16 witnesses from this witness stand and by any exhibits  
17 that may be introduced during the course of the  
18 trial.

19 Now, from time to time during the trial you  
20 might hear one of the lawyers say something like,  
21 Your Honor, I believe we have a question of law or a  
22 matter of law to discuss with you, or may we approach  
23 the bench. Or sometimes I myself might find it  
24 necessary to excuse you from the courtroom for a  
25 short period of time while the attorneys and I

1 discuss a matter of law.

2 The reason for this is because you are the  
3 judges of the facts in the case, and sometimes when I  
4 am discussing matters of law with the attorneys it  
5 may be necessary to make some comment about the facts  
6 in connection, whether a particular law applies or  
7 does not apply.

8 I'm not supposed to tell you what I think the  
9 facts are, so in that case I will excuse you from the  
10 courtroom for a short period of time while these  
11 discussions take place so that in no way will you be  
12 influenced by anything that I might say or do in  
13 connection with the facts.

14 In determining what the true facts are in this  
15 case you must decide whether the testimony of a  
16 witness is believable. It will be my responsibility  
17 to rule as a matter of law whether certain testimony  
18 is admissible or not. But once the testimony is  
19 admitted; in other words, once you hear the  
20 testimony, whether you believe it is solely up to  
21 you.

22 In deciding whether to believe a witness you  
23 have the right to consider the interest of that  
24 witness, the bias of any witness, the prejudice of  
25 any witness, and the opportunity for the witness to

1 have seen the matters and things about which the  
2 witness may testify and the way the witness acts on  
3 the witness stand.

4 You have a right to consider anything that's in  
5 this record that will help you evaluate the testimony  
6 of these witnesses. That means it's your duty to pay  
7 close attention to the witnesses, observe the  
8 witnesses. Pay close attention to the attorneys and  
9 to the Court. Try not to let your thoughts wander,  
10 but give strict attention to the testimony in the  
11 case so that at the end of the testimony after the  
12 arguments of the counsel and the charge on the law by  
13 the Court you will then be in a position to determine  
14 what the true facts are and apply the law to those  
15 facts and thus render a true and just verdict.

16 Thank you very much, ladies and gentlemen.  
17 We're now ready to begin the trial. Solicitor, you  
18 may begin with your opening statement.

19 **MS. FENT:** Thank you, Your Honor. August 20th  
20 of 2005, the defendant, Willis Weary, invaded Jose  
21 Roberto Gonzales' home. He invaded his safety. He  
22 invaded his security.

23 Mr. Gonzalez left his apartment that morning to  
24 go to work somewhere around 6 a.m. He was gone all  
25 day. He comes home around 4:00 in the afternoon and

1 he notices that his door to his home is open. It is  
2 not locked the way that he left it, but it's also not  
3 busted in. It's open.

4 He walks into his home and he notices that his  
5 speaker or DVD player is missing and there is a rock,  
6 a cement rock sitting on his living room floor. As  
7 he continues into his apartment, into the bedroom, he  
8 sees that his bedroom window has been broken open,  
9 crushed open. And as you'll see the photos, it's  
10 consistent with that rock having been thrown through  
11 that window to open that window.

12 Mr. Gonzalez backs out of his apartment. He  
13 goes to the manager's office and he asks them if we  
14 can call the police, his house has been burglarized.

15 The Richland County Sheriff's Department shows  
16 up. The first officer on the scene is Michael Smith.  
17 Officer Smith will be here to testify. But basically  
18 he comes. His duty is just to take the report, see  
19 what kind of a call this is, what's happened. He  
20 notices the cement rock on the ground, looks around,  
21 and his next step in the process is to call a crime  
22 scene investigator to process for any possible  
23 evidence that might be left at the scene.

24 So Officer or Deputy Smith takes the report,  
25 gets the information from the victim. What items do

1       you see that are missing? Basically like a DVD  
2       player, some speakers, and he noticed that some cash  
3       was missing. Somewhere in the amount of about \$50 he  
4       can approximate that cash is missing.

5       So the deputy does an incident report and the  
6       next person to arrive on the scene is Investigator  
7       Robert Oates. And his duties and responsibilities at  
8       the Richland County Sheriff's Department is to  
9       process a crime scene for possible evidence. So he  
10      looks at the cement rock. He cannot possibly lift  
11      prints off of that. And he'll be able to describe to  
12      you why some objects you can't lift prints off. Just  
13      because someone touches an item doesn't mean that  
14      they're necessarily leaving readable prints, okay,  
15      and the different types of services.

16      So he looks around, looks at the item, cannot  
17      possibly lift prints off of it. And they go around  
18      to the bedroom window that was busted open for the  
19      person to enter. And on the miniblind, on the  
20      miniblind of that window is a blood smudge. So,  
21      obviously, reasonably thinking, the person busted  
22      open the window, cut themselves in reaching into open  
23      that window to gain access to the apartment. They  
24      cut themselves on the glass and they bled on the  
25      miniblind. It's a huge break on this case. It's a



1 very simple case. So as he's trained to do, he takes  
2 a swab of that potential blood sample. Maybe we can  
3 get some DNA, a reading, a profile off of this  
4 smudge.

5 He also looks around on the glass for possible  
6 prints. And, A, somebody may leave a print, he'll  
7 explain, but that doesn't mean it's necessarily  
8 readable, that we can identify ridge marks and all  
9 that certain thing. So he cannot find anything that  
10 would be able to be processed to match a print. But  
11 he does find a smudged print. So obviously a finger  
12 has touch it, but it's moved so we're not going to  
13 get any ridges or anything of it.

14 But he thinks to himself maybe, possibly we can  
15 get some skin cells, another way to possibly get DNA  
16 off of that. So he also takes a swab from that  
17 smudged fingerprint. He packages it appropriately,  
18 takes those two swabs from the window, from the blood  
19 and from the smudged fingerprint, brings it back to  
20 the Richland County Sheriff's Department.

21 He also took photographs. You'll see all the  
22 photos of the apartment and exactly what the  
23 condition of it was and everything there, brings  
24 those swabs back to the Richland County Sheriff's  
25 Department.

1           Those swabs are submitted to the DNA lab where  
2 John Barron who is with the Richland County Sheriff's  
3 Department in the DNA lab department will come to be  
4 able to testify as to how you process evidence,  
5 saliva, blood for a DNA profile. He will be able to  
6 explain to you the science of DNA, the individuality  
7 of how we all have our own DNA profile, basically a  
8 code. Based upon that investigation the defendant's  
9 profile is developed.

10           Sergeant McRoberts then who is the lead  
11 investigator assigned to the case makes contact with  
12 the defendant, with Willis Weary, and brings him down  
13 to the Richland County Sheriff's Department. He  
14 reads him his Miranda rights. You have all probably  
15 heard on the TV, and you'll hear about each of those  
16 rights that are read to the defendant.

17           He has a right to remain silent. Does he want  
18 an attorney? Does he have an attorney? If he  
19 doesn't have one, one will be appointed for him by  
20 the court. Does he want to give up these rights and  
21 give a statement and talk about what happened?

22           And the defendant you will see and you will hear  
23 waives or gives up those rights, the right to remain  
24 silent, and says I will give you a statement. And he  
25 admits to being in Jose' Gonzalez' apartment.

1           Now, burglary in the first degree, burglary in  
2           the first degree is what Mr. Weary is charged with.  
3           You enter a dwelling, a home without consent, without  
4           the owner's permission, and you have the intent to  
5           commit a crime inside that dwelling.

6           Now, that basically is the definition of a  
7           burglary. What makes it a burglary in the first  
8           degree is either the person is -- there's a number of  
9           things in the statute. A person could be armed with  
10          a deadly weapon; they caused physical injury to a  
11          person who is not a participant in the crime; uses or  
12          threatens to use of a dangerous instrument; displays  
13          what appears to be one of these: Knife, pistol,  
14          whatever; has a prior record of two or more  
15          convictions for burglary; or the entering or  
16          remaining in the dwelling occurs during the  
17          nighttime. It occurs in the nighttime hours. And  
18          that's what makes it a burglary in the first degree.

19          These elements right here are all or's, or. We  
20          don't have to prove all of these. If we just prove  
21          one of these, one of these elements, it makes it a  
22          burglary in the first degree. The judge read to you  
23          the indictment and the charge in this case, and we  
24          have alleged in this indictment in this charge that  
25          the reason this particular case is a burglary in the

1 first degree is because of the prior record of two or  
2 more burglaries and/or the entering or remaining  
3 occurred in the nighttime.

4 Let me also talk to you about another principle.  
5 And it's always called the hand of one, hand of all,  
6 meaning I could personally maybe never actually enter  
7 the dwelling myself. I could stand outside and maybe  
8 be the look-out. I am helping someone else commit  
9 the crime. I am aiding, abetting. It's the hand of  
10 one is the hand of all.

11 If I never touch that window, if I don't throw  
12 the rock, if I don't enter that home, if I don't  
13 touch the property that's stolen, if I never get a  
14 single benefit from the crime itself, if I acted as  
15 that look-out making sure that this person doesn't  
16 get caught, I am guilty of burglary in the first  
17 degree under hand of one is the hand of all. You  
18 could be the look-out. You could be the active  
19 participant. You could be a get-away driver.

20 You will hear basically that the defendant in  
21 his statement says, yeah, I did enter that dwelling.  
22 So he does actually admit that he goes into that  
23 home. But he says that someone else threw the rock  
24 and he says that someone else got the property and he  
25 says that he didn't touch any of the property, didn't

1 get any of the property. He just got 50 bucks from  
2 it. That, ladies and gentlemen, you will hear would  
3 be under the hand of one, hand of all. Okay.

4 So at the end you could either believe that he  
5 did in fact enter that home, he did in fact get some  
6 of the property, that he is the person that threw the  
7 rock; or you could believe he's not the person that  
8 threw the rock but he got 50 bucks for it and he went  
9 into that home basically to get into the window,  
10 crawled through the window and go to the front door  
11 and unlock the front door so that someone else could  
12 come in and get that property. Hand of one, hand of  
13 all. And all of that law will be given to you again  
14 at the close of the case.

15 DNA samples are subsequently gotten from the  
16 defendant's own mouth to compare to that profile that  
17 was developed from the blood swab that was taken off  
18 of that miniblind. And John Barron will explain to  
19 you that it was in fact confirmed through those  
20 samples gotten from Sergeant McRoberts from his mouth  
21 and submitted to John Barron for analysis that it is  
22 his DNA sample. His code, his profile will be seen  
23 in the African-American population one in every  
24 11 quadrillion. There is a chance that his DNA is  
25 someone else's 1 in every 11 quadrillion.

1           That, ladies and gentlemen, basically at the  
2 close of the case, when the judge instructs you that  
3 we have to prove the case beyond a reasonable doubt,  
4 that the evidence from the witnesses, the blood swab  
5 that matches his 1 in every 11 quadrillion and the  
6 defendant's own statement and admission that he  
7 participated in this burglary is the evidence we'll  
8 be asking you to return a verdict of guilty on.  
9 Thank you very much.

10           **THE COURT:** Mr. Deysach.

11           **MR. DEYSACH:** Thank you. Good morning. The  
12 judge kind of stole my thunder when he thanked  
13 everybody who had come here to be a juror this  
14 morning, but I wanted to go ahead and thank you  
15 myself. You know, I guess I should probably get used  
16 to the judge kind of stealing my thunder.

17           You heard what the solicitor said. There's a  
18 few things -- I prepared remarks, but there's a few  
19 things that I want to make sure that you understand.  
20 One is that the evidence is going to come from this  
21 chair and from exhibits that are submitted to you.  
22 She gave you a long list of what the evidence is  
23 going to be and what it is and what it will show and  
24 those types of things. The evidence comes from here.  
25 Everything she said is not evidence. And so you'll

1 get a chance to evaluate what that evidence says.

2 If she said something in her statement that did  
3 not turn out to come from this stand, you have to  
4 disregard what she said in the statement. So I just  
5 want to make sure that you understand that what she  
6 told you is not evidence.

7 I also want to make sure that you understand  
8 that the judge is the one who instructs you on the  
9 law. And I'm not saying she said anything wrong,  
10 but especially when it comes to the hand of one,  
11 hand of all type of a theory, and she had a nice  
12 presentation that had the law of burglary on it, but  
13 when it came to that hand of one, hand of all, she  
14 was speaking a little bit more extemporaneously. So  
15 I want to make sure that you rely on what the judge  
16 charges you if he chooses to instruct you on that  
17 type of law as opposed to remembering what she has  
18 talked about.

19 But back when I was saying about thanking you, I  
20 know that when you get a notice in the mail it says  
21 you've got to come to jury duty. It's more of a  
22 hassle than it is a pleasure certainly. Everybody  
23 has taken valuable time out of their lives to come  
24 here, but you wouldn't be here unless there was a  
25 dispute.

1           The defendant disagrees with what the State is  
2 saying. If he agreed, we wouldn't need you. But he  
3 doesn't agree and that's why you're here. We can't  
4 rely in a judge. We can't rely on the Solicitor's  
5 Office. We can't rely on the police to pass  
6 judgment. We need to rely on you people who are  
7 peers, people in the community. And so that's why  
8 it's important. It's important all 12 of you are  
9 here. It's important that you listen to the  
10 instructions from the judge and it's important that  
11 you uphold that oath that you just took.

12           I think the solicitor expressed to you in her  
13 opening the seriousness of the crime. I think she  
14 said that the victim's home had been invaded. And so  
15 I do want to underline the seriousness of the subject  
16 matter here. This is a criminal trial. The judge  
17 explained to you this is a criminal trial. There is  
18 a dispute. And this is not a dispute about money.  
19 If we were having a dispute about money or somebody  
20 owing somebody money for some reason, that would be a  
21 civil trial. But this here is a criminal trial.

22           And the difference is that my client's freedom  
23 is on the line. It's not whether or not he's going  
24 to have to write a check or something like that after  
25 the trial, like a civil trial maybe, whether he's



1 going to have to perform any type of, you know,  
2 equitable judgment that a judge might see fit to  
3 enforce, a jury might see fit; but it's freedom  
4 that's at stake.

5 And so the reason I point that out to you is  
6 because in a civil trial the judge would get up there  
7 and say, well, I want you to choose a verdict based  
8 on the preponderance of the evidence. Well, this,  
9 the judge isn't going to say that. He's going to ask  
10 you to render a verdict based on whether or not the  
11 State has proven their case beyond a reasonable  
12 doubt.

13 I mean, that's for a couple of reasons. One is  
14 the State has the burden because it's difficult to  
15 prove a negative. The State has to prove that this  
16 offense occurred and that my client was the person  
17 who committed it.

18 The reason that you have to find somebody has  
19 done something beyond a reasonable doubt is to avoid  
20 a mistake. If you're just making a decision based on  
21 what's more likely to have happened than not, you  
22 might get it wrong. You might get it wrong. And if  
23 you get it wrong in a civil trial, then somebody  
24 might have to write a check. That's a little bit  
25 bigger than if somebody is not being paid the way

1 they should have.

2 But if the jury makes a mistake in a criminal  
3 case, there is the possibility that an innocent man  
4 could go to prison. And we already talked about the  
5 seriousness of the subject matter here. And so  
6 that's -- I think you understand my point, that I'm  
7 asking you to -- you know, everybody hears beyond a  
8 reasonable doubt. That's kind of a colloquial phrase  
9 that you'll hear on cop shows or court shows. But  
10 that's the reason for it, and that's why I'm asking  
11 you to, you know, honor the oath, do what the judge  
12 tells you and make sure that they've proven their  
13 case beyond a reasonable doubt.

14 Because, like I say, it's tough to prove the  
15 negative. It's tough to prove somebody didn't do  
16 something. And also we don't want to make a mistake  
17 in the verdict and have probably the most supreme  
18 injustice occur. And that's what would happen if you  
19 guys found my client guilty. You'd be sending an  
20 innocent man to prison. You'd be taking his freedom  
21 is what I want to say.

22 The solicitor made the evidence sound open and  
23 shut. I'm telling you that it's not. Listen very  
24 closely to what the witnesses say when they're up  
25 here. And I thank you for your attention. Thank

1           you.

2           **THE COURT:** All right, Ladies and Gentlemen of  
3           the Jury. It's about 11:15. Let's take a short  
4           break. I'm going to ask you to go to the jury room.  
5           This is the jury room where you will sort of hang out  
6           for the next day or so. So any time you're released  
7           to go to lunch, things like that, you'll always come  
8           back to this jury room on the third floor. Don't go  
9           back downstairs because I'd just have to come down  
10          and look for you.

11          I'm going to ask you to do a couple of things.  
12          First off, don't discuss the case among yourselves  
13          while you're in the jury room because you haven't  
14          heard any of the evidence. You and I are both sort  
15          of in the same position. I heard about as much of it  
16          as you have and it would be improper to start talking  
17          about it at this stage of the procedures. So if  
18          you'll honor that.

19          The second thing I'm going to do ask you to do  
20          while you're in the jury room -- I know you've been  
21          together for four days now; some of you might know  
22          each other -- but get to know each other a little bit  
23          better. And I'm going to ask you to select one of  
24          your members -- it doesn't matter who it is, except  
25          the last lady chosen who is serving as our alternate.

1 I was going to call her name, but Ms. 33 could not  
2 serve as foreperson of the jury. She is our  
3 alternate in the event something happens to any  
4 member of the jury panel during the course of this  
5 trial. So select one of your members to be the  
6 Foreperson of the Jury.

7 The foreperson will take the seat occupied by  
8 actually the first gentleman who was chosen seated  
9 with the, looks like blue or black sweatshirt on and  
10 will remain in that seat throughout the course of the  
11 trial. The rest of the seats don't have any names on  
12 them. So I just want to you feel free to sit where  
13 you're most comfortable, where you can see this  
14 witness box, where you can hear if you have a  
15 problem, anything like that. Just sit where, as I  
16 say, it's most comfortable to you.

17 All right. Let's take our first morning break  
18 right now. And again, if you'll just let the bailiff  
19 know, there's probably a piece of paper back there,  
20 you can write down the number of the -- the identity  
21 of your foreperson. That person eventually as the  
22 case goes along when it's turned over to you would  
23 actually preside in the jury room, and you probably  
24 know the drill, would take the votes, that sort of  
25 thing, and would actually write the verdict if this

1 becomes necessary at the end of the trial. So if  
2 you'll do that for me, I'd appreciate it. And again  
3 just relax for a few minutes. We'll call you when  
4 we're ready.

5 (Jury out at 11:22 a.m.)

6 THE COURT: All right. Let's stand at ease for  
7 about ten minutes, about ten minutes.

8 (Whereupon, a break is taken)

9 THE COURT: Are you ready for the jury?

10 MS. FENT: Yes, Your Honor.

11 THE COURT: Defense ready for the jury?

12 MR. DEYSACH: I am, Your Honor.

13 THE COURT: Bring the jury. Juror number 1 is  
14 the Foreperson of the Jury, a physical therapist.

15 (Jury in at 11:40 a.m.)

16 THE BAILIFF: The jury is all present, Your  
17 Honor.

18 THE COURT: Thank you very much. Juror number  
19 1, I want to thank you for agreeing to serve as  
20 foreperson of this jury. And juror number 55, I  
21 don't know how long -- I go the other way. So I  
22 don't know how long it takes to get to Chapin. 30  
23 minutes?

24 JUROR: 25, 30.

25 THE COURT: Okay. We'll have you there. That

1 is, if you drive safely. All right. Solicitor, call  
2 your first witness.

3 MR. HAYES: Thank you, Your Honor. The State  
4 calls Jose' Roberto Gonzalez.

5 THE COURT: Yes. Swear the interpreter.

6 THE CLERK: State your full name, please.

7 MR. HUNT: John Brit Hunt.

8 THE CLERK: Do you solemnly swear that you will  
9 accurately interpret the language requested in this  
10 courtroom of the defendant, witnesses without  
11 additions thereto or distractions therefrom or any  
12 other amendment of your own interpretation, so help  
13 you God?

14 MR. HUNT: I do.

15 JOSE' R. GONZALEZ, after being duly sworn,  
16 testifies as follows:

17 THE CLERK: Please have a seat there. State  
18 your full name for the record.

19 WITNESS: Jose' Roberto Gonzales.

20 (Whereupon, the answers of Mr. Gonzalez are  
21 interpreted and spoken by Mr. Hunt as follows)

22 DIRECT EXAMINATION

23 BY MR. HAYES

24 Q Good morning, Mr. Gonzalez.

25 A Good morning.

1 Q Mr. Gonzalez, how old are you?

2 A Twenty-one.

3 Q And how long have you lived in Columbia?

4 A Three years. I'm sorry. Interpreter error. Six  
5 years.

6 Q Mr. Gonzalez, are you currently employed?

7 A Yes.

8 Q And where are you employed at?

9 A I do electrical work.

10 Q All right, Mr. Gonzalez. I'm going to take you to  
11 August 20th of 2005. Do you remember where you were  
12 living at that time?

13 A Yes.

14 Q And where was that?

15 A The Chimneys Apartments.

16 Q And do you remember the address of the apartment that  
17 you lived in in The Chimneys?

18 A Crofton Way or something like that.

19 Q Okay. Does 2532-A Crofton Way sound right to you?

20 A Yes.

21 Q And how long had you been living at The Chimneys on  
22 August 20th of 2005?

23 A I had been living there about two months.

24 Q Two months. And where had you resided in Columbia  
25 prior to moving into that apartment?

1 A In Hunt Club.

2 Q And who did you live in the Hunt Club with?

3 A With my parents.

4 Q And had you lived in the Hunt Club -- was this your  
5 first move out of the Hunt Club since you moved to  
6 Columbia?

7 A Yes.

8 Q Okay. All right. Can you describe for me the events  
9 that you went through on August 20th, 2005, as far as  
10 you how your day progressed?

11 A The day that I was robbed?

12 Q Yes.

13 A I left in the morning about 6 a.m.

14 Q And where were you going at 6 a.m. in the morning?

15 A To work. And I returned home around 4.

16 Q Okay.

17 A And when I returned home I --

18 Q I'm going to stop you there. So when you returned  
19 home, is there anything out of the ordinary? You  
20 know, you arrived back to your house. Is there  
21 anything that's just out of the ordinary?

22 MR. HUNT: Should the interpreter finish what  
23 the witness said prior to the additional question?

24 Q Actually, I hasn't asked him those questions yet. So  
25 I would stop him there and try to ask him a new



1 question at this point. So I'm just curious. As he  
2 returned home from work on the 20th of August 2005,  
3 was there anything out of the ordinary about his  
4 residence?

5 A Yes. The door was open.

6 Q And when he had left in the morning -- when you left  
7 in the morning, would you have left the door open?

8 A No.

9 Q How did you leave the door that morning?

10 A Closed and locked.

11 Q And when you returned from work that afternoon, the  
12 door was open?

13 A Yes.

14 Q When you noticed that the door was opened, what did  
15 you do next?

16 A The first thing, when I came in, I noticed the DVD  
17 and speakers. And then I went into my -- continued  
18 to my room and noticed the window.

19 Q Okay. So you entered the residence. You noticed  
20 that some of your belongings are missing?

21 A Yes.

22 Q Then you proceeded into your bedroom where you  
23 noticed that a window was broken?

24 A Yes.

25 Q While you're looking around at your residence and the

1 condition that you find it in, do you touch anything  
2 or ...?

3 A No.

4 Q So you just look around, kind of survey?

5 A Yes.

6 Q So once you notice that you have some items that have  
7 been removed from your house and that your window has  
8 been broken, that your door was open not the way you  
9 left it, what did you do next?

10 A I left and went to the main office for the apartments  
11 and we spoke to the police.

12 Q So at the main office you all called police?

13 A Yes.

14 Q Did an officer arrive at your apartment?

15 A Yes.

16 Q And what happened when they arrived? Did they talk  
17 to you about what happened?

18 A They talked to me. They looked around and called an  
19 investigator.

20 Q Just a couple more questions, Mr. Gonzalez. You said  
21 when you left in the morning that you had closed the  
22 door and locked it. When you came home that evening,  
23 was the lock broken? Was it busted?

24 A No.

25 Q So --

1 A Just the window.

2 Q So the lock was intact?

3 A Yes.

4 Q Okay. And you also said that you noticed that there  
5 were some DVD's and some speakers missing. Upon  
6 further investigation on your part, did you notice or  
7 did you find that any other items in your house were  
8 missing?

9 A Money.

10 Q Do you know how much money?

11 A Around 40 to \$50.

12 Q Mr. Weary -- or, Mr. Gonzalez, do you recognize the  
13 defendant in this case, Mr. Weary?

14 A No.

15 Q You don't recognize him?

16 A I recognized him and I've seen him just by sight.

17 Q And would Mr. Weary have had permission to enter your  
18 residence?

19 A No.

20 MR. HAYES: No further questions at this time,  
21 Your Honor.

22 THE COURT: Cross examination.

23 MR. DEYSACH: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MR. DEYSACH

1 Q Good morning, Mr. Gonzalez.

2 A Good morning.

3 Q You testified that you left for work that morning at  
4 6 a.m.?

5 A Yes.

6 Q How do you get to work? Do you drive?

7 A Driving. Driving.

8 Q When you left for work, did you see anything  
9 suspicious around your apartment?

10 A The only thing I saw was a van with a person outside.  
11 That's all I saw.

12 Q Was it light outside?

13 A Yes.

14 Q So you know that whatever happened at your house that  
15 day happened between 6 and 4?

16 A Yes.

17 Q Who called the police? You or apartment management?

18 A The apartment manager.

19 Q Did you have an interpreter when the police arrived?

20 A No.

21 Q How were you able to communicate with them?

22 A With signals.

23 Q Did you have any difficulty communicating with the  
24 police?

25 A Yes. A little, yes.

1 Q You testified that you're an electrician?

2 A Yes.

3 Q Would you agree that it's important for electricians  
4 to pay attention to details?

5 A Yes.

6 Q And you're a good electrician?

7 A I think so. I hope so. Yes.

8 Q So you have an attention for detail?

9 A Yes.

10 Q You understood it was important to tell the police  
11 everything that was necessary, correct?

12 A Yes.

13 Q And to answer their questions fully?

14 A I tried to do that.

15 Q So if there was anything out of the ordinary when you  
16 called the police, you would have told them?

17 A Yes.

18 Q And so there is nothing that you left out when you  
19 were talking to the police?

20 A I don't think so.

21 Q So are you telling this jury under oath that you  
22 don't know Willis Weary?

23 A I know him by sight. He lived in front of my  
24 parents' apartments.

25 Q So you didn't know his name?

1 A No.

2 Q Are you known by the nickname "Amigo"?

3 A No. To all Hispanics, they call -- they call them  
4 that.

5 Q So you've been called "Amigo" by non-Hispanics?

6 A Yes. At work, some people. White people or black  
7 people.

8 Q Did you say at work?

9 A Yes. At work.

10 Q Only at work?

11 A And in the street or at Wal-Mart sometimes people  
12 will say, "Hi, Amigo."

13 Q It's your testimony that Willis Weary never called  
14 you "Amigo"?

15 A Yes.

16 Q It's your testimony under oath that he was never a  
17 guest in your home?

18 A Never. Never. No.

19 Q And if anybody said that, that would be untrue? I'll  
20 ask again. If anybody said that Willis Weary had  
21 been a guest in your home, they'd be lying?

22 A Yes.

23 Q How long did it take the police to arrive after you  
24 called them?

25 A From ten to twenty minutes.

1 Q How long did they stay?

2 A About two, two and a half hours.

3 Q How many police arrived?

4 A The first one arrived and then later the  
5 investigator. And the investigator is the one who  
6 was there at the home for the longest.

7 Q And they were both at your home at the same time?

8 A Only the investigator.

9 Q How long after the first officer arrived was it until  
10 the second officer arrived?

11 A I don't remember. It's been a long time.

12 Q Was it the same day?

13 A Yes. Yes. Same day. It was just a few minutes, at  
14 the most a half hour.

15 Q It was still light at 4:00 when you got home, right?

16 A Yes.

17 Q Was it still light when the second officer arrived?

18 A Yes.

19 Q Did they give you a copy of a police report?

20 A They gave me a card with a case number.

21 Q Did any police ever contact you after August 20th?

22 A Really I'm not sure if they were police, but I was  
23 contacted requesting my presence.

24 Q For today?

25 A No. Sometimes before. Six months or something like

1 that.

2 Q For court appearances?

3 A I don't think so.

4 Q Do you remember the names of the officers that came?

5 A No.

6 Q Do you remember if Investigator McRoberts was one of  
7 the officers?

8 A Yeah. I think he was one of them, the person seated  
9 behind you.

10 Q Was he -- what was he doing?

11 A He came in with a black light, a dark light, with a  
12 box. And he was taking fingerprints, taking pictures  
13 and things.

14 Q Is it possible that it was somebody besides Officer  
15 McRoberts who did that?

16 A I'm not sure. But it was a police officer.

17 Q Did anybody take a written statement from you?

18 A I can't remember if they took a statement but -- but  
19 the police arrived and I tried to speak with them.

20 Q The police never asked to get an interpreter?

21 A No.

22 Q Any of the other times you were contacted, was there  
23 an interpreter?

24 A Yeah. There was someone. There was a woman who  
25 spoke Spanish.



1 Q And begging the Court's indulgence. One question.  
2 Did you ever get the DVD? It's a DVD player,  
3 correct?

4 A Yeah. And also it's to listen to music.

5 Q And the speakers, did you ever get those back?

6 A No, nothing.

7 MR. DEYSACH: Begging the Court's indulgence. I  
8 don't have any more questions.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. HAYES

12 Q Mr. Gonzalez, had Mr. Weary ever been in your home  
13 before?

14 A No.

15 Q And did you ever give him permission to enter your  
16 home?

17 A No.

18 MR. HAYES: No further questions, Your Honor.

19 THE COURT: Recross?

20 MR. DEYSACH: No, Your Honor.

21 THE COURT: All right. You may come down. Next  
22 witness.

23 MR. HAYES: Thank you, Your Honor. The State  
24 would call Deputy Michael Smith.

25 MICHAEL P. SMITH, after being duly sworn,

1 testifies as follows:

2 THE CLERK: Please have a seat there, sir.

3 State your full name for the record.

4 WITNESS: Michael Patrick Smith.

5 DIRECT EXAMINATION

6 BY MR. HAYES

7 Q Mr. Smith, where are you currently employed at?

8 A Richland County Sheriff's Department.

9 Q Sir, and how long have you been employed by the  
10 Sheriff's Department of Richland County?

11 A Approximately four years.

12 Q And during that four years, what kind of duties and  
13 capacity have you served the Department in?

14 A I am the road unit. I'd answer calls out on the  
15 road.

16 Q So what are -- so could you just describe some of the  
17 general duties that you would have then as a road  
18 duty?

19 A Sure. We can do anything from serving warrants to  
20 answering calls for service, anything from a missing  
21 child to a burglary to a murder to traffic accidents,  
22 suspicious people, stuff like that.

23 Q So how would it generally work out? Would you  
24 receive a call from dispatch?

25 A Correct.

1 Q And dispatch would let you know where to respond to?

2 A Correct.

3 Q Do you remember on August 20th of 2005, did you  
4 receive a call?

5 A Yes, I did.

6 Q And what was that call in reference to, sir?

7 A This call, for the one for the burglary on Crofton  
8 Way.

9 Q And when you received that call, what did you do?  
10 How did you respond?

11 A Just answer on the radio to affirm that I got the  
12 call and tell them that I'm in route and then I go to  
13 the scene.

14 Q So you arrived at the scene on Crofton Way?

15 A Correct.

16 Q And did you make contact with the people that had  
17 called police?

18 A I did.

19 Q Do you remember who those people were?

20 A Vaguely. It's been a while.

21 Q When you met with those people, tell me kind of what  
22 transpired between you and the people that had called  
23 police?

24 A They had stated that he had stated that he had gone  
25 to work I believe and came back and found out that he

1 had been burglarized. There was I believe a hole  
2 through the window and there was a piece of concrete  
3 that was laying inside.

4 Q So when you say you found out he had been  
5 burglarized, did you follow that up? I mean, so when  
6 you meet with the people that called you, where are  
7 they when you arrive at Crofton Way?

8 A They are outside.

9 Q They are outside of the house that --

10 A I believe so, on the sidewalk.

11 Q Okay. So the gentleman who is residing in the  
12 residence that had been broken into, he is outside of  
13 his apartment?

14 A I believe so. Yes, sir.

15 Q You made contact with him?

16 A Yes, sir.

17 Q You all have communications, and you enter the  
18 residence at some point?

19 A Yes, sir.

20 Q And when you enter the residence, what kind of  
21 observations are you making?

22 A Usually what I'll do is I'll put on a pair of gloves  
23 first of all so I don't contaminate anything with my  
24 own fingerprints, DNA or anything like that. And  
25 usually -- I believe if I can remember right, I

1 believe the door was open. I don't know if he opened  
2 it or what. I go in and look to see if I see  
3 anything right off and him what's missing. You know,  
4 does he notice anything right off that's missing, you  
5 know, any damage.

6 Q And during your communications, were you primarily  
7 communicating directly with him?

8 A Yes.

9 Q And were you able to ascertain from those  
10 communications what items had been missing from the  
11 home?

12 A Yes.

13 MR. DEYSACH: Objection to the hearsay.

14 THE COURT: Rephrase your question.

15 Q Mr. Smith, what capacity -- what's your title with  
16 the Richland County Sheriff's Department?

17 A Deputy Sheriff.

18 Q All right, sir. Deputy, when you responded to the  
19 burglary on Crofton Way, did you write a report at  
20 the conclusion of your investigation?

21 A I did.

22 Q Do you recognize what I've handed you, sir?

23 A It's a printed copy of the report that I had  
24 handwritten.

25 Q And that's how you recognize it?

1 A Yes, sir.

2 Q In reviewing that report, does it refresh your memory  
3 as to the items that had been removed from the house  
4 on Crofton Way?

5 MR. DEYSACH: I would object on the same hearsay  
6 basis.

7 THE COURT: Overruled.

8 A Yes.

9 Q And what are those items, sir?

10 A A DVD player valued at \$100, a set of two speakers  
11 valued at \$50 total, \$50 cash.

12 Q So upon ascertaining what had been removed from the  
13 household, did you make any other observations? I  
14 mean, you said when you entered, the door was open.  
15 You have communication with the victim as to what's  
16 missing from the house. Is there anything else  
17 that's unusual about the residence?

18 A The screen was missing off the window. There was a  
19 large hole in the window. And there was a large  
20 piece of concrete that was inside the residence on  
21 the floor.

22 Q So can you describe the condition of the window that  
23 had a large hole in it for me, please?

24 A The window, the hole itself as I remember was  
25 probably -- I don't know. I'm going to guesstimate.

1           probably maybe 18 inches around. I can't remember.

2       Q     Sure. And once you made these observations and  
3           communicated with the victim in the case, what do you  
4           do next?

5       A     I called for a lab unit to come out and process the  
6           scene.

7       Q     And how long -- and once you contact that lab unit,  
8           do you remain at the scene until that lab unit  
9           arrives?

10      A     It depends. I mean, if they're tied up and it's  
11           going to be two or three hours, sometimes no. But in  
12           this case he arrived while I was still there. He was  
13           close by.

14      Q     And after you called the lab unit and they arrive, do  
15           you have any other responsibilities, or did you make  
16           any further investigation into this case?

17      A     Once I got all the information I had for my report, I  
18           turned over the lab unit for his -- to process the  
19           scene. I had everything I needed from the victim.

20      Q     And do you know, is the 2532 Crofton Way address, is  
21           that located here in Richland County?

22      A     It is.

23      Q     Sir, I probably should have done this at the  
24           beginning. But what time were you dispatched that  
25           afternoon?

1 A I believe it was --

2 Q Or that day. Excuse me.

3 A I believe it was around 4:00 in the afternoon. I  
4 believe.

5 Q And once you were dispatched to the scene, do you  
6 remember how long it took you to get there? Do you  
7 remember your time of arrival?

8 A Probably 15, 20 minutes. It depends on what part of  
9 the region or the county I was in. You know, I could  
10 be right around the corner one time or all the way  
11 across town.

12 Q Sir, presenting to you what's been marked State's  
13 Exhibits 4 through 21, if you would just briefly take  
14 a look at these photographs. And I ask you if you  
15 recognize what's in them?

16 A I do.

17 Q And how do you recognize these photographs?

18 A I just remember when I pulled up to the scene, I just  
19 remember. I mean, I just remember that. I remember  
20 that it was a corner apartment and the window screen  
21 missing.

22 Q So these photographs, is it fair to say, depict the  
23 residence of the victim in this case?

24 A It does.

25 MR. HAYES: I have no further questions at this



1 time, Your Honor.

2 THE COURT: Cross examination.

3 MR. DEYSACH: Thank you very much.

4 CROSS EXAMINATION

5 BY MR. DEYSACH

6 Q You testified you've been with the Sheriff's  
7 Department for four years?

8 A Approximately four years; yes, sir.

9 Q Have you been -- what did you say your job title was?

10 A Deputy Sheriff.

11 Q Did you say street patrol unit or --

12 A Yes, sir. Road patrol. Street parole.

13 Q Have you been doing that the whole four years?

14 A No. Actually I was -- actually I started up here as  
15 a JSO.

16 Q What's that?

17 A A judicial service officer.

18 Q So one of the courtroom personnel in uniform?

19 A Yes, sir.

20 Q What were you before that? Were you in law  
21 enforcement?

22 A I was a reserve deputy and also a state constable.

23 Q A state constable. How long were you a state  
24 constable and reserve deputy?

25 A Probably two years.

1 Q And that's the beginning of your law enforcement  
2 career?

3 A I was actually in military police when I was in the  
4 Air Force back in the eighties.

5 Q Okay. Until then or --

6 A No.

7 Q Are you in career law enforcement, or are you just  
8 kind of --

9 A No.

10 Q We just talked about it all, all your law enforcement  
11 experience?

12 A (Nods head affirmatively).

13 Q Okay. Well, in your law enforcement experience, I'm  
14 sure you've written several reports?

15 A Yes, sir.

16 Q That's a major part of your duties, correct?

17 A Yes, sir.

18 Q And police academies instruct you on how to do it.  
19 Is that right?

20 A Yes, sir.

21 Q And they made sure that you do it correctly because  
22 they're important documents, correct?

23 A Yes, sir.

24 Q Other police officers might rely on these documents?  
25 The Solicitor's Office might rely on documents.

1 Answer verbally. Yes?

2 A Yes.

3 Q Defense attorneys may rely on them?

4 A Yes, sir.

5 Q Even some cases judges may rely on them?

6 A Yes, sir.

7 Q So you know that these reports need to be complete,  
8 correct?

9 A Yes, sir.

10 Q And they need to be accurate, correct?

11 A Yes, sir.

12 Q And they need to be thorough, correct?

13 A Yes, sir.

14 Q Now, on your incident report, what time does it say  
15 that you arrived?

16 A It doesn't have it on that printed one. I had a  
17 handwritten one. I don't have a copy of it though.

18 Q You don't have a copy of it. What time does it say  
19 that the incident occurred?

20 A Well, the incident occurred -- when you write a  
21 report, you usually put in the incident report when  
22 the victim left the house or left the car or whatever  
23 and when everything was okay, and then when they find  
24 it you know there's a gap timeframe. So usually put  
25 that in there as to an inbetween incident time.

1 Q So are you telling me that there is a handwritten  
2 incident report somewhere?

3 A I wrote it up back then in my hand.

4 Q And did you testify that on that handwritten incident  
5 report there is information about when you arrived  
6 that's not on the printed up report?

7 A I would assume it would be.

8 Q Do you know where that handwritten incident report  
9 would be?

10 A No. I do not.

11 Q Is there a place where you normally would keep  
12 something like that?

13 A I don't get copies back.

14 Q What do you do with the incident report, the  
15 handwritten incident report once you turn it in?  
16 What happens to it?

17 A I turn it in and the supervisor signs off of on it.  
18 It gets sent to whatever division that it goes to.

19 Q Somewhere within the police department?

20 A Yes, sir.

21 Q So as far as you know, that document is somewhere  
22 within the custody of the police department?

23 A Once again, I don't know for sure, but I would assume  
24 so.

25 Q Did you have any trouble communicating with Mr.

1 Gonzalez?

2 A Not that I recall.

3 Q Did he have any trouble speaking English?

4 A I don't remember.

5 Q You didn't think there was a need for an interpreter  
6 at the time?

7 A No.

8 Q You spoke to not only Mr. Gonzalez but you spoke to  
9 Chimneys Apartment complex management?

10 A I don't recall that.

11 Q You don't recall? If you would have, would you have  
12 put it in your report?

13 A If I felt there was a need to, I would have.

14 Q Now, you testified that you're a street -- I'm sorry  
15 on street patrol?

16 A If that's what you want to call it.

17 Q Basically answer calls, correct?

18 A Correct.

19 Q And then you developed the incident report, correct?

20 A Correct.

21 Q Which gets forwarded to an investigator perhaps,  
22 correct?

23 A Correct. Perhaps. Yeah.

24 Q And those investigators typically have more  
25 experience in law enforcement than the street officer

1 might, correct?

2 A Correct.

3 Q And so they're in a better position to understand  
4 what's important and what isn't?

5 A I would assume so.

6 Q Correct?

7 A They have different training than we do.

8 Q So, are you taught at the police academy only to  
9 write things in your report which you think are  
10 important?

11 A We're usually taught to put who, what, where, when,  
12 why and how.

13 Q And that's it?

14 A No. You know, observations.

15 Q Not necessarily everyone that you talk to, correct?

16 A Correct.

17 Q Did you collect Mr. Gonzalez's phone number?

18 A I don't remember. That's a normal question we ask.

19 And if he had given it, I would have put it down.

20 Q Do you have your incident report in front of you?

21 A No, I do not.

22 Q Do you mind if I let you look at a copy of it. This  
23 is really just the front page. May I approach the  
24 witness, Your Honor?

25 THE COURT: Sure.

1 (Document handed to the witness)

2 A Oh. This is the printed copy. So ...

3 Q Yes, Your Honor. Yes, sir. Is there contact  
4 information for the victim on there?

5 A Yes.

6 Q How many numbers?

7 A One number.

8 Q Is there one number? Is there one number printed  
9 twice?

10 A Mm-hmm (affirmative).

11 Q Okay. And you collect that so that the investigator  
12 can follow up with the victim, correct?

13 A Correct.

14 Q That's something that they would typically do over  
15 the course of their investigation?

16 A Correct.

17 Q Were you the person who took the pictures?

18 A No.

19 Q It's your testimony that you arrived on the scene,  
20 made your observations and then called for lab  
21 processing, correct?

22 A Yeah. I arrived on the scene, talked to the victim  
23 and got enough information to report in a call to the  
24 lab unit.

25 Q Did the lab unit arrive while you were still there?

1 A Yes.

2 Q How long did it take for them to show up?

3 A I don't recall.

4 Q Do you remember what time you got to The Chimneys?

5 A It was like 15, 20 minutes after I got the call I  
6 believe.

7 Q So what time are we talking about now?

8 A Like from 4, maybe to 4:20, something like that in  
9 the afternoon.

10 Q Okay. Was it a sunny day you recall?

11 A I don't remember. It's been 18 months.

12 Q Fair enough. Did you stay the whole time when the  
13 lab processor was there, or did you leave before he  
14 did?

15 A I think I left before he did.

16 MR. DEYSACH: I don't have anything further,  
17 Your Honor.

18 THE COURT: Redirect?

19 MR. HAYES: Nothing, Your Honor.

20 THE COURT: All right. You may come down, sir.  
21 Thank you very much.

22 WITNESS: Subject to recall?

23 MS. FENT: May this witness be excused?

24 MR. DEYSACH: Sure.

25 THE COURT: The witness is excused. You're



1           excused.

2           **WITNESS:** Thank you.

3           **THE COURT:** Next witness.

4           **MS. FENT:** The State calls Robert Oates.

5           ROBERT C. OATES, after duly affirming to tell  
6 the truth, testifies as follows:

7           **THE CLERK:** Please have a seat there, sir.  
8 State your full name for the record.

9           **WITNESS:** Robert Cecil Oates.

10                           DIRECT EXAMINATION

11       **BY MS. FENT**

12       **Q**     With whom are you employed?

13       **A**     Richland County Sheriff's Department.

14       **Q**     In what capacity?

15       **A**     I'm a crime scene analyst.

16       **Q**     What's your title? Would I call you a sergeant,  
17 investigator?

18       **A**     Investigator.

19       **Q**     Investigator?

20       **A**     Yes, ma'am.

21       **Q**     And can you please describe to the jury, explain to  
22 the jury your educational and your training  
23 background that brought you to be a crime scene  
24 investigator with Richland County?

25       **A**     Okay. My undergraduate education, bachelor's degree

1 in criminal justice from USC. Then a graduate of  
2 South Carolina Criminal Justice Academy. Then after  
3 being promoted to crime scene investigator or crime  
4 scene analyst, I have received training in blood  
5 spatter false, basic crime scene processing,  
6 reconstruction, basic fingerprint identification and  
7 palm print identification.

8 Q And how long have you been a crime scene  
9 investigator?

10 A A little over two and a half years.

11 Q How many scenes do you think you've probably  
12 responded to and helped in some way or another  
13 process the scene?

14 A The past two years, it's been over 1600 cases.

15 Q On August the 20th, 2005, were you called out to 2532  
16 Crofton Way, apartment complex?

17 A Yes, ma'am.

18 Q Okay. And did you write reports in connection with  
19 your activities and what involvement you had with  
20 this investigation?

21 A Yes, ma'am. Crime scene case notes. Yes, ma'am.

22 Q Okay. Crime scene case notes. And was that a  
23 two-page document you filled out?

24 A Yes, ma'am.

25 Q Okay.

1 A Front and back.

2 Q Do you recall then approximately what time you were  
3 dispatched out there and then what time you arrived?

4 A Yes, ma'am. 6 -- correction. 4:30. I received a  
5 call and I arrived on the scene by my notes at 4:45.

6 Q So about 15 minutes later?

7 A Right. Yes, ma'am.

8 Q Okay. And in connection with your investigation, did  
9 you take photographs of this scene?

10 A Yes.

11 Q I am going to show you, first I'll start just with  
12 these, Exhibits 4 through 12. And right now just  
13 take a look at them and see if you recognize them.

14 A Yes.

15 Q Okay. That's 4 through 12. I'm going to show you 13  
16 through -- well, let's do 13 through 16. Do you  
17 recognize those photographs?

18 A Yes.

19 Q Okay. 17, 18 and 19?

20 A Yes.

21 Q And 20 and 21, do you recognize those?

22 A Yes.

23 Q Okay. And how do you recognize these photographs?

24 A I remember taking those photographs.

25 Q Okay.

1 A Yes.

2 Q And do these photographs accurately depict the  
3 apartment and the area as you found it on  
4 August 20th, 2005, at approximately 4:45 in the  
5 afternoon?

6 A Yes.

7 Q And the photos haven't been changed, altered,  
8 deleted? Those are the photos you took?

9 A Those are the photos I took, yes.

10 MS. FENT: I offer into evidence Exhibits 4  
11 through 21, and I will tender it to counsel.

12 MR. DEYSACH: I've already seen them. I have no  
13 objection.

14 THE COURT: No objection.

15 (WHEREUPON, State's Exhibit No. 4 is admitted  
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 5 is admitted  
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 6 is admitted  
20 into evidence.)

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

23 (WHEREUPON, State's Exhibit No. 8 is admitted  
24 into evidence.)

25

1 (WHEREUPON, State's Exhibit No. 9 is admitted  
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 10 is admitted  
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 11 is admitted  
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 12 is admitted  
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 13 is admitted  
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 14 is admitted  
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 15 is admitted  
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 16 is admitted  
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 17 is admitted  
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 18 is admitted  
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 19 is admitted  
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 20 is admitted  
24 into evidence.)  
25

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

3 Q Take the jury through then when you arrived at this  
4 apartment complex. What is your process of starting,  
5 the first steps you take when you're going to process  
6 a scene?

7 A Okay. After I arrive I made contact with Deputy  
8 Smith. And as my procedure, what I do is I have the  
9 deputy walk me through the scene along with the  
10 victim and go through the areas within the -- this  
11 being a residential burglary, within the residence.  
12 Areas, basically POE which is the point of entry and  
13 the room inside where the entry took place; and if  
14 there are any items that were removed or anything  
15 like this, any areas of concern that I need to look  
16 for.

17 And then after that I did return back to my  
18 vehicle. The first thing I always do is take  
19 photographs. So I take photographs of the outside of  
20 the area of the residence and work my way inside  
21 until I breach the last point of entry.

22 Q And at this point in your process, have you touched  
23 any items or moved any items?

24 A No, ma'am. Hmm-mm (Negative). I only show -- I want  
25 to show it just like the scene is when I get there to

1 the best of ability. And then after that I return  
2 back to my vehicle and get my latent print kit, which  
3 I start looking for fingerprints.

4 Q And what is a latent print?

5 A It's an invisible print that you can't see with the  
6 naked eye.

7 Q Okay.

8 A Yes.

9 Q And I guess at that point it's an unknown print. You  
10 don't know who left it maybe?

11 A Right. Right.

12 Q So you're looking for any latent prints, any prints  
13 that are left at the scene?

14 A Right. Any prints or any trace evidence of any kind.

15 Q And the purpose of doing the walk through with the  
16 deputy and the victim you said to point out any areas  
17 of concern is; for example, if they say, oh, somebody  
18 stole my steak knives in the kitchen you're going to  
19 go to the kitchen, right?

20 A Right. It also helps for reconstruction of the crime  
21 scene, too.

22 Q So you've done the walk through. You said you took  
23 the photographs. And now you've gotten your latent  
24 print kit. What do you do next then?

25 A Well, then I start on the outside. I always start on

1 the outside of the point of entry, which in this case  
2 was the front bedroom window.

3 Q Okay. And what was it that you figured out was why  
4 that was the point of entry?

5 A Well, the front window was smashed out. The pane of  
6 glass was smashed out. And it was up, in the up  
7 position.

8 Q Okay. I'm going to show you Exhibits 4, 6 and 7 I  
9 guess. And if you could just hold those up and show  
10 the jury what area you're talking about?

11 A Sure. Can everyone see?

12 Q Try to speak up as much as possible.

13 A This is the outside as you face the apartment in  
14 question or the residential apartment in question  
15 where the incident took place. And that's just a  
16 general -- I always take a general photograph of the  
17 outside of the residence, okay, so I'll know I can  
18 tell the story of what I'm looking at. And that  
19 right there is just an outside view of the front of  
20 the apartment right there.

21 Q And that was Exhibit 4 for the record that you were  
22 looking at?

23 A Yes. And this is Exhibit 7. It's going to be a  
24 little closer shot focusing in on the actual point of  
25 entry window. The window is up. It's in the up



1 position and the miniblinds are in a closed position  
2 there.

3 Q So have you touched or moved that window in any way  
4 prior to taking this photograph?

5 A No. I always take photographs first so it can be  
6 viewed of what I see basically before I do any kind  
7 of processing. I will not touch anything in the  
8 crime scene until I have photographed it to document  
9 it at least. And that's just a closer shot there of  
10 that particular window in question. And here is a  
11 closer shot here, Exhibit 6, depicting that the  
12 window is up and the miniblinds are closed, in a  
13 closed position.

14 Q And then I'm going to show you Exhibit 5.

15 A Okay.

16 Q If you can tell the jury what that is?

17 A Okay. Upon getting closer to the window and the  
18 miniblinds, while I'm doing this I'm also looking for  
19 any trace evidence or anything that would -- any  
20 evidence that would pop out or that I would see, that  
21 I would notice that could have been left behind by a  
22 suspect. And right here, though it's hard to see,  
23 there is a stain here. Or right here it looks like  
24 probably a little smudge to you all from where you're  
25 sitting. But I took a picture of that. Okay. I

1 looked at that and identified that as blood, as a  
2 stain, blood stain. That's why I'm homing in on  
3 that; honing in but looking, focusing in on that  
4 right there.

5 Q State's Exhibit No. 9.

6 A We get a little closer. State's Exhibit 9, now, at  
7 this point I have focused in on the blood stain. So  
8 now I'm using my microlens and with a scale which  
9 brings out the stain so it could be identified. And  
10 that's what I did there.

11 Q So basically going through Exhibits 4, 7, 6, 5 and 4,  
12 you're basically just getting, starting out a broad  
13 direction?

14 A Right.

15 Q And then slowly focusing in on that stain?

16 A Right. What I'll do if I -- in the process of my  
17 search when I first get there, the interview, and  
18 then starting to take the photographs, if I see  
19 something that jumps out like that, then I will pack  
20 up and then I will start the process of photographing  
21 with microlens and scale getting ready for  
22 collection.

23 Q Other than taking a photograph -- just make sure you  
24 keep talking into that microphone. I'm sorry.

25 A Yes, ma'am.

1 Q Other than taking a photograph of that stain, what  
2 else did you do, if anything, in processing that?

3 A Well, after I had photographed the stain, then I then  
4 retrieved a sterile cotton swab with distilled water  
5 and a cardboard with a cardboard box that we use.  
6 It's a swab box. And I swabbed the sample of the  
7 blood stain and secured it in a yellow envelope.

8 Q And as you're standing there at that window looking  
9 at that blood stain, what is it you're thinking about  
10 it being possible evidentiary value? Why are you  
11 swabbing it?

12 A Well, being that it's metal miniblinds, I'm going on  
13 the inclination that it's an injury, a possible  
14 injury from the suspect, maybe a finger, that's  
15 unknown at this time. I know that there is no other  
16 stain on the miniblind in that area and it is in an  
17 area where it's the point of entry to a burglary. So  
18 for that reason.

19 Q You're preserving it as that maybe we can get a DNA  
20 profile off of this?

21 A Right. Yes, ma'am.

22 Q Okay. I am going to show you State's Exhibit 22 and  
23 ask you if you can look at that and look inside that  
24 and see if you recognize it? Do you need a staple  
25 remover maybe?

1 A It might take a minute. I've got it. Yes. I do  
2 recognize it, my initials.

3 Q Okay. And is that the swab that you were just  
4 talking about?

5 A Yes. Yes, ma'am.

6 Q Okay.

7 MS. FENT: I offer into evidence State's Exhibit  
8 22 and tender it to defense counsel.

9 MR. DEYSACH: No objection.

10 THE COURT: Without objection.

11 (WHEREUPON, State's Exhibit No. 22 is admitted  
12 into evidence.)

13 Q Can you then explain to the jury what you do with  
14 that swab once you swab the miniblind and how you  
15 package it, preserve it and what you do with it?

16 A Upon swabbing the blood stain or the substance, I  
17 then directly place it into the cardboard box.

18 Q And is that inside Exhibit 22?

19 A Yes.

20 Q The cardboard box?

21 A I had on surgical gloves of course when performing  
22 this procedure.

23 Q And on the cardboard box, what type of information  
24 are you recording for purposes of chain of custody or  
25 evidence?

1 A Okay. Depending on how many swabs I have; as an  
2 example, in a crime scene I'll start with swab 1  
3 normally to identify it. Okay. And then below that  
4 I will put -- I will write a small description of  
5 where I found the substance. And then over far right  
6 to that I will put the date that I collected it and a  
7 signature or my signature.

8 Q And is all of that information documented on the box  
9 that was inside Exhibit 22?

10 A Yes, it is.

11 Q So on August 20th, 2005, swab number 1, front window  
12 miniblind window facing side?

13 A Right. Correct.

14 Q Okay. And your initials, do you initial the  
15 envelope? Then what information do you do on the  
16 envelope?

17 A Yes. Of course -- well, this is happening while I'm  
18 processing the scene. So I take the envelope where  
19 the cardboard box is and place it in my patrol  
20 vehicle. I always lock my patrol vehicle so when I  
21 am not in the presence of it, it is locked and  
22 secured with all the evidence.

23 Q So it is remaining in your custody. No one else has  
24 access to it?

25 A Right. Of course.

1 Q But the envelope itself, how were you securing the  
2 envelope that you put the box into?

3 A It's in another brown bag. We use paper brown bags  
4 to carry large amounts of evidence. That's where I  
5 put it at. Yes.

6 Q After taking that swab then, what else do you do?

7 A Okay. Then I return back to my previous point. I  
8 finish taking photographs. I would then -- with this  
9 particular case here, I then went inside the rear  
10 bedroom where the point of entry was, took  
11 photographs of the 360 which is the whole bedroom.  
12 In this case there was broken glass on top of the  
13 bed. So I did focus in on the broken glass and also  
14 the inside of the bedroom window itself showing that  
15 side of the broken window inside the apartment and  
16 also showing the actual room that was entered. And  
17 then in this particular case here also during my  
18 search or during the interview, a medium sized cement  
19 block was found up in the upper kitchen/living room  
20 area which I thought was very interesting.

21 Q I'm going to show you what's marked as 10 and 11.  
22 Are those the photographs that show the brick, the  
23 rock?

24 A Yes. Yes.

25 Q And where in the apartment was this?

1 A It was in the -- with it being apartments, the  
2 kitchen/living room area right at the hallway.

3 Q So not in the bedroom where the point of entry was?

4 A Right. Not in the bedroom. Not in the bedroom.

5 Q And what, if anything, did you do about processing  
6 this cement brick?

7 A Well, with the cement brick I pretty much with gloves  
8 picked it up, examined it to see if there were any  
9 smooth surfaces. It basically was very porous being  
10 it was mixed with cement. So I didn't find any trace  
11 evidence on the block. So that's basically all I did  
12 with it and then photographed it before then.

13 Q Explain the difficulty of getting prints off as  
14 you're describing a porous substance like this brick?

15 A Right. Generally a fingerprint, the best surface for  
16 a fingerprint is a flat service. I'm able to  
17 retrieve all the minutiae. Or I say minutiae.  
18 Ridges, ridges in your finger. If a surface is very  
19 porous, in this case made with cement that has rocks  
20 and things in it, it's not very flat, then it's very  
21 hard to get a fingerprint because it's not flat  
22 enough. It's not flat enough to leave a print there.  
23 But I still look either way just in case there was  
24 any trace evidence, what have you, that might come  
25 off on to the cement block.

1 Q And by trace evidence, you're talking about what  
2 type?

3 A Blood, hair, spit, saliva.

4 Q And you're saying you did not find any?

5 A Right. Did not find any.

6 Q Okay. So was there anything else then that you did  
7 with regard to this cement brick?

8 A No, ma'am.

9 Q Okay. Exhibits 17, 18 and 19, what do these  
10 photographs show basically?

11 A This is the inside of the front bedroom window  
12 showing -- I'm sorry.

13 Q That's all right.

14 A Showing the far right here or my right there, the  
15 bedroom, the bed. And there is a headboard right  
16 here that you can store boxes and things like that,  
17 pretty big, right up under against the window showing  
18 that, the blind still down here. And then a little  
19 closer shot here in the window so you can see the  
20 glass up on top of the headboard slat. We so he had  
21 to crawl across that. And then a closer shot of the  
22 window sill and then showing the miniblind also to  
23 get a better look at it when you see it.

24 Q So the glass was broken from the outside in?

25 A Right.



1 Q Because the glass is all over the bed?

2 A Yes. There was a substantial amount of glass on the  
3 bedspread.

4 Q What, if anything, did you do then with regard to  
5 processing the glass and all of the materials here?

6 A Okay. Being that part of reconstruction, basically  
7 with knowing that someone had to have crawled through  
8 the window. So using magnetic black powder, I would  
9 process the window sill, the wooden part of the  
10 windowsill and also the top of the wooden headboard  
11 there to see if there is anything. Also checking the  
12 back of the miniblind for anything else.

13 Q And what was the result of your examination of the  
14 headboard and inside the window sill?

15 A No prints. No prints were found.

16 Q Okay. Anything else you did in that regard?

17 A Well, within the bedroom window I noticed that his  
18 bedroom window is up, has been basically shattered  
19 and then the window has been placed up, in the up  
20 position. So --

21 Q So this is still -- nothing has been moved. You're  
22 still taking photographs at the scene?

23 A Well, yes. Of course. Take photographs. And then,  
24 yes, the next thing I did was processed those items  
25 that I mentioned. Not all at one time.

1 Q And you're talking about how this person had to have  
2 crawled, you know, over the headboard and in. When  
3 you came to the apartment and you looked at the front  
4 door, what were your observations regarding the front  
5 door and if the lock was broken or if it had appeared  
6 to be busted in?

7 A Well, as another series of those questions when I'm  
8 walking through with the victim and the deputy, I'll  
9 ask that question trying to find out a point of entry  
10 and a point of exit. And I do remember talking to  
11 Mr. Hernandez (sic) and he did say they found the  
12 front door open.

13 Q So you did not see, observe for yourself any busted  
14 locks?

15 A No.

16 Q Or busted down door?

17 A Hmm-mm (Negative).

18 Q Okay. I'm going show you what's marked as State's  
19 Exhibit No. 23 and ask if you recognize that or the  
20 inside contents?

21 A Yes.

22 Q And basically, what is this? How did this -- how do  
23 you recognize it?

24 A Okay. After processing the outside of the front  
25 window, I then of course moved on to the inside of

1 the window. After the headboard and the window sill  
2 area, I then raised the miniblind, okay, raised the  
3 miniblind up. So now I wanted to process the window  
4 that's been pushed up, in the up position. There is  
5 also some broken glass there on that. It's not  
6 totally out of the window that's been pushed up.  
7 Okay. So I pushed it down in the down position and I  
8 used black powder to process the broken pieces of  
9 glass.

10 Q With the black powder, what are you looking for?

11 A Any visible identifiable prints.

12 Q Prints?

13 A Fingerprints.

14 Q Fingerprints?

15 A Mm-hmm (affirmative).

16 Q So what do you find, if anything?

17 A On one of the broken pieces of glass on the bottom  
18 part on the bottom edge of the window I did find a  
19 smudged -- call it a smudged fingerprint. Okay.  
20 That's going to be an outline of a finger or fingers  
21 that do not have the ridge detail that's in your  
22 fingerprint. So it cannot be analyzed basically  
23 through our automated fingerprint identification  
24 system.

25 Q When you say analyzed, you mean we can't match it to

1 a person?

2 A Right. Right. There's not enough ridge detail there  
3 for us to do that.

4 Q So then you see this smudge. What do you do with it?

5 A I then photograph the smudged fingerprint, put a  
6 scale in it again to identify it. And then I then  
7 retrieve another sterile cotton swab with distilled  
8 water, the same technique as with blood and place it  
9 in another cardboard container and the evidence  
10 envelope and put it also in that black -- not  
11 black -- brown paper bag, evidence bag.

12 Q Okay. So you put this box into this envelope?

13 A Right. Yes, ma'am.

14 Q And this envelope is sealed?

15 A Tightly sealed, yes.

16 Q And it remains in your custody the entire time?

17 A Right. Yes, ma'am.

18 MS. FENT: I offer into evidence Exhibit 23.

19 MR. DEYSACH: No objection, Your Honor.

20 THE COURT: Without objection.

21 (WHEREUPON, State's Exhibit No. 23 is admitted  
22 into evidence.)

23 Q You were just talking about lowering the window and  
24 processing the window and the black powder. I'm  
25 going to show you Exhibits 20 and 21. What do these

1 show?

2 A Exhibit 20 is showing the bedroom window in the down  
3 position, and Exhibit 21 is a picture of me  
4 photographing the smudge print with scale.

5 Q Okay. And your gloves with the black powder all over  
6 it?

7 A Right. Yes, ma'am.

8 Q Also I'll go ahead and just show you 13, 14, 15 and  
9 16. Basically what are these photographs showing?

10 A The inside of the bedroom, the glass on the bed and  
11 the bed area -- it's kind of a far-away shot -- and  
12 the broken glass on the bedspread.

13 Q Okay. So you've taken all the photographs. You've  
14 taken the swab of the smudge on the miniblind and a  
15 swab of the smudged fingerprint. Anything else that  
16 you do at the scene that you can recall?

17 A Other than after -- what I would do, what I will do  
18 with the broken glass, any piece of sufficient size,  
19 I will use the black powder also and meticulously go  
20 through any broken piece of glass that's on the top  
21 of the bed in that area to see if I can find any kind  
22 of fingerprints or any kind of shoe prints or  
23 anything like this. Because he probably could have  
24 stepped on it when he came through the window. And  
25 also searched the floor under the beds, things like

1 this, to see if there was anything that might have  
2 fallen off or come loose from the suspect's clothing  
3 or anything like this. Part of reconstruction.

4 Q And were you able to locate anything or collect any  
5 other evidence, process anything else?

6 A No, ma'am.

7 Q What then is your next step in terms of -- and  
8 actually I'll show you -- in terms of your chain of  
9 custody, do you also fill out forms documenting your  
10 chain of custody?

11 A Yes.

12 Q Okay. And is that basically the chain of custody  
13 form you filled out?

14 A Yes. That is the one.

15 Q And can you then explain to the jury basically what  
16 happens to these packages, these two swabs, 22 and  
17 23?

18 A Okay. After I have collected the samples and I'm  
19 finished with the crime scene, I will transport them  
20 back to our laboratory at the main Sheriff's Office  
21 on Two Notch Road in our laboratory. And they will  
22 be placed into a large black metal security locker  
23 that has a Master lock, Master lock connected to it.

24 Also our laboratory has a key code to access the  
25 system, to actually get into the laboratory. And

1 that's where it is placed. And then after, then I  
2 will take the item and fill out this here, this  
3 evidence form, describing the items to be placed into  
4 evidence. And then I will personally take the items  
5 down to the evidence room.

6 Q You collected them on August 20th, 2005. When did  
7 you deliver them to the evidence room?

8 A It says here at the time bottom received 08-30-05.

9 Q So August 30th of 2005, correct?

10 A Yes.

11 Q Who was it that you delivered those two?

12 A Our evidence technician, Tena Goff.

13 Q From the time that you took those swabs at the scene  
14 until the time that you handed them over to Tena  
15 Goff, they were in your custody and secure?

16 A Right. Yes, ma'am.

17 Q And did the seals remain intact?

18 A Right. Yes, ma'am.

19 Q Did anyone tamper with them, open the envelopes, do  
20 anything with them while you had them in your custody  
21 during that time?

22 A No, ma'am. I think I might have mentioned that my  
23 locker, our lockers that we have in the laboratory,  
24 each locker has its own lock with its own key. No  
25 one person in the laboratory has one key that opens

1 all lockers.

2 Q So this went into your locker?

3 A That's right.

4 Q And no one else has access to it?

5 A No, ma'am.

6 Q And so then from your locker you walked them to Tena  
7 Goff in the evidence room?

8 A That's right. Yes, ma'am.

9 MS. FENT: I have no further questions at this  
10 time.

11 THE COURT: Cross examination.

12 MR. DEYSACH: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MR. DEYSACH

15 Q Good afternoon, Officer Oates.

16 A Good afternoon.

17 Q Your records indicate that you arrived at the scene  
18 on 4:45, at 4:45?

19 A Yes, sir.

20 Q And you stayed until 18:03. So I guess that's 6:03?

21 A Yes, sir. 6:03.

22 Q Was Mr. Gonzalez there?

23 A To my knowledge, yes.

24 Q Was officer Smith there?

25 A Yes. On my initial arrival; yes, sir.



1 Q Was there anybody else there?

2 A I think there were some house members or others that  
3 might have lived there.

4 Q Bystanders or something?

5 A Well, we had some bystanders. But I think there were  
6 some folks that lived there, too, that lived in the  
7 residence. I think they were there also. I don't  
8 recall.

9 Q Are all of the -- I guess you all have some exhibits.  
10 Did you say you noticed the stain on the blinds  
11 before anything else? Was that the first I guess  
12 piece of -- was that the first thing, the piece of  
13 evidence that you thought was collectible that you  
14 saw at the scene?

15 A Right. On my arrival. Yes, sir.

16 Q And you have no way of telling when that stain was  
17 left, correct?

18 A No.

19 Q And you have no way of telling what position those  
20 blinds were in when the stain was left, correct?

21 A Right. All I can say is what I see or tell you what  
22 I see. And they were closed. Yes, sir.

23 Q And you took those pictures without touching  
24 anything?

25 A Right. Yes, sir.

1 Q You have no way of knowing whether the smudged  
2 fingerprint that you lift is from the same source as  
3 the other stain?

4 A Right. All I know is there's a smudge print on a  
5 broken piece of glass at the point of entry, no way  
6 of knowing who left it.

7 Q Are you a fingerprint expert?

8 A No, sir.

9 Q But you're expert enough -- are you an expert in I  
10 guess picking up the fingerprints?

11 A I wouldn't say an expert. I have a lot of experience  
12 in basic collection of fingerprints.

13 Q I guess my question is how do you know when a  
14 fingerprint is too smudged to be analyzed?

15 A Basically what I'm looking for again is the ridge  
16 detail that would show to be able to classify what  
17 type of fingerprint it is so it can be analyzed. On  
18 these I don't recall seeing any ridge detail that I  
19 could recall.

20 Q So you know that what the expert does is look at that  
21 ridge detail?

22 A Right.

23 Q And if there's no ridge detail, then there's nothing  
24 for a fingerprint expert to look at?

25 A Right. It can't be classified.

1 Q Because you know that they match up -- if they're  
2 making a fingerprint match, what they do is match up  
3 different locations of those ridge details?

4 A As far as I know; yes, sir.

5 Q You do or don't? I don't know if you know or not.

6 A I know that they do pick out specific characteristics  
7 within a fingerprint. But as far as after that --

8 Q Well, you used the term minutiae. I think maybe you  
9 retracted it. But you did utter the word minutiae  
10 under direct examination. Isn't that a term that  
11 fingerprint experts use to describe ridge detail?

12 A Right. Right.

13 Q So you're familiar with that term?

14 A Right. Well, we do have a latent fingerprint expert  
15 that is with us.

16 Q In the same office as you?

17 A Right. She is.

18 Q Do you know how many similar locations on a  
19 fingerprint that that expert would require before  
20 making a match?

21 A No, sir.

22 Q Any idea?

23 A Hmm-mm (Negative). I don't even know.

24 Q Okay. In regards to the stain on the blinds, you  
25 used the swab?

- 1 A Right.
- 2 Q The swab is soaked in distilled water?
- 3 A Right.
- 4 Q You put it in the cardboard container, correct?
- 5 A Right.
- 6 Q You put that in the envelope?
- 7 A Right.
- 8 Q And what do you do with that envelope?
- 9 A It was then placed in a brown paper bag that I use to
- 10 store all evidence from a scene.
- 11 Q So was it in the same bag as the other swab?
- 12 A Yes. But different envelope, yes.
- 13 Q So you've got an envelope for both swabs. They're
- 14 separated but in the same paper bag?
- 15 A Right. Totally separate. Yes.
- 16 Q So you take the swab of the stain and put it in the
- 17 brown paper bag. Do you put that in your car then?
- 18 A Right. Right.
- 19 Q Or do you carry it around with you while you're
- 20 continuing to analyze?
- 21 A Well, in this case here it's placed it in the vehicle
- 22 and then in the brown paper bag and then lock the
- 23 vehicle.
- 24 Q And then go back for more processing?
- 25 A Right. Processing.

1 Q And the only other thing that you collected was what  
2 was hopefully some trace evidence from the  
3 fingerprint, correct?

4 A Right. Right. Yes. Those are oils, things like  
5 this.

6 Q So you take a swab of that the same way, with  
7 distilled water, correct?

8 A Right.

9 Q And put that after the cardboard into the envelope  
10 correct?

11 A Yes.

12 Q At what point did you put it in the brown paper bag?  
13 Did you go to your car and put it in the brown paper  
14 bag, or was the brown paper bag with you when you put  
15 it in?

16 A No. It would stay in my truck. They would stay in  
17 my vehicle, yes.

18 Q And you took pictures which have been entered into  
19 evidence?

20 A Yes.

21 Q And was there anything else that you did to process  
22 the scene besides the pictures and the swabs?

23 A Besides search the bedroom floor, things like this  
24 for trace evidence.

25 Q The cement rock was not in the bedroom?

1 A No, sir. It wasn't.

2 Q How far away from the bedroom was it?

3 A It was from -- I mean, I'd have to guess, which I  
4 didn't measure it off. It was far. I mean, at least  
5 20 or 30 feet away.

6 Q 20 or 30 feet?

7 A I mean, that's just a guesstimation.

8 Q So really nowhere near the bedroom?

9 A Nowhere near the bedroom. It was toward the front  
10 kitchen area.

11 Q Did you check the doorknob for any prints?

12 A On the --

13 Q Yeah. The front doorknob.

14 A I observed and looked. But I don't recall -- I don't  
15 recall dusting that.

16 Q And many times --

17 A No.

18 Q I'm sorry. Were you finished?

19 A Well, undoubtedly, I didn't because I looked on my  
20 report here.

21 Q And if it's not on your report --

22 A Which is interesting. I'm sorry.

23 Q If you didn't write it on your report, you probably  
24 didn't do it, correct?

25 A Right. You are correct. I would not have.

1 Q And it's not on your report?

2 A I would have documented it.

3 Q And many times those prints are latent, meaning you  
4 can't see them with the naked eye without the  
5 magnetic powder, right?

6 A It has to be developed, yes.

7 Q So you can't just look at it and say there's no  
8 prints here and move on, correct?

9 A Right. Right. Without special equipment.

10 Q You never communicated with Mr. Gonzalez. Is that  
11 correct?

12 A Never communicated with Mr. Gonzalez?

13 Q Did you talk to him when you were there?

14 A As I recall, I'm sure I asked him several questions  
15 as far as I know.

16 Q But it's not written in the report?

17 A Right. I wouldn't have done that.

18 Q Okay. When you left the scene with the evidence in  
19 your car or your truck, where did you go?

20 A Well, to my knowledge, to my knowledge, I went back  
21 to the Sheriff's Department as far as I can recall.

22 Q Do you have anything about that written in your notes  
23 or anything like that?

24 A No. No, sir.

25 Q At the Sheriff's Department is where this locker is,

1 correct?

2 A Yes, sir.

3 Q It's a personal locker?

4 A Right.

5 Q Each lab technician would have one?

6 A Yes, sir.

7 Q Other lab technicians don't have access to your  
8 locker?

9 A That's right.

10 Q Or you to anybody else's?

11 A That's right. No, sir.

12 Q Do you have any type of a log that shows when you put  
13 this evidence into the locker?

14 A No, sir. Hmm-mm (Negative). No, sir.

15 Q Do you have a log that says when you took it out?

16 A No, sir. Not a specific log in the lab. No, sir.

17 Q Anything connected to your locker that says, hey, I  
18 put this evidence in here at this time and took it  
19 out at this time? Nothing like that exists?

20 A No, sir.

21 Q So was there anything else in your locker at the  
22 time?

23 A I'm sure there was.

24 Q There probably was. There typically is more than one  
25 piece of evidence in the locker?



1 A Yes, sir.

2 Q And that's why you're careful to mark your samples  
3 the way you do?

4 A Most definitely. Yes, sir.

5 Q So is it true that you're unable to tell the jury how  
6 long these samples were in your truck inbetween the  
7 incident location and your locker? Do you have any  
8 idea how long they were in your truck?

9 A It could have been several hours. It look a little  
10 while to process the scene. A couple of hours to  
11 process it.

12 Q Is it your testimony --

13 A I'd say a couple of hours.

14 Q I'm sorry. I didn't mean to interrupt. I'll let you  
15 finish.

16 A It's hard to tell.

17 Q Is it your testimony that you went straight from the  
18 incident location to take the stuff and put it into  
19 the locker?

20 A To the best of my knowledge, yes.

21 Q But there is no log that you're relying on. Just  
22 from your memory?

23 A Right. There is no log-in in our laboratory.

24 Q So do you know when you got this evidence -- I guess  
25 let me back up. Where is your locker compared to the

1 evidence technician that you ultimately delivered  
2 those swabs to? In the same building or not?

3 A He's in the same building. The laboratory is on the  
4 second floor, and the evidence room is on the bottom  
5 floor, first floor.

6 Q Do you specifically remember doing this delivery, or  
7 has your memory faded and you know because of the  
8 fact that you do this for a living?

9 A Oh. I am -- you know, I know that, yes, I can  
10 testify to, yes, I don't remember taking it down to  
11 the evidence room. Yes.

12 Q You remember this specific case, taking these swabs  
13 from the locker to the laboratory?

14 A Well, I didn't say that. But, I mean, as far as  
15 picturing in my mind and saying yes, I mean --

16 Q That's your practice?

17 A Right.

18 Q I think that's what you're saying?

19 A Yes.

20 Q Like you can't ever remember a time when you didn't  
21 do that. Is that what you're saying?

22 A Right. It's something I do all the time. So --

23 Q There's never been a case where you've, you know,  
24 gotten something out of your locker and then gone to  
25 get lunch and then go to the evidence room. There'd

1 be no reason to do that, correct?

2 A Hmm-mm (Negative). No, sir.

3 Q And so, it took you -- okay. I guess you're  
4 testifying it took you ten days to get this swab from  
5 your locker to the evidence technician who works in  
6 the same building?

7 A Right.

8 Q Is your locker at all climate controlled, or is it  
9 possible that the things in there could get heated or  
10 cooled or anything like that?

11 A No, sir. It's just a regular storage locker, metal  
12 storage locker.

13 Q In an air conditioned room?

14 A Yes. The lab is air conditioned and heated. Yes,  
15 sir.

16 Q But this locker is not in the lab, is it?

17 A Yes. It's in our laboratory, yes.

18 Q So when you take the swab from the locker to the lab,  
19 you're taking it -- you're already in the lab --

20 A Right.

21 Q -- when you get to the locker?

22 A Right. Mm-hmm (affirmative). Yes. It's already  
23 secured inside the laboratory inside the locker.

24 Q Pardon?

25 A It's already secured inside the laboratory inside the

1 locker, yes.

2 Q All right. I don't have any more questions.

3 THE COURT: Any redirect?

4 MS. FENT: Nothing further, Your Honor.

5 THE COURT: All right. You may come down, sir.

6 Thank you very much.

7 THE WITNESS: Thank you, sir.

8 THE COURT: May the witness be excused? Any  
9 objection.?

10 MR. DEYSACH: No objection, Your Honor.

11 THE COURT: Without objection. All right,  
12 Ladies and Gentlemen of the Jury. It's time to take  
13 our lunch break. I'm going to excuse you now until  
14 2:0. I'm going to ask you to be back in your jury  
15 room at 2:30 at which time we'll reconvene and  
16 recommence the trial.

17 Again I'm going to caution you not to discuss  
18 the case among yourselves when you return to the jury  
19 room or with anyone else over the lunch hour. Have a  
20 pleasant lunch. We'll see you at 2:30. Thank you  
21 very much.

22 (Jury out 1:12 p.m.)

23 THE COURT: We'll stand at ease until 2:30.

24 (Whereupon, a lunch break is taken)

25

1 (WHEREUPON, State's Exhibit No. 26 is marked for  
2 identification.)

3 THE COURT: Ready for the jury?

4 MS. FENT: One matter I just want to declare on  
5 the record before the jury is in is the original  
6 statement we discussed and offered in the motion was  
7 marked as State's Exhibit No. 2. And I would just  
8 offer it as a Court's Exhibit. And the redacted  
9 version I have marked as State's Exhibit 26 that I'll  
10 be using and offering with the investigator.

11 THE COURT: Subject to the defendant's prior  
12 objection?

13 MS. FENT: Correct.

14 THE COURT: Bring the jury. I'm sorry.

15 MR. DEYSACH: I just wanted to make sure I'm  
16 clear about it.

17 THE COURT: Yes, sir. We've got until 5:30. A  
18 juror has to be in Chapin at 6:00.

19 (Jury in at 2:44 p.m.)

20 THE BAILIFF: The jury is all present, Your  
21 Honor.

22 THE COURT: All right. Thank you very much,  
23 ladies and gentlemen. I hope you had a pleasant  
24 lunch. We're now ready to continue with the trial.  
25 Solicitor, call your next witness.

1           *MS. FENT:* The State calls Tena Goff.

2           TENA GOFF, after being duly sworn, testifies as  
3 follows:

4           *THE CLERK:* Please have a seat there and state  
5 your full name for the record.

6           *WITNESS:* Tena Goff.

7                           DIRECT EXAMINATION

8   *BY MS. FENT*

9   *Q*     And where do you work?

10   *A*     The Richland County Sheriff's Department.

11   *Q*     In what capacity?

12   *A*     I am the evidence custodian.

13   *Q*     Okay. And can you explain to the jury basically what  
14 that means? What are your duties and  
15 responsibilities?

16   *A*     My duties as the evidence custodian is to supervise,  
17 manage and oversee the personnel and room of the  
18 evidence room. It's where we store -- we accept,  
19 store and maintain the evidence as well as chain of  
20 custody and evidence.

21   *Q*     And in that regard do you keep reports documenting  
22 evidence that's coming in and leaving your room?

23   *A*     Yes, ma'am.

24   *Q*     Okay. And how is the evidence room basically I guess  
25 locked or kept? Who can come in and out of that

1 room?

2 A The only personnel who are allowed in the evidence  
3 room is myself and my partner, and then of course our  
4 supervisor. We are the only three in the department  
5 who have access to it at any time. No one else is  
6 allowed in unless you are signed in by us and  
7 escorted while you're there.

8 Q So then how is evidence physically delivered to you?

9 A During normal business hours the officers have the  
10 capability of bringing us the evidence and actually  
11 handing it to us. If we're not there, we have a drop  
12 box or a mail box along with lockers that they're  
13 allowed to put the evidence in. And no one can get  
14 into those.

15 Q So who all then -- once they drop it into this box,  
16 who all can open this box to retrieve the evidence?

17 A Again, just myself, my partner, and our supervisor.

18 Q And is this basically kind of like a mail box so that  
19 if you drop mail in, I can't get that mail back out?

20 A That is correct.

21 Q Okay. And in terms of physically handing you  
22 evidence, do they just come up to almost like a  
23 window or something?

24 A To a door.

25 Q To a door. Okay. So they don't actually come into

1 the room?

2 A No.

3 Q In terms of the case that I asked you to come here  
4 today on is report 0508218120 regarding a burglary  
5 case?

6 A Yes.

7 Q Okay. And did you bring that property report showing  
8 the chain of custody of the evidence?

9 A I did.

10 Q Okay. What items were -- I guess what item was  
11 initially brought to you, brought to the evidence  
12 room?

13 A The first two items, the first one was a blood swab  
14 from the front bedroom window, and the second was a  
15 DNA swab from the left corner front bedroom window.

16 Q Okay. And when was that delivered to the property  
17 room?

18 A These were brought August 30th of 2005.

19 Q By whom?

20 A Investigator Oates.

21 Q Okay. And I'm going to show you what's been admitted  
22 into evidence, Exhibits 22 and 23. And if you can  
23 look at those and see if those are the items that  
24 match your property report?

25 A They do.



1 Q And in terms of the case number that I read, is that  
2 case number documented on your report, I mean  
3 documented on these items?

4 A Yes. That's the bar code.

5 Q Okay. And at the end of the case number that I read,  
6 do you also list like item number 1, item number 2?

7 A Those items are automatically generated through the  
8 computer program.

9 Q Okay. So 22 is item .1 and 23 is item .2?

10 A Yes.

11 Q Okay. Were those items delivered to your property  
12 room, your evidence room; were they sealed when you  
13 took custody of them?

14 A Yes.

15 Q Have they been in any tampered with, opened, damaged  
16 in any way?

17 A No.

18 Q And the amount of time that it remains in your  
19 property room, does anyone else other than you, your  
20 partner and your supervisor have access to this  
21 property room?

22 A No.

23 Q How long do you keep it, and it who do you give it to  
24 next?

25 A In a case like this, we have set policy and

1 procedures is how long we hold the evidence. The  
2 next person who gets it is when it's being asked for  
3 by the lab for analysis.

4 Q Okay. And the report that you have, is that a report  
5 kept in the regular course of business of the  
6 evidence room?

7 A Yes.

8 Q Okay. And who is the next person then who takes  
9 custody of these two items?

10 A John Barron.

11 Q And he is with what division of the Sheriff's  
12 Department?

13 A DNA.

14 Q Okay. What other items name to your evidence room  
15 with regard to this case?

16 A Item number 3 which was two buccal swabs, were  
17 submitted by Investigator McRoberts on January 24th  
18 of 2006.

19 Q Okay. And were those personally delivered to you or  
20 through the drop box?

21 A I would have to see the package. I'm sorry.

22 Q Okay.

23 (WHEREUPON, State's Exhibit No. 27 is marked for  
24 identification.)  
25

1 (WHEREUPON, State's Exhibit No. 28 is marked for  
2 identification.)

3 Q I'm going to hand you what's been marked as State's  
4 Exhibit No. 28 and ask if you recognize that?

5 A I do.

6 Q And what is that?

7 A This is item number 3 that was submitted by  
8 Investigator McRoberts. And I took this out of the  
9 drop box on January 24th of 2006.

10 Q Okay. Were there any other items that were then  
11 brought to the property room with regard to this  
12 case?

13 A Yes. Investigator McRoberts turned in two more  
14 buccal swabs on June 22nd of 2006.

15 Q Okay. And we can maybe explain this later, but do  
16 you know what a buccal swab is?

17 A It's an oral swab taken from a known person.

18 Q Okay. And so that's how you describe it, is as a  
19 buccal swab?

20 A Yes.

21 Q Okay. I'm going to show you State's Exhibit 27 and  
22 ask if you recognize that?

23 A Yes. These are the last two swabs that came in and I  
24 took these again from the drop box.

25 Q Okay. And these items are labeled items 3 and 4,

1 correct?

2 A Yes.

3 Q And were these in their sealed envelopes when you  
4 took custody of these items?

5 A Yes.

6 Q Had they been opened or tampered with in any way?

7 A No.

8 Q And these items as they are in the evidence room, as  
9 previously described, nobody else has access to them,  
10 correct?

11 A That is correct.

12 Q And then when do those two items leave the property  
13 room?

14 A When an analyst upstairs asks for them.

15 Q Okay. And based on your report, when if any time did  
16 somebody come and who picked up these items from the  
17 property room, the evidence room?

18 A On January 24th of 2006 John Barron came and picked  
19 up item number 3, and then on December 27th of 2006  
20 he also came back and picked up item number 4.

21 Q Okay. And then ultimately were these items then  
22 returned back to the property room?

23 A Yes, they were.

24 Q Okay. This report that's generated I guess, is it a  
25 constantly changing report because items are coming

1 in and leaving the property room?

2 A Yes. It's always being updated.

3 Q Okay. And the very last update, when was that?

4 A February 27th -- excuse me -- February 28th of 2007  
5 when I signed them over to Investigator Oates to  
6 bring them to court.

7 Q Okay. Thank you very much. No further questions.

8 THE COURT: Cross examination.

9 MR. DEYSACH: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. DEYSACH

12 Q Good afternoon.

13 A Good afternoon.

14 Q It was your testimony that Officer Oates hand  
15 delivered those packages to you? Those are items 1  
16 and 2, the ones from --

17 A They are put in the drop box.

18 Q And you retrieved them out of the drop box?

19 A Yes.

20 Q Are you able to tell when they are put in the drop  
21 box?

22 A No.

23 Q Do you know where the property lockers are or the  
24 lockers are that the crime scene techs, where they  
25 store evidence? Do you know where those are?

1 A Upstairs in the lab.

2 Q So those are in the lab?

3 A They have their own set; yes, sir.

4 Q And it's in a part of the lab that's not secured by  
5 you and your supervisor and your partner?

6 A That is correct.

7 Q So you don't have any way of knowing how long the  
8 evidence was sitting in the drop box before you  
9 retrieved it?

10 A No.

11 Q And there is two other people that have access to  
12 that drop box?

13 A Yes.

14 Q Would you be able to tell if any of those people had  
15 access to the drop box since that evidence had been  
16 placed there?

17 A Yes.

18 Q You would be able to tell if that drop box had been  
19 accessed since Officer Oates put them in the drop  
20 box?

21 A Yes.

22 Q How would you be able to tell?

23 A We have security cameras that are up in the evidence  
24 log in area where the drop box and lockers are kept.

25 Q Did you look at those cameras?

1 A No.

2 Q So what way do you have of knowing nobody else  
3 accessed that drop box?

4 A Because when we take the items out of the drop box or  
5 lockers we then go into our office and go ahead and  
6 log them into evidence or accept them into evidence  
7 and put them in storage.

8 Q Right. I'm not asking what you did. I'm asking  
9 really about the security of the sample when it's in  
10 the drop box and whether or not you can tell this  
11 jury whether your supervisor or your partner would  
12 have opened that drop box before you got to the  
13 evidence while that evidence was there?

14 A No. If it's dropped the night before after office  
15 hours, I'm the one first one that shows up every  
16 morning and I'm the one that empties it out.

17 Q Okay. So any time anybody were to open that drop  
18 box, they would empty it out?

19 A Yes.

20 Q Okay. So you can assume from the policies of your  
21 lab that nobody opened that drop box because  
22 otherwise there wouldn't have been any -- the  
23 evidence would have been there?

24 A That is correct.

25 Q But it's just based on those policies that you hold

1           that opinion?

2    A     Yes.

3    Q     Now, when you take the samples from the drop box,  
4           where then are they stored?

5    A     In our evidence room.

6    Q     And are they in a locker in the evidence room or not?

7    A     No. They're on a shelf.

8    Q     Along with evidence from other cases?

9    A     Yes, sir.

10   Q     And there are the same number of people, three, that  
11           have access to that room, that have access to the  
12           drop box?

13   A     Yes.

14   Q     Do you all keep a log of when anyone enters or leaves  
15           that room? Or no?

16   A     Which room?

17   Q     The room with the shelves that you keep the evidence  
18           on.

19   A     Outside of the evidence personnel who are assigned to  
20           the evidence room, there is a log of anybody else who  
21           comes in. We do not ourselves sign in and out.

22   Q     Do you personally remember handling this evidence  
23           back when it was first delivered, or are you just  
24           basing your testimony on the record that's kept?

25   A     My testimony is on the record that's kept.



1 Q Because, I mean, you deal with probably a huge volume  
2 of trace evidence?

3 A I handle a lot of evidence every day. Yes, sir.

4 Q I mean, that's what you're paid to do?

5 A Yes.

6 Q Now, if somebody from the lab were to request that  
7 evidence, would it be you who goes into the room to  
8 get it, or could it be any one of your two of  
9 co-workers? Would it have to be you specifically to  
10 go get the evidence since you're the one who put it  
11 there in the first place?

12 A No.

13 Q It could be any of you and the two other people?

14 A That is correct.

15 Q But your testimony is that when it was requested by  
16 the lab that you're the one who got the evidence out  
17 of that room and passed it on?

18 A No.

19 Q Who was? Who was the person who went into the room  
20 and passed it on?

21 A You'll have to be more specific as to which item you  
22 are talking about or referring to.

23 Q Okay. How about item 1?

24 A Item 1 was retrieved by Mr. Beverly Crane.

25 Q Okay. Now, I'm not really concerned with item number

1 2 right now. But okay. Items 3 and 4 were delivered  
2 sometime later; January 24th of '06 for item number 3  
3 and June 22nd, '06 for item number 4, correct?

4 A January 24th of 2006, yes. And then December 27th of  
5 2006.

6 Q That's when item number 4 was --

7 A Item number 3 was signed out on January 24th. Item  
8 number 4 was signed out December 27th of 2006.

9 Q That is when they left -- I guess I was asking  
10 basically when they arrived at the lab, not when they  
11 were checked out of the room with the shelves. Was  
12 that the question you were answering? That the first  
13 time that item number 4 made it to your lab was  
14 December 27th, 2006, two days after Christmas?

15 A When it first came into the evidence room or into the  
16 lab?

17 Q I guess the evidence room. I guess I'm getting mixed  
18 up between my terminology for the evidence room and  
19 the lab.

20 A There are two separate divisions.

21 Q Got you. Got you. So, obviously they arrive at the  
22 evidence room before they arrive at the lab?

23 A Yes.

24 Q As to item number 3, you are the one who took it from  
25 the drop box to the room with the shelves?

1 A Yes.

2 Q The same is true of item number 4?

3 A Yes.

4 Q Do you know who took item number 3 to the lab?

5 A John Barron took it to the lab.

6 Q Who took item number 4 to the lab?

7 A John Barron.

8 Q And he -- where did he -- I guess who took it out of  
9 the room with the shelves?

10 A Item number 3 was retrieved by Mr. Beverly Crane.

11 Q And item number 4?

12 A Was retrieved by Ms. Joy Delatorre.

13 Q But they couldn't go into the room with the shelves  
14 themselves? Somebody had to hand it to them from  
15 that room, correct?

16 A Both of those individuals. Mr. Beverly Crane used to  
17 work in the evidence room and he has been since moved  
18 out. And Ms. Delatorre has been put in his place.

19 Q So that's got be one of the three people who had  
20 access to the room with the shelves?

21 A The three people who have access now to the evidence  
22 room are myself, Ms. Joy Delatorre, and our  
23 supervisor, Dr. Demi Garvin.

24 Q Okay. And so, what you're saying is that those  
25 personnel changed sometime after the first items were

1 submitted to the evidence room?

2 A Yes. Is that correct.

3 Q So in total, there would be during that period of  
4 time four or five people that had access to it if you  
5 add them all up?

6 A No. At any given point there is only three people  
7 who have access during this whole process of this  
8 particular case.

9 Q But I'm not asking you at any given point. I'm  
10 asking throughout the whole time you guys had any  
11 items marked with this case number. I'm not just  
12 asking any given time. I'm asking for the whole  
13 period. So how many people?

14 A Collectively?

15 Q Yeah. How many different people worked in the  
16 evidence room during that? How much turnover was  
17 there in those positions?

18 A There have been four people in the evidence room and  
19 then number 5 would be Dr. Demi Garvin.

20 Q That's all I have.

21 REDIRECT EXAMINATION

22 BY MS. FENT

23 Q Just to clear up, Beverly Crane and Joy Delatorre are  
24 inside this evidence room, the property room the same  
25 as you have access to it, correct?

1 A That is correct.

2 Q Nobody else has physical access to that room. The  
3 other people that want evidence are on the other side  
4 of that window?

5 A That is correct.

6 Q Okay. So from the time that these items were either  
7 dropped off by McRoberts or Oates, either physically  
8 handing to you or physically into this drop box, they  
9 are in your property room?

10 A That is correct.

11 Q Then the next person to retrieve them from the inside  
12 of the property room by either Bev Crane, Joy  
13 Delatorre to John Barron, he's standing outside the  
14 property room and those employees are inside,  
15 correct?

16 A That is correct.

17 Q And they are checked out to him. So that whole span  
18 of time until they get to John Barron, from the time  
19 they enter the property room to John Barron in DNA,  
20 they are in your secure property room?

21 A They are.

22 Q No further questions.

23 THE COURT: Anything further?

24 MR. DEYSACH: No, Your Honor.

25 THE COURT: You may come down. Thank you very

1 much. May the witness be excused?

2 MS. FENT: Yes, Your Honor.

3 THE COURT: Without objection. Call your next  
4 witness.

5 MS. FENT: Sergeant McRoberts..

6 DAVID MCROBERTS, after being duly sworn,  
7 testifies as follows:

8 THE CLERK: Please have a seat there sir. State  
9 your full name for record.

10 THE WITNESS: Sergeant David McRoberts.

11 DIRECT EXAMINATION

12 BY MS. FENT

13 Q Sergeant McRoberts, who do you work for?

14 A The Richland County Sheriff's Department.

15 Q And as a sergeant, what are your duties and  
16 responsibilities?

17 A Currently I supervise the criminal domestic violence  
18 unit.

19 Q And can you tell the jury about basically your  
20 educational and your training background that brings  
21 you to be a sergeant?

22 A I've been with the Sheriff's Department for 14 years.  
23 I've got a degree in criminal justice. And I've been  
24 an investigator for the past 11 years.

25 Q And let me ask you this. Back in the fall of 2005,

1           were you assigned to this burglary case that we've  
2           been talking about?

3   A       I was actually the supervisor over the unit in region  
4           two which was in that division, in that area. And  
5           Investigator Cannon was initially assigned to the  
6           case but I was his supervisor at the time. He passed  
7           away. After that I pretty much inherited his cases.

8   Q       Okay. And so basically your first kind of  
9           information about the case is communication from  
10          whom?

11   A       From John Barron.

12   Q       With what division?

13   A       John Barron is with our DNA lab.

14   Q       Okay. And basically what was the information that he  
15          relayed to you?

16   A       He relayed information to me regarding this case.

17           MR. DEYSACH: Objection to the hearsay.

18           MS. FENT: It's basically why he takes the next  
19          steps that he does.

20           THE COURT: Well, it's part of the  
21          investigation. I'm going to allow it. Go ahead.  
22          Overruled.

23   Q       Let me back up. Is -- the case we have is a burglary  
24          incident report, correct?

25   A       That's correct.

1 Q And from the incident report, do we have a suspect?

2 A No, ma'am.

3 Q Okay. Are you aware then of the evidence that has  
4 been collected by Investigator Oates who testified?

5 A Yes, ma'am.

6 Q Okay. And that evidence, the swab from the miniblind  
7 and the smudged print, has been taken to whom?

8 A It was taken to our evidence room.

9 Q Okay. But then to John Barron?

10 A It would have been then sent to SLED I'm assuming.

11 MR. DEYSACH: I'm going to check, Your Honor.

12 Can we approach?

13 THE COURT: Sure.

14 (Whereupon, a bench conference is had)

15 THE COURT: All right, ladies and gentlemen. As  
16 I mentioned at the beginning of the trial there may  
17 be a matter of law that I need to take up with the  
18 attorneys, and it's kind of hard to do it up here  
19 whispering. And it needs to be on the record. So  
20 I'm going to ask you to go to your jury room for just  
21 a minute while I clear this up. And we'll be with  
22 you in just a minute. Don't discuss the case among  
23 yourselves while you're in the jury room.

24 (Jury out 4:08 p.m.)

25 THE COURT: All right. In the pre-trial hearing



1 yesterday the Court ruled that there should not be  
2 any evidence presented during the trial which would  
3 infer or somehow give the jury the impression that  
4 there is or was a criminal history filed in some sort  
5 of a database, referring specifically to CODUS.

6 Now, the question that was just asked, Mr.  
7 Deysach, what is your objection to the question that  
8 was just asked? That is, what was done with the  
9 sample?

10 MR. DEYSACH: As I heard, okay, I have to  
11 remember the question; it may have been: What did  
12 you do with the DNA?

13 THE COURT: Right.

14 MR. DEYSACH: And, you know, what division of  
15 SLED, I think she was even asking.

16 THE COURT: He used the word SLED. The witness  
17 used the word.

18 MR. DEYSACH: Where did you send it?

19 THE COURT: That's right. He said it was sent  
20 to SLED.

21 MR. DEYSACH: I mean, I think that that's  
22 probably one of very truthful answers that I can  
23 think of the witness actually said. You know, I  
24 mean, that's where it was sent. And I feel like, you  
25 know, when she was mentioning John Barron, he is the

1 DNA expert at Richland County. He's not the CODUS  
2 person.

3 THE COURT: Well, that's not been described to  
4 the jury.

5 MR. DEYSACH: I understand that. And, in fact,  
6 if it goes to John Barron, that makes sense. But for  
7 it to go to SLED for a match, I believe the direction  
8 she was headed was, why did you talk -- explaining to  
9 the jury why he talked to Willis Weary. And it was  
10 specifically that when we had our discussion  
11 yesterday I said, sure, I can open the door to that.  
12 If I was questioning why does law enforcement want to  
13 mess with poor little Willis Weary or something like  
14 that, then I would kick the door open. But until  
15 that is done, there shouldn't be any mention of why  
16 he was approached, why he was developed.

17 THE COURT: All right. Proffer your evidence.

18 MS. FENT: Do you want me to do it in actual  
19 question and answer?

20 THE COURT: Yes, ma'am. Yes, ma'am. I want you  
21 to do exactly what you intend to do in front of this  
22 jury.

23 MS. FENT: Okay.

24 IN CAMERA EXAMINATION

25 BY MS. FENT

1 Q When I asked you, Investigator Oates took a swab from  
2 the miniblind and a swab from a smudged print, where  
3 did those swabs go; who did they go to?

4 A John Barron.

5 Q Okay. Who works where?

6 A At the Richland County Sheriff's Department.

7 Q Okay. And did he then give you information regarding  
8 a profile that was developed from those swabs?

9 A Yes.

10 Q And did you then get a suspect?

11 A Yes.

12 Q A suspect name?

13 A Yes.

14 Q Okay. And who was that suspect name?

15 A Willis Weary.

16 Q What did you then do? Knowing that you had a  
17 suspect, what was the next step in the process that  
18 you took?

19 A To question him, pick him up and question him.

20 Q Okay. Had you warrants? Had you gotten warrants  
21 yet?

22 A I did at that point.

23 Q Okay. So that was the next step in the process you  
24 did, was to obtain warrants and have the warrants  
25 served on Mr. Weary?

1 A That's correct.

2 Q Okay. Then what was the next step?

3 THE COURT: That's all you needed.

4 MR. DEYSACH: Right.

5 THE COURT: Isn't that the subject of the  
6 objection?

7 MR. DEYSACH: Right.

8 MS. FENT: And in terms of to just proffer it  
9 right now since we have the jury out already, I have  
10 discussed with John Barron that I was asking -- I am  
11 asking him did he obtain these swabs from  
12 Investigator Oates. He developed a profile and from  
13 that profile he got a name of a suspect, Willis  
14 Weary. So there is no discussion of SLED. There is  
15 no discussion of CODUS.

16 THE COURT: All right. What's the objection?

17 MR. DEYSACH: The objection is that they go  
18 to -- law enforcement develops the DNA profile and  
19 then, you know, the next step is Willis Weary is  
20 developed as a suspect.

21 THE COURT: I understand.

22 MR. DEYSACH: So, ergo, he must be --

23 THE COURT: I understand the factual.

24 MR. DEYSACH: There is no other explanation  
25 other than he is in a law enforcement database with

1 his DNA.

2 THE COURT: Overruled. Bring the jury, please.

3 (Jury in at 4:15 p.m.)

4 THE BAILIFF: The jury is all present, Your  
5 Honor.

6 THE COURT: All right, Solicitor. You may  
7 proceed.

8 Q Okay. With regard to the two swabs that Robert  
9 Oates, Investigator Oates took, there was the swab  
10 from the miniblind and the swab from the smudged  
11 print, we've heard testimony those were submitted to  
12 the property room to Tena Goff; and then the next  
13 step basically in the investigation is to get some  
14 DNA analysis off these swabs?

15 A Yes, ma'am.

16 Q Okay. To see can we develop DNA off these swabs. So  
17 who in the Richland County Sheriff's Office analyzed  
18 those two swabs?

19 A John Barron.

20 Q Okay. After he analyzed those swabs, did he give you  
21 information? Did he tell you, yeah, I was able to  
22 develop a profile or no?

23 A He did.

24 MR. DEYSACH: Your Honor, objection to hearsay.

25 THE COURT: Well, it's leading, too. I overrule

1 the objection as to hearsay. However, I will sustain  
2 your objection as to leading.

3 Q What -- along with the -- does he get a profile? I'm  
4 sorry.

5 A Yes, he does.

6 Q Okay. And does that profile, does he also give you a  
7 suspect name?

8 A He does.

9 Q And who is that suspect name?

10 A Willis L. Weary.

11 Q Okay. Now you have a suspect. What's the next step  
12 in the process that you do?

13 A The next step is I get the warrants and I pick him up  
14 and interview him.

15 Q Okay. Now, do you do the warrants and pick him up  
16 and interview him on the same day?

17 A No.

18 Q Okay. So you get warrants on him. Is he actually  
19 served on those warrants, arrested and served on  
20 those warrants?

21 A Yes, ma'am.

22 Q Okay. Subsequently then you pick him up to take an  
23 interview from him I guess?

24 A Yes, ma'am.

25 Q Okay. Do you know what day it was that you made

1 contact with him and tried to interview him?

2 A The day I talked to him was January 23rd of '06 at  
3 12:15.

4 Q Okay. And where did this interview take place?

5 A At the Sheriff's Department.

6 Q And where at the Sheriff's Department?

7 A In my cubicle.

8 Q So you don't have your own private room at the  
9 Richland County Sheriff's Department?

10 A I do now but I didn't then.

11 Q Okay. Do you see the person that you brought to your  
12 cubicle in the courtroom today?

13 A Yes, ma'am.

14 Q Could you point to him and describe what he is  
15 wearing, who he is?

16 A He's sitting next to the attorney at that table  
17 swearing the striped shirt with the braids in his  
18 hair.

19 MS. FENT: May the record reflect the witness  
20 has identified the defendant?

21 THE COURT: The record will reflect the witness  
22 identified the defendant.

23 Q Okay. So what purpose then do you have him in your  
24 cubicle?

25 A I'm going to question him as to why his blood is

1 found at the burglary scene.

2 Q Okay. Let's then talk through the process of; you  
3 sit him down in the cubicle, and what do you do?

4 MR. DEYSACH: I would object to that last  
5 response on the same grounds as my previous  
6 objection.

7 THE COURT: Overruled.

8 A I Mirandized him, read him his rights.

9 Q I'm going to show you what's been marked as State's  
10 Exhibit No. 1 and ask you if you recognize that?

11 A Yes.

12 Q And what is that?

13 A This is a written Miranda form that we have at the  
14 Sheriff's Department that we read and have  
15 individuals sign.

16 Q And is it the specific one that you used with Willis  
17 Weary?

18 A Yes, ma'am.

19 Q Okay. If we can then go down this form and describe  
20 to the jury step-by-step what you did to go over this  
21 form and read this form with him?

22 A The first space is his name, Willis Laverne Weary.  
23 The place is where I read him the rights which is at  
24 the Sheriff's Department, my name, the date and time  
25 at which time I read him the rights. And then do you



1 want me to read each one?

2 Q Yeah. There's a number of rights on this form,  
3 correct?

4 A Mm-hmm (affirmative). Yes, ma'am.

5 Q How do you do it? Do you read it one at a time?

6 A I read it one at a time; and if he understands it, I  
7 check it off.

8 Q Okay.

9 A I go down each one and check it off.

10 Q Okay. Then please start with the first thing that  
11 you read to him?

12 A The first thing I read him was, before we ask you any  
13 questions, you must understand your rights. The  
14 second thing was, you have the right to remain  
15 silent. The third thing is, anything you say can be  
16 used against you in court. The next one is, you have  
17 the right to talk to a lawyer for advice before we  
18 ask you any questions and to have a lawyer with you  
19 during any questioning. If you cannot afford a  
20 lawyer, one will be appointed for you before any  
21 questioning if you wish. And then, if you decide to  
22 answer questions now without a lawyer present, you  
23 still have the right to stop answering at any time.  
24 You also have the right to stop answering at any time  
25 until you talk to a lawyer.

1 Q And you checked off each of these rights after or as  
2 you read them?

3 A Yes, ma'am.

4 Q And then what do you do in terms of documenting  
5 whether or not he understood or the fact that you  
6 read these rights to him?

7 A I asked him if he understood them. He said yes. And  
8 he signs underneath where all the rights are read to  
9 him. And then I sign it and the witness signs it.

10 Q Okay. Then what's the next step? Now that you're  
11 basically just saying I've read the rights and  
12 understand them, what's the next step?

13 A The next step is down here at the bottom. It says:  
14 "Waiver of Rights". It says: "I have read this  
15 statements of my rights and understand what my rights  
16 are. I am willing to talk and answer questions. I  
17 understand and know what I am doing. No promises  
18 have been made to me and no pressure or coercion of  
19 any kind has been used against me."

20 Q Okay. So, the waiver of rights, explain that part.  
21 What are we asking him to do?

22 A Asking him basically if he understood what I just  
23 read him and if he's willing to talk to me.

24 Q If he is willing to give up those rights and talk?

25 A That's correct.

1 Q How do you acknowledge on the form that he is willing  
2 to give up those rights?

3 A I have him sign right here where it says sign which  
4 is directly underneath the waiver. And then I sign  
5 it and the witness signs it.

6 Q Did you force him in any way to give you a statement?

7 A No, ma'am.

8 Q Did you coerce him in any way to give you a  
9 statement?

10 A He was very cooperative.

11 Q Did you make any promises to him if he was to give  
12 you a statement?

13 A No, ma'am.

14 Q Did he appear to be understanding everything that you  
15 were saying?

16 A Yes, he did.

17 Q Did he appear to be under the influence of alcohol or  
18 drugs?

19 A No.

20 MS. FENT: I offer into evidence State's Exhibit  
21 No. 1.

22 MR. DEYSACH: Renewing my previous objections.

23 THE COURT: Subject to defendant's prior  
24 objection, it's admissible.

25

1 (WHEREUPON, State's Exhibit No. 1 is admitted  
2 into evidence.)

3 Q Okay. Now you've read him his rights. He is willing  
4 to give up his rights and to give you a statement.  
5 What do you do next then?

6 A Next I sit down at my computer and ask him a question  
7 and take a statement in typed form.

8 Q Okay. So are you writing this statement on a  
9 notebook, or are you actually typing it in as it's  
10 happening?

11 A I'm typing it as he's saying it.

12 Q Okay. So what information are you first documenting  
13 on this statement form?

14 A Well, the first actual thing is his name at the top  
15 as to who I'm taking it from, what his address is,  
16 phone number, and then the date and time and then my  
17 name, and then his name is right underneath that.

18 Q Okay. And there is also another portion where these  
19 rights are actually printed out again, correct?

20 A Yeah. The Miranda warnings are printed out again at  
21 the top of the statement.

22 Q Okay. And then basically you do what? Do you chat,  
23 or do you go right into question/answer? Explain it  
24 to the jury.

25 A I go right into question and answer. And I asked him

1           what he knew about the burglary that happened at 2532  
2           Crofton Way.

3   Q       Okay. I'm going to show you what's been marked as  
4           State's Exhibit No. 26. Do you recognize this?

5   A       Yes.

6   Q       And what is this?

7   A       This is the statement I took from Mr. Weary that day,  
8           on the 23rd.

9   Q       Okay. And how many pages is it?

10   A       It's about two and a half, two and a quarter.

11   Q       Okay. And after you take this statement from him,  
12           you're all done, what do you do to have him  
13           acknowledge or sign, or what's the next process?

14   A       I print it out and let him read it and make sure  
15           there's nothing on here he doesn't need to change,  
16           make sure everything is the way he wants it to read.

17   Q       Okay. So you don't read it to him. You said you  
18           have him read it to himself?

19   A       Correct.

20   Q       Correct? And then what's the final step?

21   A       He signs it in two places on each page.

22   Q       And did he at any place make any changes?

23   A       No. The last question I asked was if there was  
24           anything he wanted to add to the statement. He said,  
25           "No, that's it."

1 Q When you went back, you printed it out and he went  
2 back and read it to himself, at that point does he  
3 mark anything out?

4 A No, ma'am.

5 Q Add anything inside?

6 A No. And as I'm taking it from him, if there's  
7 something that he wants to change, I'll change it  
8 before I print it out. I print it out once  
9 everything is said and done, and then I let him read  
10 it again just to make sure he doesn't want to change  
11 anything.

12 Q And in terms of the process of getting his signature  
13 on the statement, you said you have him read it to  
14 himself. When does he sign each page?

15 A Once he is done reading the statement, he'll go back  
16 and sign each page.

17 Q Okay. And then who else signs this statement?

18 A I sign it, and then Investigator Terry Downie  
19 notarized it.

20 MS. FENT: I offer into evidence Exhibit 26.

21 MR. DEYSACH: Subject to the previous objection,  
22 Your Honor.

23 THE COURT: Subject to the defendant's previous  
24 objection, the document is admitted.

25

1 (WHEREUPON, State's Exhibit No. 26 is admitted  
2 into evidence.)

3 Q If you can then read to the jury State's Exhibit 26?  
4 And we'll just start with the question/answer  
5 portion.

6 A My first question is, "What do you know about a  
7 burglary that occurred at 2532 Crofton Way back in  
8 August of 2005 at a Hispanic person's apartment?"  
9 And Mr. Weary --

10 Q What is his answer?

11 A Mr. Weary's answer was: "I was walking into Chimneys  
12 Apartments around 12 a.m. or 1 a.m. over by Richland  
13 Northeast High School when I saw this guy named  
14 Darryl. He goes by "Fab". I saw "Fab" throw a brick  
15 through this Hispanic dude's apartment. I stopped  
16 and asked "Fab" what he was doing going in Amigo's  
17 house and he said he was going in there to get  
18 Amigo's DVD player and his TV and stuff. "Fab"  
19 told" -- I misspelled told but it stays stole --  
20 "Fab" told me he would give me \$60 if I just went in  
21 the broken window and unlocked the door, so I did.  
22 Then "Fab" went in the apartment and took the stuff  
23 and he ran the stuff nextdoor to his house. "Fab"  
24 lives right nextdoor to Amigo. Amigo's apartment was  
25 on the bottom floor and "Fab" lived right across the

1 hall from Amigo. Amigo drove a red GMC four-by-four  
2 pickup truck. I knew Amigo from the neighborhood. I  
3 used to bring girls over to his apartment for him,  
4 girls that he liked. Me and Amigo used to drink  
5 together."

6 Q And going to the second page.

7 A The second -- the next question is: "Did you keep  
8 any of the items that were taken out of the Amigo's  
9 apartment? No. "Fab" kept everything. All I got  
10 was \$60. "Fab" kept everything because he was trying  
11 to get stuff for his house. He didn't have any  
12 furniture for his apartment."

13 Q Next?

14 A The next question: "How do you know this guy named  
15 "Fab?" Mr. weary responds: "Fab" drives an old  
16 green Chevrolet Impala with skull and crossbones on  
17 the doors."

18 Q Then finally?

19 A The last question: "Is there anything else you want  
20 to add to this statement?" "No. That's it."

21 Q After getting his statement, what else did you ask  
22 him if he would give you?

23 A I asked him if he would give consent to have his DNA  
24 taken, which was an oral swab.

25 Q Okay. Also known as what Tena Goff was referring to



1 as a buccal swab?

2 A Buccal swab.

3 Q Okay. I'm going to show you State's Exhibit 3 and  
4 ask you if you recognize that?

5 A Yes. This is the consent to search for DNA  
6 evidence --

7 Q What --

8 A -- that the Sheriff's Department uses.

9 Q What --

10 A -- in cases where we take DNA samples.

11 Q I'm sorry. I keep interrupting. And basically what  
12 are you documenting on this consent to search form?

13 A The date where it's taken and the person that we're  
14 taking it from it says if you're about to consent to  
15 giving your DNA.

16 Q And did Mr. Weary sign his consent to give his DNA  
17 sample?

18 A Yes, he did.

19 Q To give a buccal swab?

20 A Yes.

21 Q And who witnessed that?

22 A Myself and another investigator.

23 Q Did you coerce him or force him in any way to consent  
24 to give a buccal swab?

25 A No, ma'am.

1 Q Did you make him any promises to make him give you a  
2 buccal swab?

3 A No.

4 MS. FENT: I offer into evidence State's Exhibit  
5 3.

6 MR. DEYSACH: Subject to the objection prior.

7 THE COURT: Subject to the defendant's prior  
8 objection, the document is admitted.

9 (WHEREUPON, State's Exhibit No. 3 is admitted  
10 into evidence.)

11 Q He consents to give you this swab. And when and  
12 where is that swab taken?

13 A In my cubicle.

14 Q Right then, the same time as the statement, the same  
15 day?

16 A Yes.

17 Q Can you describe to the jury basically how that  
18 process is? How is it taken?

19 A It's two like long Q-tips, about that long. It's  
20 just got cotton on one end. And you put the two of  
21 them together. And I told him just to rub them on  
22 the inside of his cheek on both sides. And then I  
23 put them in a little box which is long enough for  
24 both of them to fit in, date it, initial it, put it  
25 in a plastic sealed evidence bag, and that's it.

1 Q So he actually does the swab himself. You don't  
2 stick a Q-tip or a swab into his mouth?

3 A No, ma'am.

4 Q Okay. I'm going to show you what's been marked as  
5 State's Exhibit No. 28 and ask you if you recognize  
6 this?

7 A Yes.

8 Q And what is this?

9 A This is the evidence bag that I put the buccal swabs  
10 in that day.

11 Q So inside of the bag is the box and the --

12 A Yes.

13 Q -- swabs?

14 A This is the box that the swabs are in and then  
15 dropped in. And once you seal it, it's sealed.

16 Q Okay. Once it goes into that box, who put it into  
17 this plastic bag?

18 A I did.

19 Q And who sealed it?

20 A I did.

21 Q And then where did you take this?

22 A I put it in the drop box. It looks like a big  
23 mailbox, but it's a secured drop box we put evidence  
24 in.

25 MS. FENT: I offer into evidence State's Exhibit

1 28.

2 MR. DEYSACH: That's also subject to a prior  
3 objection.

4 THE COURT: Subject to defendant's prior  
5 objection, it's admitted.

6 (WHEREUPON, State's Exhibit No. 28 is admitted  
7 into evidence.)

8 Q After that did you subsequently -- did you take  
9 another sample from the defendant?

10 A Yes.

11 Q Okay. And do you recall the date that you took that  
12 sample from him?

13 A Months later. I want to say it was --

14 Q I'm going to show you State's Exhibit 27 and ask you  
15 if you recognize that?

16 A Yes. It was on June 21st of 2006.

17 Q Okay. And this swab was taken pursuant to what?

18 A Pursuant to an order by the judge that you relayed to  
19 me.

20 Q Okay. And you actually took that swab also?

21 A Yes.

22 Q Okay. Physically from the defendant?

23 A Yes.

24 Q And any difference in the procedures of taking that  
25 buccal swab?

1 A No. No, ma'am. It's the same thing.

2 Q And that is what is in State's Exhibit 27?

3 A Yes, ma'am.

4 Q Who put it in this plastic bag?

5 A I did.

6 Q Who sealed it?

7 A I did.

8 Q And where did you take it?

9 A A drop box down in the evidence room.

10 MS. FENT: I offer into evidence State's Exhibit  
11 27.

12 MR. DEYSACH: Also subject to a previous  
13 objection.

14 THE COURT: Subject to your previous objection,  
15 the document; I mean, the evidence is admitted.

16 (WHEREUPON, State's Exhibit No. 27 is admitted  
17 into evidence.)

18 Q Based upon your experience as a criminal  
19 investigator, what now do you need? Who do you need  
20 these swabs to go to in your office?

21 A John Barron.

22 Q Okay. No further questions.

23 THE COURT: Cross examination.

24 MR. DEYSACH: Thank you, Your Honor.

25 CROSS EXAMINATION

1 BY MR. DEYSACH

2 Q Good afternoon, Sergeant.

3 A Good afternoon.

4 Q Now, you are the officer that took out the warrant  
5 for my client?

6 A I was the one who prepared the warrant affidavits,  
7 the warrant worksheets. Yes, sir.

8 Q So does that mean that you're the one that makes the  
9 affidavit that the warrant is based on?

10 A Yes, sir.

11 Q Now, when you made that affidavit, you alleged that  
12 the crime took place in the hours of darkness,  
13 correct?

14 A Let me look at the warrant here and make sure. Yes.

15 Q And when you made that warrant, you did not allege  
16 that he had two prior convictions for burglary?

17 A No, sir, I didn't.

18 Q So as a law enforcement officer, you understand the  
19 effect of a warrant, correct?

20 A Yes, sir.

21 Q I mean, you've been a law enforcement officer for 14  
22 years. I'm sure you know better than me. But the  
23 warrant, when you have a warrant for somebody, you  
24 can arrest them, correct?

25 A Correct.

1 Q And when you arrest them, you take them to jail,  
2 correct?

3 A Most of the time. It depends on what the charge is.

4 Q Okay. They have to stay in jail until a bond is set,  
5 correct?

6 A Yes, sir.

7 Q And once a bond is set, they have to make that bond  
8 before they can be released from jail, correct?

9 A Correct.

10 Q Do you know what day that Willis Weary was served  
11 with your warrant?

12 A On December 15th.

13 Q Is that the same -- that's the day that you swore out  
14 the warrant, correct?

15 A That's the day the warrant was served on him.

16 Q Do you have your investigative report?

17 A Yes, sir.

18 Q Do you see the entry under January 9th of 2006?

19 A Yes, sir.

20 Q Doesn't it indicate under that entry that that's the  
21 day that the warrant was served?

22 A It does.

23 Q So --

24 MS. FENT: Your Honor, may we approach?

25 (Whereupon, a bench conference is had)

1 Q Whatever the case, on January 23rd when you had your  
2 conversation with my client, he had already been  
3 served with the warrant, correct?

4 A Correct.

5 Q And he was still in custody, wasn't he?

6 A Yes, sir.

7 Q You knew that he hadn't had a bond set yet, correct?

8 A I didn't have any information on his bond.

9 Q Okay. Now, you yourself picked up Mr. Weary from the  
10 detention center, correct?

11 A Correct.

12 Q He was handcuffed when you picked him up? He was  
13 shackled?

14 A Yes, sir.

15 Q And you put him in the back seat of your squad car?

16 A I put him in the front seat.

17 Q The front seat. But shackled?

18 A Yes, sir.

19 Q And took him to Two Notch Road?

20 A Yes, sir.

21 Q The police department there?

22 A Yes, sir.

23 Q That's the same building that the evidence lab is in?

24 A That's correct.

25 Q And you took him to your cubicle. That's what you



1 testified, correct?

2 A Yes, sir.

3 Q Was he handcuffed? Let me ask you this. What was  
4 the first thing that you did?

5 A The first thing that I did when?

6 Q The first thing that you did when you got back to the  
7 police department.

8 A I would have taken him to my cubicle. I mean, I  
9 can't tell you step-by-step what I did when I walked  
10 in the door.

11 Q Fair enough. You testified that you read him his  
12 rights first?

13 A That's correct.

14 Q And then you testified that you gave him a -- that  
15 you asked him some questions, correct?

16 A Correct.

17 Q You testified that as he spoke you wrote, correct?

18 A Right. Once I got to the statement form, yes.

19 Q So you did have a conversation with him before you  
20 started writing, correct?

21 A Nothing about the case.

22 Q So it's just --

23 A Once I Mirandized him, we didn't have any discussion  
24 about the case until after I Mirandized him.

25 Q My question is, did you have any discussion about the

1 case before you started writing while he was talking?

2 A I told him why he was in my cubicle I told him why I  
3 was picking him up.

4 Q Did you tell him what he was being accused of?

5 A I told him that he was in my cubicle and being  
6 charged with burglary because of the evidence I had.

7 Q I'm just asking you did you tell him what he was  
8 accused of. I wasn't asking why.

9 A Yes. Yes.

10 Q Okay. Did you continue to have him shackled at that  
11 time?

12 A As far as I can tell, yes. The only time I  
13 un-handcuff someone, especially when they're in  
14 custody, is if they can't sign a statement form or if  
15 they're drinking a cup of water, if they're going to  
16 the bathroom, the shackles that I had fitted around  
17 his waist and a handcuff on each side. So if I would  
18 have unshackled one hand, it would have been to sign  
19 the statement or to drink a cup of water, and then he  
20 would have been shackled right back.

21 Q As far as you know, the only time that you would have  
22 unshackled him would be to sign the statement, to  
23 sign the waiver of rights and maybe to swab his mouth  
24 with the -- for the swab?

25 A Correct. For the safety of not just him, everybody

1 in the office. When we bring somebody in, they have  
2 to stay handcuffed.

3 Q And it was just you and him having the conversation,  
4 correct?

5 A Yes.

6 Q There may have been another witness to him signing  
7 the waiver form, correct?

8 A Yes.

9 Q And there may have been somebody who watched him sign  
10 his statement, correct? A notary?

11 A Yes.

12 Q But they weren't there when the conversation about  
13 the case was going on, correct?

14 A If they were, if they overheard anything, they  
15 weren't present, physically sitting next to us when  
16 we were discussing the case, no.

17 Q Right. So they may have overheard but they weren't  
18 participating in the conversation?

19 A My cubicle is one of about 85 cubicles in one big  
20 room and you can't hear; I mean, unless you're just  
21 eavesdropping and paying attention. But there was  
22 nobody physically sitting there, no.

23 Q So it's at the police department, all those 85  
24 cubicles. So all, if they were occupied, would be  
25 occupied by police?

1 A Most of the time. They're not always full every day  
2 but from 9 to 5. Yeah.

3 Q I can appreciate that. You never took an audiotape  
4 of your conversation with my client?

5 A We don't -- we don't audiotape statements.

6 Q As a policy, you don't audiotape statements?

7 A We don't audiotape or videotape them. No, sir.

8 Q And so you didn't videotape the statement either?

9 A No, sir.

10 Q You're saying you didn't do it not because you  
11 couldn't, just because your office doesn't, correct?

12 A It's a policy that we don't.

13 Q And it's a policy set by your boss?

14 A The sheriff.

15 Q The sheriff sets this policy?

16 A Yes, sir.

17 Q No videotapes or audiotapes of statements?

18 A That's correct.

19 Q And you don't know of any legal basis for that  
20 policy?

21 A No, sir.

22 Q When he was done signing and with the swab, he was  
23 handcuffed, correct?

24 A Yes, sir.

25 Q And then he was put back in your car, correct?

1 A Correct.

2 Q And then deposited back at the detention center?

3 A Yes, sir.

4 Q And you're telling this jury under oath that at no  
5 time from the point that you picked him up from the  
6 detention center to the time that you took the  
7 statement that he at no time ever asked for an  
8 attorney. Is that your testimony?

9 A That's what I'm telling you. Yes, sir. He was very  
10 cooperative. He was answering everything that I  
11 asked him.

12 Q Is it your testimony that if he'd asked for an  
13 attorney that would have been trouble?

14 A If he had asked for an attorney, I would have taken  
15 him back to the detention center at that point.

16 Q Now, how long -- you've been an investigator. You  
17 said an investigator 11 years, correct?

18 A Eleven. Yes, sir.

19 Q And I can imagine over that period of time that you  
20 have investigated a lot of cases?

21 A Yes, sir.

22 Q I don't even want to guess how many. But a lot?

23 A A lot.

24 Q And so you know that it's important to be thorough  
25 and complete in your investigations?

1 A Yes, sir.

2 Q Because essentially what you're preparing for is the  
3 possibility of a trial?

4 A That's correct.

5 Q And you know that the Solicitor's Office is going to  
6 rely on your reports and your investigation?

7 A That's correct.

8 Q And the reports are part of the investigation. So if  
9 you're going to have a complete and thorough  
10 investigation you've got to have complete and  
11 thorough reports, correct?

12 A Correct.

13 Q And that's not only reports, but that also applies to  
14 the affidavits that you make in obtaining a warrant,  
15 correct?

16 A That's correct.

17 Q Did you ever call the management of The Chimneys  
18 apartment complex about this case?

19 A No, sir.

20 Q Did you ever check with any security that might have  
21 worked at The Chimneys apartment complex?

22 A No, sir.

23 Q Did you ever check to see if there was any individual  
24 cameras in the parking lot of The Chimneys apartment  
25 complex?

1 A I know for a fact there aren't.

2 Q How do you know that?

3 A Because I've worked cases out there before where  
4 armed robberies have happened in the parking lot.

5 Q So you know that in the interim between the last case  
6 that you investigated out there and this case that  
7 they hadn't installed them? You knew that?

8 A I did not check with the management and ask them  
9 that, no.

10 Q Did you ever even visit The Chimneys apartments as  
11 part of this case?

12 A No, sir.

13 Q Did you take a written statement from Mr. Gonzalez?

14 A No, sir. When I got the case it was several months  
15 after it had happened, and I left him a message on a  
16 phone number they had. He was not an eye witness to  
17 the crime, so there was really no need for me to take  
18 a statement from him.

19 Q So you determined that there was not a need to talk  
20 to Mr. Gonzalez about the burglary of his home?

21 A There was no need to take a statement. I did attempt  
22 to talk to him. He moved from the apartment after.

23 Q So you never took an oral statement. And it's your  
24 testimony that you did try to call him. Does that  
25 appear in any of your investigative notes?

1 A No, sir.

2 Q Okay. So it's your testimony that it was part of  
3 your complete investigation to try and make contact  
4 with the victim but to never note that attempt?

5 A I should have noted it. Yes, sir.

6 Q But you didn't?

7 A I didn't.

8 Q And that was a mistake?

9 A It was a mistake.

10 Q Now, you read the statement to the jury, correct?

11 A Yes, sir.

12 Q In that statement my client tells you about somebody  
13 else who's involved in this burglary, correct?

14 A Correct.

15 Q Did you ever follow up in any way on that person?

16 A I did. I ran the name Darryl through a system that  
17 we have at the Sheriff's Department called Leads On  
18 Line. It's a computer program that's linked to all  
19 the pawn shops nationwide. I didn't get any hits on  
20 a name Darryl. And I even ran the victim's property  
21 through there because you can check it by name, by  
22 address or by what type of property it is. I never  
23 got any hits.

24 Q All right. So the statement tells you where Darryl  
25 lives, correct?



1 A That's correct.

2 Q But instead of actually going to that location, you  
3 stayed in your cubicle and ran the word Darryl  
4 through a database?

5 A That, and the information; yes, sir.

6 Q What information?

7 A The property information.

8 Q So you put his name, the name, the address and the  
9 name Darryl through a computer; and that's the extent  
10 of your follow-up on the possible accomplice?

11 A That's correct.

12 Q Okay.

13 A Based on my investigations, we've got to have more  
14 before you can go up to somebody and say, hey, some  
15 guy says you were involved in a burglary. And we  
16 didn't have any evidence linking anybody else other  
17 than Willis Weary.

18 Q So what you're saying is it's not enough for a person  
19 to, okay, if a person were to blame -- if somebody  
20 else were to blame Darryl for the crime, it would be  
21 one thing. But if the person who you've accused of  
22 committing that crime were to give that same  
23 information, it wouldn't be enough. Is that what  
24 you're saying?

25 A I'm saying if I had had more than one person tell me,

1           then I would have had better information to go say,  
2           hey --

3   Q       And so it's your testimony to this jury that you did  
4           not have enough information to knock on that door to  
5           see if Darryl lived there?

6   A       No.

7   Q       Is there any legal basis for that?

8   A       No, sir.

9   Q       The statement indicates that the burglary took place  
10          at midnight or 1 a.m.?

11   A       According to Mr. Weary, he said it was around 1 or  
12          2 a.m. That's what he told me.

13   Q       And you're sure that he meant when it was dark.  
14          You're sure of that?

15   A       That's what he told me.

16   Q       Okay. And so you're sure that he didn't get a.m. and  
17          p.m. mixed up, correct?

18   A       Yeah. I'm positive.

19   Q       Okay. But you know now that that's not possible,  
20          correct?

21   A       Correct.

22   Q       I don't have anything further.

23           THE COURT: Redirect?

24           MS. FENT: No, Your Honor.

25           THE COURT: You may come down. Thank you very

1 much, sir.

2 MS. FENT: I call John Barron.

3 THE COURT: May this witness be excused without  
4 objection?

5 MR. DEYSACH: Sure.

6 JOHN C. BARRON, after being duly sworn,  
7 testifies as follows:

8 THE CLERK: Please have a seat there, sir.  
9 State your full name for the record.

10 WITNESS: My name is John C. Barron,  
11 B-A-R-R-O-N.

12 DIRECT EXAMINATION

13 BY MS. FENT

14 Q And who do you work for?

15 A Richland County Sheriff's Department.

16 Q In what capacity?

17 A I'm a DNA analyst.

18 Q And how long have you been with the Richland County  
19 Sheriff's Department?

20 A Since March of 2004.

21 Q And can you basically tell the jury your educational  
22 and your training background that brings you to be a  
23 DNA analyst?

24 A I have a bachelor of science degree in microbiology  
25 from Clemson University. I've taken graduate level

1 courses in molecular biology at the University of  
2 South Carolina. I was employed at the South Carolina  
3 Law Enforcement Division otherwise known as SLED in  
4 their forensic science laboratory since 1975. In  
5 1999 I received the latest DNA technology training  
6 and became qualified as a DNA analyst for SLED. And  
7 in March of 2004 I came to Richland County to set up  
8 their DNA laboratory. And we have been doing cases  
9 for Richland County since November of 2004.

10 Q Have you ever testified as an expert in the area of  
11 DNA analysis before?

12 A Yes, I have.

13 Q About how many times?

14 A This will be the 16th time.

15 Q Okay. And have you been qualified as an expert in  
16 this area?

17 A Yes, I have.

18 Q How many times?

19 A Fifteen.

20 MS. FENT: Okay. Your Honor, we offer Mr.  
21 Barron as an expert in the area of DNA analysis.

22 THE COURT: Any objections or Voir Dire?

23 MR. DEYSACH: No objections, Your Honor, nor  
24 Voir Dire.

25 THE COURT: You may proceed.

1 Q With regard to the case that we brought you here  
2 today on, case number 0508218120, was evidence I  
3 guess brought to your attention that had been  
4 collected at a crime scene?

5 A Yes.

6 Q And needed your analysis?

7 A That's correct.

8 Q Okay. Do you know what day it was that you came upon  
9 the first piece or pieces of evidence?

10 A I obtained the first piece of evidence from our  
11 evidence custodian on January 9th, 2000 -- no.  
12 Excuse me.

13 Q Okay. And --

14 A Excuse me. November the 3rd. These items are listed  
15 backwards. November the 3rd, 2005.

16 Q Okay. And what items were these that you obtained  
17 from the evidence custodian?

18 A I received a swab from the bedroom window blinds and  
19 also a swab of a smudged fingerprint from a burglary  
20 crime scene.

21 Q I'm going to show you what's been marked and admitted  
22 already as State's Exhibits 22 and 23 and see if you  
23 can look at those and tell us if you recognize them?

24 A This is the box that the swab from the front window  
25 miniblind was in. And I subsequently consumed that

1 swab in analysis.

2 Q You said you consumed the swab, meaning ...?

3 A I used it all up.

4 Q Okay.

5 A And this is the box that contained the swab from the  
6 smudged fingerprint.

7 Q Let me back up and have you, if you can as simply as  
8 possible, explain to us what DNA is?

9 A Okay. DNA is an acronym for deoxyribonucleic acid.  
10 It is the molecule in every nucleated cell in your  
11 body. Not all cells in your body have a nucleus but  
12 both of them do. And it codes for who you are. 99.9  
13 percent of it codes for who you are as a human being,  
14 as opposed to any other living organism. The other  
15 .1 percent defines who you are individually, your  
16 different hair color, your size, your skin color, all  
17 the differences that make who you are unique.

18 And each person's DNA is unique to that person  
19 unless you have an identical twin. Then you would  
20 have the same DNA. Half of your DNA comes from your  
21 mom. Half of it comes from your dad. And forensic  
22 DNA analysis in essence uses parts of the DNA  
23 molecule and copies them and identifies those  
24 portions that are unique to you that can help us  
25 identify an individual from biological materials such

1 as blood, skin cells, saliva; in the case of sexual  
2 assault, the semen, vaginal fluid, that type of  
3 thing. So any biological material coming from you, a  
4 profile can be obtained and it can be traced back to  
5 you.

6 Q Okay. And when you say a profile, what does that  
7 mean, a profile?

8 A A forensic DNA profile is 15 points on your DNA  
9 molecule. We develop, we copy those fragments on  
10 those portions of the molecule, and each fragment has  
11 a certain size. And each size has a designated  
12 number. So your DNA profile in essence is a series  
13 of numbers.

14 Q And you're saying that each and every one of us has a  
15 different series of numbers?

16 A That's correct.

17 Q Unless I have an identical twin?

18 A That is correct.

19 Q And even fraternal twins will obviously have a  
20 different series of numbers?

21 A A fraternal twin will mean that it comes from a  
22 different egg and a different sperm. So it will be a  
23 different set of numbers.

24 Q Okay. How long has DNA analysis been around? How  
25 long have you been working on this science?

1 A Well, it's been around for a long time but used  
2 forensically, or in other words used to identify  
3 individuals in crime scenes, it's been used since the  
4 mid eighties. There was a technology used in the  
5 eighties and the early nineties that is no longer  
6 used today. The technology that's used today is  
7 developed in the late 1990's and is being used today  
8 not only here in Richland County but throughout the  
9 state of South Carolina. And every state in the  
10 union does the same identical test. That's why we  
11 compare DNA from individuals of Richland County all  
12 over the United States.

13 Q And how many different technologies have we developed  
14 or progressed to and gotten better technologies in  
15 this area?

16 A Well, to develop profiles from nuclear DNA, this is  
17 the second technology that has been developed.

18 Q Okay. Did you then take these samples, exhibits that  
19 you've just talked about, and do analysis on these  
20 two samples?

21 A Yes, I did.

22 Q Okay. Let's start with the smudged fingerprint  
23 first, the .2, I guess item .2?

24 A Mm-hmm (affirmative).

25 Q Were you able to do anything with that sample?



1 A I attempted to develop a DNA profile, but there was  
2 no DNA on the swab.

3 Q Okay. And basically, what would be -- I mean, what  
4 possibly -- what kind of material could you have  
5 developed DNA off of from a fingerprint?

6 A Well, I have actually developed DNA from smudged  
7 fingerprints before. It is just skin cells. If  
8 enough skin cells is left behind, then enough DNA is  
9 there and I can develop a profile from it.

10 Q Okay. So we didn't have enough skin cells on this  
11 swab to develop a profile?

12 A That's correct.

13 Q Okay. Then item 1, the swab from the miniblinds  
14 that's documented on here, can you walk us through  
15 then that analysis that you do, and are you able to  
16 get a profile from that?

17 A Well, first of all, I noted that the swab contained a  
18 red stain which indicated it could be blood. I did a  
19 preliminary test for blood or a presumptive test for  
20 blood. It was positive. Which indicated to me that  
21 this was probably a blood stain. I proceeded then to  
22 extract the blood, to pull all of the DNA out of it.  
23 I confirmed that there was plenty of DNA for a  
24 profile and proceeded to develop a profile from that  
25 blood stain.

1 Q And were you able to develop a profile or a series of  
2 numbers from that blood stain?

3 A Yes, I was.

4 Q Okay. Your subsequent investigation, did that  
5 profile lead to a suspect's name?

6 A It did.

7 Q Okay. And what's --

8 MR. DEYSACH: Renewing my objection, Your Honor.

9 THE COURT: Subject to the defendant's prior  
10 objection, the testimony is admitted.

11 Q And what suspect's name did you obtain?

12 A I obtained an individual by the name of Willis Weary.

13 Q And who did you then give that name to?

14 A I gave that name to Investigator McRoberts from the  
15 Richland County Sheriff's Department for follow up,  
16 and I asked him to obtain another known sample from  
17 Willis Weary to confirm that this was indeed his DNA.

18 Q And a known sample meaning someone visually sees a  
19 swab being taken from Willis Weary's mouth, correct?

20 A Well, the easiest way to do that and not invasive is  
21 simply to swab their mouth, because inside your mouth  
22 there's plenty of skin cells and you can easily  
23 develop a DNA profile from it.

24 Q Okay. Did you receive a buccal swab or a swab for  
25 analysis?

1 A Yes, I did.

2 Q Okay. And where did you retrieve that sample of that  
3 buccal swab?

4 A All of our evidence is deposited at the evidence  
5 custodian, and I go down to the evidence custodian  
6 and retrieve it from them.

7 Q Okay. I'm going to show you what's been marked as  
8 State's Exhibit No. 28 and ask you to take a look at  
9 that and see if you recognize it?

10 A Yes. This is a box labeled Willis Laverne Weary. It  
11 contained the swab from his mouth.

12 Q Okay. And do you make any markings or anything on  
13 the box or the envelopes to kind of mark your chain  
14 of custody, that you were the one that did the  
15 analysis or anything on it?

16 A Yes. My name is John Barron. There's initials JB on  
17 the box. And also when I opened this container, I  
18 resealed it with evidence tape and put my initials  
19 and the date that I resealed it on there.

20 Q Okay. And did you analyze then this swab that was  
21 given to you and compare it to the blood swab that  
22 was taken from the miniblind, your profile that you  
23 developed there?

24 A Yes, I did.

25 Q And what was your result?

1 A My result was that indeed this DNA profile was that  
2 of Willis Weary. It matched him.

3 Q Okay. And when you say matched, do you come up with  
4 a statistic or a number? Or, I mean, what is your  
5 finding when you say that you have a match?

6 MR. DEYSACH: I would object, Your Honor; the  
7 ground being that he was qualified as a DNA expert  
8 but not as a population statistics expert. So I  
9 don't think he's qualified to make that --

10 THE COURT: Do you want to ask him some  
11 questions?

12 VOIR DIRE EXAMINATION

13 BY MR. DEYSACH

14 Q Do you have any training in population statistics?

15 A Yes, I have.

16 Q What is the training?

17 A I have attended a graduate level course at the  
18 University of South Carolina in relation to forensic  
19 DNA population statistics.

20 Q When you come up with this number where you kind of  
21 have basically, I guess it's the percent chance is a  
22 way of thinking of it, that the DNA that --

23 THE COURT: Just as to qualifications now.

24 Q I'm just wondering, what is the formula that you use  
25 when you come up with your answer? Do you know the

1 formula?

2 A Yes.

3 Q What is the formula?

4 A Do you want me to write it on the board?

5 Q I mean, how long is it? I mean, I guess I'm asking  
6 could you if you had to?

7 A Yes.

8 MR. DEYSACH: All right. Well, I guess he's an  
9 expert at population statistics then.

10 THE COURT: You may continue.

11 DIRECT EXAMINATION

12 BY MS. FENT

13 Q Is there a statistic or a number that you come up  
14 with? Other than saying it's a match, what is that  
15 statistical number?

16 A Well, when I say it's a match, that means that every  
17 single number is the same. So, I develop a chart  
18 which is on my report. And you can look at the chart  
19 and you can see that the profile of Willis Weary is  
20 identical to that of the profile obtained from the  
21 blood.

22 Now, the next question is, what is the frequency  
23 of this profile in the population? And that can be  
24 determined because we know the frequencies of these  
25 different fragment sizes that occur in the population

1 based upon population studies.

2 Q And what is that frequency?

3 A The frequency of this particular profile in African  
4 Americans is 1 in 11 quadrillion.

5 Q And what is the -- do you know the population of the  
6 earth?

7 A Yes.

8 Q And what is the population of the earth?

9 A It's a little over 6 billion.

10 Q So how many earths would we need to have to see that  
11 frequency again I guess?

12 A For the possibly of that profile showing up again?

13 Q Yes.

14 A A little over a trillion.

15 Q A trillion earths to see that code of numbers again?

16 A That's the frequency. That's the random match  
17 probability.

18 Q Did you subsequently receive another swab identified  
19 also as Willis Weary's?

20 A Yes, I did.

21 Q And I'm going to show you that. It's marked as  
22 State's Exhibit 27. And see if you recognize that.

23 A Yes. This is an additional swab from the mouth of  
24 Willis Weary.

25 Q And where did you retrieve this swab?

1 A It was up in the evidence room.

2 Q Did you do an analysis then on this swab?

3 A Yes. I was asked to repeat the analysis on the  
4 saliva sample from Willis Weary. And I did and came  
5 up with identical results.

6 Q Items 22, 23, 27 and 28, when you retrieved these  
7 items from the property room, what was the condition  
8 of these envelopes?

9 A They were sealed, un-tampered with.

10 Q And you were the one that then opened these  
11 envelopes?

12 A That is correct.

13 MS. FENT: No further questions.

14 THE COURT: Cross examination.

15 MR. DEYSACH: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. DEYSACH

18 Q Good afternoon, Mr. Barron.

19 A Good afternoon.

20 Q So you analyzed the swabs that were submitted to your  
21 lab, correct? You did that? You just testified that  
22 you analyzed the swabs that were submitted to your  
23 lab, correct?

24 A Yes.

25 Q You have no way of knowing through your analysis the

1 age of any of the genetic material that comes to you,  
2 do you?

3 A Are you asking me can I tell how long that blood had  
4 been on those blinds at that window?

5 Q I mean, yeah.

6 A No, I cannot.

7 Q And you can't tell where the blinds were or what  
8 position they were in when the blood was left there?

9 A No. That would -- the crime scene person would have  
10 had to testify to that. Sure.

11 Q And if anybody could know, then, you know, they --  
12 anyway. But you can't tell that? That's not part of  
13 what you can analyze?

14 A No.

15 Q Now, when you develop a profile of somebody's DNA,  
16 you don't develop a complete profile, do you?

17 A Complete enough for identification.

18 Q But not complete?

19 A As I mentioned in my direct testimony, that  
20 99.9 percent of your DNA is the same as all of us  
21 because it defines us as human beings. We don't  
22 worry about that part of it. We're only worried  
23 about the part that individualizes people.

24 Q So you're saying that 16 genes, is that how many  
25 genes it takes to individualize us? Is that your



1 testimony?

2 A My testimony is that developing the DNA profile that  
3 gives a statistic of 1 in 11 quadrillion is  
4 sufficient for identification.

5 Q Okay. I guess my first question was, you do not  
6 complete a -- you don't do a complete profile,  
7 correct?

8 A I do a complete forensic DNA profile.

9 Q But that leaves off over 99.9 percent of the genes,  
10 correct?

11 A That's correct.

12 Q Okay. So there are in fact between 25,000 and 60,000  
13 genes?

14 A Yes.

15 Q Do you know how many genes there are?

16 A Not exactly, no.

17 Q Was that range that I gave you --

18 A Reasonable.

19 Q -- reasonable? Okay. How many genes did you  
20 analyze?

21 A We analyzed 15 points on the DNA molecule plus the  
22 sex gene so we can tell what sex this DNA came from.

23 Q When you say points, is that the same as genes, or is  
24 that something different?

25 A Well, genes actually code for an expression. These

1 points do not code for a particular expression.

2 Q So do these points correspond to genes?

3 A In a sense, yes.

4 Q So there would be the same number of points as there  
5 are genes in a person's DNA?

6 A No.

7 Q Okay. What would the difference be?

8 A There is a lot of your DNA that is not genes. It is  
9 just what we call junk DNA. It really doesn't code  
10 for anything. Why it's there, only God knows.

11 Q So it may be there for something; you guys just don't  
12 know yet?

13 A Exactly.

14 Q Now, you analyzed two swabs, two sets of swabs that  
15 came from Investigator McRoberts, correct?

16 A I testified that I analyzed a swab from the blinds, a  
17 fingerprint smudge and two swabs from Willis Weary.

18 Q The known swabs I guess is what I'm referring to now?

19 A Yes. Two separate occasions; two separate swabs.

20 Q So you did analysis on his known swabs two different  
21 times?

22 A Correct.

23 Q You didn't get in the lab one time and just do it  
24 once. You did it two different days?

25 A Two separate occasions.

1 Q And each time you developed a profile, whether it be  
2 from the stain on the blinds, the known swabs, you  
3 still just got a profile on the same 16 genes,  
4 correct?

5 A That's correct.

6 Q Do you know how they came up with those 16 genes?

7 A Yes.

8 Q How did they come up with them?

9 A When they -- a number of years ago they unraveled the  
10 human DNA molecule. You may have heard it on the  
11 news, that sort of thing. When they did that they  
12 discovered that certain portions of the DNA molecule  
13 had what we call short tandem repeat units that coded  
14 for nothing but yet they were present in each of us  
15 and they were highly variable. In other words, the  
16 number of repeat units in you and me might be totally  
17 different.

18 So they looked at 15 different points on the DNA  
19 molecule. Actually 13. We do two extra. But the  
20 FBI only requires 13. So there's 13 core, what they  
21 call 13 core loci which is a genetic term for a point  
22 on the DNA molecule. And because these points were  
23 highly variable based upon the number of short tandem  
24 repeat units of the DNA nucleus basis, these points  
25 were chosen by the FBI for forensic DNA analysis

1 throughout the United States.

2 Q Okay. So, is there only 16 genes that have short  
3 tandem repeats?

4 A No. There is others as well. But this is all we  
5 need to facilitate human identification.

6 Q Okay. And that's -- do you know how many genes there  
7 are with short tandem repeats?

8 A No, I do not. But I know that there are more than  
9 this because there is others that are used in Europe  
10 that we don't use.

11 Q Would you agree that if you were doing an analysis  
12 that one of those other short tandem -- if any one of  
13 those short tandem repeats that exists were not the  
14 same, then that would mean that you did not have a  
15 match?

16 A That's true. However, the chance of that happening  
17 is 1 in 11 quadrillion which in my opinion is  
18 impossible.

19 Q When you plug in that formula, do you use computer  
20 software, or is it something that you can do on like  
21 a scratch piece of paper?

22 A Well, we use computer software to make it easy  
23 because we're doing these profiles every day. But if  
24 I had to, I could do it by hand. But it would take a  
25 long time to do it. I mean, we all use calculators

1           versus multiplying by hand.

2   Q       In this case did you do it by hand, or did you just  
3           use the computer?

4   A       I used the computer software.

5   Q       So do you have any way of double checking that  
6           computer software?

7   A       The computer software is issued by the FBI and they  
8           maintain it.

9   Q       So you don't maintain the computer software and  
10           nobody at Richland County maintains the computer  
11           software?

12   A       Well, it's a simple math formula that any computer  
13           can do.

14   Q       Okay. So it's too complex for the analyst to keep  
15           doing but simple for the computer is what you're  
16           saying?

17   A       It's not complex. It's just easier to do it. I  
18           mean, just like you. If you have to multiple  
19           something, you're going to pull out a calculator.  
20           You're not going to do it by hand.

21   Q       Right. But even when I use a calculator, there's a  
22           possibility I could make a mistake. What I'm asking  
23           you is, who double-checked your work?

24   A       Oh, we have a review process. I have another DNA  
25           analyst who works with me who reviews all my work.

1 He double checks to make sure that I entered the  
2 correct allele numbers. That's what these numbers  
3 and the sequence are called genetically. And if  
4 those allele numbers a entered correctly, then the  
5 formula is applied correctly.

6 Q Now, when you do these analyses, you develop a  
7 three-page report?

8 A Well, sometimes it's longer than that. But in this  
9 case it was three pages.

10 Q Anywhere on that three-page report do you put the  
11 name of the person who double checks your work?

12 A That is on the first page of our cover sheet in our  
13 case file which I have a copy of right here.

14 Q Okay. So beyond -- when he double checks your work,  
15 does he go through and plug the same formula into the  
16 same computer, or what does he do?

17 A He pulls up the computer program which I plugged the  
18 numbers in and he in essence looks at the profile and  
19 makes sure that I entered the correct numbers.

20 Q So basically --

21 A I do the same thing for him when I'm re-doing his  
22 cases.

23 Q He's double checking your data entry?

24 A Exactly.

25 Q He's not double checking whether or not the computer

1 is working basically?

2 A No. He's not double checking whether the computer is  
3 working.

4 Q He's just checking --

5 A If the computer were not working, it would crash.

6 Q -- whether or not the buttons were punched properly?

7 A Whether or not the correct entry was made.

8 MR. DEYSACH: I have nothing further.

9 THE COURT: Redirect?

10 MS. FENT: No further questions, Your Honor.

11 THE COURT: Thank you very much. You may come  
12 down. May this witness be excused?

13 MR. DEYSACH: Yes, Your Honor.

14 THE COURT: Without objection, you're excused.

15 WITNESS: Thank you.

16 THE COURT: Thank you, sir. Next witness.

17 MS. FENT: Your Honor, at this time we would  
18 offer into evidence State's Exhibits 24 and 25, the  
19 certified conviction sheets of Mr. Weary's prior  
20 burglaries.

21 MR. DEYSACH: No objection, Your Honor.

22 THE COURT: Without objection. You may publish  
23 them to the jury.

24 (WHEREUPON, State's Exhibit No. 24 is admitted  
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 25 is admitted  
2 into evidence.)

3 MS. FENT: We rest at this time, Your Honor.

4 THE COURT: All right. Thank you very much.  
5 All right, Ladies and Gentlemen of the Jury, that  
6 concludes the State's case. Now, there are again  
7 some legal matters I need to take up with the  
8 attorneys before we go further in the trial. And so  
9 at this time, and I know you've just been handed a  
10 certain piece of evidence, it will be available to  
11 you when you come back in. So I'm just going to ask  
12 you to go to the jury room for just a few minutes  
13 while I discuss matters of law with the attorneys and  
14 we'll call you. Just relax for a few months. We may  
15 have some snacks back there, some cold drinks or  
16 something. Don't discuss the case among yourselves  
17 while you're in the jury room, and we'll call you in  
18 just a few minutes.

19 (Jury out at 4:20 p.m.)

20 THE COURT: All right. Any motions?

21 MR. DEYSACH: Yes, Your Honor.

22 THE COURT: You may proceed.

23 MR. DEYSACH: I would move for a directed  
24 verdict at this time. If you view the case in a  
25 light most favorable to the prosecution, I still



1 don't believe that there is enough to go to the jury.

2 Additionally, Your Honor, if I may, I would ask  
3 that you consider sending it to the jury as a  
4 burglary second. We've gotten the certified  
5 convictions with Willis Weary's name on here, but if  
6 you look at the date of offense, it's the same date  
7 of offense. It's a little unclear but I think it  
8 reads 11-24-2000. And in order to use the  
9 enhancements, my understanding of the law, in order  
10 to use the enhancement, the two offenses cannot be so  
11 closely linked as to basically constitute the same  
12 offense. I don't think that there is anything on  
13 these pieces of paper that indicates that these two  
14 cases aren't so linked.

15 THE COURT: I haven't seen them. What's the  
16 State's position? He says they're either the same  
17 offense or --

18 MR. DEYSACH: My position is that they haven't  
19 given any evidence that they're not and it's their  
20 burden of proof on this.

21 MS. FENT: Well, the indictments that we had  
22 show that they are two different owners, two  
23 different --

24 THE COURT: What did you -- what was submitted?

25 MR. DEYSACH: Just the sentencing sheet.

1           **THE COURT:** Oh, the sentencing sheet.

2           **MS. FENT:** The sentencing sheets that show two  
3 different warrant numbers.

4           **THE COURT:** Okay. And they're sentencing  
5 sheets. That's what they are?

6           **MS. FENT:** Correct. Correct. They are two  
7 different warrant numbers. The law is that it's just  
8 two prior burglary convictions. These are two  
9 different warrant numbers, two different indictment  
10 numbers. The indictments themselves are two  
11 different owners, two different victims. They are  
12 two separate burglary convictions. And that's what  
13 the statute calls for.

14           **THE COURT:** Well, it may be that you have fallen  
15 on your own sword. I don't think you can move that  
16 indictments not be submitted to the jury because of  
17 the --

18           **MR. DEYSACH:** Your Honor, the indictments  
19 haven't been submitted and the State has rested.

20           **THE COURT:** I know. As you'll recall, you  
21 objected to the indictments being submitted.

22           **MR. DEYSACH:** Correct. And I was overruled.

23           **THE COURT:** Right. And the State I guess has  
24 elected at this point not to offer them because of  
25 the prejudicial value of them. And they have chosen

1           instead to offer the sentencing sheets. Let me see  
2           them. I just want to --

3           MS. FENT: The sentencing sheets?

4           THE COURT: Well, he says they look like they're  
5           the same offense.

6           MR. DEYSACH: Offense date.

7           MS. FENT: They are the same offense date. They  
8           are two separate warrant numbers, two separate  
9           indictment numbers. They are two separate  
10          convictions. For purposes of a legal argument, I  
11          would submit to the court records, then I --

12          THE COURT: Am I looking at the right thing  
13          here? They're both the same address.

14          MS. FENT: That's his address.

15          THE COURT: Oh, I'm sorry. I'm sorry. You're  
16          right. Is there a better way to make better copies?

17          MS. FENT: We could ask.

18          THE COURT: Hmm?

19          MS. FENT: We could ask. That's the certified  
20          copies we were --

21          THE COURT: These came from the clerks' office?

22          MS. FENT: Correct.

23          THE COURT: It looks like the clerk's office has  
24          run out of toner.

25

1 (WHEREUPON, Court's Exhibit No. 1 is marked for  
2 identification.)

3 (WHEREUPON, Court's Exhibit No. 2 is marked for  
4 identification.)

5 MS. FENT: Your Honor, I would just say by  
6 virtue of the fact that they are two separate warrant  
7 numbers and two separate indictment numbers they are  
8 two different convictions.

9 THE COURT: This thing is very difficult to  
10 read. 9-1-27 and 9-1-28. Arrest warrants are DPC, I  
11 feel like I'm taking an eye test. 1553 and 1554.  
12 They are apparently different indictment numbers,  
13 different arrest numbers or warrant numbers.

14 MR. DEYSACH: Your Honor, I would say that  
15 they're consecutive, is evidence that they are that  
16 much more closely related.

17 THE COURT: Well, what's to say they're not,  
18 that the defendant was developed as a suspect in both  
19 cases even though the events may have occurred months  
20 apart and both warrants served on him at the same  
21 time and both indictments served on him at the same  
22 time? I don't know.

23 MR. DEYSACH: And there's certainly nothing that  
24 the State put in evidence as to that.

25 THE COURT: No. There's nothing in evidence

1       ether that says that they take place on the same day  
2       that would give substance to your argument.

3           MR. DEYSACH: They have the burden of proof in  
4       this case.

5           THE COURT: I understand that. Overruled. Next  
6       motion.

7           MR. DEYSACH: I would renew all my objections  
8       both in post-trial or not post but during the trial  
9       to make sure that those are preserved for the record.

10          THE COURT: All right. Well, as to the motion  
11       for directed verdict, I feel the evidence goes beyond  
12       mere conjecture or speculation, that there is  
13       evidence, either direct or circumstantial or some  
14       combination of both, which reasonably tends to prove  
15       the guilt of the defendant or from which that guilt  
16       might be logically and reasonably deducted or deduced  
17       if that evidence is taken in the light most favorable  
18       to the State. I must respectfully deny the motion  
19       for a directed verdict at this time.

20          Now, does the defendant intend to present  
21       evidence?

22          MR. DEYSACH: We do not, Your Honor. I would  
23       say that he's --

24          THE COURT: Let me just -- either evidence or  
25       the defendant will testify. Answer both questions.

1           MR. DEYSACH: No. No evidence, not for the  
2 defendant. And I just point out he needs to use the  
3 bathroom as soon as we get a break.

4           THE COURT: Well, we've got a break right now.  
5 But why don't you -- you had -- in pre-trial you had  
6 evidence regarding the voluntariness of the  
7 confession. I guess that's what I was inquiring, as  
8 to whether or not you plan to present that evidence  
9 again or not.

10          MR. DEYSACH: I do not.

11          THE COURT: Okay. All right. Let's take about  
12 a ten-minute break. I want to give him his Fifth  
13 Amendment warning rights. And we'll probably adjourn  
14 for the day after that.

15          MR. DEYSACH: Yes, Your Honor.

16          THE COURT: Do you want to announce to the jury,  
17 or do you want me to announce to the jury?

18          MR. DEYSACH: I don't need to, Your Honor.

19          THE COURT: All right. Let's take about a  
20 ten-minute break.

21          (Whereupon, a break is taken)

22          THE COURT: All right, counsel. Are you ready  
23 for the jury?

24          MR. DEYSACH: Yes, Your Honor. Were you going  
25 to bring them in before you question my client?

1           THE COURT: Oh, I'm sorry. Hold the jury. Are  
2 you going to hold the jury?

3           THE BAILIFF: I haven't called them.

4           THE COURT: I'm sorry. I knew there was  
5 something that needed to be done. Mr. Weary, will  
6 you stand, please. Mr. Weary, I need to advise you  
7 now you have the right to invoke the protections  
8 given to you by the Fifth Amendment to the  
9 Constitution of the United States and a similar  
10 counterpart provision of the Constitution of the  
11 State of South Carolina.

12           The Fifth Amendment to the Constitution of the  
13 United States provides in part no person shall be  
14 compelled in any criminal case to be a witness  
15 against himself. This provision of Constitutional  
16 law means you cannot be compelled or required to  
17 testify in this case. This is a right and privilege  
18 which the law extends to you. This is a personal  
19 privilege and no one can waive that right except you.

20           You have the right not to testify but you also  
21 have the right to testify. The Court will grant you  
22 the right to consult with your attorney before you  
23 make this decision. If you elect not to testify,  
24 your failure to testify or the fact that you did not  
25 testify cannot be used by the State as an inference

1 of guilt and your failure to testify cannot be  
2 considered by the jury in its deliberations on your  
3 guilt or innocence.

4 If you elect to testify and waive the privilege  
5 extended to you by the Fifth Amendment to the  
6 Constitution of the United States, I advise you now  
7 that you will then assume the role of any other  
8 witness in this case and will give up or waive your  
9 Constitutional privilege against self-incrimination.  
10 This means that if you voluntarily take the stand and  
11 testify, you will then subject yourself to the same  
12 rules that govern all other witnesses and you may be  
13 examined and cross examined on any relevant issue in  
14 this case. You may be impeached to the same extent  
15 as any other witness, all of which is subject to the  
16 rules of the state of South Carolina.

17 I further advise you that if you elect to take  
18 the witness stand and testify that this decision on  
19 your part must be freely, voluntarily, intelligently,  
20 and with knowledge of the protections given to you by  
21 the Fifth Amendment to the Constitution of the United  
22 States and with knowledge of the consequences of your  
23 election to testify.

24 Do you wish to consult further with your lawyer  
25 on this matter?



1           MR. WEARY: No, sir.

2           MR. DEYSACH: He says to me he doesn't want to  
3 testify. He didn't really answer the question  
4 whether or not --

5           THE COURT: Do you want to talk to your lawyer  
6 any more about it?

7           MR. WEARY: No, sir.

8           THE COURT: All right. Have you already  
9 discussed it with your lawyer?

10          MR. WEARY: Yes, sir.

11          THE COURT: All right. Do you understand what I  
12 have explained to you?

13          MR. WEARY: Yes, sir.

14          THE COURT: Do you have any questions about what  
15 I have explained to you?

16          MR. WEARY: No, sir.

17          THE COURT: Do you wish to testify?

18          MR. WEARY: No, sir.

19          THE COURT: All right. Thank you very much.

20          MR. WEARY: You're welcome.

21          THE COURT: Anything further before we bring the  
22 jury? Now bring the jury.

23                 (Jury in at 4:55 p.m.)

24          THE BAILIFF: The jury is all present, Your  
25 Honor.

1           THE COURT: All right, ladies and gentlemen.  
2 Thank you very much. At this stage the defendant  
3 rests. In other words, the defendant has elected not  
4 to put any evidence in front of you. Now, let me  
5 just say that is his right. As I explained to you at  
6 the beginning of this trial, the State has the burden  
7 of proving the defendant's guilt beyond a reasonable  
8 doubt, and that's the burden that the State has, and  
9 the defendant is under no obligation to present any  
10 evidence in this case and has elected not to.

11           Therefore, you've heard all the evidence that  
12 you're going to hear. The remaining portion of this  
13 trial will consist of the final arguments or  
14 summations by the attorneys and my charge to you on  
15 the law of the state of South Carolina as it applies  
16 to this case.

17           Now, that procedure will take over an hour. It  
18 will take a while. And I'm sure you looked out the  
19 window and saw it was raining outside. Well, people  
20 in Richland County seem to just drive crazier when  
21 it's raining. So the bottom line is I'm going to  
22 excuse you for the day now and ask you to be back in  
23 the jury room at 9:30 at which time we will conclude  
24 the trial.

25           Again, let me caution you, do not discuss the

1 case with anyone else over the evening hours or among  
2 yourselves when you return to the jury room until  
3 you've heard the final arguments of counsel and my  
4 charge to you on the law of the state of South  
5 Carolina. I hope you have a pleasant evening. We'll  
6 see you at 9:30 in the morning. Thank you very much.

7 (Jury out at 4:58 p.m.)

8 THE COURT: All right, counsel. Any requests  
9 for charge?

10 MR. DEYSACH: I've got a few. The first thing  
11 I'm going to ask to be charged would be a burglary  
12 second instruction.

13 THE COURT: Burglary second. All right.

14 MR. DEYSACH: Would you like to hear some  
15 reasoning?

16 THE COURT: Sure.

17 MR. DEYSACH: You know, besides the point I  
18 brought up about no proof that these two burglaries  
19 are sufficiently separated from each other, I would  
20 also bring up the fact that Officer McRoberts  
21 testified that nowhere in his affidavit for the  
22 warrant that he received did he put that the  
23 defendant had been charged with two prior burglaries.  
24 And so I think that there is that bear minimum that I  
25 need to draw an inference that Willis Weary has not

1       been convicted of two prior burglaries. You know, I  
2       think the evidence was it wasn't at night.

3               So I'm not really concerned with that element.  
4       But not only are these two burglaries I think too  
5       closely linked, I think when you add that with the  
6       fact that Officer McRoberts, Sergeant McRoberts did  
7       not use that on his warrant, that those two together  
8       are sufficient evidence that burglary second could go  
9       to the jury.

10              **THE COURT:** Well, the warrant is not in  
11       evidence, is it?

12              **MR. DEYSACH:** He testified as to the contents of  
13       what was in the warrant but I didn't enter the  
14       warrant.

15              **THE COURT:** Do you think that makes the warrant  
16       deficient to the extent that the enhancements would  
17       not be applicable? Is that --

18              **MR. DEYSACH:** Your Honor, that's, you know, one  
19       argument obviously. I mean, he was indicted, you  
20       know. And I know that the indictment once it has  
21       been to the Grand Jury is to me the overriding  
22       document. But in order to get a warrant, an officer  
23       has to make an affidavit. In this case Sergeant  
24       McRoberts made an affidavit and nowhere in that  
25       affidavit for a warrant did he say anything about two

1 prior burglaries. And it turns out that that's  
2 exactly the element that they're relying on to  
3 enhance this to a burglary first. And so for that  
4 reason I feel like that's enough to send a burglary  
5 second instruction to the jury.

6 *THE COURT:* Well, the affidavit on the warrant  
7 or with the warrant, however it's done, is required  
8 to convince the magistrate that there is probable  
9 cause to believe that a crime exists or the crime  
10 exists. How that translates into being defective I'm  
11 not quite clear about. Let me hear from the State.

12 *MS. FENT:* The bench warrant is for a burglary  
13 in the first degree and the indictment is for a  
14 burglary in the first degree.

15 *THE COURT:* He's saying that the affidavit is  
16 insufficient to support a charge of burglary in the  
17 first degree because it doesn't say either at night  
18 or that there are two priors.

19 *MS. FENT:* The indictment is sufficient that  
20 provides it. The warrant spelled out burglary in the  
21 first degree. It's spelled out, at least the manner  
22 or the remaining at night. It provided the probable  
23 cause to arrest. The indictment then was presented  
24 and probable cause for the return of a burglary in  
25 the first degree indictment was returned. And that

1 is sufficient. I understand that what his argument  
2 was when he stood up with Your Honor, please submit a  
3 burglary second because he believes a factual issue  
4 arose that he can argue to the jury, you could  
5 disbelieve that he had two prior burglaries because  
6 the officer didn't put it on the warrant. So that's  
7 what he was asking, was that he had a factual issue.  
8 In terms of, you know, a proper arrest under the  
9 warrant, proper notification and the indictment  
10 returned, true billed by the grand jury for the same  
11 offense, burglary in the first degree.

12 MR. DEYSACH: And, Your Honor, in candor, the  
13 warrant alleges at night.

14 THE COURT: Okay.

15 MR. DEYSACH: You know, the warrant does, you  
16 know, support a burglary first. I think through  
17 testimony it has been revealed that according to the  
18 victim at least this did not happen at night. What I  
19 am saying is that I elicited testimony from the  
20 officer about his putting that in an affidavit,  
21 something he swore to. I mean, that's what an  
22 affidavit is, something that you swear to. And  
23 nowhere in there does he put that Willis Weary is  
24 convicted of two prior burglaries. So there is that  
25 testimony on the record.

1           And so, you know, I think, you know, that, you  
2           know, the inference there is that there may be some  
3           reasonable doubt as to whether or not Willis Weary  
4           was convicted of two prior burglaries, and I want to  
5           be allowed to argue that, and that's why I ask for  
6           the burglary second instruction.

7           **THE COURT:** Ms. Fent.

8           **MS. FENT:** Still, same thing. The warrant only  
9           provides probable cause to arrest the individual for  
10          any offense, even, well, burglary is if there is any  
11          manner and means. If in reading the witness's  
12          statements we discovered that someone was physically  
13          injured and that was not put on the warrant as  
14          proximate cause for the initial arrest but it does  
15          substantiate a burglary in the first indictment, that  
16          indictment is present and returned, true billed by  
17          the Grand Jury.

18          **MR. DEYSACH:** Your Honor, I wasn't saying  
19          don't -- I wasn't at this point -- I wasn't saying  
20          don't instruct them on burglary first. I was just  
21          asking for the additional lesser-included be  
22          instructed.

23          **THE COURT:** Oh. Oh, I didn't understand you to  
24          say you're asking for lesser-included.

25          **MR. DEYSACH:** Yes, Your Honor. I mean, I did --

1 I think I made the --

2 THE COURT: Would you be entitled to a  
3 lesser-included anyway?

4 MR. DEYSACH: Well, I hope so. I'd love to have  
5 one, you know. And that's what I'm asking for. I  
6 did make the motion during my directed verdict. I  
7 made the argument at directed verdict argument that  
8 maybe you should direct it as burglary second. I  
9 stand by that argument. I'd like to renew it. I  
10 don't want to waive that, you know, that argument or  
11 any grounds that there might be additionally. And so  
12 I want to assert all that, too. But what I started  
13 out doing was asking for a burglary second  
14 instruction.

15 THE COURT: A lesser-included?

16 MR. DEYSACH: A lesser-included.

17 THE COURT: I'm sorry. I missed your --

18 MR. DEYSACH: I apologize, Your Honor, for not  
19 being clear.

20 THE COURT: I missed that. I assumed that was  
21 the only instruction you wanted when you said you  
22 want a burglary second. If you're talking about an  
23 additional instruction of a lesser-included  
24 instruction, let me hear from the State on that.

25 MS. FENT: My understanding of lesser-included



1 is the standard has to be, you know, there is  
2 evidence that if I am guilty I am only guilty of the  
3 lesser-included offense. He did make a legal  
4 argument outside of the presence of the jury  
5 regarding, you know, he was objecting to the  
6 admission of the sentencing sheets because he didn't  
7 believe that they sufficiently showed that they were  
8 two separate prior convictions. But there is no  
9 evidence in front of the jury that they are possibly  
10 not two separate convictions. They're two indictment  
11 numbers. They're two separate warrant numbers.

12 THE COURT: Well, I mean, the standard for  
13 giving a lesser-included offense is that all of the  
14 elements of the greater offense include all the  
15 elements of the lesser offense, right?

16 MS. FENT: Well, that's what makes it a  
17 lesser-included offense but that's not the standard  
18 for submitting it to a jury, whether or not he's  
19 entitled to it. So that's what makes a burglary  
20 second a lesser-included offense of a burglary first,  
21 is that --

22 THE COURT: Well, why would you not give both if  
23 you agree that it's a lesser-included offense?

24 MS. FENT: Well, I --

25 THE COURT: There's got to be evidence that

1 supports it.

2 MS. FENT: Right. That's what I'm saying, is  
3 that there has to be evidence supporting that it's a  
4 burglary second and not a burglary first.

5 THE COURT: Okay. All right. I'm going to  
6 grant your motion, Mr. Deysach. I'll instruct as to  
7 first and second.

8 MR. DEYSACH: My motion wasn't necessarily to  
9 having you instruct on a first but it was to instruct  
10 on the second. We would ask you to reconsider the  
11 argument that I made earlier about I believe that  
12 there is evidence that these two convictions are so  
13 intimately connected because part of the evidence  
14 that's been submitted to the jury is the same offense  
15 dates and consecutive warrant numbers and there has  
16 been no evidence submitted by the prosecution that  
17 they have been --

18 THE COURT: Do you think the State should be  
19 allowed to go into the offenses behind the  
20 convictions? I mean, is that what you're saying?

21 MR. DEYSACH: Well, I mean, they were allowed to  
22 put in --

23 THE COURT: I mean, just as a rule, should they  
24 be allowed to present evidence as to the nature and  
25 extent of the prior convictions?

1           MR. DEYSACH: Well, you allowed it when you said  
2           that they could put in the indictment because that  
3           would be in the indictment.

4           THE COURT: There is certainly more facts in the  
5           indictment than there are in a sentencing sheet. But  
6           in order to establish -- let's assume the indictments  
7           say the same thing as the sentencing sheets do. In  
8           order to establish that they indeed were separate  
9           offenses and all of the factual surroundings of both  
10          offenses, I don't believe I would have allowed that  
11          to start with. In other words, just to prove that  
12          they were second offenses, I think you would have  
13          objected to it.

14          MR. DEYSACH: You know, all that it takes for a  
15          separate offense is basically a separate address, you  
16          know, a separate location. We don't even have that.  
17          I think that would be in the indictment. It's not  
18          here. I think you --

19          THE COURT: I know. But you argued against the  
20          indictment.

21          MS. FENT: For him to plead guilty to burglary  
22          second of the same exact house would be double  
23          jeopardy. He's not pleading guilty under two warrant  
24          numbers, two separate warrant numbers to two separate  
25          indictment numbers. And the reason that the warrant

1 numbers are sequential is because they were DP's.  
2 They weren't issued from an arresting agency. They  
3 were issued from the Grand Jury as a direct  
4 presentment, and that's why the warrant numbers are  
5 sequential. I mean, we're bound by what's in the  
6 record though, Your Honor.

7 *THE COURT:* Well, I've already ruled on this  
8 issue. I'm not going to change my ruling as to that.  
9 You've made a record. You may be right. So let's  
10 get back to the original question. Any other  
11 requested jury instructions? Or would you rather  
12 take it up first thing in the morning?

13 *MR. DEYSACH:* You know, the rest of the  
14 instructions that I was going to ask about, I was  
15 kind of going to see what you were going to instruct  
16 anyway, then see if there was anything that I would  
17 have added or objected to.

18 *THE COURT:* Other than the standard charge,  
19 expert witnesses, statement of the defendant; in  
20 other words, the Miranda charge, failure of the  
21 defendant to testify, first degree and second degree,  
22 I have not considered this hand of one, hand of all  
23 issue. I'm not sure that is appropriate. That's  
24 basically what I've looked at so far. Anything  
25 further from the State?

1           MS. FENT: We are requesting hand of one, hand  
2 of all based on his statement. He says, you know, I  
3 wasn't the one that threw the rock in. I wasn't  
4 actually -- I wasn't going in to steal the property.  
5 I was going in to help the other guy.

6           THE COURT: Would you hand me the statement?

7           MS. FENT: Yes, sir.

8           THE COURT: I haven't really carefully  
9 considered it.

10          MS. FENT: He says I didn't go in for the  
11 purpose of stealing any property. I never touched  
12 any property. I never took any property. I just got  
13 60 bucks from this guy named "Fab". So basically  
14 he's trying to state I didn't go in with the intent  
15 of committing any crime myself. I was aiding "Fab"  
16 to commit the crime. So it is hand of one, hand of  
17 all. He can maybe not have any criminal intent but  
18 he's helping someone else who has the intent to steal  
19 the items.

20          THE COURT: He said he was going in there to get  
21 the DVD player.

22          MS. FENT: Correct. That "Fab" was.

23          THE COURT: He would give me \$60 if I just went  
24 in the broken window and unlocked the door. So I did  
25 it.

1           MS. FENT: And conceivably, the jury could go  
2 back and say, gosh, you know, Willis Weary didn't  
3 have any criminal intent to steal anything but "Fab"  
4 did and he was aiding "Fab" in stealing the property  
5 by opening that door, by going in and opening the  
6 door.

7           THE COURT: I agree. They could. Mr. Deysach.

8           MR. DEYSACH: I mean, I don't think it's  
9 necessary. I think that, you know, I'll leave it in  
10 your discretion. It's nothing I am going to get too  
11 hung up on. You know, I'm not exactly sure -- I  
12 wouldn't mind hearing what the instruction is.

13          THE COURT: All right. I'll give it to you  
14 first thing in the morning. I'll consider it over  
15 the evening break and if I think it's an appropriate  
16 charge and the State has requested it, if there is  
17 evidence to support it, I think I have to give it.  
18 So I'll deal with that in the morning.

19          Anything else that anybody wanted to request?  
20 If there's anything, I'll hear from you again in the  
21 morning.

22          MR. DEYSACH: Okay.

23          THE COURT: All right. Let's take this up at 9.  
24 And the jury is coming back at 9:30. All right.  
25 We'll have the charge conference at 9:00.

1           MR. DEYSACH: Thank you, Your Honor.

2           MS. FENT: Thank you, Your Honor.

3           THE COURT: Stand at ease until 9:00.

4           (Whereupon, the proceedings are concluded for  
5 the day, to be reconvened tomorrow morning)

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1                   Friday, March 2, 2007

2           **THE COURT:** All right. I've considered the  
3 matter of hand of one, hand of all and re-read or  
4 read the statement of the defendant. I feel it's  
5 appropriate to give a hand of one, hand of all charge  
6 and plan to give a burglary second charge in addition  
7 to that. Anything else?

8           **MR. DEYSACH:** Like I said, I -- like you said  
9 yesterday, you had a number of standard charges that  
10 you're giving. I'm not exactly sure what all those  
11 are.

12           **THE COURT:** Well, I'll give you a copy. How  
13 about that? Would you like a copy?

14           **MR. DEYSACH:** Yeah. Then I could just look at  
15 it.

16           **THE COURT:** Mr. Deysach, have you read the  
17 charges?

18           **MR. DEYSACH:** Yes.

19           **THE COURT:** You've been through it?

20           **MS. FENT:** Yes, Your Honor.

21           **THE COURT:** As to the proposed charge, any  
22 objection from the State, or additions?

23           **MS. FENT:** No, Your Honor.

24           **THE COURT:** From the defense?

25           **MR. DEYSACH:** None, Your Honor.



1           THE COURT: All right. Good. As soon as the  
2 jury is here we will proceed.

3           MS. FENT: Judge, I'm sorry. One quick thing.  
4 I did notice that one of the jurors was taking notes.  
5 I think it was the foreperson.

6           THE COURT: It was.

7           MS. FENT: Okay. So I didn't know if you wanted  
8 to --

9           THE COURT: I will caution her.

10          MS. FENT: Okay.

11          (Whereupon, a break is taken)

12          THE COURT: All right. The State ready for the  
13 jury?

14          MS. FENT: We are, Your Honor.

15          THE COURT: Defense ready for the jury?

16          MR. DEYSACH: Yes, Your Honor.

17          THE COURT: Bring the jury, please.

18          (Jury in at 9:45 a.m.)

19          THE COURT: The defense will argue last.

20          THE BAILIFF: Your Honor, the jury is present.

21          THE COURT: Thank you very much. Good morning,  
22 ladies and gentlemen. I hope you had a pleasant  
23 evening. We're now ready to conclude the trial which  
24 as I explained to you yesterday will consist of the  
25 final arguments of counsel and my charge to you on

1 the law of the state of South Carolina as it applies  
2 to this case.

3 Solicitor, you may begin with your closing  
4 remarks.

5 MR. HAYES: Good morning, Ladies and Gentlemen.  
6 I want to tell you that Ms. Fent and I appreciate,  
7 the State appreciates your attention to all the  
8 testimony and all the evidence that's been presented  
9 in this trial. It's ending today but we can't tell  
10 you how much we appreciate you paying attention to  
11 everything that's been said.

12 I just want to preface my argument by saying  
13 that if I say anything during my argument that  
14 contradicts or doesn't mesh with what your memory of  
15 what the testimony and evidence is, I would ask you  
16 to just rely on what your memory is and just rely on  
17 how you remember the testimony and how you remember  
18 the evidence being presented. I'm going to do my  
19 best to present it the way that it was perceived and  
20 the way that it was presented to you, but if I ever  
21 say anything that contradicts that, I just want to  
22 make sure that you all just rely on your memory. And  
23 if Mr. Deysach does the same, I would ask you to also  
24 rely on your memory.

25 Mr. Weary, the defendant, stands in front of

1       you. He is charged with burglary in the first  
2       degree. It's the State's burden to prove that he is  
3       guilty beyond a reasonable doubt. So let's talk  
4       about what burglary in the first degree is.

5               Burglary in the first degree is when a person  
6       enters a dwelling, your home, without consent with  
7       the intent to commit a crime therein. Any of these  
8       factors that I'm about to go through will constitute  
9       this being a burglary in the first degree. Some of  
10      you may think that there is one factor that's there.  
11      Another of you, somebody else might think that  
12      there's a different factors there. You do not have  
13      to be unanimous as to the actual factor as long as  
14      you all unanimously agree that the factors, that one  
15      of these factors is present.

16             So if the person enters the dwelling without  
17      consent with the intent to a commit a crime when's  
18      armed with a deadly weapon, if he causes physical  
19      injury to a person who is not participant in the  
20      crime, if the uses or threatens to use a dangerous  
21      instrument, if he displays what is or appears to be a  
22      knife, pistol, revolver, shotgun, machine gun or  
23      other firearm, if he has a prior record of two or  
24      more convictions for burglary or housebreaking or a  
25      combination thereof, or if he enters the dwelling

1 during the nighttime.

2 So this is generally -- and if we say anything  
3 about the law -- I also want to preface this, if I  
4 say anything about the law that contradicts what the  
5 judge is going to tell you at the end of the case,  
6 he's going to charge you what the law is, I would ask  
7 you to always follow the law that the judge gives  
8 you.

9 We have to prove that the defendant is guilty of  
10 the burglary in the first degree beyond a reasonable  
11 doubt. Proof beyond a reasonable doubt is proof that  
12 leaves you firmly convinced of the defendant's guilt.  
13 There are few things in this world that we know with  
14 absolute certainty, and in criminal cases the law  
15 does not require proof that overcomes every possible  
16 doubt.

17 If based on your consideration of the evidence  
18 you are firmly convinced that the defendant is guilty  
19 of the crime charged, you must find him guilty. If  
20 on the other hand you think there is a real  
21 possibility that he is not guilty, you must give him  
22 the benefit of the doubt and find him not guilty.

23 So when you go back to the jury room and you  
24 deliberate, you're going to be reviewing the  
25 testimony. You're going to be reviewing the evidence

1 that's been presented here during this trial, and you  
2 probably have to figure out, you know, what weight to  
3 give to that testimony, what weight to give to that  
4 evidence. And the credibility of the witnesses'  
5 testimony can be outlined by a few factors that will  
6 help you figure out the credibility of a witness.

7 You can look at the demeanor of the witness  
8 while he was on the stand. You can look at the way  
9 that he answered the questions. Was he forthright or  
10 was he hesitant? Was the testimony of a witness  
11 corroborated? Was there other evidence, was there  
12 other testimony offered during the trial that  
13 supported that person's testimony? And does the  
14 witness that took the stand have a reason to be  
15 biased? Do they have a reason to maybe be less than  
16 truthful? Is there a reason that they would be  
17 prejudiced in some way? Is there some kind of bias?  
18 Is there a reason that would bias them?

19 So let's talk about the events that lead us to  
20 this courtroom today. On August 20th, 2005, at 2532  
21 Crofton Way here in Richland County where Jose'  
22 Gonzalez was residing, he wakes up that morning, 6:00  
23 in the morning he says, goes to work, comes home from  
24 a long day at work, notices that his front door is  
25 open. Well, he made sure that he locked the door.

1 He closed it and locked it behind him when he left  
2 for work that day. When he arrived home the door was  
3 opened.

4 So, he enters the house, looks around, notices  
5 right off that his DVD player and some speakers are  
6 missing, looks around the rest of the house to make  
7 sure that none of his other possessions are missing  
8 at that time, goes into where his bedroom is and sees  
9 that his window had been broken into. The window is  
10 shattered in. He doesn't touch anything. He just  
11 kind of looks around. Not sure what to do, goes and  
12 talks to his apartment complex manager. The manager  
13 and he decided that the right thing to do was call  
14 the police. The police are called.

15 They dispatch Deputy Smith to the scene. Deputy  
16 Smith arrives. He communicates with the defendant.  
17 He figures out, ascertains what's missing from the  
18 house. Yes, it's the DVD player. Yes, it's the  
19 speakers. And there's some cash that's also missing.  
20 Deputy Smith, recognizing that there is maybe some  
21 evidence that can be collected here, calls  
22 Investigator Oates.

23 Investigator Oates arrives, makes contact with  
24 Deputy Smith. They have a conversation about what's  
25 inside and what's going on outside. He starts his

1 investigation from a far away distance. He talked to  
2 you. He explained his process to you about how he  
3 tries to collect evidence. He wants to get a broad  
4 picture and narrow in on the things that he finds.  
5 So he starts in the parking lot. He worked closer to  
6 the window that's been broken in, ultimately leading  
7 to where he finds the blood stain on the miniblinds.  
8 He gets his micro lens film, makes sure he gets a  
9 close view of that.

10 What's he do with the miniblinds, the blood  
11 sample on the miniblinds? He takes a swab with his  
12 distilled water and he swabbed it. He collects it.  
13 Once he has this he puts it into his container that's  
14 inside, puts it in this envelope, seals it, puts it  
15 in a brown bag and puts it in his car for  
16 safekeeping.

17 He goes back in the house. He's not done yet.  
18 He doesn't know what other kind of evidence there may  
19 be to be collected. He takes pictures. He  
20 recognizes the value of all the glass that's been  
21 broken into inside the home. He tries to put some  
22 black powder and some magnetic material on that under  
23 a black light I believe he testified or some kind of  
24 magnetized material to see if the black powder, to  
25 see if anything would come up, give rise.

1           He said that on one of the corners of the piece  
2 of the glass on the window that he found the  
3 fingerprint smudge. He didn't know if would have had  
4 any value but sometimes he testified that there would  
5 be some skin cells on such a smudge. He decided that  
6 he needed to swab that, too. So he takes another  
7 swab, goes through the same procedure as he did with  
8 the blood stain on the miniblind, packages it, put it  
9 in a brown bag, puts it in his car.

10           Once he leaves the scene he testifies that he  
11 goes down to headquarters. He has a black locker for  
12 his evidence. He puts it in there. A few days later  
13 he goes and he turns it into the evidence room where  
14 Tena Goff said that she and two other people have  
15 access to. She drops this off into the evidence  
16 room.

17           It's in the evidence room. You heard John  
18 Barron, the DNA expert, that testified. He says he  
19 comes over, he picks up the samples, takes them to  
20 his lab, analyzes them. Through that analysis,  
21 through his process he is able to develop a DNA  
22 profile, the profile of Willis Weary. He develops a  
23 suspect through the profile.

24           Once he has developed Mr. Weary he calls  
25 Sergeant McRoberts, says, Sergeant McRoberts, we have



1 Willis Weary. I've developed his profile. He's our  
2 suspect. Sergeant McRoberts goes and gets the  
3 warrants, has them served on the defendant, picks the  
4 defendant up, wants to talk to him about his  
5 involvement in this, takes him to headquarters.

6 They sit in his cubicle and he goes through Mr.  
7 Weary's, his rights. And you'll have this when you  
8 go back to the jury room. But I'm briefly going to  
9 go through it with you. It says: "Before we ask you  
10 any questions, you must understand your rights. You  
11 have the right to remain silent. Anything you say  
12 can be used against you in court. You have the right  
13 to talk to a lawyer for advice before we ask you any  
14 questions, and you have the right to a lawyer during  
15 any questioning. If you cannot afford a lawyer one  
16 will be appointed for you. If you decide to answer  
17 the questions now without a lawyer present, you still  
18 have the right to stop answering at any time. You  
19 also have the right to stop answering at any time  
20 until you talk to your lawyer."

21 And every one of these rights is checked. Mr.  
22 Weary signs it. It says on the waiver of rights: "I  
23 have read this statement of my rights and I  
24 understand what my rights are. I am willing to talk  
25 and answer questions. I understand and know what I

1 am doing. No promises have been made to me. No  
2 pressure or coercion of any kind has been used  
3 against me." And he signs again.

4 After they go through his waiver of rights  
5 Mr. McRoberts interviews the defendant. They talk  
6 about what happened at 2532 Crofton Way.  
7 Mr. McRoberts asks him: "What do you know about a  
8 burglary that occurred at 2532 Crofton Way back on  
9 August 2005 in an Hispanic person's apartment?" The  
10 answer: "I was walking in The Chimneys apartments  
11 around 12 a.m. or 1 a.m. over by the Richland  
12 Northeast High School and saw a guy named Darryl. He  
13 also goes by "Fab". I saw what he was doing. I saw  
14 "Fab" throw a brick through this Hispanic dude's  
15 apartment and I stopped to ask "Fab" what he was  
16 doing going into Amigo's house, and he said he was  
17 going in there to get Amigo's DVD player and TV and  
18 stuff. "Fab" told me he would give me \$60 if I just  
19 went in the broken window and unlocked the door. So  
20 I did. Then "Fab" went in the apartment, took the  
21 stuff. He ran nextdoor. "Fab" lived right nextdoor  
22 to Amigo. Amigo's apartment was on the bottom floor  
23 and "Fab" lived right across the hall."

24 He says: "I knew Amigo from the neighborhood.  
25 I used to bring girls over to his apartment for him

1           that he liked."

2           "Q     Did you keep any of the items were taken  
3           out of Amigo's apartment?"

4           The answer that the defendant gave was: "No.  
5           "Fab" kept everything. All I got was \$60. "Fab"  
6           kept everything because he was trying to get stuff  
7           for the house. He didn't have any furniture."

8           He asked him how he knew "Fab". He knows "Fab"  
9           from the car that he drives. Is there anything else  
10          that he wanted to add to the statement. He said no.  
11          And he signed at the bottom of every page, some pages  
12          twice that this is his statement.

13          He says in the statement that he went in the  
14          house. He went in through the broken window so he  
15          could unlock the door so that "Fab" could come in and  
16          take his things.

17          And I know Ms. Fent talked to you about hand of  
18          one, hand of all at the beginning of the trial. And  
19          the judge is going to charge you on what hand of one,  
20          hand of all is. And I just want to briefly go  
21          through this with you as we're talking about the  
22          statement where he talks about how he went into the  
23          window to open the door for "Fab" because "Fab" told  
24          him he wanted to go in and take Mr. Gonzalez's  
25          things.

1           Hand of one, hand of all says if a crime is  
2 committed by two or more people who are acting  
3 together and committing a crime, the act of one is  
4 the act of all. A person who joins with another to  
5 accomplish an illegal purpose is criminally  
6 responsible for everything done by the other person  
7 which occurs as a natural consequence of the acts  
8 done in carrying out the common plan and purpose.

9           It says a principal in a crime is one who either  
10 actually commits the crime or who is present aiding,  
11 abetting or assisting in committing the crime.  
12 Aiding, abetting or assisting in committing the  
13 actual crime. If A person does an act in the  
14 presence and with the assistance of another, the act  
15 is done by both.

16           Where two or more acting with a common plan or  
17 intent are present at the commission of a crime, it  
18 does not matter who actually commits the crime. All  
19 are guilty. The hand of one is the hand of all.

20           So when the defendant knows that he is going in  
21 that window to go through the apartment to unlock the  
22 door for "Fab" because "Fab" wants to come in there  
23 and steal things, the act of one is the act of all.  
24 He knows that "Fab" has the intent. He's in there  
25 assisting, aiding and abetting "Fab"'s accomplishment

1 of stealing Mr. Gonzalez's things.

2 After obtaining the statement from the defendant  
3 Sergeant McRoberts also asked the defendant to give a  
4 sample of his DNA so that they can try to match Mr.  
5 Weary's DNA against the DNA on the miniblind that was  
6 obtained by Investigator Oates. And it says: "I,  
7 Willis Weary, do hereby consent to the search of my  
8 person without a search warrant by Sergeant  
9 McRoberts, investigator for Richland County Sheriff's  
10 Department. This investigator is authorized by me to  
11 take from my person any materials or other property  
12 which he or she may desire. This search shall be  
13 made of my person for the purpose of obtaining oral  
14 swabs of DNA evidence. I am aware that any evidence  
15 obtained as a result of this search can be used  
16 against me in a court of law. This written  
17 permission is given by me to the above-named  
18 investigator freely, voluntarily, without threats,  
19 promises of any kind." And Mr. Weary signs this at  
20 the bottom.

21 So having obtained the consent for the DNA,  
22 Sergeant McRoberts takes a swab, skin cells on the  
23 inside. They have talked about how he rubbed on  
24 them. There's plenty of skin cells in the mouth.  
25 Mr. McRoberts obtains this, puts it in this box, puts

1 it in this bag, takes it down to the evidence room,  
2 submits it to Tena Goff at the evidence room. A  
3 couple of days later DNA expert, again John Barron,  
4 comes in, picks up the sample obtained by Sergeant  
5 McRoberts, takes it down to his lab, analyzes it.

6 What's he find? He finds an exact match of Mr.  
7 Weary's DNA. And what is the probability of finding  
8 that exact match? 1 in 11 quadrillion. I've tried  
9 for a couple of days thinking about how to bring 11  
10 quadrillion. This number is so astronomical that you  
11 take the earth's population which is approximately 6  
12 billion according to DNA expert and census expert  
13 John Barron, 6 billion; you multiply the earth's  
14 population by over a trillion before you come up with  
15 a number like this. 1 in 11 quadrillion.

16 So sometime later there is another sample. They  
17 want to make sure that they didn't make a mistake.  
18 Mr. Barron talked about the techniques and the double  
19 check, you know, the check and balance that they want  
20 to make sure that -- you know, DNA evidence is a very  
21 serious thing. So they want to make sure. They  
22 double check each other's work, make sure the entries  
23 were right. They want to make sure that this is what  
24 it is.

25 So they come back sometime in June of 2006.

1 Sergeant McRoberts obtains another sample from the  
2 defendant, does the same thing, takes it down to Tena  
3 Goff at the evidence room, submits it to her.  
4 Sometime later John Barron again comes in, picks up  
5 this DNA sample, takes it back to his lab, processes  
6 it again. And what does he find out? That they were  
7 right the first time and that the 1 in 11 quadrillion  
8 is where we're at.

9 Some of the pictures of the interior of the home  
10 which you all will have back in the jury room with  
11 you that don't necessarily show the broken glass but  
12 just kind of show the layout, show the cement brick  
13 that was used to break in the window. And  
14 Investigator Oates went through with you his attempt  
15 to try to, you know, obtain some kind of evidence off  
16 of this brick and that he wasn't able to do it  
17 because it was coarse and basically cement isn't  
18 going to yield the kind of latent fingerprints that  
19 he needs or something, that it just didn't have what  
20 he was looking for.

21 But if you notice where the brick is in this  
22 photograph, it's not in the bedroom where the brick  
23 went through the window. And the State would submit  
24 to you that the person who went through the window  
25 picked up that brick when they got inside because

1 they didn't know what they were going to find and  
2 that this was going to be their weapon. If someone  
3 came around the corner, if someone came out of a  
4 room, if something unexpected happened, they wanted  
5 to be armed; they wanted to be ready.

6 And when they finally got to a place that they  
7 felt secure, like there was nobody in the house and  
8 that they were going to be able to get out, they  
9 dropped it. But at some point in time they were in  
10 the house with this brick because the brick went  
11 through the window in the bedroom, and here it is out  
12 what looks to be near the kitchen down this hallway.  
13 So whoever went in there picked this up and wanted to  
14 make sure that they were armed.

15 And the State submits to you that that person is  
16 the defendant, Willis Weary, based on 1 in 11  
17 quadrillion, based on his own admission having  
18 entered the house to assist "Fab" coming in there to  
19 steal his things.

20 Now, we talked to Investigator McRoberts about  
21 "Fab". And they processed this crime scene. They  
22 went through and they tried to come up with every  
23 piece of evidence that they could at the scene. The  
24 only evidence that they found was that that  
25 implicated Willis Weary; nothing that implicated



1 "Fab". There is no evidence to support that "Fab"  
2 was in the house. No forensic evidence, not like the  
3 forensic evidence that there is to support that  
4 Willis Weary was there. And not only do you have the  
5 forensic evidence, but he told you, yeah, I went  
6 through the window. I went to open the door.

7 Now, Willis Weary says that he went in sometime  
8 in the nighttime. And that's the reason when the  
9 judge read to you the indictment at the beginning of  
10 the case that it said in the nighttime and it also  
11 said because the defendant had been convicted of two  
12 or more prior burglaries. Okay? The indictment  
13 reads that he went in through the nighttime based on  
14 the defendant's own confession.

15 Now, the victim in the case, Mr. Gonzalez, says,  
16 well, probably, you know, I left at 6 and I came back  
17 at 4. You know, it probably happened while I was  
18 gone. So, you know, either way, you don't have to be  
19 sure if he came in through the night or if he has two  
20 or more prior burglaries.

21 Back in the jury room you're going to be able to  
22 look at these. These are sentencing sheets. These  
23 sentencing sheets indicate that Mr. Weary has been  
24 convicted of two prior burglaries. You can see that  
25 there's an indictment number. The judge read to you

1 an indictment number at the beginning of this case.  
2 On every sentencing sheet there will be an indictment  
3 number. There'll be a warrant number. They are two  
4 separate indictment numbers. They are two separate  
5 warrant numbers. They are two separate convictions  
6 for prior burglaries.

7 Mr. Deysach told you at the beginning of this  
8 case that to convict his client would be a supreme  
9 injustice. The State would submit to you that  
10 ignoring a number like this, 1 in 11 quadrillion, is  
11 a supreme injustice.

12 The victim in the case, Mr. Gonzalez, told you  
13 that Mr. Weary had never been in his apartment and  
14 that at no time did he ever give Mr. Weary permission  
15 to enter his premises, his dwelling. So Mr. Weary  
16 entered the dwelling without consent with intent to  
17 commit a crime. He's been convicted of two prior  
18 burglaries. And it's the hand of one, the hand of  
19 all if you believe his statement about "Fab".

20 The State would ask you to return a guilty  
21 verdict as to the charge of burglary in the first  
22 degree against Willis Weary. Thank you.

23 **THE COURT:** Mr. Hayes.

24 **MR. HAYES:** Yes, sir.

25 **THE COURT:** Remove the diagram. Mr. Deysach.

1           **MR. DEYSACH:** Thank you, Your Honor. I want to  
2 thank you again for being here, thank you for  
3 listening and doing I guess what your oath says and  
4 what I asked you to do in the beginning; that is,  
5 listen to what came out of this box.

6           The judge read you the indictment at the  
7 beginning of this case, and it has an allegation of  
8 either at night or with two prior burglaries. And I  
9 guess that's why the indictment isn't evidence,  
10 because I think even the Solicitor's Office can agree  
11 that to allege that this happened at night would have  
12 been a mistake, was a mistake. The victim got up  
13 here, said it was daytime when I left for work, it  
14 was daytime when I got back from work and somewhere  
15 in that time is when the burglary occurred. So we  
16 know that the allegation that the State started with  
17 that this may have occurred at night is not something  
18 that they are sticking to.

19           Instead they've added the allegation of two  
20 prior burglaries as if they're trying to -- and I  
21 even heard a third allegation maybe that the person  
22 who committed the burglary was armed. And so it  
23 seems like they're throwing whatever they can against  
24 the wall to get it to stick and see what sticks and  
25 see what the jury will go for. I'm asking you not to

1 go for that type of a strategy from the Solicitor's  
2 Office because it's clear that from the beginning  
3 their theory of this case has evolved.

4 Mr. McRoberts, Sergeant McRoberts, you know, he  
5 said that when he signed the affidavit, when he swore  
6 out the warrant, the document that basically  
7 initiates the process, that he alleged that it  
8 happened at nighttime. He didn't allege anything  
9 about it happening with two prior convictions of  
10 burglary.

11 I mean, Sergeant McRoberts works for the  
12 Richland County Sheriff's Department. It would be --  
13 I think your common sense tells you that he is going  
14 to have plenty of access to any criminal history that  
15 he would be able to find on Willis Weary. And yet,  
16 that is nowhere appearing in the affidavit that he  
17 swears out for the warrants that he testified that it  
18 happened at night. And so I guess that brings me to  
19 the interrogation of my client.

20 Testimony was he was in jail, picked up by  
21 Sergeant McRoberts, shackled, carried in his car,  
22 just him and Sergeant McRoberts there, taken to the  
23 middle of the police station. And although there is  
24 other police around, really it's him and Sergeant  
25 McRoberts present for the conversation that they have

1. about the case. There may have been witnesses as to  
2 his signature here, witnesses as to his signature  
3 there. But really no other witness besides Sergeant  
4 McRoberts to the conversation that's really at the  
5 heart of this case.

6 You know, the big issue when you go back there  
7 isn't, well, you know, did he really sign right here?  
8 It's what he said. It's what he said in his  
9 statement. And so those witnesses who kind of sign  
10 alongside my client's signature, they're not really  
11 witnesses to what he said. I just want to make that  
12 clear, that the only witness who is there is Sergeant  
13 McRoberts.

14 And he elicits, he extracts during the  
15 interrogation from my client not a version of events  
16 that we know to be true. He extracts a statement  
17 consistent with what he thinks is true. So, you  
18 know, we don't have an audiotape of their  
19 conversation. We don't have a videotape of their  
20 conversation. The same building, the same building  
21 where they have the computers and the DNA machines  
22 and, you know, high tech criminal crime scene  
23 investigation machines, and yet Sergeant McRoberts  
24 tells you, no, we do not audiotape, we do not  
25 videotape. My boss sets a policy, says we do not

1 videotape, we do not audiotape.

2 I'm going to ask you to ask yourselves, is that  
3 for the protection of a suspect, or is that for the  
4 protection of the police? If something happened  
5 during that conversation that would have rendered  
6 this statement involuntary, we would have no way of  
7 knowing it, because it was just Sergeant McRoberts.  
8 We just have to trust him. We don't have any other  
9 corroborating witness. That's what Mr. Hayes told  
10 you about credibility. Is there anything to  
11 corroborate? That's one factor to consider. Nobody  
12 to corroborate the voluntariness of what went on  
13 between Sergeant McRoberts and my client when they  
14 were alone in this cubicle.

15 He simply -- he's handcuffed the whole time and  
16 simply unshackled to sign his name here and here, you  
17 know, on the consent, on the statement. And then  
18 when he is done with that, when he's done swabbing  
19 his mouth, shackled back. The only time his hand is  
20 free, this is my understanding of Sergeant  
21 McRoberts's policy, the only time his hand is free is  
22 to sign the incriminating statement. If he's not  
23 signing any incriminating statement or not giving any  
24 consent to search himself, he's shackled.

25 And I submit to you that this is not -- this

1 statement is not voluntary. The judge is going to  
2 instruct you that if you're going to consider this  
3 statement, you've got to find that it is voluntary  
4 beyond a reasonable doubt. And I don't think the  
5 State has carried their burden as to that, not one  
6 bit.

7 No tape, no record of any Constitutional  
8 violations. And that is how I understand the  
9 Sheriff's Department policy. Maybe if there was a  
10 tape, you know, we could understand why the statement  
11 that is extracted doesn't comport with what the  
12 witness's testimony was, you know, why the burglary  
13 that's described in the statement is different from  
14 the burglary that was described by the testimony.

15 We would know for sure if the defendant ever  
16 asked for an attorney from the time he is picked up  
17 from the police from the jail and taken to the police  
18 station and any time during the interrogation. We  
19 would know for sure whether or not he had ever asked  
20 for an attorney. No tape. We have no reason to know  
21 that. That's why I submit to you that this  
22 statement, the State certainly has not carried their  
23 burden of proving to you that this statement was  
24 voluntary beyond a reasonable doubt.

25 And so, you know, there is the credibility, you

1 know. The judge is going to tell you if they don't  
2 prove that, that you cannot consider that statement.  
3 If they don't prove that it's voluntary, you're not  
4 to consider that statement.

5 The State, you know, I could practically feel,  
6 you know, the pride from Scientist Barron; and, you  
7 know, and how kind of sure they are that they have  
8 won this case when they write that number, 1 in 11  
9 quadrillion. And they say -- when he talks about it  
10 in his statement, he says -- I'm talking about  
11 Mr. Hayes -- he says 1 in 11 quadrillion people.

12 Now, when I heard the scientist testify, he said  
13 1 in 11 quadrillion in the black community. That is  
14 what his testimony was as I recall it. Again, he  
15 gave you the number. If you remember it differently,  
16 remember it your way. But I'm telling you that it's  
17 my position that's what was said.

18 He doesn't say anything about the probability of  
19 that profile in the white community, in the Hispanic  
20 community, any of that. None of that evidence was  
21 testified to. You know, I'm not a scientist. And I  
22 don't think anybody else here is a scientist. I  
23 don't think anybody here has the same training as  
24 Mr. Barron did. You know, I'm willing to admit that.  
25 If we're going to have a discussion about DNA science



1 and the genetic code, I'm really, you know, I'm not  
2 on the same footing as Mr. Barron.

3 But just because he seems so sure about his  
4 science doesn't mean that you should. He works for  
5 the Sheriff's Department. His office is in the same  
6 building where the confession is extracted. You  
7 know, he said he was an expert 16 times. He  
8 certainly didn't tell you about any times that he was  
9 an expert for the defense. I neglected to ask him.  
10 I wish I had. But I didn't, you know. A mistake,  
11 you know, I wish I could go back and fix.

12 They test 16 genes. They test 16 genes out of  
13 25,000 or 60,000. And he gave you a reason why they  
14 picked those certain genes. But I do want to point  
15 out that we share, me and you share 99.9 percent of  
16 the same DNA, you know. 25 and 60,000 genes, you  
17 know, and they only picked 16 to test. Okay.

18 They test his DNA twice. They just do the same  
19 16 genes. Of course they're going to come up with  
20 the same result. Why are they not going to check a  
21 couple of different genes? They've got the samples  
22 in their lab. Of course you're going to get the same  
23 results with the same 16 genes.

24 I think he testified that -- he testified that,  
25 hey, we can't -- there's no reason to test all

1 25,000. I'm an expert on the census on the  
2 population and everything like that. But he did say  
3 that, you know, in Europe they test different genes.  
4 It's not these same 16. These are not the only 16  
5 genes that can be tested.

6 And if one of those other genes doesn't match my  
7 client, it's not the same person. That 1 in 11  
8 quadrillion or whatever number he wants to throw out  
9 there automatically becomes zero. And that could  
10 just be because of one gene, one gene that's  
11 different.

12 So I want to caution you about blindly  
13 following -- you know, DNA -- a lot of publicity. I  
14 mean, DNA evidence, it almost sounds like it's  
15 foolproof. But when you actually get under the  
16 surface and you understand they're not testing  
17 somebody's entire genetic code; they're testing a  
18 small portion of it, and then they test, like he  
19 said, just 16 genes, plug the results into a  
20 computer, use a formula that, you know, I'm sure  
21 people who have worked on that formula a long time  
22 came up with. But how would you know it's right when  
23 you come up with a number that's more people than  
24 even exist? How could you know if the formula is  
25 wrong? You couldn't. You couldn't ever test that

1 formula.

2 So I'm asking you to forget about 1 in 11  
3 quadrillion, you know, that that's the crutch that  
4 the State wants to rest their case on. But when you  
5 realize that, hey, this isn't a match of a complete  
6 genetic code, this is just 16 genes that match up,  
7 this is -- we could have tested others; one more  
8 result from a different gene or location or whatever  
9 would have changed the whole result, to not just take  
10 that DNA as the be all, end all.

11 And, I mean, I wouldn't trust a number like 11  
12 quadrillion.. It's got too many zeroes. I mean, what  
13 are the chances, what are the chances that a true  
14 result would be such perfect number? So I ask you to  
15 just forget about that number. That number doesn't  
16 make any sense. And the way they get it is  
17 untestable. I don't think it -- it can't possibly be  
18 scientifically proven. And so I ask you to disregard  
19 it.

20 Now, I told you that Willis Weary was an  
21 innocent man, and he is. I've sat here during the  
22 trial and, you know, I've watched the evidence. And  
23 I feel like I would be -- I would be remiss if I  
24 didn't attack every element that the State had to try  
25 to prove. That a burglary occurred, I think we can

1 agree on that. That somebody went into Mr.  
2 Gonzalez's home. And the question is whether or not  
3 that person was Willis Weary and whether -- if it  
4 was, whether that burglary would have been a burglary  
5 first.

6 I mean, I'm -- I would submit that although, you  
7 know, the State is relying on the 1 in 11 quadrillion  
8 and the statement, they have not proved that beyond a  
9 reasonable doubt at all, that he is the person who  
10 went in there.

11 And I don't want you to think that just because  
12 I'm talking about the difference between a burglary  
13 second and a burglary first that I'm in some way  
14 admitting to you that I think or that it's my  
15 position, that it's the defense position at all that  
16 Willis Weary was indeed that person. But I just feel  
17 I would be remiss if I didn't -- I wouldn't be doing  
18 my job if I didn't at least talk about it.

19 As I said before, the theory of burglary first  
20 as opposed to, say, burglary second degree, seems to  
21 have evolved throughout this process. It started on  
22 the warrant as a nighttime burglary. Well, you know,  
23 we find out that that's not possible.

24 We find out, you know, that since that's not  
25 possible, the State comes with another theory: Two

1 prior convictions. And that's one of the theories  
2 stated on the indictment. And then we hear at  
3 closing, you know, maybe the person was armed also.  
4 No evidence as to what happened within that home, no  
5 fingerprints of course that have anything to do with  
6 my client's hands on that brick. No -- I mean, they  
7 didn't even bother to do the doorknob, which, you  
8 know, I think the officer was a little bit miffed at  
9 that. He's like, how did I miss the doorknob? But,  
10 you know, in fact they didn't.

11 So, my point is, is simply when I started that  
12 line was just that there has been some evolution. I  
13 made the point earlier that if Sergeant McRoberts has  
14 access to criminal histories, he is the one who  
15 swears out the warrant, doesn't include any prior  
16 convictions for burglary on that warrant. The  
17 nighttime theory collapses, crumbles. And then you  
18 hear from the judge that he's being accused of having  
19 two prior burglaries.

20 And the only, the only evidence that the State  
21 has given you to prove this are these two pieces of  
22 paper, kind of faded copies, that show that somebody  
23 named Willis Weary was convicted of a second degree  
24 burglary. They do not put in any evidence, anyone to  
25 testify, hey, you know, I was around when Willis

1       Weary went before the judge, that that's the same  
2       Willis Weary. They haven't put in any identifying  
3       information as to this Willis Weary, whether or not  
4       his birthday is this, his birthday is that, his  
5       address, his age, his Social Security number. We  
6       have no idea what this Willis Weary's Social Security  
7       number is. All we have is just his name on these, is  
8       somebody named Willis Weary's name on this sentencing  
9       sheet.

10           And if you look at them, you've got the  
11       signature of what Officer McRoberts testified as this  
12       Willis Weary. He pointed him out. Yeah, that's him,  
13       striped shirt. His signature on this, and then  
14       you've got the signature of someone named Willis  
15       Weary on this. They don't match. They look like  
16       different signatures. This person had good  
17       penmanship. This person has bad penmanship. You  
18       don't have to be a handwriting expert. And it's  
19       consistent. It's consistent. All these things from  
20       January 23rd, '06 are consistent. Here is another  
21       one, January 23rd, '06.

22           The Willis Weary from these pieces of paper,  
23       these two signatures are consistent. And all the  
24       State had to do would be to call somebody, to call  
25       anybody who could have possibly witnessed it. If it

1 so-called happened in Richland County, if it happened  
2 in Richland County, it would be easy. You have the  
3 names of the people who are present: The solicitor,  
4 the attorney for the defendant. They've got the  
5 subpoena power. They could call those people. You  
6 know, if those people aren't around, you know, they  
7 certainly haven't put up any evidence to demonstrate  
8 to you that they're not, you know. They have the  
9 burden of proof in this case.

10 I talked to you about the seriousness of the  
11 subject matter when we got started, you know. It's  
12 not a civil case. This isn't about somebody writing  
13 a check. This is about the State proving their case  
14 beyond a reasonable doubt, not just -- every element,  
15 you know.

16 So even if you believe, even if you believe that  
17 Willis Weary, this Willis Weary was the person who  
18 went into that home, the State still -- that's not  
19 all they have to prove beyond a reasonable doubt.  
20 They have to prove some sort of aggravating factor to  
21 make this a burglary first from a burglary second.  
22 And I'm submitting to you they have not proved their  
23 case. They haven't proved to you that his statement  
24 was voluntary beyond a reasonable doubt.

25 Mr. Barron, the only person to come up here and

1 tell you that his DNA matches, you know, nobody to  
2 come back behind him and say, oh, yeah, he's right.  
3 And they certainly haven't proved beyond a reasonable  
4 doubt that there's any aggravating factor here that  
5 says that whatever the burglary that did happen was a  
6 burglary. You know, the burglary that did happen was  
7 a burglary second, whether Willis Weary committed it  
8 or somebody else committed it during the daytime.  
9 And they have not proved any type of aggravating  
10 factor.

11 So I don't want to you buy the State's evolving  
12 theory that went from nighttime to convictions, to  
13 possibly armed, which I don't think you can consider  
14 that as an aggravating factor because it's not in the  
15 indictment, you know, because it's such a new theory.  
16 But I ask you to consider all that.

17 And I thank you for listening to everything that  
18 came before. I thank you for listening to me. You  
19 know, all I can do right now is just reinforce to you  
20 that this burden of beyond a reasonable doubt is set  
21 for a reason. And I mentioned that reason before at  
22 the beginning, was not so -- the reason is, is so we  
23 don't make a mistake, that we don't punish somebody  
24 for something they didn't do, that we don't carry out  
25 a supreme injustice. The injustice would be justice



1       supreme if you convicted somebody of a burglary first  
2       who really committed a burglary second. Well, what  
3       if you convicted somebody of a burglary that they  
4       didn't even do? So that's just the point I want to  
5       drive home.

6               I want to again thank you for listening. I'm  
7       going to ask you to go back into that jury room,  
8       listen to everything I've said, listen to everything  
9       that's come out of the witness box, and return a  
10      verdict of not guilty. Thank you.

11             **THE COURT:** All right, Ladies and Gentlemen.  
12      You've now heard all the evidence and arguments of  
13      the State and the defendant, and I will try to -- I  
14      will explain the law of the state of South Carolina  
15      that applies to this case.

16             Now, you've heard -- let me just say something  
17      at the beginning of my remarks. You've heard counsel  
18      talk about burglary in the first degree and burglary  
19      in the second degree. And I've not explained that to  
20      you to this point. But they are lesser -- obviously  
21      one a lesser degree of the other. One is what is  
22      known as a lesser-included offense.

23             And a jury, any time there is what is determined  
24      to be by law a lesser-included offense, the jury can  
25      consider that. So when you retire to your jury room

1 and I give you a verdict form, you can consider both  
2 a first and a second degree burglary even though the  
3 indictment only charges first degree burglary which  
4 the State must prove beyond a reasonable doubt, but  
5 they also -- even for you to find burglary in the  
6 second degree, they will have to prove it beyond a  
7 reasonable doubt. And I'm going to give you a  
8 definition of each of them in just a minute. But I  
9 wanted you to as a preface to my remarks for you to  
10 understand that. Because some of you may be  
11 thinking, well, what's he talking about, what are  
12 these attorneys talking about a burglary in the  
13 second degree, a burglary in the first degree.  
14 Obviously burglary in the first degree is a much more  
15 serious charge.

16 Under our Constitution and code of laws only  
17 you, the jury, can make the findings of fact in this  
18 case. I am not permitted to indicate to you how I  
19 may feel about the facts. If I have done or said  
20 anything in this case which would indicate to you  
21 that I have an opinion regarding the facts of the  
22 case, then you should disregard that notion. This  
23 jury must independently weigh the evidence presented  
24 at the trial and render a verdict based on the  
25 evidence as you have seen and heard it.

1 And under the same Constitution and laws which  
2 designate and make you the finders of the fact also  
3 make me the instructor of the law. If you have some  
4 idea as to what the law is or what the law ought to  
5 be and it does not agree what I now tell you the law  
6 is, you are obligated under the oath that you've  
7 taken to abandon that preconception on your part and  
8 accept and apply the law precisely as I now state it  
9 to you.

10 As you know, the indictment charges the  
11 defendant with burglary in the first degree. I  
12 remind you that the fact that the defendant was  
13 arrested, charged and indicted in this case is not  
14 evidence in this case, cannot be considered by you as  
15 evidence in this case and does not create any  
16 presumption or inference of guilt. This document is  
17 simply the formal legal instrument by which the case  
18 is brought into court.

19 The defendant has pled not guilty to this  
20 indictment, and that plea puts the burden on the  
21 State to prove the defendant guilty. A person  
22 charged with committing a criminal offense in South  
23 Carolina is never required to prove himself or  
24 herself innocent. This is an important rule of law  
25 in this country, that the defendant in a criminal

1 trial will always be presumed to be innocent of the  
2 charge, of the crime for which the defendant has been  
3 initially charged unless guilt has been proven to you  
4 by evidence satisfying you of that guilt beyond a  
5 reasonable doubt.

6 This presumption of innocence does not end when  
7 you begin your deliberations, but it accompanies the  
8 defendant when you leave this courtroom and into the  
9 jury room, throughout the trial until you reach a  
10 verdict of guilt based on evidence satisfying you of  
11 that guilt beyond a reasonable doubt.

12 The presumption of innocence in other words is  
13 not a mere legal theory. It's not just a legal  
14 phrase. It's a substantial right to which every  
15 defendant is entitled. This presumption of innocence  
16 accompanies the defendant from the time he or she is  
17 charged throughout the trial until you reach a  
18 verdict of guilt based on evidence satisfying you of  
19 that guilt beyond a reasonable doubt.

20 Well, what is a reasonable doubt? I said the  
21 State has the burden of proving the defendant guilty  
22 beyond a reasonable doubt. Some of you may have  
23 served as jurors in civil cases where you were told  
24 it's only necessary to prove that a fact is more  
25 likely true than not true, such as by the greater

1 weight or preponderance of the evidence. In criminal  
2 cases, however, the State's proof must be more  
3 powerful than that. It must be beyond a reasonable  
4 doubt.

5 Proof beyond a reasonable doubt is proof that  
6 leaves you firmly convinced of the defendant's guilt.  
7 There are very few things in this world we know with  
8 absolute certainty, and in criminal cases the law  
9 does not require proof that overcomes every possible  
10 doubt. If based on your consideration of the  
11 evidence you are firmly convinced that the defendant  
12 is guilty of the crime charged, you must find the  
13 defendant guilty.

14 If on the other hand you think there is a real  
15 possibility that the defendant is not guilty, you  
16 must give the defendant the benefit of the doubt and  
17 find him not guilty.

18 Now, there are two types of evidence which are  
19 generally presented during a trial: Direct evidence  
20 and circumstantial evidence. We've had both in this  
21 case. Direct evidence is the testimony of a person  
22 who claims to have actual knowledge of a fact, such  
23 as an eye witness. It's evidence which immediately  
24 establishes the main fact to be proved.

25 Circumstantial evidence on the other hand is

1 proof of a chain of facts or circumstances indicating  
2 the existence of a fact. It's evidence which  
3 immediately establishes collateral facts from which  
4 the main fact may be inferred. Circumstantial  
5 evidence is based on inference in other words and not  
6 on personal knowledge or observation.

7 But you should weigh all of the evidence in the  
8 case; and after weighing all the evidence, if you are  
9 not convinced of the guilt of the defendant beyond a  
10 reasonable doubt, you must find the defendant not  
11 guilty.

12 Now, necessarily, you must determine the  
13 credibility of the witnesses who have testified in  
14 this case. Credibility simply means believability.  
15 It becomes your duty as jurors to analyze and  
16 evaluate the evidence and determine which evidence  
17 convinces you of its truth.

18 In determining the believability of the  
19 witnesses who have testified in this case, you may  
20 believe one witness over several witnesses or several  
21 witnesses over one witness. You may believe a part  
22 of the testimony of a witness and reject the  
23 remaining part of the testimony of the same witness.  
24 You may in other words believe the witness's  
25 testimony in its entirety or reject the witness's

1 testimony in its entirety.

2 You may consider whether any witness has  
3 exhibited to you any interest, bias, prejudice or  
4 other motive in this case. You may also consider the  
5 appearance and manner of the witness while on the  
6 witness stand.

7 Now, normally a witness or a person cannot give  
8 what's known as opinion testimony. In other words,  
9 they can't offer their opinion when speaking to a  
10 jury. They must testify either about what they saw,  
11 heard or sensed or something of that nature.

12 However, there is an exception to this rule, and  
13 that's when someone is qualified by education or  
14 experience, they are permitted to give an opinion in  
15 certain areas if the Court qualifies them in that  
16 way.

17 The witness that we have heard in this case, I  
18 think it was Mr. Barron, was qualified by me as an  
19 expert in forensic DNA analysis and population  
20 statistics and was able to give an opinion because of  
21 that designation. Now, that does not mean that you  
22 must accept his opinion, but it is evidence for you  
23 to use in any way that you see fit.

24 Now, in this case the defendant has -- or the  
25 State has presented a statement made by the

1 defendant. And it's been admitted into evidence.  
2 While I have determined that that statement was  
3 admissible, I instruct you that you make the ultimate  
4 decision whether or not the defendant made that  
5 statement. And if the defendant did make that  
6 statement, you must determine whether the statement  
7 was made by the defendant voluntarily and of his own  
8 free will. This means that the statement was not  
9 caused by pressure, fear or force, threats, coercion  
10 or intimidation or by hope or a promise of leniency  
11 or reward.

12 In determining whether the statement was  
13 voluntary you should consider the characteristics of  
14 the defendant and the details of the questioning.  
15 Some of the factors you must consider are the age of  
16 the defendant, the defendant's education or lack  
17 thereof, his mental abilities, his IQ or  
18 intelligence, the defendant's background and  
19 environment, the place and length of the detention,  
20 the nature of the questioning, the advice or the lack  
21 thereof to the defendant of his Constitutional  
22 rights, including but not limited to the right to  
23 remain silent, that any statement could be used  
24 against him in a court of law, the right to have a  
25 lawyer present, that if he could not afford a lawyer,



1 a lawyer would be appointed to represent him at no  
2 cost, and that he could stop making the statement at  
3 any time.

4 You must consider all of the surrounding  
5 circumstances before you give any weight to the  
6 alleged statement. The State again has the burden of  
7 proving beyond a reasonable doubt that the alleged  
8 statement was voluntary. If you determine it was,  
9 you may give the statement any further consideration  
10 that you deem proper. You must decide what weight,  
11 if any, should be given to the alleged statement. If  
12 you determine the statement was not freely and  
13 voluntarily given, you should not consider the  
14 statement at all.

15 Now, I instruct you, and this is a very  
16 important point of law, the fact that the defendant  
17 did not testify is not a factor to be considered by  
18 you in any way in your deliberation and in your  
19 consideration on the question of guilt or innocence.  
20 It must not be considered by you in any manner  
21 whatsoever.

22 As I have said before, a defendant has the  
23 Constitutional right to remain silent, and the  
24 assertion of this right must not be considered by you  
25 in your deliberations. I repeat, under your oath,

1 you are to draw no conclusion whatsoever from the  
2 fact that the defendant in this case did not testify.  
3 The fact that this defendant did not testify should  
4 not even be discussed by you in the jury room.

5 The burden of proof, as I have stated, is on the  
6 State. The defendant is not and never is required to  
7 prove his or her innocence. The burden of proof  
8 remains on the State to prove guilt beyond a  
9 reasonable doubt.

10 Now, in order to establish criminal liability,  
11 criminal intent is required. For example, the mental  
12 state required to be proven by the State for some  
13 particular crime might be a purpose or an intent to  
14 do something or knowledge of certain factors.  
15 Criminal intent must be proven by the State beyond a  
16 reasonable doubt.

17 Criminal intent is always a matter that must be  
18 determined by the jury from the circumstances  
19 surrounding the situation. There is no way to prove  
20 intent to a mathematical certainty. There is no way  
21 medical science can dissect a person's brain and  
22 determine what the person had in mind. So the law  
23 says that criminal intent may be inferred from the  
24 circumstances shown to have existed at the time and  
25 place. And this is how you make the determination of

1           whether or not the element requiring intent was  
2           present.

3           It's not necessary to establish intent by direct  
4           and positive evidence, but intent may be established  
5           by inference in the same way as any other fact, by  
6           taking into consideration the acts of the parties and  
7           all the facts and circumstances of the case.  
8           Criminal intent, in other words, is a mental state, a  
9           conscious wrongdoing. It's up to you to determine  
10          what the defendant intended to do based on the  
11          circumstances shown to have existed.

12          Now, as I've said, the defendant is charged with  
13          first degree burglary. The State must prove beyond a  
14          reasonable doubt that the defendant entered a  
15          dwelling without consent. A dwelling is any building  
16          or portion of a building in which a person ordinarily  
17          sleeps. A building constructed as a dwelling that's  
18          never been occupied obviously cannot be considered a  
19          dwelling for purposes of burglary, but a building is  
20          a dwelling even if the residents are temporarily  
21          absent from the building.

22          In order to prove the defendant entered the  
23          dwelling, the State does not have to show that the  
24          defendant's entire body entered the building. The  
25          smallest entry is sufficient. It may be any part of

1 the body such as a hand or a foot or even an  
2 instrument, sometimes even a hook or any other type  
3 of instrument used to intrude into the dwelling. In  
4 addition, the State does not have to prove that force  
5 was used to gain entry.

6 Next the State must prove beyond a reasonable  
7 doubt that the defendant intended to commit a crime,  
8 either a felony or a misdemeanor, at the time of  
9 entry. The mere entry into a building without  
10 consent is not burglary. If the intent to commit a  
11 crime is formed after the entry, it's not a burglary.

12 On the other hand, if the defendant intended to  
13 commit a crime at the time of the entry, it is a  
14 burglary even if that intent was abandoned after the  
15 entry. It does not matter that the intended crime  
16 was not completed.

17 Intent may be shown by acts and conduct of the  
18 defendant and other circumstances from which you may  
19 naturally and reasonably infer intent.

20 And, finally, the State must prove to you beyond  
21 a reasonable doubt that the defendant has a prior  
22 record of two or more convictions for burglary or  
23 housekeeping -- housebreaking, not housekeeping --  
24 two or more convictions for burglary or housebreaking  
25 or some combination of both.

1           Let me emphasize this fact. Evidence of these  
2 prior offenses committed by the defendant was not  
3 offered to prove the defendant has a bad character or  
4 to prove that the defendant committed the burglary in  
5 this case. The prior convictions may be considered  
6 by you only for the purpose of determining whether or  
7 not it satisfies that element of the offense that  
8 makes it burglary in the first degree to enter a  
9 dwelling without consent to commit a crime and you  
10 have two prior convictions for burglary or  
11 housekeeping (sic).

12           Before you can even consider the evidence of the  
13 defendant's prior burglaries and/or housekeeping  
14 (sic) convictions, you must first find that the State  
15 has proven beyond a reasonable doubt that a burglary  
16 was committed by the defendant. If you find beyond a  
17 reasonable doubt that the burglary was committed,  
18 then you may consider the evidence of the prior  
19 convictions as evidence of one of the circumstances  
20 which would make this burglary a first degree  
21 burglary.

22           If you do not find beyond a reasonable doubt  
23 that the defendant committed these alleged prior  
24 offenses, you cannot return a verdict of burglary in  
25 the first degree.

1           Now, as I said, you will also be asked to  
2       consider what's known as the lesser-included charge  
3       of burglary in the second degree. If you find the  
4       State has failed to prove beyond a reasonable doubt  
5       that the defendant committed first degree burglary,  
6       you may consider whether the State has proven beyond  
7       a reasonable doubt that the defendant committed a  
8       second degree burglary.

9           A second degree burglary includes all of the  
10       same elements about breaking into a dwelling with the  
11       intent to commit a crime as first degree, except that  
12       the defendant has the prior record of two or more  
13       convictions for burglary or housekeeping (sic) or a  
14       combination of both.

15          In other words, if you found that the defendant  
16       was guilty of a burglary but did not find that he had  
17       the two prior convictions, you would then address the  
18       issue of whether he was guilty or not guilty of  
19       second degree burglary. The element that separates  
20       the two is the two prior convictions for burglary or  
21       housebreaking.

22          Now, it's been mentioned by counsel that there  
23       is a provision of our law, a tenet of our law that if  
24       a crime is committed by two or more people who are  
25       acting together in committing that crime, the act of

1 one is known as the act of all or the hand of one is  
2 the hand of all.

3 A person who joins with another to accomplish an  
4 illegal purpose is criminally responsible for  
5 everything done by the other person which occurs as a  
6 natural consequence of the acts done in carrying out  
7 the common plan or purpose.

8 For example, two people can be guilty of killing  
9 another person when only one of the two had a gun,  
10 there was only one bullet and only one of the two  
11 fired the shot that caused the death. If two or more  
12 people are acting together, assisting each other in  
13 committing the offense, the act of one is the act of  
14 all; or, as it is sometimes said, the hand of one is  
15 the hand of all.

16 Prior knowledge that a crime is going to be  
17 committed without more is not sufficient to make a  
18 person guilty of that crime. Mere knowledge that  
19 another person is going to commit a crime, even if  
20 the defendant is present when the crime is committed,  
21 is not sufficient to convict the defendant.

22 Guilt for any defendant is shown by an actual or  
23 constructive presence at the scene as a result of a  
24 prior arrangement. Therefore, a finding of a prior  
25 arranged plan or common scheme is necessary for a

1 finding of the defendant's guilt. The State must  
2 prove beyond a reasonable doubt by competent evidence  
3 the theory of the hand of one is the hand of all.

4 A principal in a crime; that is, the person  
5 responsible for the crime, is one who either actually  
6 commits the crime or who is present aiding, abetting  
7 or assisting in committing the crime. When a person  
8 does an act in the presence of and with the  
9 assistance of another, the act is done by both.

10 Where two or more acting with a common plan or  
11 intent are present at the commission of a crime, it  
12 does not matter who actually commits the crime. All  
13 are guilty. In other words, the hand of one is the  
14 hand of all.

15 Now, mere presence at the scene of a crime  
16 obviously is not sufficient to convict one as the  
17 principal on the theory of aiding and abetting.

18 Intent is a necessary element, for there must have  
19 been a common design or intent to commit the crime,  
20 and the crime must have been committed pursuant to  
21 that intent with the person aiding and abetting by  
22 some overt act.

23 Intent means intending the result which actually  
24 occurs, not accidentally or involuntarily. Intent  
25 may be shown by acts and conduct of the defendant and



1 other circumstances from which you may naturally and  
2 reasonably infer intent. The State again must prove  
3 these elements beyond a reasonable doubt.

4 Now, ladies and gentlemen, there are two  
5 possible verdicts in this case which you might find  
6 as to each of the charges. There is no -- I have  
7 prepared for you what's known as a verdict form  
8 which, Madam Forelady, I will hand to the jury when  
9 you retire to the jury room. It's a fairly simple  
10 form. I'll read it to you.

11 We, the jury, by unanimous consent on the charge  
12 of burglary in the first degree find the defendant,  
13 Willis Weary, guilty or not guilty. You merely check  
14 which box is present. Or we, the jury, by unanimous  
15 consent on the charge of burglary in the second  
16 degree find the defendant, Willis Weary, guilty or  
17 not guilty. Once you have made that decision, sign  
18 your name and date it, knock on the jury room door,  
19 and we will receive your verdict.

20 Now, your verdict must represent the considered  
21 judgment of each juror. In order to return a  
22 verdict, as I said, it's necessary that each juror  
23 agree. Your verdict must be unanimous. It's your  
24 duty as jurors to consult with one another and to  
25 deliberate with a view to reaching an agreement if

1       you can do so without violence to your individual  
2       judgments. Each of you must decide the case for  
3       himself or herself, but do so only after an impartial  
4       consideration of the evidence in the case with your  
5       fellow jurors.

6       In the course of your deliberations do not  
7       hesitate to re-examine your own views and change your  
8       opinion if convinced it is erroneous, but do not  
9       surrender your honest conviction as to the weight or  
10      the effect of the evidence solely because of the  
11      opinion of your fellow jurors or for the mere purpose  
12      of returning a verdict.

13      Remember at all times that you are not partisans  
14      favoring one party over the other. You are judges,  
15      judges of the fact. Your sole interest is to seek  
16      the truth from the evidence that has been presented  
17      to you in this case.

18      Now, ladies and gentlemen, I'm going ask you to  
19      retire to the jury room in just a minute. I did  
20      notice throughout the trial that one or more of you  
21      may have been taking some notes. That's fine. I  
22      probably should have said that at the beginning of  
23      the trial. I have no objection to anybody taking  
24      notes. But I will caution you that the notes are for  
25      your own memory purposes, your own edification.

1 They're not to be used to try to convince somebody  
2 else that I heard something at a certain time and a  
3 certain place. And I hope you'll respect that. They  
4 are for your own memory purposes. And if they help  
5 you, fine. If they don't, that's fine, too. I just  
6 caution you about trying to use notes. And I do this  
7 for every jury, not to use notes to try to convince  
8 somebody else that a fact is true or not true because  
9 you wrote something down. That's just a general  
10 concern.

11 All right. I'm going to ask you to retire to  
12 the jury room now. Okay. Do not begin your  
13 deliberations until the bailiff brings to you all of  
14 the evidence in the case. All the evidence is going  
15 to be brought to the jury room along with the verdict  
16 form. Once you receive the evidence and the verdict  
17 form you can begin your deliberations. As I said,  
18 when you're complete, knock on the jury room door and  
19 we will receive your verdict. Thank you very much,  
20 ladies and gentlemen.

21 (Jury out at 10:55 a.m.)

22 THE COURT: Any exceptions to the charge from  
23 the State?

24 MS. FENT: No, Your Honor.

25 THE COURT: From the defense?

1 MR. DEYSACH: No, Your Honor.

2 THE COURT: Thank you very much, counsel.

3 Please review the evidence and the bailiff will take  
4 it to the jury room.

5 (Pause)

6 THE COURT: Have you got the verdict form,  
7 Mr. Broom?

8 THE BAILIFF: Yes, sir.

9 (Jury deliberating at approximately 11:00 a.m.)

10 THE COURT: All right, counsel. The jury, I'm  
11 advised the jury has reached a verdict. Are you  
12 ready to receive the verdict?

13 MS. FENT: We're ready.

14 THE COURT: Bring the jury, please.

15 MR. DEYSACH: I need my defendant.

16 THE COURT: I'm sorry. Where is the client?

17 MR. DEYSACH: He's on his way up.

18 THE COURT: All right. Bring the jury, please.

19 (Jury in at 11:38 a.m.)

20 THE BAILIFF: Your Honor, the jury is present.

21 THE COURT: All right. Thank you. Madam

22 Forelady, has the jury reached a verdict?

23 FOREPERSON: Yes, we have, Your Honor.

24 THE COURT: Will you hand it to the bailiff,  
25 please.

1 (Forelady complies)

2 THE COURT: Mr. Clerk, publish the verdict,  
3 please.

4 THE CLERK: Yes, Your Honor. The State of South  
5 Carolina, in the County of Richland, in The Court of  
6 General Sessions, indictment number  
7 2006-GS-40-0006 -- Judge, may I interrupt just a  
8 minute?

9 (Whereupon, a bench conference is had between  
10 the Court and the clerk)

11 THE CLERK: The State of South Carolina, in the  
12 County of Richland, in the Court of General Sessions,  
13 indictment No. 2006-GS-40-0006, The State of South  
14 Carolina vs. Willis Weary, the indictment for  
15 burglary in the first degree, the verdict is: We,  
16 the jury, by unanimous consent on the charge of  
17 burglary in the first degree find the defendant,  
18 Willis Weary, guilty as charged; signed by the  
19 forelady on this 2nd day of March 2007.

20 Madam Forelady, is this your verdict and the  
21 verdict of the entire jury?

22 FOREPERSON: Yes, it is.

23 THE COURT: Any desire to poll the jury?

24 MR. DEYSACH: Yes, Your Honor.

25 THE COURT: Poll the jury, please.

1           THE CLERK: Yes, Your Honor. Ladies and  
2           Gentlemen of the Jury, I now have two questions to  
3           ask you. The questions will be: Was this your  
4           verdict, and is it still your verdict? When I call  
5           out your number, please answer yes or no.

6           Number 1, was this your verdict?

7           JUROR: Yes.

8           THE CLERK: Is it still your verdict?

9           JUROR: Yes.

10          THE CLERK: Number 177, was this your verdict?

11          JUROR: Yes.

12          THE CLERK: Is it still your verdict?

13          JUROR: Yes.

14          THE CLERK: Number 67, was this your verdict?

15          JUROR: Yes.

16          THE CLERK: Is it still your verdict?

17          JUROR: Yes.

18          THE CLERK: Number 55, was this your verdict?

19          JUROR: Yes.

20          THE CLERK: Is it still your verdict?

21          JUROR: It is.

22          THE CLERK: Number 41, was this your verdict?

23          JUROR: Yes.

24          THE CLERK: Is it still your verdict?

25          JUROR: Yes.

1 THE CLERK: Number 31, was this your verdict?  
2 JUROR: Yes.  
3 THE CLERK: Is it still your verdict?  
4 JUROR: Yes.  
5 THE CLERK: Number 2, was this your verdict?  
6 JUROR: Yes.  
7 THE CLERK: Is it still your verdict?  
8 JUROR: Yes.  
9 THE CLERK: Number 77, was this your verdict?  
10 JUROR: Yes.  
11 THE CLERK: Is it still your verdict?  
12 JUROR: Yes.  
13 THE CLERK: Number 9, was this your verdict?  
14 JUROR: Yes.  
15 THE CLERK: Is it still your verdict?  
16 JUROR: Yes.  
17 THE CLERK: Number 152, was this your verdict?  
18 JUROR: Yes.  
19 THE CLERK: Is it still your verdict?  
20 JUROR: Yes.  
21 THE CLERK: Number 10, was this your verdict?  
22 JUROR: Yes.  
23 THE CLERK: Is it still your verdict?  
24 JUROR: Yes.  
25 THE CLERK: Number 153, was this your verdict?

1 JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 JUROR: Yes.

4 THE CLERK: Thank you. The jury has been  
5 polled, Your Honor.

6 THE COURT: Any motions?

7 MR. DEYSACH: Your Honor, at this time I would  
8 move for a judgment notwithstanding the verdict and  
9 for a new trial. I don't believe there was enough  
10 evidence to go to the jury, certainly not as a  
11 burglary first. The two burglaries that were the  
12 subjects of the sentencing sheets did not appear to  
13 be separate enough offenses in order to go to the  
14 jury as a burglary first as they are both on the same  
15 offense date and there was no other evidence  
16 presented by State to show that they weren't so  
17 intimately connected. And that burden was on the  
18 State and was not proven. So I'd ask you to grant a  
19 judgment notwithstanding the verdict.

20 I'd also like to renew all my objections that I  
21 made pre and post and during the trial at this time.

22 THE COURT: All right. Thank you, Mr. Deysach.  
23 I feel the jury was well within the evidence  
24 presented and that they had a fair consideration of  
25 all the evidence. I think that the jury was



1 conscientious and they listened. I submitted it to  
2 them on the law as I understood it. I think their  
3 verdict was within the range that they certainly had  
4 the authority to do. And I respectfully deny your  
5 motions.

6 Now, Ladies and Gentlemen of the Jury, that  
7 concludes your service for this week. Let me just  
8 say that unlike Law and Order, we sentence defendants  
9 immediately. In other words, I don't know about Law  
10 and Order, but what you see on television is  
11 generally the defendant is taken into custody and  
12 sentencing takes place at a later time.

13 We don't have that luxury here in Richland  
14 County. We've got cases scheduled for Monday,  
15 Tuesday, Wednesday, all next week, every week. So,  
16 it's incumbent upon judges in this county to go ahead  
17 and sentence immediately. Now, there is a little bit  
18 of paperwork that must take place before that's done.  
19 So I'm going to ask you to return to the jury room.

20 But what I'm going to tell you is that you're  
21 certainly free to sit in here during the sentencing  
22 in the seats that you're sitting in now. You can  
23 come right back in here and sit in the jury room; I  
24 mean, in the jury box and watch the sentencing  
25 procedure. Some jurors like to do that as sort of a

1 closure to the entire case.

2 But the clerk is going to have just pick up your  
3 badges and give you -- let you know what you need, if  
4 you need anything for your work, things like that for  
5 just few minutes. And if you'd like to return to the  
6 courtroom once we have the paperwork filled out,  
7 we'll begin the sentencing procedure. It will only  
8 take ten or fifteen minutes. And what I want to tell  
9 you is you're welcome to sit in during that  
10 proceeding.

11 If not, if you choose to leave, let me just take  
12 this opportunity to thank you for your service this  
13 week. As you were probably told on Monday, this will  
14 conclude your obligation for jury service this year.  
15 It also gives you an exemption for the next two years  
16 if you choose to exercise that exemption if your name  
17 is called again.

18 I also want to tell you on behalf of these  
19 litigants, the court system, everybody that's  
20 involved in this process that we thank you. This  
21 system cannot operate without you. You are such an  
22 important part of the judicial system of this county  
23 and this state. You probably don't even realize it.  
24 Sometimes you might think that I've just come up here  
25 because I was called to come up here. But you're an

1 integral part of this judicial system.

2 I tell jurors all the time this system can do  
3 without me, this system can do without these lawyers.  
4 It cannot do without you. You are such an important  
5 part of the process. You are the way these disputes  
6 get resolved. Whether they're civil disputes or  
7 criminal disputes, decisions have to be made. And  
8 you do the work of making the tough decisions. So I  
9 want to thank you very much for your service this  
10 week.

11 All right. Jim, do you need to talk to them for  
12 just a minute? And, counsel, the jury is excused.  
13 Any information for the sentencing sheets? All  
14 right. We'll stand at ease for about five to ten  
15 minutes, about ten minutes until we're ready to begin  
16 the sentencing procedure.

17 (Whereupon, a break is taken)

18 **THE COURT:** Bring the defendant. All right, Ms.  
19 Fent.

20 **MS. FENT:** Thank you, Your Honor. Aside from  
21 the two convictions for burglary second that we  
22 presented in evidence, the defendant was also  
23 convicted of a third burglary second offense. He  
24 pled guilty to it on the same day that he pled guilty  
25 on the other two burglaries, but it was as per the

1 indictment committed on a different date. So the two  
2 that we admitted were committed on the same date and  
3 the third one was on a different date.

4 *THE COURT:* So there's a third burglary second?

5 *MS. FENT:* Correct. He was initially charged on  
6 all three of those cases as burglary in the first  
7 degree and they were pled down to burg second,  
8 non-violent. He was sentenced on one of those  
9 burglaries to 15 years suspended to five years  
10 followed by five years probation. He's currently on  
11 probation. Ms. Tull was here. She'll be right back.

12 *THE COURT:* He's on probation now?

13 *MS. FENT:* Correct. To the other two burglaries  
14 he was given just a five-year sentence to run  
15 concurrent with that 15 years suspended to five  
16 followed by five probation.

17 *THE COURT:* What was the date of those?

18 *MS. FENT:* He pled guilty on April 15th of 2002.  
19 In addition to pleading guilty to those three  
20 burglaries he pled guilty to three grand larcenies  
21 where he was given the five-year sentence concurrent.  
22 And he pled guilty to threatening the life, person or  
23 family of an official where he was sentenced to five  
24 years running concurrent with all these other  
25 charges.

1           He also has a breach of peace conviction from  
2           2004 and he has a couple of pending charges still  
3           with our office.

4           *THE COURT:*   What are they?

5           *MS. FENT:*   Assault and battery of a high and  
6           aggravated nature and a malicious injury to property.

7           *THE COURT:*   All right.

8           *MS. FENT:*   Mr. Gonzalez wanted the Court to know  
9           that he is concerned with regard to the defendant and  
10          his family because they do know where he lives now.  
11          I believe after he left this residence, he left it  
12          within a couple of days of being burglarized, he  
13          moved to another location that happened to be where  
14          the defendant's family lived in that same apartment  
15          complex. He no longer -- is that how they know where  
16          you live?

17          *MR. HUNT:*   Yes.

18          *MS. FENT:*   Okay. And just wanted the Court to  
19          be aware of his concern.

20          *THE COURT:*   I don't know that I can do much  
21          about that. I have control over the defendant but  
22          not over his family.

23          *MS. FENT:*   I understand that.

24          *THE COURT:*   Mr. Deysach.

25          *MR. DEYSACH:*   Thank you very much, Your Honor.

1 Willis is 22. You can tell just from the dates of  
2 these prior offenses that he was very young at this  
3 time. He tells me he was actually 15 when he got  
4 arrested for those first burglaries. If you look at  
5 his sentencing sheets, he spent 500 days. They gave  
6 him 500 days of time served on those sentencing  
7 sheets.

8 You know, in a perfect world, Your Honor, I  
9 think the Department of Corrections Youthful Offender  
10 Act sentence might have done him some good at that  
11 time. But instead, I think instead of really going  
12 to high school, you know, he graduated from the  
13 Department of Corrections and his education wasn't in  
14 anything very positive at that time.

15 I think like many defendants who emerge from the  
16 Department of Corrections, Willis who had been  
17 incarcerated since a pretty young age came out with  
18 basically the opposite of life skills and despite all  
19 good intentions backslid. You know, when there are  
20 setbacks, he backslid.

21 He was candid with me and let me know that there  
22 was a time in his life after the Department of  
23 Corrections when drugs had their grips in him in the  
24 way he behaved. When you look at his record and when  
25 you look at this case and you listen to the solicitor

1 say what they're saying about him, one might assume  
2 that Willis is a mean person or that he has some sort  
3 of a disregard for life in general.

4 But when you get to know him, you can tell that  
5 his motivation, honestly, Your Honor, he has made --  
6 you know, since I've been representing him, I think  
7 he's made, you know, decisions. I think when Nicole  
8 Singletary was representing him he made decisions  
9 that we wish that he hadn't made. I think, you know,  
10 regarding this case he made a decision we all wish he  
11 hadn't made. But even knowing him, he's made  
12 decisions that we wish he wouldn't have made, whether  
13 it was going forward with a trial or not, you know,  
14 and following advice.

15 And those decisions were not the result of some  
16 macho attitude or disregard for others or disregard  
17 for the victim in this case. To be honest, Your  
18 Honor, they were motivated by fear, fear of -- as far  
19 as disregarding advice from attorneys, fear of going  
20 back to prison, you know, desire to be with his child  
21 who was born while he was at the detention center and  
22 with whom he's never got to spend any time.

23 And so, as I said, listening to the solicitor,  
24 listening to the State, you hear such negative  
25 things. And like one may assume, even Officer

1 McRoberts acknowledged when we were just  
2 small-talking that Willis was quite cooperative. He  
3 was very nice. And he didn't relish in any way  
4 seeing anything negative happen to him in this  
5 regard.

6 You know, the law is what the law is, Your  
7 Honor, and we stand before you facing, you know, a  
8 minimum of 15 years. You've heard his record.  
9 Willis did not put himself in the position where  
10 anybody could have gotten hurt. I honestly believe  
11 that he was not the organizer nor the instigator of  
12 this event. He never got the DVD player. He never  
13 got the speakers. He never benefited in any real way  
14 from what had happened.

15 You know, I'm not speaking for Willis. I'm  
16 speaking for myself now. I don't want anything I'm  
17 saying to be construed as any admission of guilt  
18 because he does plan on appealing. And that's not  
19 what I'm saying. I'm just asking you, Your Honor, to  
20 view the facts and the evidence in this light so that  
21 can you understand that Willis is not evil in any  
22 way. He's got a family that's been here the whole  
23 time, very supportive. Not the whole time of this  
24 trial but the whole time of my representation; his  
25 mother who I've been on the phone with, other family



1 members. Only two can come up here right now.

2 So he is loved. And he's loved for a reason,  
3 not just because he's somebody's son and somebody's  
4 sister and somebody's fiance, but because he is who  
5 he is. And the things that you hear about only  
6 represent a small fraction of his personality.

7 I'm not making excuses for him, Your Honor. I  
8 did want to point out just the youth at which he  
9 started getting in trouble. And we know that when  
10 one is young they don't -- 15, when you first start  
11 getting in trouble, you don't make the same decisions  
12 that you would as an adult; and as I said, graduating  
13 from basically from high school the Department of  
14 Corrections ill prepared to make any better  
15 decisions.

16 He has this assault and battery of a high and  
17 aggravated nature pending, Your Honor. That was  
18 dismissed at prelim, then directly presented. It  
19 happened before this burglary. In all candor, I  
20 believe that the case on the burglary was stronger  
21 than the assault and battery of a high and aggravated  
22 nature. A mutual combat type situation. Even if you  
23 read the incident report, it looks as if Willis is  
24 coming to the defense of another. So I ask that you  
25 not consider that too much in this case because it's

1 an accusation, not a conviction.

2 So those are the things -- you know, I've been  
3 handed a probation violation report. I don't know if  
4 you want me to address that at all right now. I  
5 don't see the probation agent here at the time. So I  
6 can hold off. I assume that it's their intention to  
7 find that he has violated. But I'm not ready to  
8 address it unless you're ready to hear from me on it.

9 *THE COURT:* Well, let me see it. I mean,  
10 there's no reason to my knowledge why it shouldn't be  
11 administratively dealt with at this stage. I thought  
12 somebody said Ms. Tull was on her way.

13 *MS. FENT:* Ms. Tull was here when the verdict  
14 came out. She stepped out while we were doing the  
15 paperwork to just go check on probation revs and said  
16 she'd be right back. Your Honor, may I add  
17 something?

18 *THE COURT:* Sure.

19 *MS. FENT:* In terms of the victim's concern  
20 regarding safety from the defendant, with regards to  
21 that threatening the life or family member of a  
22 public official that the defendant pled to, the  
23 victim of that offense was the victim of one of the  
24 burglaries that he committed that happened to be a  
25 Columbia police officer. So the burglary is

1 committed and then subsequently threats were made to  
2 that victim of the burglary and was a police officer.

3 MR. DEYSACH: Your Honor, I'll respond just  
4 briefly to that. That was when -- my client was 15  
5 years old when that happened.

6 THE COURT: Do you object to -- do you have any  
7 objection to addressing the probation violation at  
8 this time?

9 MR. DEYSACH: I do not. He hasn't been served  
10 with the warrant yet.

11 THE COURT: Oh.

12 MR. DEYSACH: Well, maybe he has. If you look  
13 in there, maybe there is a warrant in that package.

14 THE COURT: September 28th, 2005? 2005?

15 MR. DEYSACH: Your Honor, he would have been  
16 incarcerated at that time.

17 MS. FENT: It was because he was pending on the  
18 ABHAN probably. He was in on the ABHAN.

19 MR. DEYSACH: They held off on holding the  
20 hearing I would assume because they were waiting to  
21 see if there would be a conviction. I think outside  
22 of this conviction, the violations are, I'm not  
23 trying to minimize them, but they're not -- there's a  
24 reason why they waited to go forward. Because if  
25 they'd gone forward with just the violations that

1           they had at that time, they are quite minimal.

2           **THE COURT:** The point is I can revoke this in  
3 full and it still wouldn't meet the minimum sentence  
4 required under the burglary first statute.

5           **MR. DEYSACH:** I would ask, I would certainly ask  
6 that you would give him a concurrent sentence. You  
7 know, those --

8           **THE COURT:** Sure I will. Sure I will.

9           **MR. DEYSACH:** Okay. Well, you know, that's  
10 simply all that I would ask in regards to the  
11 probation violation case.

12          **THE COURT:** I'll run it concurrent.

13          **MR. DEYSACH:** Your Honor, and just to finish up,  
14 you know, I've given you all the reasons why, you  
15 know, Willis would be a good candidate for some mercy  
16 in this case. We know the minimum is 15 years, you  
17 know. And so when we're talking about mercy in this  
18 case, 15 years at 85 percent, a strike on a -- a most  
19 serious strike, community supervision to follow, all  
20 those things, that's what we're talking about when  
21 we're talking about mercy. And so that's what me and  
22 that's what his family are asking you to consider.

23          Willis was not in any way trying to -- he  
24 wouldn't have hurt anybody in this. Nobody was hurt.  
25 He wasn't intending to hurt anybody, was never going

1 to use the rock as a weapon as the solicitor may have  
2 alleged in their closing. So I ask that you consider  
3 the 15 years.

4 THE COURT: Mr. Weary, do you have anything you  
5 want to tell me, anything you want to say?

6 MR. DEYSACH: Your Honor, I told him that it  
7 might not be a good idea to talk if he plans on  
8 appealing, that what he said in front of you is  
9 something that could potentially be used against him.  
10 And so I told him that the remorse that he feels is  
11 something that I would intend to express again  
12 without trying to say anything that would prejudice  
13 him.

14 THE COURT: That's fine. You understand that,  
15 Mr. Weary?

16 MR. WEARY: Yes, sir.

17 THE COURT: How about any members of the family?

18 MR. DEYSACH: Do you all want to say anything?

19 MS. WEARY: I mean, --

20 THE COURT: If you're going to speak, I need to  
21 know who you are.

22 MS. WEARY: Marsha Weary. I'm his sister.

23 THE COURT: Okay.

24 COURT REPORTER: Could she move to the  
25 microphone, Your Honor?

1           **THE COURT:** Yeah. I have to be able to hear  
2 what you say, too.

3           **MS. WEARY:** I just want to say that -- that my  
4 brother, you know, we've been through difficult  
5 times, hard times at times when it was just us, you  
6 know. Then there was my stepfather's death and just  
7 all kind of things that may have took ahold of him.  
8 But I'm -- I'm just asking that -- that you take it  
9 easy on him. And hopefully he would have time enough  
10 to be a part of his child's life. And to him, I love  
11 him. That's all I want to say.

12           **THE COURT:** All right. Thank you, ma'am.

13           **MR. DEYSACH:** Your Honor, I think it is clear  
14 that there is a lot of emotion, feelings that both  
15 Ms. Hampton and Ms. Weary feel. And I'm sure that  
16 that's somewhat of a hindrance towards their, you  
17 know, ability to communicate.

18           **THE COURT:** I understand.

19           **MR. DEYSACH:** I would also say that I don't  
20 think that there's any reason why anybody, you know,  
21 nobody feels -- I've not felt any type of ill will  
22 from this group of people towards the victim in this  
23 case. I think that everybody standing over here is  
24 sorry and feels terribly for what he's had to go  
25 through and that, you know, as far as any threats or

1 anything like that, that's not anything that is going  
2 to happen. Like I said, it's the 15-year-old Willis  
3 that made some threatening statements way back when.  
4 This is not the type of people that they are. And we  
5 certainly, like I said, feel very sadly or badly  
6 about what he's had to go through.

7 THE COURT: All right. Ms. Tull, I've been  
8 advised that there is a probation violation. And in  
9 your absence I have talked to Mr. Deysach and told  
10 him -- the defendant has no objection to going  
11 forward, since the fact that you weren't here and he  
12 says he hasn't been served with the warrant. But it  
13 looks like on the package he might have already been  
14 served with the warrant.

15 AGENT TULL: Yes, sir.

16 THE COURT: And I have agreed to run any  
17 sentence or any probation revocation concurrent with  
18 whatever sentence he gets today.

19 AGENT TULL: Yes, sir.

20 THE COURT: All right. Anything further from  
21 you?

22 AGENT TULL: If you've already seen a report, I  
23 have nothing to add to that report, Your Honor.

24 THE COURT: I have a report.

25 AGENT TULL: Okay. Thank you.

1           THE COURT: All right, Mr. Weary. I hope you  
2 realize you could have been sentenced to life in jail  
3 on this. Do you understand that? That's how serious  
4 this charge was. You don't have to answer. But the  
5 State, I mean, the jury has found you guilty and I am  
6 obligated to impose a sentence. A minimum sentence  
7 of 15 years is required for a burglary first  
8 conviction. And based on the prior convictions, your  
9 prior three convictions, I don't feel in the least  
10 bit sympathetic or inclined to give you the minimum,  
11 although due to your age, I'll make some concessions  
12 to that. And I'm hoping that you don't -- once you  
13 are released from the Department of Corrections that  
14 you don't resume this type of behavior. People need  
15 to be secure in their homes. It doesn't matter how  
16 much money they've got. Do you understand?

17           The sentence of the Court is that you be  
18 committed to the State Department of Corrections for  
19 a period of 18 years. Good luck to you, sir. And on  
20 your probation revocation, revoke ten years and  
21 terminate.

22           AGENT TULL: Thank you.

23           THE COURT: Run it concurrent --

24           AGENT TULL: Yes, sir.

25           THE COURT: -- with his General Sessions



1 conviction.

2 MR. DEYSACH: Thank you, Your Honor.

3 (Whereupon, the proceedings are concluded)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 28th day of February, 2007 and 1st and 2nd days of March 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 22, 2007

Jenny H. Williams

Jenny H. Williams, Court Reporter



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DEC 10 2009

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December 9, 2009

**REMITTITUR**

The Honorable Jeannette W. McBride  
1701 Main Street, Room 205  
PO Box 2766  
Columbia, SC 29202

Re: The State v. Weary, Willis  
2006-GS-40-0006

Dear Mrs. McBride:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Barber", written over a horizontal line.

Jeanette F. Barber  
Clerk of Court

JFB/tf

cc: Appellate Defender M. Celia Robinson  
Willis Weary, #283431  
Assistant Deputy Attorney General Salley W. Elliott  
Warren Blair Giese, Esquire

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

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

The State,

Respondent,

v.

Willis Weary,

Appellant.

---

Appeal From Richland County  
G. Thomas Cooper, Jr., Circuit Court Judge

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Unpublished Opinion No. 2009-UP-559  
Submitted November 2, 2009 – Filed November 23, 2009

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**APPEAL DISMISSED**

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Appellate Defender M. Celia Robinson, of Columbia,  
for Appellant.

Attorney General Henry Dargan McMaster, Chief  
Deputy Attorney General John W. McIntosh,  
Assistant Deputy Attorney General Salley W. Elliott,  
and Solicitor Warren B. Giese, all of Columbia, for  
Respondent.

**PER CURIAM:** Willis Weary appeals his first-degree burglary conviction and eighteen-year sentence. Weary argues the trial court erred in admitting his statement to police and DNA evidence. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.<sup>1</sup>

**APPEAL DISMISSED.**

**HEARN, C.J., HUFF, and GEATHERS, JJ., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

WILLIS WEARY,

APPELLANT

---

FINAL ANDERS BRIEF OF APPELLANT

---

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| <u>Davis v. United States</u> , 512 U.S. 452, 114 S.Ct. 2350 (1994).....             | 10 |
| <u>Edwards v. Arizona</u> , 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981)..... | 10 |
| <u>Jackson v. Denno</u> , 378 U.S. 368 84 S.Ct. 1774 (1964).....                     | 5  |
| <u>State v. Kennedy</u> , 333 S.C. 426, 510 S.E.2d 714 (S.C.,1998).....              | 10 |
| <u>State v. Rochester</u> , 301 S.C. 196, 391 S.E.2d 244 (1990).....                 | 12 |



STATEMENT OF THE ISSUE ON APPEAL

Did the trial judge err as a matter of law in admitting appellant's statement which was taken in violation of his constitutional rights and also err in admitting DNA test results for which the sample was taken pursuant to a consent signed by appellant without his first being informed of his rights to refuse the search and seizure?

STATEMENT OF THE CASE

Appellant, Willis Weary, was indicted by the Richland County Grand Jury for first degree burglary. He proceeded to trial before the Honorable Judge Thomas Cooper, Jr. and a jury on February 28, 2007. The jury found appellant guilty as charged and he was sentenced to incarceration for a period of eighteen (18) years. The judge also revoked ten years and terminated appellant's probation, imposing a concurrent term. This appeal follows.

ARGUMENT

- I. The trial judge erred and abused his discretion in admitting over objection appellant's statement and evidence from a DNA sample where both the statement and the sample were taken in violation of his constitutional rights.

The State sought to admit a statement made by appellant and a hearing pursuant to Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964), was held to determine if the statement was voluntarily given. Sergeant McRoberts testified in camera that upon getting a CODUS hit from a blood sample retrieved from the crime scene, appellant was identified as a suspect. McRoberts testified that he obtained a warrant which he served on appellant on December 15, 2005, at the Alvin S. Glenn jail where appellant was incarcerated on other charges. (R. p. 11, lines 2-19).

Sergeant McRoberts testified that at the first opportunity on January 23, 2006, he picked appellant up, let him know that he was investigating the burglary case, and asked if appellant had anything to tell him. (R. p. 11, lines 22-25). McRoberts testified that he transported appellant to his cubicle at the Sheriff's Department and that appellant was in handcuffs and belly chains the entire time he was in McRoberts' custody. (R. p. 12, lines 6-25). McRoberts testified that he first read appellant his rights from a written Miranda warning form. (R. p. 13, lines 9-18). McRoberts testified that he read appellant the entire warnings and that appellant confirmed that he understood each warning. (R. p. 14). McRoberts testified that appellant acknowledged to him that he wanted to waive his rights and sign a statement and that appellant then signed a waiver of rights form. (R. p. 15.) McRoberts testified that appellant was very cooperative; "he told me everything." (R. p. 15, lines 23-240. McRoberts testified that appellant answered his questions orally and later gave him a written statement. (R. p. 17).

McRoberts testified that appellant never asked him for an attorney. (R. p. 18, lines 20-24). McRoberts testified that appellant also did not indicate that he was represented by counsel at the time. However, McRoberts testified, "There may have been discussion at the very beginning when I first read him that form if he has represented. He said, 'No, he wasn't; he didn't know.'" (R. p. 19, lines 4-6). McRoberts testified that appellant did not have an attorney and he did not want an attorney. (R. p. 19). McRoberts testified that he was not aware of any attorney representing appellant on the burglary charge until after he spoke with the Solicitor at some point after the January 23, statement was made.

McRoberts staunchly denied that appellant requested an attorney; however, he testified that appellant "was not even sure if he was represented" on the burglary charge. (R. p. 25, lines 8-21). He explained that appellant made the statement indicating that he did not know if he had an attorney in the midst of the officer's reading of the Miranda warnings. McRoberts testified, "I read him his Miranda and he said that he was not sure if he had an attorney on this charge." (R. p. 26, lines 19-20). McRoberts clarified that appellant made the statement regarding an attorney after he had completed the reading of the entire advice of rights and waiver language. (R. p. 26, lines 19-25). However, McRoberts then testified that he was reading the Miranda rights form when appellant indicated, "I'm not even sure if I have an attorney." (R. p. 27, lines 1-5).

In fact, appellant was represented on other charges by Richland County Public Defender, Nicole Singletary. Singletary testified, "I was his attorney on the charges that he had at time, including ABHN, malicious injury to property, and also on the burglary first." (R. p. 28, line 24-p. 29, line 2). Singletary testified that she met with appellant several times but that she last met with appellant on January 18, 2006. Singletary testified that, typically,

when she meets with a client the public defenders' office sends a letter to the client in jail. She testified that the standard letter advises the client not to talk to fellow inmates, not to talk to any police officers, and "that if anyone asks them any questions in reference to their case that what they need to do is tell them to get in contact with his lawyer." (R. p. 30, lines 3-8).

Singletary further testified that she gives her clients a copy of her business card and that on her business card it basically again advises the client not to talk to police officers and that if anyone questions him about the case to inform that person to get in contact with his attorney. (R. p. 30, lines 9-12). Singletary testified, "Basically it tells the client that they should not speak to anyone at all. They should not give any statements. They should not give any samples, such as blood, hair, or anything." (R. p. 30, lines 21-24). Counsel testified that she told her clients, "What they should do is tell that individual to contact their attorney. In this case that would be me." (R. p. 31, lines 1-3). Counsel testified that she had no reason whatsoever to believe that she failed to give this advice to appellant; she testified that she gives her business card to every client and that her employer, the Public Defender's Office, always sends out the form letter.

Singletary testified that she was never contacted on January 23, 2006, in relation to appellant's arrest and questioning. Singletary testified that if one of her clients was served with additional warrants after they are represented by the Public Defender, she just opens a new file and commences representation without waiting for a bond hearing. Singletary testified that this is what would have happened in appellant's case, explaining that she already had two files open in the office on appellant, one on September 30, 2005, and the

other opened on December 19, 2005, and that his file had been transferred to her from another attorney in the office. (R. p. 33).

Appellant testified during the hearing, indicating that he had met with his attorney, Nicole Singletary, approximately a week before he was picked up by Investigator McRoberts. Appellant testified that he remembers his attorney's advice given to him orally, by letter, and by her business cards. He testified that his attorney told him not to speak with anyone about his case but to tell any questioner to contact his attorney. (R. p. 36). Appellant testified that when McRoberts picked him up from the jail, "I was telling him about how I had a lawyer and stuff. And he was like, 'I'll let you use the phone when we get to the Sheriff's Department.'" (R. p. 38). Appellant testified that he told McRoberts that he wanted to talk to an attorney from the first. He testified that when he arrived at the Police Department, he used the phone to call his girlfriend in order to have her call his attorney on a three-way call. However, he testified that when he called, a guy answered the phone and said they couldn't put him through to his attorney because she was not in her office. Appellant testified that he tried to get the guy who answered the phone to transfer his call to Singletary's voice mail but that he was told he could not be transferred at that time. (R. p. 38). Appellant testified that he told McRoberts that he was trying to get tin touch with his public defender. Appellant testified, "He asked me was it a real lawyer. I was like, a public defender." (R. p. 39, lines 1-2).

Appellant testified that McRoberts "promised me that he would contact the solicitor and drop the charge of what it supposed to have been. And he promised me that I'd be home before my baby was born and all of this stuff, you know. Basically he made me just feel comfortable with him just to open up with him and stuff." (R. p. 42). The assistant solicitor

pointed out to appellant that the advice of rights form included advice regarding his right to talk to an attorney before answering any questions. However, appellant responded, "Yes, ma'am, But I tried to get in contact with her. They couldn't put me through to her." (R. p. 42). Appellant's girlfriend, Chiquita Hampton testified that she remembered receiving the phone call from appellant on January 23, 2000. She testified that he was calling from the police station and that she tried to arrange a three-way-call to appellant's counsel, but that counsel was not in her office at the time so that the call could not be transferred. (R. p. 45).

Counsel for appellant moved to exclude appellant's statement on the grounds that it was taken in violation of his right to counsel. Counsel argued that appellant had asserted his right to counsel but the officer continued to interrogate him without his attorney present. (R. p. 47). Counsel argued that the State had failed to carry the burden of showing by a preponderance of the evidence that the statement was given voluntarily and, therefore, that the statement should be suppressed. (R. p. 48). Counsel argued that once appellant indicated that he sought legal representation, all the questioning had to stop at that point. Counsel argued that although appellant signed a waiver, where he contemporaneously indicated that he wanted an attorney the officer was required to stop the questioning. Counsel argued that where the questioning continued without the provision of counsel, the statement should be suppressed. (R. p. 48)

The trial judge ruled that appellant was informed of his rights and that he found by a preponderance of the evidence that appellant chose willingly to make a statement without the benefit of counsel. (R. p. 52). The trial judge ruled that appellant was fully advised of his constitutional rights under the Fifth and Sixth Amendments and of the safeguards of Miranda, but that the statement was freely and voluntarily given without duress, coercion,

undue influence, promise of reward, compulsion or inducement of any kind. The judge found by a preponderance of the evidence that the statement was admissible in evidence. (R. pp. 54-55). The statement was redacted and admitted before the jury. (R. p. 207; p. 241). Appellant indicated in the statement that he saw an acquaintance throw a brick through the window of the victim's apartment and that the man told him that he would give him \$60 to go in through the broken window and unlock the door. Appellant stated that he opened the door in exchange for \$60 but that he did not take anything from the house. (R. p. 241-242).

The judge's erroneous ruling admitting the statement was an abuse of discretion under the law. If the desire for counsel is presented "sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney," no ambiguity or equivocation exists, and all questioning must cease until the person can consult counsel or the accused voluntarily reinitiates conversation. Davis v. United States, 512 U.S. 452 at 459, 114 S.Ct. 2350 at 2355 (1994); State v. Kennedy, 333 S.C. 426, 430, 510 S.E.2d 714, 715 (S.C.,1998). Here, accepting the testimony of McRoberts as accurate, appellant discussed with the officer his need for legal counsel and indicated that he did not know whether he was already represented by counsel on the current charge. Given this statement, a reasonable police officer would have understood that appellant was requesting an attorney. Once an accused requests counsel, police interrogation must cease unless the accused himself "initiates further communication, exchanges, or conversations with the police." Edwards v. Arizona, 451 U.S. 477, 485, 101 S.Ct. 1880, 1885, 68 L.Ed.2d 378, 386 (1981). Therefore, all questioning should have ceased upon appellant's bringing up the fact that he did not know whether he was already represented by counsel on this charge.



In a similar ruling, the trial judge found that consent to the taking of DNA evidence was signed by appellant knowingly and voluntarily. Counsel for appellant argued that the DNA results, like appellant's statement, should be suppressed as the product of the violation of appellant's constitutional rights. Counsel argued, "I would object to the introduction of that evidence on the same grounds, that he asked for an attorney prior to being asked for consent." (R. p. 56). The assistant solicitor argued that appellant signed a consent to search for DNA at the same time he gave his written statement. Sergeant McRoberts identified a Consent to Search for DNA Evidence Form signed by appellant. However, the officer testified that he did not remember if it was before or after he took appellant's statement that he signed the consent to search. He testified that the form was read to appellant and that he signed the form indicating that he gave his permission for a DNA search "freely, voluntarily, and without threats or promises of any kind." (R. pp. 60-61). However, McRoberts testified that he could not recall if appellant signed the consent form before or after he advised him of his rights. (R. p. 61). McRoberts testified that appellant signed the form and placed the buccal swabs in his own mouth. (R. p. 62).

Counsel for appellant argued that where appellant had denied being advised of his rights and where the officer had testified that he did not know whether appellant signed the consent to search before or after he was advised of his rights regarding the consent, the consent was invalid. Counsel argued, "He needed to be advised of all those same rights that are in Miranda as he was in custody before he gave this consent." (R. p. 64). The trial judge ruled, "I understand your argument that it's not clear whether the request to take the DNA was made before or after the advice of rights, and that, therefore, we ought to protect the defendant's rights and assume that it was taken before any waiver of rights was granted. . . .

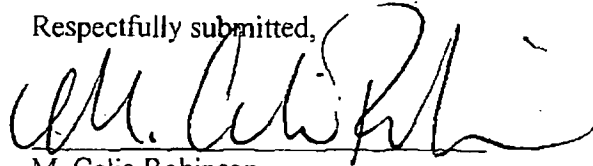
But I don't think based on again where that goes to the totality of the circumstances." The judge ruled that the law did not require him to exclude the DNA evidence at that stage. (R. pp. 63-64).

On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a statement will not be disturbed unless so manifestly erroneous as to show an abuse of discretion. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990). Here, given McRoberts' admission that appellant brought up the subject of his legal representation and his admission that the consent to the DNA search may have been signed before appellant had been advised of his rights, the judge's rulings were manifestly erroneous. Both the ruling admitting the statement and the ruling admitting the DNA evidence were in violation of appellant's constitutional rights and so manifestly erroneous as to show an abuse of discretion. As the result of the trial judge's errors in admitting the statement and the DNA evidence, both of which were obtained in violation of appellant's constitutional rights, appellant was deprived of his right to a fair trial.

CONCLUSION

Appellant's conviction should be reversed and a new trial granted on the grounds that his trial was tainted by the erroneous admission of a statement and a DNA sample which were given and/or taken in violation of appellant's constitutional rights.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson  
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of May, 2008.

## STATE OF SOUTH CAROLINA

## IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIS WEARY,

APPELLANT

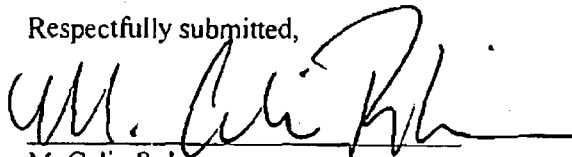
## PETITION TO BE RELIEVED AS COUNSEL.

Counsel for Willis Weary states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge G. Thomas Cooper, Jr., which was held on March 2, 2007, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed the arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Willis Weary.

Respectfully submitted,

M. Celia Robinson  
Appellate Defender

ATTORNEY FOR APPELLANT

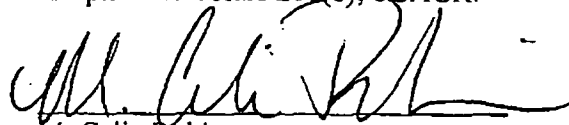
This 15th day of May, 2008.

CERTIFICATE OF COUNSEL

399

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

May 15, 2008

A handwritten signature in dark ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson  
Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Post Office Box 11589  
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

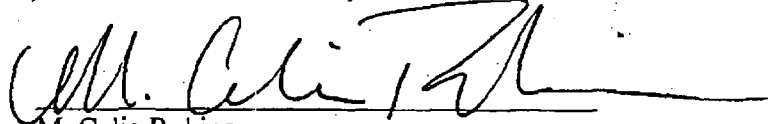
V.

WILLIS WEARY,

APPELLANT

## CERTIFICATE OF SERVICE

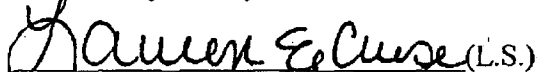
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal have been served on Willis Weary, #283431 at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, South Carolina 29210 this 15th day of May, 2008.



M. Celia Robinson  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 15th day of May, 2008.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014.

2010CP400 4072

STATE OF SOUTH CAROLINA )

In the Court of Common Pleas

County of Richland )

Willis Weary # 293431 )

Full name and prison number, if any, of applicant )

v. )

State of South Carolina )

Name of Respondent )

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 McCormick Corr. Inst. 386 Redemption Way  
McCormick SC 29899
2. Name and location of Court which imposed sentence Richland Co. Court of General Sessions  
1701 Main St. Columbia SC 29201
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) Docket No. 2006-GS-40-6
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) March 2, 2007, 18 years
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

5. Check whether a finding of guilty was made

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere \_\_\_\_\_

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

7. If you answered "yes" to (6), list

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

i. South Carolina Court of Appeals

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. Denied and Dismissed

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. December 23, 2009 or May of 2009 my paper won't get lost

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) Ineffective Assistance of Counsel

(b) \_\_\_\_\_

(c) \_\_\_\_\_



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

(a) Brief to follow

(b) \_\_\_\_\_

(c) \_\_\_\_\_

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/A

(d) any other petitions, motions or applications in this or any other Court?

N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof: N/A

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof: N/A

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition: N/A

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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? N/A

14. If you answered "yes" to (13), identify: N/A

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Ian Deyssach Esq.
- (c) your sentencing? Ian Deyssach Esq.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?  
Celia Robinson Esq.
- (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. Ian Deyssach, Barnwell St. Columbia SC. 29201
- ii. Nelia Robinson S.C. Comm. Indigent Defense, P.O. Box 11589
- iii. Columbia SC. 29211-1589

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

- i. Trial
- ii. Appeal
- iii.

18. State clearly the relief you seek in filing this application.

Conviction set aside. Sentence reversed. New trial awarded. All other  
relief the Courts deem appropriate.

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

NO

STATE OF SOUTH CAROLINA

COUNTY OF Richland

VERIFICATION

I, Willis Weary #283431, 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.

✓ Willis Weary #283431

Sworn to and subscribed before me

This 12 day of Feb, 2010

Joyce L Young L.S.  
Notary Public for South Carolina

My Commission Expires 8-28-2011

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

I, Willis Weary #283431, 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.

Willis Weary #283431  
Applicant

Sworn to and subscribed before me

This 12 day of Feb, 2010

Joyce L Young L.S.  
Notary Public for South Carolina

My Commission Expires: 8-28-2011

FILED  
FEB 19 AM 10:23  
JANELLE W. MCBRIDE  
C.C.P. & G.S.

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT

Willis Weary,

2010-CP-400-1172

Applicant,

vs.

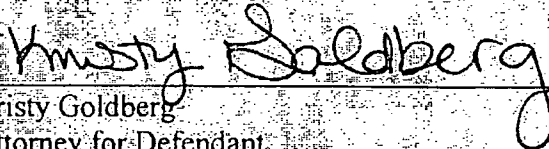
AMENDMENT TO APPLICATION FOR  
 POST-CONVICTION RELIEF

The State of South Carolina,

Respondent.

PLEASE TAKE NOTICE the Applicant, by and through his undersigned counsel, hereby petitions this Court to Amend his Application for Post-Conviction Relief by adding the following grounds:

The Applicant alleges trial counsel was ineffective due to the fact that he did not investigate the Applicant's prior burglaries which were used to enhance his charge to a 1<sup>st</sup> Degree Burglary and therefore was unable to make a proper and compelling argument regarding the improper enhancement of the Burglary to a 1<sup>st</sup> Degree Burglary. Trial counsel's deficiency in this regard was not reasonable under professional norms, and there is a reasonable probability that if trial counsel had investigated and argued the issue appropriately the Applicant could have been sentenced for 2<sup>nd</sup> Degree Burglary and accordingly received a lesser sentence.

  
 Kristy Goldberg  
 Attorney for Defendant

Law Office of Kristy Goldberg, LLC  
 1720 Main Street, Suite 301  
 Columbia, SC 29201  
 803-252-2299  
 803-799-4059 (fax)  
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 22<sup>nd</sup> day of August, 2011

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )

IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT

Willis Weary, )  
 )

2010-CP-400-1172

Applicant, )  
 )

vs. )  
 )

**CERTIFICATE OF SERVICE**

The State of South Carolina, )  
 )

Respondent. )

I certify that on this date I served the Amendment to Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this Amendment to the State's attorney of record, Brian Petrano, by delivering a copy of this motion via U.S. Mail said copy to the Office of the Attorney General, Post Office Box 11549, Columbia South Carolina 29211.

  
 Kristy Goldberg  
 Attorney for Defendant

Kristy Goldberg  
 Law Office of Kristy Goldberg, LLC  
 1720 Main Street, Suite 301  
 Columbia, SC 29201  
 803-252-2299  
 803-799-4059 (fax)  
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 22<sup>nd</sup> day of August, 2011

|                            |                              |
|----------------------------|------------------------------|
| STATE OF SOUTH CAROLINA)   |                              |
| COUNTY OF RICHLAND )       | IN THE COURT OF COMMON PLEAS |
|                            |                              |
|                            | 2010-CP-400-1172             |
| WEARY Willis , #283431 )   |                              |
|                            |                              |
| Applicant, )               |                              |
|                            |                              |
| v. )                       | RETURN                       |
|                            |                              |
| State of South Carolina, ) |                              |
|                            |                              |
| Respondent. )              |                              |

---

The Respondent, making its Return to the Application for Post-Conviction Relief filed February 19 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by Ian Deysach, Esquire. The Applicant was convicted following a jury trial on February 2 2007, with the Honorable G. Thomas Cooper, Jr.. The Applicant was indicted for and/or convicted of: Burglary(After 6/20/85) 1st Degree - 2006-GS-40-6. According to the South Carolina Department of Corrections (SCDC), the Applicant is serving an 18 year sentence for "Burglary-1st Degree."

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and [if applicable] the Applicant's appellate records.

## II.

The Applicant interprets each of the Applicant's allegations as a claim of ineffective assistance of counsel.

## III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80



L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 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.

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

## IV.

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

## V.

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

## VI.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Mark Schnee, Jr., Esquire regarding when the hearing should be set.<sup>1</sup>

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

BRIAN T. PETRANO  
Assistant Attorney General

By:   
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May 10, 2010

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<sup>1</sup> See: <http://www.scattorneygeneral.com/inside/pcr.html> for current and archived PCR rosters.

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

) IN THE COURT OF COMMON PLEAS

2010-CP-400-1172

Willis Weary, 283431

Applicant, )

vs )

State of South Carolina, )

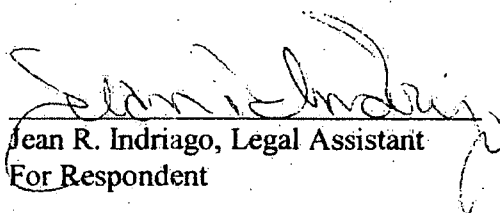
Respondent. )

) 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(s) by depositing same in the United States mail, postage prepaid:

Mark E. Schnee, Esquire  
1720 Main Street, Suite 202  
Columbia, South Carolina 29201

DATED this 20<sup>th</sup> day of May, 2010.

  
Jean R. Indriago, Legal Assistant  
For Respondent

|                         |   |                       |
|-------------------------|---|-----------------------|
| STATE OF SOUTH CAROLINA | ) |                       |
|                         | ) | COURT OF COMMON PLEAS |
| County of Richland      | ) | 2010-CP-40-01172      |
|                         | ) |                       |
| Willis Weary            | ) |                       |
|                         | ) |                       |
| Applicant,              | ) |                       |
|                         | ) |                       |
| vs.                     | ) | TRANSCRIPT OF RECORD  |
|                         | ) |                       |
| The State               | ) |                       |
|                         | ) |                       |
| Respondent              | ) |                       |

August 31, 2011  
Columbia, South Carolina

BEFORE:

The Honorable James R. Barber, III, Judge.

APPEARANCES:

Christy Grafton Goldberg,  
Attorney for the Applicant

Brian Petrano, Assistant Attorney General  
Attorney for the State

KAREN AMBROZIAK  
Official Court Reporter

C O N T E N T SWITNESSES

## WILLIS WEARY

|                                      |    |
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| Direct Examination by Ms. Goldberg   | 5  |
| Cross-examination by Mr. Petrano     | 13 |
| Redirect Examination by Ms. Goldberg | 19 |
| Recross-examination by Mr. Petrano   | 20 |

## IAN DEYSACH

|                                     |    |
|-------------------------------------|----|
| Direct Examination by Mr. Petrano   | 22 |
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| Redirect Examination by Mr. Petrano | 31 |

EXHIBITSAPPLICANT'S EXHIBITS:

| No. | Description                | ID | EV |
|-----|----------------------------|----|----|
| 1   | Statement/Advice of Rights | 9  |    |

STATE'S EXHIBITS:

| No. | Description                 | ID | EV |
|-----|-----------------------------|----|----|
| 1   | Sentencing Sheet/Indictment | 5  |    |
| 2   | Sentencing Sheet/Indictment | 5  |    |
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|                         |    |
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| Certificate of Reporter | 53 |
|-------------------------|----|

1 THE COURT: All right. Ready to proceed?

2 MR. PETRANO: Yes, Your Honor.

3 MS. GOLDBERG: Yes, Your Honor.

4 THE COURT: All right.

5 MR. PETRANO: Your Honor, this is  
6 2010-CP-40-01172, Mr. Willis Weary. It's a PCR  
7 application filed February 19th, 2010. He pled guilty  
8 in front of --- excuse me, it was a jury trial in  
9 front of Judge Cooper; that was G. Thomas Cooper, Jr.  
10 That was on March 2nd, 2007. He was represented by  
11 Mr. Ian Deysach.

12 Am I saying that correctly?

13 MR. DEYSACH: Deysach.

14 MR. PETRANO: Deysach, sorry. Who is here  
15 present in the courtroom, because he corrected me.

16 There was an appeal. That was --- it was an  
17 Anders brief, and that was remitted by the South  
18 Carolina Court of Appeals on June 9th, 2009. Opinion  
19 number 2009-UP-559.

20 It was a first degree burglary. He had been  
21 indicted by the April 2006 term of the Richland County  
22 grand jury, 2006-GS-40-0006. He received 18 years.

23 Your Honor, as you're going to hear, some of the  
24 issues is what enhanced that burglary into a first  
25 degree burglary, specifically his prior offenses,

1 items 44 and 45, I believe --- or 24 and 25 from the  
2 prior --- from the trial itself were introduced, his  
3 sentencing sheets from his old burglaries.

4 We're wanting to view those, make sure they were  
5 the same sentencing sheets that we got from the  
6 clerk's office.

7 Mr. Truitt has been kind enough to show us those,  
8 so we do not need those specific items. We have  
9 agreed and stipulated to enter into this court  
10 proceeding the sentencing sheets for 01-GS-40-09127  
11 and 9128.

12 These are certified raised-seal copies from the  
13 Clerk of Court that I got this morning from the  
14 microfilm, and these are just for the purposes of ---  
15 if they need to be referred to in this hearing.

16 We are substituting these certified copies as  
17 opposed to using the ones --- or attempting to using  
18 the ones from the trial itself. We have agreed to  
19 those same things. I hope I'm making ---

20 THE COURT: All right.

21 MR. PETRANO: That's all we've got.

22 THE COURT: So Mr. Truitt ---

23 MR. PETRANO: He can go ---

24 THE COURT: --- can go back to his office and lay  
25 down?



1 MR. PETRANO: For the record, Mr. Truitt is  
2 laughing.

3 THE CLERK: Judge, that just went on the record.

4 THE COURT: It's about nap time for Mr. Truitt.

5 MR. PETRANO: I'm going to put these in as, I  
6 guess, State's or just mark these.

7 MS. GOLDBERG: It's stipulated so.

8 THE COURT: It's a State's Exhibit. That's fine.

9 MR. PETRANO: Okay.

10 (WHEREUPON, State's Exhibit numbers 1 and 2 were  
11 marked for identification only.)

12 THE COURT: Are you ready to proceed,  
13 Ms. Goldberg?

14 MS. GOLDBERG: I am. One small issue before we  
15 begin for the sake of clarity. Mr. Petrano cited an  
16 indictment number from the grand jury from April  
17 of 2006. That indictment was later amended, then  
18 during the grand jury of January 25th, 2007. I just  
19 wanted to make sure Your Honor is on the same page as  
20 me.

21 MR. PETRANO: I stand corrected. Thank you.

22 MS. GOLDBERG: Your Honor. We would call Willis  
23 Weary.

24 WILLIS WEARY,  
25 after being duly sworn, testified as follows:

1 THE COURT: All right. If you'll have a seat, Mr.  
2 Weary. Tell us your name, please, sir.

3 THE WITNESS: Willis Weary.

4 THE COURT: Can somebody pull that mic down so  
5 that...

6 Direct Examination:

7 BY MS. GOLDBERG:

8 Q Mr. Weary, how are you?

9 A I'm all right.

10 Q Good. You were on trial for first degree  
11 burglary in March of 2007; is that correct?

12 A Yes, ma'am.

13 Q Who was your attorney?

14 A Ian Deysach.

15 THE COURT: All right. You need to speak up, if  
16 you would, sir. I've got to be able to hear you.

17 THE WITNESS: Ian Deysach.

18 BY MS. GOLDBERG:

19 Q That was a jury trial?

20 A Yes, ma'am.

21 Q What was the result of the jury trial?

22 A They find me guilty of first degree burglary,  
23 gave me 18 years.

24 Q An 18-year sentence?

25 A Yes, ma'am.

1 Q I'm going to hand up an exhibit that was provided  
2 by the State. This is your warrant ---

3 A Uh-huh.

4 Q --- for the first degree burglary. Can you take  
5 a look at that?

6 A Yes, ma'am.

7 Q Does that appear to be the warrant that you were  
8 aware of all along?

9 A Yes, ma'am.

10 Q And when they charged you with first degree  
11 burglary in this warrant, do you know why it was first  
12 degree burglary?

13 A Yeah, because they said it happened at the hours  
14 of darkness.

15 Q At trial, do you know what evidence was presented  
16 regarding the time of day the burglary took place?

17 A Yeah. They said it happened --- he told me that  
18 it happened in broad daylight.

19 Q And who said that it happened in broad daylight?

20 A The homeowners.

21 Q The victim?

22 A Yeah.

23 Q When you went to trial, you believed that it was  
24 going to be regarding the time of day of the burglary;  
25 is that correct?

1 A Yes, ma'am.

2 Q Did you know that the State was going to base  
3 their case on your prior burglaries?

4 A No, because I seen the first --- the first  
5 indictment said something about hours of darkness, so  
6 that's what I was going by. I didn't know nothing  
7 about the second indictment based on the priors until  
8 it was time for me to go to trial.

9 Q Until the time of trial?

10 A Yes, ma'am.

11 Q When you spoke with Mr. Deysach, generally  
12 speaking, your attorney ---

13 A Uh-huh.

14 Q --- did you ever talk about your prior burglaries?

15 A No. I ain't never talked about them.

16 Q Did he ever ask you any facts or details about  
17 your prior burglaries?

18 A No, ma'am.

19 Q Do you recall being convicted of burglary  
20 convictions in the year 2000?

21 A Yeah. Like, I was young then, but I remember.

22 MR. PETRANO: I'm sorry. Can he speak up or pull  
23 the mic?

24 THE COURT: He said he was young at that time,  
25 but he does remember.

1 MR. PETRANO: Thank you.

2 BY MS. GOLDBERG:

3 Q And I'm going to show you State's Exhibit 1 and  
4 State's Exhibit 2. These are the sentencing sheets  
5 from those burglaries in 2001?

6 A Uh-huh.

7 Q Right here there is a date of offense, and right  
8 here is a date of offense.

9 A Yes.

10 Q And those both say November 24th; is that correct?

11 A Yes, ma'am.

12 Q So you were convicted of two burglaries that  
13 occurred on the same day; is that right?

14 A Yes, ma'am.

15 MS. GOLDBERG: And can I please have this one  
16 marked as Applicant's 1.

17 (WHEREUPON, Applicant's Exhibit No. 1 was marked  
18 for identification only.)

19 BY MS. GOLDBERG:

20 Q Mr. Weary, if you'll look at what I gave you,  
21 this is your handwritten statement to police involving  
22 the burglaries in the year 2000. Do you recognize  
23 that?

24 A Yes, ma'am.

25 Q Do you want to flip through it and make sure that

1 it looks like your statement?

2 A It is.

3 Q It is your statement?

4 A Uh-huh.

5 Q Okay. If you will turn to page one, not the top  
6 page but the first page of the writing, it references  
7 a burglary on November 24th of 2000. Can you tell me  
8 what the address is?

9 A 2000----

10 MR. PETRANO: If I may, excuse me. Objection.  
11 In the sense that he hasn't indicated that he doesn't  
12 remember the facts themselves. So I don't think he  
13 needs a document to refresh his memorandum yet at this  
14 point.

15 MS. GOLDBERG: Your Honor, I only want to refresh  
16 his memory to the addresses of the burglaries, and  
17 then I won't refer to the statement any further, just  
18 so he knows which ones we're talking about.

19 THE COURT: Well, if he can't recall them, then  
20 he can refresh his memorandum.

21 BY MS. GOLDBERG:

22 Q That's fair.

23 Mr. Weary, do you recall two burglaries on  
24 November 24th, 2000? Do you recall the addresses of  
25 where those two burglaries took place?

1 A I can't really remember back that far about the  
2 addresses, but I remember.

3 Q Your Honor, may I?

4 THE COURT: Yes.

5 BY MS. GOLDBERG:

6 Q In your statement page one, it references a  
7 burglary on November 24th. Can you tell me what that  
8 address is?

9 A 203 Gingeroot Way.

10 THE COURT: 203 what?

11 THE WITNESS: Gingeroot Way.

12 MS. GOLDBERG: Gingeroot Way.

13 THE COURT: All right, Gingeroot Way.

14 BY MS. GOLDBERG:

15 Q And on page three, there is a question about a  
16 second burglary on November 24th. Can you tell me  
17 what that address is?

18 A 4113 Lester Drive.

19 Q Are you familiar with Gingeroot Way?

20 A Yes, ma'am. I know where it's at.

21 Q Do --- are you familiar with that address on  
22 Lester Drive, as well?

23 A I know where that's at, too.

24 Q Do you remember committing burglaries at those  
25 two residences?

1 A Yeah, I remember.

2 Q Okay. Are those residences close together?

3 A Yes, ma'am.

4 Q Can you tell me --- those two burglaries, you  
5 were charged with committing them on the same date,  
6 correct?

7 A Yes.

8 Q Were they both at night?

9 A Yes, ma'am. They was both at night, probably.  
10 Yeah, both at night. It had to be. Yeah, they had to  
11 be because we probably was running around drinking,  
12 smoking. It had to be.

13 Q Can you --- do you remember anything about the  
14 timing between one burglary and the other?

15 A No. I can't remember the time, but it probably  
16 was a short period, about 15 --- ten, 15 minutes. It  
17 wasn't long.

18 Q You were out with your friends committing both of  
19 those burglaries that same night?

20 A Yes, ma'am.

21 Q How long do you think it took you to get from one  
22 address to the other?

23 A It didn't take long, because it's like a street  
24 over, so it ain't going to take --- it ain't even a  
25 five-minute walk. It ain't going to take long.



1 Q Did Mr. Deysach ever have a conversation with you  
2 about keeping either of those convictions --- trying  
3 to prevent those convictions from being used against  
4 you in trial?

5 A No. I ain't never know they could be used  
6 against me until the trial.

7 Q Did he ever have a conversation with you about  
8 attempting to say that those two burglaries were one  
9 incident?

10 A No. Being that I was only 15 then, I was  
11 thinking that it wouldn't have mattered.

12 MS. GOLDBERG: No further questions.

13 THE COURT: All right. Mr. Petrano.

14 CROSS-EXAMINATION:

15 BY MR. PETRANO:

16 Q Now, you said ---

17 A She forgot this.

18 Q --- they're five minutes away, Gingerroot Way and  
19 Lester Drive, right?

20 A Yeah. It's only ---

21 Q And that's walking?

22 A Yeah, walking; right.

23 Q And you guys were walking, right?

24 A Yeah, it ain't that far.

25 Q Now, you remember --- you said you know that area

1 well?

2 A Yeah.

3 Q Have you ever driven that route?

4 A Not then. I was 15, so I wasn't driving like  
5 that.

6 Q All right. But you got across 277, if you're  
7 going to walk, right?

8 A All you got to do is like --- like it's a little  
9 cut right there, so you can just run across the little  
10 highway right there.

11 Q And you get on the frontage road?

12 A Yeah.

13 Q All right. And then you walk down along the  
14 highway?

15 A No. You just walk straight across from Bayberry  
16 to Capital Heights. All you got to do is cross the  
17 highway right there. It's Bayberry Mews and Capital  
18 Heights.

19 Q And you go under the highway?

20 A Yeah. All you got to do is walk through the  
21 little --- or either take the train track, one of the  
22 two. It ain't that far.

23 Q Now Gingerroot Way is kind of a little  
24 neighborhood?

25 A That's Capital Heights.

1 Q Right, and Lester Drive is another neighborhood.

2 A Yeah. They're the same. They're the same part.

3 They just got different names, though.

4 Q Okay. And just ballpark me here ---

5 A Yeah.

6 Q --- how many houses do you pass between the two?

7 A It's a --- I don't know. It's a little

8 neighborhood now. I don't know how many houses.

9 Q Okay. A lot, not a lot?

10 A It's a few. It's a good little bit.

11 Q Okay. And if I read the statement right, you

12 guys are just knocking on doors, whoever doesn't

13 answer?

14 A Yeah. We was just doing all type of crazy stuff

15 back then, man.

16 Q Okay. And did you knock on other doors on the

17 way between Lester and Gingeroot?

18 A I can't really remember. I know that's what we

19 was doing, though.

20 Q All right. About --- about how much time passed?

21 I know you said they're about five minutes apart.

22 A Yeah.

23 Q About how much time passed? You guys had both

24 been drinking.

25 A In and out, like during the night?

1 burglary that day that you pled to in front of Judge  
2 Floyd?

3 A I know I pled guilty. I ain't know until she  
4 told me. She told me after I pled guilty. She was  
5 like, "Do you realize what they done?"

6 I was like, "No. No. I just pled guilty."

7 Q And what do you mean "what they done"?

8 A Something to do with the sentencing. I ain't  
9 really know.

10 Q Okay. And the sentencing ---

11 A I know she said something about them charging me  
12 as an adult, too, so...

13 Q Because you were a juvenile at the time. You  
14 were 15.

15 A Yeah.

16 Q And you got waived up from Family Court and went  
17 to General Sessions in front of Judge Floyd.

18 A Yes, sir.

19 Q And do you remember him giving you 15 years for  
20 burglary first and having it suspended to five? Do  
21 you remember any of that?

22 A No.

23 Q And is this your --- your signature here?

24 A Yes, it is.

25 MR. PETRANO: All right. Your Honor, I'd like to

1 move in --- I've got a raised seal certified copy of a  
2 sentencing sheet, 01-GS-40-09125. It happened the  
3 same day as the others, 9127 and...

4 THE COURT: What happened the same day as the  
5 others?

6 MR. PETRANO: This plea. It was the same --- it  
7 was one plea to several charges.

8 THE COURT: In front of Judge Cooper?

9 MR. PETRANO: Floyd. No. This was...

10 THE COURT: Well, the pleas that we're talking  
11 about on --- I mean, the trial that took place was in  
12 front of Judge Cooper.

13 MR. PETRANO: Yes, Your Honor.

14 THE COURT: All right. And that ---

15 MS. GOLDBERG: And the two prior burglaries were  
16 introduced.

17 THE COURT: All right. And that --- those two  
18 and this one were done at the same time?

19 MS. GOLDBERG: Yes, Your Honor, the pleas, but  
20 this one was not introduced in the later trial.

21 MR. PETRANO: That's correct.

22 THE COURT: All right.

23 MR. PETRANO: I'd like to move these in as  
24 State's 3.

25 (WHEREUPON, State's Exhibit No. 3 was marked for

1 identification only.)

2 BY MR. PETRANO:

3 Q And Mr. Weary, when is it that you realized that  
4 the victim --- that this was a daytime burglary and  
5 not a nighttime burglary? And when I say "this  
6 burglary", I'm talking about the one, the trial with  
7 Judge Cooper.

8 A I been knew that [sic]. I knew that from the  
9 start.

10 Q You knew it?

11 A Yeah.

12 Q Okay. And when did you know that the State also  
13 knew it? That basically, that they were going to have  
14 to use your prior burglaries to enhance you?

15 A I ain't know that until the day of trial that  
16 they were going to use the prior.

17 Q Okay.

18 MR. PETRANO: Nothing further.

19 THE COURT: Anything?

20 MS. GOLDBERG: Briefly for clarification.

21 REDIRECT EXAMINATION:

22 BY MS. GOLDBERG:

23 Q Mr. Weary, you said --- when you were originally  
24 charged with first degree burglary for committing a  
25 burglary in the nighttime, but you knew that it

1 happened during the day, correct?

2 A Yes, ma'am.

3 Q Tell me why there was confusion about that.

4 A Because the warrant said "hours of darkness",  
5 then the officer tried to say that I said it happened  
6 at --- a.m., but I know I ain't say that. He tried to  
7 switch it up and try to make it seem right with the  
8 warrant. So he tried to make it seem like that, but  
9 it wasn't never like that.

10 Q So, basically, the officer wrote down the time  
11 wrong?

12 A Yeah.

13 Q So you knew all along that ---

14 A He knew he was writing --- he knew he was writing  
15 down the time wrong.

16 Q So you always wanted to go to trial ---

17 A Uh-huh.

18 Q --- and prove that it wasn't a nighttime first  
19 degree burglary?

20 A Yeah. That's the only reason why I didn't plead  
21 guilty, because it said hours of darkness, and I knew  
22 it happened during the daylight.

23 MS. GOLDBERG: Thank you. Nothing further.

24 RECROSS-EXAMINATION:

25 BY MR. PETRANO:

1 Q I would just --- you wanted to plead guilty, or  
2 you would have pled guilty. I'm sorry, what was ---

3 A Yeah, I would have. I would have pled guilty.

4 Q What would you --- were there any offers or  
5 anything?

6 A Yeah. They did offer me the second degree to the  
7 seven years, but I was so --- listening to my sister  
8 and my daughter mama [sic]. I ain't take it at the  
9 time because...

10 Q You didn't take the second degree burglary to  
11 plead to second because of your family?

12 A Yeah.

13 Q Or was it because that you knew you would beat  
14 the trial because it was hours of darkness? I don't  
15 understand.

16 A I thought I could have beat it because of the  
17 hours of darkness, but when I realized it was time to  
18 go to trial and that they was using them priors, I was  
19 going to try to plead guilty, but he was like --- he  
20 showed me the indictment.

21 He was like, "They going to try to" --- he was  
22 like, "They ain't offered no pleas, she was like ---  
23 she would give me 15, but I was like no. I'll go  
24 ahead and go to trial."

25 MR. PETRANO: Okay. Thank you.



1 THE COURT: All right. Thank you. You may step  
2 down.

3 MS. GOLDBERG: That concludes our testimony, Your  
4 Honor.

5 THE COURT: All right. Mr. Petrano, anything?

6 MR. PETRANO: Your Honor, the State calls Mr. Ian  
7 Deysach.

8 IAN DEYSACH,  
9 after being duly sworn, testified as follows:

10 THE COURT: All right. Thank you very much.  
11 Have a seat. Tell us your full name.

12 THE WITNESS: Yes, sir. Ian Christopher Deysach.

13 DIRECT EXAMINATION:

14 BY MR. PETRANO:

15 Q Sir, do you recall your representation of this  
16 Applicant?

17 A I do.

18 Q And can you tell us a little bit about how you  
19 got involved?

20 A I was appointed to his case. I don't know what  
21 --- what you want me to say beyond that.

22 Q Were you the first one appointed? Did you take  
23 over from someone else?

24 A I believe I was the first one appointed.

25 Q And did you meet with him?

1 A Oh, actually, he had Nicole Singletary from the  
2 Public Defender's Office, and then I took the case  
3 over from her.

4 Q Okay. That's what I meant. Thank you.  
5 And then did you meet with him?

6 A I did.

7 Q Did you go over the discovery with him?

8 A I did.

9 Q Did he tell you his version of events or any kind  
10 of statements or anything like that?

11 A He did. I think from the first time I met him, I  
12 think that he did adopt his statement except for the  
13 part about it being at night. That was from the  
14 beginning. He was pretty clear that what was written  
15 down by the officer in his statement about it being at  
16 nighttime, it was always his position that whatever  
17 happened had happened during the daytime.

18 Q And when did you realize, or when were you told  
19 or however it happened, that the State was going to  
20 amend or had amended the indictment; that they were  
21 going for the priors?

22 A I --- I mean, I realized that as soon as I had  
23 the rap sheet in his case that has two burglaries, I  
24 knew that there was more than one way that the State  
25 might try to enhance what might factually be a

1 burglary second into a burglary first, whether ---  
2 both the --- they might try to use the nighttime still  
3 and that there was two prior burglaries out there.

4 Q And did you explain that to the client?

5 A I did.

6 Q When I was reading the transcript, there was  
7 several portions where there's kind of basically an  
8 argument as to what should be introduced and how it  
9 should be introduced and some back and forth. Could  
10 you kind of walk us through it as far as introducing  
11 the sentencing sheets and the proof of the priors.

12 A Yes. I think that my --- it was my position that  
13 the state of the law was that if two prior burglaries  
14 were so closely connected as to basically amount to  
15 --- basically too closely connected, I'll say it like  
16 that, and I have no law in front of me. It may not be  
17 verbatim, but if the two burglaries are too closely  
18 connected, then you can't use both of them to enhance;  
19 and therefore, that there was an argument that only  
20 one burglary should count.

21 I did make that argument to the judge because the  
22 offense date was the same day, and the warrant numbers  
23 happened to be consecutive and there wasn't any  
24 evidence about where the burglaries would have  
25 occurred.

1 I don't think there is an address connected to  
2 either a sentencing sheet or an indictment, and so I  
3 wanted to --- I was asking the judge to direct a  
4 verdict on burglary first and then just go as a  
5 burglary second because testimony did show that it  
6 was --- the evidence was that it was a daytime  
7 burglary.

8 Q Now --- may I approach, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. PETRANO:

11 Q I'm going to show you State's 3, which is the  
12 third burglary conviction that Mr. Weary has. This is  
13 9125. Now, the State never bothered to put that one  
14 into evidence, did they?

15 A They did not.

16 Q Okay. And so all you had was 9127 and 9128?

17 A Correct. That's all that --- and as I looked at  
18 it as --- when I was reviewing his rap sheet in my  
19 file, I didn't really --- I really only saw the two  
20 prior burglaries on the rap sheet. So I mean, the  
21 possibility exists that I wasn't even aware that there  
22 was three in all, to be honest with you.

23 Q But they never really put it in anyway?

24 A Correct.

25 Q So after the State rests, you're left with what

1 as proof of the priors?

2 A I think they had --- they had a sentencing sheet  
3 that they put in front of the jury.

4 Q Two sentencing sheets?

5 A Two sentencing sheets.

6 Q Okay.

7 A One for each burglary that they put in front of  
8 the jury, and I believe a --- looking at the  
9 transcript, and I'm just trying to read from the  
10 transcript, and it's not really that fresh in my  
11 memory, but I think they may have had indictments from  
12 the prior burglaries that were Court's Exhibits not  
13 for the jury.

14 Q Okay. And that's where I was going. Would it be  
15 your custom or practice or anything --- would you want  
16 those indictments in or not in?

17 If you --- this is right around page 80. Do you  
18 have the transcript in front of you?

19 A I do. Page 80?

20 Q Specifically 85 through 87. If you could just  
21 take your time and kind of refresh yourself.

22 A (Pause). All right. I believe I'm refreshed.

23 Q And I'm sorry. I'll go back to the question,  
24 would it be your habit or practice to want those  
25 indictments in?

1 A No. I mean a couple of different things. I mean,  
2 I see that there is a discussion that says --- that  
3 would indicate that the indictments were for burglary  
4 first degree, and the convictions are for burglary  
5 second.

6 So the idea that the jury would know that they  
7 might have been true that he was accused of in the  
8 first place, burglary in the first degree, doesn't  
9 sound like something I would want the jury to hear.

10 Whether --- even not counting that, there's  
11 reasons why you don't want more stacks of paper where  
12 Mr. Weary is accused of committing a crime; and  
13 secondly, I mean, as far as me entering them, I mean,  
14 it's the --- it's the solicitor's job to enter them.  
15 I argued against them, but I certainly wasn't going to  
16 enter them myself.

17 Q And, in fact, did you put in any evidence?

18 A I don't believe I did, no.

19 Q And so that was --- is there a reason for not  
20 putting in any evidence?

21 A Correct. You know, the last closing part is  
22 something that a lot of defense attorneys talk about.  
23 You know, I don't --- I don't --- I couldn't think of  
24 any evidence that was worthwhile for me to present  
25 other than what was gotten out of the State's

1 witnesses on cross-examination, because even for  
2 Mr. Weary to testify would have been about, you know,  
3 if he was adopting his statement. It wasn't really a  
4 piece of evidence consistent with innocence.

5 Q And you got what you needed out of the DNA expert  
6 as much as you could?

7 A I did as much as I could.

8 MR. PETRANO: Nothing further, Your Honor.

9 THE COURT: Yes, ma'am.

10 MS. GOLDBERG: Thank you, Your Honor.

11 CROSS EXAMINATION:

12 BY MS. GOLDBERG:

13 Q Mr. Deysach, there was a plea offer made in this  
14 case, correct?

15 A There was.

16 Q And it actually required and involved this charge,  
17 along with other unrelated charges.

18 A I believe that's true. He had another AB ---  
19 assault and battery, high and aggravated nature charge.

20 Q And Mr. Weary had issues with the assault and  
21 battery of a high and aggravated nature unrelated that  
22 made him not want to plead to those, correct?

23 A I believe he did, yes.

24 Q At the time of trial for the burglary, Mr. Weary  
25 stated earlier that he would consider having pled to

1 burglary second, but the plea offer was revoked at  
2 that time. Is that true?

3 A That is true. He didn't have the opportunity on  
4 the day of trial to plead to burglary second because  
5 the solicitor wouldn't make that available.

6 Q During the trial it became apparent what time of  
7 day the burglary occurred, correct?

8 A Correct.

9 Q So the only thing the State could legitimately go  
10 forward on were the prior burglary convictions?

11 A As an enhancer. That was --- that was the only  
12 enhancer.

13 Q Prior to the trial, did you pull Mr. Weary's  
14 indictments or records related to those prior  
15 burglaries?

16 A I don't have them in my file. I don't have a  
17 memory of doing it, so I can't sit here and say that I  
18 did. But I feel like I should have, but I don't have  
19 it in the file and I don't have a memory of doing it.

20 Q Do you recall if you spoke to Mr. Weary about the  
21 facts of those prior convictions?

22 A I don't have a specific recollection of a  
23 conversation about the facts of those prior --- prior  
24 convictions, not to say it didn't happen, but it's not  
25 reflected in my notes and I don't have a memory of it.



1 Q Do you recall, or does your file reflect, that  
2 you did any legal research regarding prior convictions  
3 even though you didn't know the facts of them?

4 A There's nothing in the file. There's not a case  
5 or anything that's on point. There is the discussion  
6 in the transcript where I submit to the judge what the  
7 state of the law is on whether or not two cases can be  
8 used as enhancers if they're too closely connected.

9 So, you know, it's something that I have run  
10 across before, not necessarily in Willis' case, but  
11 there is no --- there is nothing in the file that  
12 indicates further research into the facts of Willis'  
13 case or, really, the state of the law about the close  
14 connection of two prior enhancing burglaries.

15 Q And in the trial itself when you made arguments,  
16 did you cite to any specific case law or examples or  
17 statutes?

18 A I didn't cite to any --- no authority.

19 Q Did you ever request a hearing with the judge and  
20 ask the judge to make a factual determination based on  
21 the two prior convictions?

22 A The only --- the only time it appears in the  
23 transcript, so the only time it happened, was at the  
24 directed --- I believe the directed verdict stage, and  
25 the --- I guess the --- yeah, the directed verdict

1 stage. I guess that's where it happened. That's the  
2 only time. No specific hearing for him to take it ---  
3 take up the issue.

4 Q If this issue --- you were to have this issue  
5 again in this similar case, was there anything you  
6 would do differently, or was this trial strategy?

7 A I --- you know, hindsight, obviously, not having  
8 the perfect recollection, I feel like what I should  
9 have done is I should have had the --- the better  
10 authority with me. I should have had the indictments  
11 with me, although they were in the possession of the  
12 solicitor's office.

13 I did view those indictments, but I should have  
14 had better authority, prepared argument a little bit  
15 better and had more factual research done on the  
16 connection between the two burglaries.

17 MS. GOLDBERG: No further questions.

18 THE COURT: Anything, Mr. Petrano?

19 MR. PETRANO: If I could just have one moment,  
20 Your Honor, to think something through.

21 (Pause)

22 REDIRECT EXAMINATION:

23 BY MR. PETRANO:

24 Q Sir, what's your opinion --- and tell us if it  
25 was different then versus now --- is the priors in a

1 burglary first, is that an element of the crime, or is  
2 that a sentencing enhancement like a strike?

3 A My opinion now, and I think then, is that with  
4 burglary, as opposed to, say, drug offenses that those  
5 enhancers are elements.

6 Q And that would have to be proven by the State  
7 beyond a reasonable doubt?

8 A Correct.

9 Q And submitted to the jury?

10 A Correct.

11 MR. PETRANO: All right. Nothing further.

12 Thank you.

13 THE COURT: All right. Thank you. You may step  
14 down.

15 THE WITNESS: All right. Thank you, Your Honor.  
16 Am I excused or must I hang around?

17 THE COURT: What would you like to do?

18 THE WITNESS: I'd like to be excused. I've got  
19 to get back to Beaufort.

20 THE COURT: You don't need to put all this on.

21 (WHEREUPON, there was an off-the-record  
22 discussion.)

23 THE COURT: Anything further?

24 MR. PETRANO: No evidence or testimony. Just  
25 brief argument, but I'll do that in reply.

1 THE COURT: All right.

2 MS. GOLDBERG: Thank you, Your Honor. First  
3 degree burglary, we know, because lots of case law is  
4 out there that says that the case law, the two prior  
5 convictions, are an element of the crime. They're not  
6 just used for sentencing.

7 Your Honor, there is a statute that is often used  
8 for life without parole. It's actually also used for  
9 drug offenses.

10 It states that in determining the number of  
11 offenses for the purpose of disposition of a sentence,  
12 the court shall treat as one offense any number of  
13 offenses which have been committed at times so closely  
14 connected in point of time that that they may be  
15 considered as one offense.

16 Your Honor, the same concept is also present in  
17 habitual traffic offender laws: Any priors committed  
18 at one time should be treated as one.

19 It is common in our state for almost every single  
20 recidivist statute, and first degree burglary, even  
21 though the prior convictions are an element of the  
22 offense, it is a recidivist statute.

23 Clearly, two separate people can commit the exact  
24 same burglary during the day, and the only difference  
25 in the charge and the potential sentence is their

1 prior record. That's the definition of the recidivist  
2 statute.

3 Our argument is that the statute concerning  
4 closely connected offenses, the state policy  
5 concerning recidivist statutes, using this concept  
6 should apply to first degree burglary.

7 There is --- the two burglary convictions that  
8 the State entered as their burden of proof in proving  
9 first degree should be considered as one offense.

10 The Applicant stated they happened the same day,  
11 same night, nearby, close in time. Basically, what he  
12 said without in so many words is that they were out  
13 committing crimes and doing burglaries, and that is a  
14 crime spree.

15 Your Honor, I think State v. Bryant has one of  
16 the newest definitions of the test. It basically says  
17 when multiple offenses are inextricably connected and  
18 share an immediate temporal proximity. That's what  
19 happened. They were connected.

20 They were out committing burglaries. That's what  
21 they were doing. There is a time connection, a  
22 location connection.

23 Your Honor, Bryant v. State also says when a  
24 genuine ambiguity exists as a result of the proposed  
25 application of 17-25-50 to a given situation, the rule

1 of lenity requires that the doubt must be resolved in  
2 the defendant's favor. Basically saying if we're not  
3 sure, it should be resolved.

4 In this case, Mr. Deysach never investigated the  
5 prior burglaries, was not able to make a sufficient  
6 argument as to how they should be considered one, and  
7 therefore, the trial judge was never given a true  
8 opportunity to rule on this.

9 He never asked for a hearing. Mr. Deysach didn't  
10 quote the statute that relates to recidivist crimes,  
11 and therefore, there wasn't a meaningful application  
12 of this legal theory. And therefore, that would be  
13 ineffective assistance of counsel.

14 THE COURT: All right. Mr. Petrano, what do you  
15 want to say?

16 MR. PETRANO: Your Honor, this is an interesting  
17 issue, and I'll submit that. We've got kind of an  
18 awkward layered analysis here.

19 I'll try to walk through it and try to be  
20 articulate. I know I'm not good at that, but counsel  
21 would have had to put up the applicant or put in  
22 evidence to explain the nuances of the prior  
23 burglaries. That was obviously something that was  
24 risky in the sense that if you put up the Applicant,  
25 things would go south, but if you put up documents,

1 there really isn't a lot to put up.

2 I don't think we can put the indictments into  
3 evidence here for the two prior burglaries, but I  
4 think it's fair to say that they don't really indicate  
5 what happened.

6 The only reason we know, supposedly, that this  
7 was only --- these two burglaries were only five  
8 minutes apart is based on his --- his meaning the  
9 applicant's --- testimony.

10 So it would be a tricky call, I submit, to put  
11 the Applicant up there to do that: (A) you don't know  
12 what's going to happen when the State goes to cross  
13 him. You don't know what else he's going to say; and  
14 (B) losing the right to closing argument.

15 I think the transcript reflects that on multiple  
16 occasions, counsel did argue that there was not  
17 sufficient evidence presented as far as beyond a  
18 reasonable doubt that these were two prior distinct  
19 burglaries. He argues that on several occasions to  
20 the judge and to the jury.

21 I've got the trickier part here, too, of section  
22 two of my analysis is I submit these aren't sprees.  
23 First of all, the test in Bryant that was articulated,  
24 I don't think would --- find these to be one  
25 transaction, but first let me say that Bryant didn't

1 exist.

2 We didn't have that well thought out analysis  
3 that Bryant has given us at the time of the  
4 Applicant's trial, but the spree and the common  
5 transaction to make a bunch of crimes one offense for  
6 the purposes of the recidivist statute is, I believe,  
7 to take into consideration you go into a store and you  
8 hold it up. So you've got a kidnapping, an armed  
9 robbery, another kidnapping, a larceny all happening  
10 in one store.

11 You shouldn't be able to break those apart, that  
12 one armed robbery of the one store with a bunch of  
13 victims, and you're taking items, and break those  
14 apart and LWOP someone. I think that's the idea  
15 behind the same transaction, same offense.

16 What you've got here is the Applicant --- even if  
17 you take the Applicant's word at face value, where  
18 they're just going around the neighborhood robbing  
19 houses. Judge, that's not the same transaction.  
20 That's not really a spree the State submits.

21 I can see the argument going both ways, but if it  
22 goes both ways, then counsel's approach was legitimate.  
23 Strickland's test is that he has to be deficient,  
24 wholly deficient, by the State's --- our community  
25 standards as far as a lawyer. I don't think this his



1 approach was ---

2 THE COURT: Well, he had gotten up and admitted  
3 some deficiency, didn't he?

4 MR. PETRANO: Well, what did he say? He said, "I  
5 should have cited some more case law."

6 THE COURT: "I should have been more familiar  
7 with the facts concerning the two burglaries, so that  
8 I could have argued that. Well, the indictments were  
9 in --- were in the courtroom. I really was not  
10 familiar with what the facts were and how all of that  
11 happened."

12 I mean, isn't that a deficiency?

13 MR. PETRANO: Well, let's look at all those  
14 things. He explained he wouldn't want to put the  
15 indictments in because they would ---

16 THE COURT: He is saying that I should have had  
17 something to argue about. I understand he said he  
18 wouldn't want to put the indictments in.

19 MR. PETRANO: Well, he said --- I'm sorry.

20 THE COURT: Well, what is he going to do? I mean,  
21 he didn't know anything. The indictments say the  
22 burglaries occurred at such and such address on such  
23 and such a time.

24 MR. PETRANO: That's right. So what --- what is  
25 he supposed to do?

1 THE COURT: Well, do some investigation. I guess  
2 somebody has come up with something here today to know  
3 that at least...

4 MR. PETRANO: And ---

5 THE COURT: That they occurred within a five  
6 minute period.

7 MR. PETRANO: And that ---

8 THE COURT: He didn't know that at that time.

9 MR. PETRANO: And that was my first point. For  
10 him to get that in front of the jury, which is that  
11 Judge Cooper trial, would be to put Mr. Weary up, and  
12 that is inherently risky, I submit.

13 THE COURT: Well, there are other ways to attempt  
14 to do that, aren't there?

15 MR. PETRANO: I don't ---

16 THE COURT: You could make a motion to suppress  
17 the introduction of the indictment for --- I mean  
18 those sentence sheets, because they all constitute one  
19 crime, and therefore, they shouldn't be admitted. I  
20 mean ---

21 MR. PETRANO: Yeah.

22 THE COURT: You do that through --- without  
23 necessarily having to put him up in front of a jury, I  
24 don't think. I don't know. I don't know what Judge  
25 Cooper would have done in that instance.

1 MR. PETRANO: And I submit that the indictments  
2 have not been put into evidence here, have not been  
3 read in. We don't know if they make it clear that  
4 these were five minutes apart. I think that's fair to  
5 argue that the indictments do not.

6 MS. GOLDBERG: They do not have a time.

7 MR. PETRANO: Right. The only time issue is  
8 going to come from Mr. Weary.

9 THE COURT: Well, I understand that. I mean,  
10 indictments normally don't have the time.

11 MR. PETRANO: So we're back to a prejudice issue  
12 here.

13 THE COURT: But he had the ability to talk to his  
14 client and say, "Hey, tell me about when these things  
15 happened. Let me know about the facts surrounding  
16 them, so if that's an issue, I can argue it."

17 MR. PETRANO: And we're back to what I'm saying  
18 is even if you ---

19 THE COURT: Well, he says --- in my opinion, he  
20 says, "I was deficient. I should have done these  
21 things."

22 MR. PETRANO: And I have explore, okay, then what.

23 THE COURT: I mean, I understand you may disagree,  
24 but he says that he was. So what --- here is what I  
25 want: Where are you, if you prevail on this thing?

1 You go back, and you still have two indictments, don't  
2 you? I mean, two charges for...

3 MR. PETRANO: Well, he has three, and that's  
4 where my ---

5 THE COURT: No. Assuming these should have only  
6 been considered one offense, one --- one burglary, it  
7 goes back to still going to have a second one, right?

8 MS. GOLDBERG: Your Honor, effectively, there is  
9 one out there. It wasn't introduced in this trial.

10 THE COURT: I know that. I mean, they got the  
11 ability to go forward.

12 MS. GOLDBERG: Absolutely, and at that point,  
13 Mr. Weary would, again, have the ability to decide  
14 whether he wanted to plead guilty or go to trial.

15 MR. PETRANO: Actually, it's more nuance than  
16 that, if I may.

17 THE COURT: Sure.

18 MR. PETRANO: If you were to rule that he is to  
19 go back and be resentenced, at that point in time,  
20 9125 is not in evidence.

21 The only thing he could be resentenced to is  
22 burglary second. If you were to rule that he goes  
23 back and gets a new trial because his counsel was  
24 deficient, then it's game on. They can slip in 9125.  
25 That's why it gets tricky because if ---

1 THE COURT: Well, I didn't know that I could rule  
2 it could go back only to be resentenced.

3 MR. PETRANO: There are case laws to support that  
4 regarding burglary and drug offenses and strike issues.  
5 Now, I'm not saying that's within the PCR statute, but  
6 there are published cases that suggest that you could  
7 do that.

8 Now, back to what I was saying before is that ---  
9 if you were to say that he should just get resentenced,  
10 then you're kind of presupposing that counsel did a  
11 good job in the sense that you granting PCR would be  
12 because of the State's deficiency, not to call Mr.  
13 Deysach deficient because you locked the State down.

14 And if he is to go back and resentenced, he's  
15 going to win out because there's only the two, not the  
16 9125, not the third, so Mr. Deysach did nothing wrong.  
17 It was the State's inadequacies in they're  
18 presentation. We also get to another step, but I'll  
19 stop now, if you want.

20 THE COURT: Well, I'm prepared to listen.

21 MR. PETRANO: We've got another issue.  
22 Repeatedly, it's been referred to that the priors for  
23 burglary are enhancements. In fact, some of the cases  
24 being relied upon are enhancement cases, 17-25-45,  
25 strike issues and some drug cases.

1 Well, we've got an Aprendi problem now. Aprendi,  
2 I believe it's New Jersey, that's a 2000 case. The US  
3 Supreme Court made it very clear that the jury must  
4 find all elements of a crime except for prior offenses.

5 Now, we've got a problem. 9125 is in evidence.  
6 You go back and a judge can find that the third  
7 burglary, which the State never bothered to put in,  
8 does exist, in which case, this is a burglary because  
9 the jury doesn't have to find the fact that there was  
10 a prior if you read Aprendi to say that. I submit  
11 that that is an argument that could be made.

12 So I apologize for making this completely  
13 tangential, but if the priors for burglary are  
14 sentence enhancements, Aprendi says the jury need not  
15 find those. 9125 exists. The judge can find that on  
16 his own. He goes back for resentencing. It's still a  
17 burglary. IE, there is no prejudice.

18 THE COURT: Well, I mean, my opinion is clearly  
19 an element that they have a burden of proof.

20 MR. PETRANO: And absolutely, it's an element.  
21 However, you have got Aprendi's plain language that  
22 says all elements must be found by the jury, except  
23 for prior offenses.

24 Now, when we have drugs and we have strikes, we  
25 don't make a jury finding ---

1 THE COURT: Well, that's solely a --- in my  
2 opinion, solely an enhancer as opposed to an element.

3 MR. PETRANO: It's consistently been referred to  
4 as an --- here today as an enhancement, and the cases  
5 relied upon our calling it ---

6 THE COURT: Well, I don't know what you mean,  
7 consistently. They relied on some cases that speak to  
8 enhancements, but I think --- I think Mr. Deysach  
9 clearly said, in his opinion, it's an element, not an  
10 enhancer.

11 MR. PETRANO: Okay.

12 THE COURT: Isn't that what --- wasn't that his  
13 testimony?

14 MR. PETRANO: He absolutely did.

15 THE COURT: All right. And based on some of your  
16 editorial comments in the course of your  
17 cross-examination, I believe that you believe it's an  
18 element that has to be proven.

19 MR. PETRANO: I believe there is an argument to  
20 go both ways, but I --- if you were to ask me  
21 specifically, it is an element of the crime. It's in  
22 the statute.

23 But that being said, he did a good job. He kept  
24 the intricacies out, and he argued that this was one  
25 offense. The only other away to really, really do it,

1 at least the way it's been presented here today, is to  
2 put Mr. Weary up.

3 There has been no other evidence presented that  
4 he could have done anything else to show that this was  
5 five minutes apart, except for put Mr. Weary up, and  
6 that was a risky move. My point being he didn't do  
7 anything ineffective. It's a tough call, and it's a  
8 tough situation.

9 THE COURT: I don't know that he did. Clearly,  
10 there was a method for him having to do that without  
11 putting his client up.

12 MR. PETRANO: None of that has been shown here  
13 today.

14 THE COURT: Well, he said himself in the course  
15 of his directed verdict motion that he could have had  
16 the facts to --- I mean, the indictments were there.

17 MR. PETRANO: Now, wait a minute. You're saying  
18 that he had to put them in front of the jury. So  
19 either he has to put a case up or he doesn't. It...

20 We're getting...

21 THE COURT: He made a directed verdict motion.

22 MR. PETRANO: Right.

23 THE COURT: This is a burglary one.

24 MR. PETRANO: Right.

25 THE COURT: And in the course of making that



1 motion, he can clearly make certain arguments and  
2 ask --- he's got whatever he --- information he's got  
3 there in front of him.

4 MR. PETRANO: By definition, he can't put  
5 evidence in to make it ---

6 THE COURT: I'll have the court take judicial  
7 notice of it as to of those --- I don't know what the  
8 indictments are, but he has invoked the same --- they  
9 clearly say that it's the same day.

10 MR. PETRANO: That is exactly my point, sir.  
11 Putting in the indictments wouldn't have helped. The  
12 only way to do this is to ---

13 THE COURT: He shows the court --- you know, I'm  
14 the judge. I'm not ---

15 MR. PETRANO: The indictments don't say anything.  
16 There is no other way to do this.

17 THE COURT: They're saying they occurred on the  
18 same day.

19 MR. PETRANO: And that does not make it a spree..

20 THE COURT: Well, that gives them something ---  
21 the State may then have to offer some proof as to what  
22 it is. I don't know. It's --- it's a difficult  
23 situation, but they ---

24 MS. GOLDBERG: Your Honor, if I may, my take on  
25 that would be that the jury would need to find that he

1 had two prior connections beyond a reasonable doubt.

2 That's all they need.

3 Whether they're so closely connected to be  
4 considered as one offense, that's a legal decision for  
5 the judge to make, and that's something that  
6 Mr. Deysach could have done during the directed  
7 verdict motion or pretrial regarding the indictments,  
8 and you can obviously put the defendant up for limited  
9 purposes, such as a Denno hearing. So that absolutely  
10 could have been done.

11 MR. PETRANO: And I do have a retort to that. If  
12 the argument is that he should have done something  
13 pretrial, then that begs the question that the State  
14 would have changed their case in chief.

15 So, again, there has been no demonstration of  
16 prejudice. They could have brought out the officer  
17 and brought out the other avenues to explain that they  
18 were separate offenses and they were not the same  
19 crime, or --- and why the State didn't do this, I have  
20 no idea ---

21 THE COURT: Well, I don't ---

22 MR. PETRANO: --- bring in 9125 ---

23 THE COURT: The jury would have never made a  
24 decision as to whether they were so closely related to  
25 be considered one. That would be a decision for the

1 court.

2 MR. PETRANO: But you have 9125. It was pushed  
3 at pretrial. Everyone has to admit --- it's  
4 reasonable to assume that if this were pushed at  
5 pretrial, the State would have found 9125, which I  
6 found right over there, and moved it in. This problem  
7 is solved. There's two or more priors.

8 THE COURT: I don't know that. If I'm the  
9 court --- I mean, if I'm the --- I want to get the  
10 jury sworn and go forward before I raise that issue.

11 MR. PETRANO: And ---

12 THE COURT: And you can certainly ask the court  
13 to consider that at any time.

14 MR. PETRANO: And, again, he couldn't put  
15 anything else in, and then we're back to what he was  
16 saying at the beginning.

17 THE COURT: In my opinion, he could have raised  
18 that issue at any time.

19 MR. PETRANO: And are you saying that the court  
20 could not --- is it inappropriate for me to ask  
21 questions, just to fire them?

22 THE COURT: You can ask me.

23 MR. PETRANO: If the court could take judicial  
24 notice, they could also take judicial notice of the  
25 third burglary that the State never bothered to

1 mention.

2 THE COURT: I don't think they could do that at  
3 the time the State just puts all their evidence in.

4 MR. PETRANO: Okay.

5 THE COURT: I mean, they maybe take judicial  
6 notice, but that was not evidence that was offered  
7 with respect to this element of the crime.

8 MR. PETRANO: Well, then, by that same logic, I  
9 fail to see how, then, Mr. Deysach could have the  
10 court take judicial notice of the indictments that  
11 were never put in.

12 THE COURT: All right. So your position would be,  
13 Mr. Petrano, that if you were defending this person  
14 and you knew these two indictments, alleged offenses  
15 that occurred within five minutes of each other in the  
16 neighborhoods that were across the street from each  
17 other, if your client had told you that, you would  
18 have said, "Hey, you can't win on that. These are two  
19 burglaries, and we're just not even going to raise  
20 that issue"?

21 MR. PETRANO: I would be hesitant to put my  
22 client up if that was the only avenue ---

23 THE COURT: Mr. Petrano ---

24 MR. PETRANO: --- to explain the difference.

25 THE COURT: --- would you ---

1 MR. PETRANO: At the time of this trial, I would  
2 be hesitant that that would not be a spree, absolutely.

3 MS. GOLDBERG: Your Honor, if I may.

4 MR. PETRANO: We didn't have Bryant.

5 THE COURT: Well, we've got it now.

6 MR. PETRANO: That's true.

7 THE COURT: Yes, ma'am.

8 MS. GOLDBERG: Briefly, you're right. Bryant was  
9 not issued until now. However, prior to this trial,  
10 there was State v. Benjamin.

11 State v. Benjamin was overruled on other grounds,  
12 but the courts considered the issue. And that was two  
13 armed robberies and a murder that occurred within a  
14 four-hour period. It wasn't one incident, as he  
15 referenced. It was within a four-hour period.

16 They found those were closely connected. It was  
17 overruled on issues related to the statutes, but the  
18 legal theory behind considering those offenses to  
19 count as one.

20 THE COURT: All right. Here is what we're going  
21 to do: Both of you submit me proposed orders.

22 MR. PETRANO: And I'm sorry, but if I may just, I  
23 have to reply to that one part.

24 THE COURT: No, you don't.

25 MR. PETRANO: Thank you.

1 MS. GOLDBERG: Thank you, Your Honor.

2 THE COURT: Just submit me a proposed order. How  
3 much time do you all want for the proposed order?

4 MR. PETRANO: I'm fine for whatever, Ms. Grafton.

5 MS. GOLDBERG: I would ask for until next Friday,  
6 but if that's too long, we can do whatever you want.

7 THE COURT: Well, look ---

8 MS. GOLDBERG: Yes.

9 THE COURT: I'm not getting an order out of him  
10 by next Friday.

11 MR. PETRANO: I was thinking 30 days.

12 MS. GOLDBERG: Oh, okay.

13 THE COURT: I mean, he has orders from Monday and  
14 Tuesday.

15 MS. GOLDBERG: Uh-huh. I just didn't want to do  
16 it by this Friday.

17 THE COURT: The question is, is it something to  
18 send back for resentencing for send back for a new  
19 trial?

20 THE DEFENDANT: Oh, I don't want...

21 MR. PETRANO: What.

22 THE DEFENDANT: I don't want no trial again. I  
23 wanted to try to plead guilty the whole time.

24 THE COURT: I just don't know that I have the  
25 authority to do anything else at this point. You all

1 better address that, too.

2 MS. GOLDBERG: Yes, Your Honor.

3 THE COURT: I mean, you could agree on something.

4 MR. PETRANO: It's unlikely.

5 THE COURT: You were telling me yesterday what, I  
6 agree on things all the time.

7 MR. PETRANO: I do, but not on this one.

8 THE COURT: You agreed on one in front of me.

9 How many years have you been doing that?

10 MR. PETRANO: Are we still on the record?

11 THE COURT: No. We don't have to be.

12 MR. PETRANO: Okay.

13 (Off-the-record discussion.)

14 (WHEREUPON, the proceedings were concluded.)

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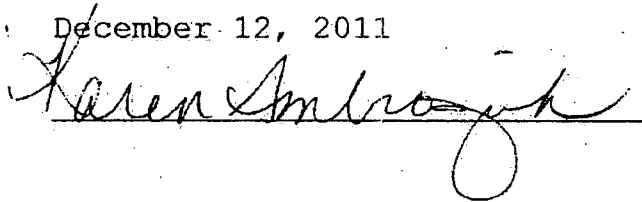
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA       )  
                                          )  
COUNTY OF RICHLAND            )

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Common Pleas Court for Richland County, South Carolina, on the 31<sup>st</sup> day of August, 2011.

December 12, 2011

A handwritten signature in cursive script, reading "Karen Ambroziak", is written over a horizontal line.

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14



STATE OF SOUTH CAROLINA  
 COUNTY OF RICHLAND  
 IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP4001172

Willis #283431 Weary

vs.

State of South Carolina

Plaintiff

Defendant

## CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP;  
 SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other: \_\_\_\_\_
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

JEANETTE W. McBRIDE  
 C.C.P. G.S.  
 2011 OCT -3 PM 3:18  
 RICHLAND COUNTY  
 FILED

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this \_\_\_\_ day of \_\_\_\_\_, 2011.

PRESIDING JUDGE

This judgment was entered on the \_\_\_\_ day of \_\_\_\_\_, 2011, and a copy mailed first class this 3<sup>rd</sup> October 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Willis #283431 Weary  
 Kristy Grafton Goldberg

ATTORNEY(S) FOR THE PLAINTIFF(S)

Brian T Petrano

ATTORNEY(S) FOR THE DEFENDANT(S)

*Jeanette W. McBride*  
 Clerk of Court

SCRCP APP-24/FORM 4

ATTORNEY REVIEWED OFFICE

SCANNED

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT

Willis Weary, SCDC # 283431 )

2010-CP-400-1172

Applicant, )

vs. )

ORDER

The State of South Carolina, )

Respondent. )

RICHLAND COUNTY  
 FILED  
 2011 OCT - 3 PM 3:14  
 JEANETTE W. McBRIDE  
 C.C.P. & G.S.

### PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 19, 2010. The Respondent made its Return on or about May 20, 2010. The Applicant thereafter filed an Amendment to his Application for Post-Conviction Relief on August 22, 2011. An evidentiary hearing into the matter was convened on August 31, 2011 at the Richland County Courthouse. The applicant was present at the hearing and was represented by Kristy Goldberg, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Ian Deysach, Esquire, also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the trial proceedings against the Applicant, the appellate records that followed, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to an order of commitment of the Clerk of Court for Richland

County. The Applicant was represented by Ian Deysach, Esquire during his trial. On March 2, 2007 at the conclusion of his jury trial, the Applicant was sentenced by the Honorable G. Thomas Cooper, Jr. as follows:

1<sup>st</sup> Degree Burglary      2006-GS-40-6      Eighteen years

The Applicant appealed his conviction. The South Carolina Court of Appeals denied the appeal. State v. Willis Weary, Op. No. 2009-UP-559 (S.C. Ct. App. Filed November 23, 2009). The Remittitur was dated December 9, 2009.

At the evidentiary hearing, Applicant alleged that trial counsel was ineffective for failing to investigate the Applicant's prior burglaries and research whether they should have been considered a single incident for the purpose of enhancing his burglary charge to a First Degree burglary charge. Accordingly, the Applicant argues he should have been convicted of Second Degree Burglary and his case should be remanded back to the trial court for re-sentencing for the offense of Second Degree Burglary.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard testimony during the Post-Conviction Relief evidentiary hearing. Further, this Court had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

#### **Relevant Facts**

The Applicant was arrested for a burglary incident which occurred on August 20, 2005. (See, Warrant.) Allegedly, the burglary took place when the Applicant broke a window and entered an apartment to steal items including but not limited to a DVD player. (See, Warrant and Record, generally). The Applicant was charged with First Degree Burglary based on the allegation that the burglary occurred at night. (See, Warrant).

The Applicant was initially indicted for First Degree Burglary by the Grand Jury on April 19, 2006. This indictment alleged that the burglary occurred during the nighttime. (See, Indictment dated April 19, 2006). This indictment was thereafter amended on January 25, 2007 to include the additional element of "having a prior record of two or more convictions for burglary." (See, Indictment dated January 25, 2007).

During the jury trial February 28, 2007 through March 7, 2007, the victim provided evidence that the burglary occurred between the hours of 6:00 a.m. and 4:00 p.m., or in other words, during the hours of daylight. (See, Transcript of trial, pages 144 - 155.) No evidence was introduced to prove the Burglary occurred during the hours of darkness<sup>1</sup>. (See, Trial transcript, generally).

The State proceeded forward on the First Degree Burglary charge by entering into evidence two sentencing sheets for the Applicant's prior convictions of Second Degree Burglary. The sentencing sheets prove convictions for indictments 2001-GS-

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<sup>1</sup> Although the Investigator testified that the Applicant admitted committing the burglary between 12 a.m. or 1 a.m., the victim testified that the burglary must have occurred between 6:00 a.m. and 4:00 p.m. As a result, the Investigator conceded during the jury trial that the burglary could not have occurred during the hours of darkness. (See, trial transcript page 260).

40-9128 and 2001-GS-40-9127 (See, trial exhibits 24 and 25). The sentencing sheets reflect that both prior burglaries had an offense date of November 24, 2000.

Trial counsel moved for a directed verdict at the close of the State's case and asked that the case be sent to the jury as a Second Degree Burglary only, as the State failed to provide sufficient evidence for the charge of First Degree Burglary. (See, trial transcript pages 283 – 288). Trial counsel based this request on the fact that the sentencing sheets showed the prior convictions occurred on the same offense date. Trial counsel argued, "my understanding of the law, in order to use the enhancement, the two offenses cannot be so closely linked as to basically constitute the same offense. I don't think there is anything on these pieces of paper that indicates that these two cases aren't so linked." (See, trial transcript page 283). Trial counsel also pointed out the indictment numbers were consecutive. (See, trial transcript page 286). Trial counsel clarified, "[m]y position is that they haven't given any evidence that they're not [closely linked] and it's their burden of proof on this." (See, trial transcript page 286).

In response, the State argued that the convictions involved two separate warrant numbers, two separate indictment numbers, and name two separate victims. Further, the State argued "[t]hey are two separate burglary convictions. And that's what the statute calls for." (See, trial transcript pages 284 – 285). The State explained their position that, "by virtue of the fact that they are two separate warrant numbers and two separate indictment numbers they are two different convictions." (See, trial transcript page 286).

Throughout this directed verdict motion, neither side produced any facts regarding the prior convictions or any legal authority for their arguments. The Court decided not to grant trial counsel's motion for a directed verdict and in doing so explained that he did not have enough information to rule in favor of trial counsel, as stated below:

**The Court:** Well, what's to say they're not, that the defendant was developed as a suspect in both cases even though the events may have occurred months apart and both warrants served on him at the same time and both indictments served on him at the same time? I don't know.

**Mr. Deysach:** And there's certainly nothing that the State put in evidence as to that.

**The Court:** No. There's nothing in evidence either that say that they take place on the same day that would substance to your argument.

**Mr. Deysach:** They have the burden of proof in this case.

**The Court:** I understand that. Overruled. Next motion.

(See, trial transcript pages 286 – 287). This issue was not reviewed on appeal. The Applicant has not asserted an allegation of ineffective assistance of appellate counsel because, as explained below, the issue was not properly preserved by trial counsel for appellate review.

On August 31, 2011 the Applicant testified during the evidentiary hearing for the Post-Conviction Relief action. The Applicant testified that prior to trial he did not understand that his previous convictions were going to be used against him to enhance the burglary charge. Accordingly, he was also not informed by trial counsel that this could be challenged. Further, the Applicant testified that he never spoke to trial counsel about his prior convictions.

During the evidentiary hearing, the Applicant was asked if he recalled the burglaries resulting in convictions of indictments 2001-GS-40-9128 and 2001-GS-40-9127. While on the witness stand, the Applicant's memory was refreshed with the incident report form each of the burglaries stating the address of each burglary. Applicant testified that he did remember November 24, 2000 when he committed these burglaries, and recalled that the burglaries were in a close proximity to each other by way of a short-cut, and occurred within approximately five minutes of each other.

Trial counsel Ian Deysach also testified during the evidentiary hearing. Trial counsel testified he was aware of the Applicant's prior burglary convictions on his RAP sheet and was aware that those prior convictions could be used to enhance the burglary charge to a First Degree Burglary. Trial counsel testified that his notes do not reflect that he did any investigation or research regarding the prior convictions. His notes also do not reflect that he ever spoke with the Applicant about the underlying facts of his prior convictions. Trial counsel could not recall if he had seen the indictments or sentencing sheets for the prior convictions before they were presented as evidence during the jury trial.

During testimony, trial counsel admitted that he should have done some investigation as to the prior convictions so that he could present a factual basis to the Court regarding the "closely connected" nature of the prior convictions. Trial counsel testified that his intent was to refrain from putting up any evidence so that

he could argue last closing, but he should have been more prepared to argue the issue from a factual and legal standpoint during the directed verdict motion.

### LEGAL FINDINGS

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

### Failure to Investigate

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at



625, (citing Strickland).

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the state." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Trial counsel admitted during the evidentiary hearing that he did not have any factual information regarding the prior burglary convictions and did not research whether the prior burglaries should be considered a single incident. As a result, trial counsel did not conduct an investigation to discover all reasonably available evidence to rebut the State's enhancement of the burglary charge to First Degree. Trial counsel did not provide the Court with any documentation or testimony regarding the "closely connected" nature of the prior burglaries.

If trial counsel had investigated the prior burglary convictions, he would have been able to present the Court with incident reports and/or testimony by the Applicant as was done in the Post-Conviction Relief evidentiary hearing. Trial counsel could have asked the Court to review this information outside of the presence of the jury during the directed verdict motion for the purpose of making the legal determination whether the prior closely connected offenses should be considered as one prior offense.

Trial counsel did not provide the Court with any information regarding the "closely connected" nature of the prior burglaries, and therefore was not able to sufficiently challenge the use of the prior burglaries. Based on the trial counsel's

lack of information, the Court had no choice but to deny Applicant's motion for a directed verdict as to First Degree Burglary. (See, trial transcript pages 286 – 287).

### Prejudice

The second prong in evaluating allegations of ineffective assistance of counsel requires that the 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.

South Carolina Code of Laws Section 17-25-50 states:

"[I]n determining the number of offenses for the purpose of imposition of a sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses."

This statute is applicable to South Carolina's recidivist offenses, including those for which a "Life without Parole" sentence under §17-25-45 is available and those within our state's drug distribution laws. See, Robinson v. State, 387 S.C. 568 (2010), State v. Benjamin, 353 S.C. 441 (2003), Bryant v. State, 384 S.C. 525, 683 S.E.2d 280 (2009), Koon v. State, 372 S.C. 531 (2007), State v. Boyd, 288 S.C. 206 (1986); State v. Woody, 359 S.C. 1, 596 S.E.2d 907 (2004). A similar provision is also present in the statute criminalizing recidivism in the form of habitual traffic offenders. See, S.C. Code of Laws § 56-1-1020. If the State attempts to improperly use prior convictions against an offender, the burden should be on the Defense attorney to challenge the use of the prior convictions. See generally, Scott v. State,

334 S.C. 248, 513 S.E.2d 100 (1999).

Burglary is a recidivist statute because the appropriate charge and maximum sentence can be determined by the offender's history of similar criminal offenses. The statute defining First Degree Burglary states that it can be proven if "the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both." SC ST § 16-11-311. Our Courts have clearly established that evidence of the prior burglary convictions is an element of the offense of First Degree Burglary and must be submitted to the jury for a conviction. State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (App. Ct. 2002). The statute does not require anything more specific than "a prior record of two or more convictions" and does not reference if prior closely connected convictions should be treated as one conviction for the purpose of enhancement.

Under the statute, evidence of prior burglary convictions alone can enhance a Second Degree Burglary, which is punishable up to fifteen years in prison, to a First Degree Burglary, which is punishable up to life in prison. SC ST § 16-11-311. The charge and sentence are enhanced solely because of the recidivistic nature of the offender. Therefore, offenders charged with First Degree Burglary based on prior offenses are entitled to the same considerations as other recidivist offenders under § 14-25-50.

The Applicant testified during the evidentiary hearing regarding the prior burglary convictions which were used during the jury trial and stated that the burglaries occurred within the same area and on the same day within five minutes

of each other. The Applicant was credible in this regard, and his testimony was consistent with the information in the available records. The Applicant provided sufficient evidence that the burglaries occurred within a single crime spree and "were so closely connected in point of time that they may be considered as one offense." As a result, the two prior burglary convictions should have been treated as one prior conviction for the purpose of enhancing the charge to a First Degree Burglary. The Applicant's motion for a directed verdict as to First Degree Burglary should have been granted as a matter of law and the jury should have deliberated only as to Second Degree Burglary.

During the Post-Conviction Relief evidentiary hearing, the Respondent provided evidence to the Court that the Applicant has an additional burglary conviction which could have been presented as evidence in the jury trial for consideration as a second prior conviction. However, the additional prior conviction was never submitted to the Court or to the jury by the State during trial<sup>2</sup>. Therefore, its existence is not relevant to trial counsel's performance regarding the directed verdict motion made after the State concluded their case and rested.

During the Post-Conviction Relief hearing Respondent argued the evidence regarding the "crime spree" nature of the Applicant's prior convictions was only introduced because the Applicant testified during the hearing. The Respondent took the position that there is no mechanism to allow testimony or evidence to be presented during a directed verdict motion, i.e., offering evidence to explain that the

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<sup>2</sup> There is no explanation in the record as to why the State never offered the 3<sup>rd</sup> burglary conviction during the jury trial.

two prior convictions introduced were a crime spree and should be considered as one offense. The trial court noted "[T]here's nothing in evidence either that says that they take place on the same day that would substance your argument." (See, trial transcript page 286 – 287.) Respondent's argument is without merit, because the determination regarding the use of prior convictions is a legal determination to be decided by the Judge, not by the jury. Therefore, trial counsel could have requested the trial court allow him an in-camera hearing on the matter and the trial court would have had discretion to decide whether to hear the evidence.

The Respondent further argued that it was reasonable to speculate that had trial counsel provided the appropriate factual information regarding the prior convictions, then the State would have introduced the third burglary conviction into evidence. This speculative argument fails because the State had already rested its case.

Finally, the Respondent argued there is no prejudice or deficient performance because the First Degree Burglary statute simply requires two prior burglary convictions and two prior convictions were provided as evidence in trial. The Respondent further argued that § 17-25-50 is not applicable to this matter because prior burglary convictions are an "element" of First Degree Burglary and not simply used for sentencing purposes. Respondent also argued in the alternative, supposing that if priors are used for a sentence enhancement to which § 17-25-50 would apply, then there is a lack of prejudice because the jury need not find the existence of priors for the purpose of sentence enhancement and the Applicant's third burglary

satisfies the requirement of two prior convictions and validates his sentence. See generally, Almendarez-Torres v. United States, 523 U.S. 224 (1998) and Apprendi v. New Jersey, 530 U.S. 466 (2000). As the respondent explained, if the prior convictions can be used for the purpose of sentencing only, there is no prejudice because the third burglary conviction could be used if the Applicant is remanded for a re-sentencing in this matter, making his First Degree Burglary sentence valid.

The Respondent's arguments are rejected. In summation, this Court finds that trial counsel was deficient in failing to investigate the Applicant's prior burglaries and research whether they should be considered a single incident. Trial counsel's deficiency resulted in the Applicant's charge being submitted to the jury as a First Degree Burglary. If not for trial counsel's deficiency a different outcome would have resulted at trial.

#### Remedy

During the Applicant's jury trial, DNA evidence was admitted proving the Applicant's participation in the Burglary. (See, trial transcript, generally). Additionally, evidence was admitted that the Applicant confessed to committing the Burglary. (See, trial transcript pages 241 – 242). Therefore, sufficient evidence was provided to the jury that the Applicant was guilty of the crime of burglary.

The deficiency on the part of trial counsel resulted in the trial court allowing the case to proceed to the jury as a First Degree Burglary with a lesser included option of Second Degree Burglary. If trial counsel had properly investigated the Applicant's prior burglaries and researched whether they should be considered a

single incident, the trial court would have sent the case to the jury as a Second Degree Burglary only.

The South Carolina Supreme Court "has previously held that post-conviction relief may be tailored to remedy the precise prejudice resulting from trial counsel's deficient performance." Boan v. State, 388 S.C. 272, 695 S.E.2d 850 (2010). Because the Applicant's only argument is that directed verdict should have been granted as to First Degree Burglary, and that the jury should have proceeded to deliberate as to the charge of Second Degree Burglary, this Court remands for resentencing for Second Degree Burglary. See generally, Dervin v. State, 386 S.C. 164, 687 S.E.2d 712 (2009), see also Robinson v. State, 380 S.C. 201, 669 S.E.2d 588 (2008).

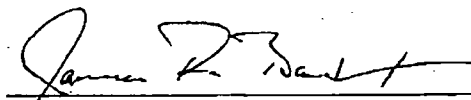
### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has established deprivations that would require this court to grant his application.

### IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be granted.
2. That the Applicant's case be remanded for sentencing for the charge of Second Degree Burglary.

AND IT IS SO ORDERED this 27 day of September, 2011.

  
The Honorable James R. Barber  
Presiding Judge  
Fifth Judicial Circuit

Columbia, South Carolina

WITNESSES

(S) W. MCROBERTS - RCSD

ARREST WARRANT NUMBER

I-975321

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury

Date:

JAN 25 2007

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-40-6

**Amended  
The State of South Carolina**

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2006

92

THE STATE  
vs.

WILLIS WEARY

Indictment for

**BURGLARY (AFTER 6/20/85)  
1<sup>ST</sup> DEGREE**

SC Code: 16-11-311

CDR Code: 079

Class FEL-EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

482  
CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
JAN 25 2007  
C.C.C.P. & G.S.  
RICHLAND COUNTY



STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

## INDICTMENT

At a Court of General Sessions, convened on APRIL 18, 2006, the Grand Jurors of Richland County present upon their oath:

**BURGLARY/(AFTER 6/20/85) - 1ST DEG**

That WILLIS WEARY did in Richland County on or about AUGUST 20, 2005, unlawfully enter the dwelling of JOSE GONZALEZ, without consent and with the intent to commit a crime therein; the defendant having a prior record of two or more convictions for burglary and/or housebreaking and/or such unlawful entering and/or remaining occurring in the nighttime, all in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B Giese  
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF  
STATE

VS.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

GS -

AKA:

Race: B Sex: MDOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip

DL#            SID#           

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary - First degreein violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 7 / 9☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ §17-25-45 w/minor 1<sup>st</sup> or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Margaret Fent  
Solicitor

Defendant

[Signature]  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_, plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:

☐ set by SCDPPPS

Recipient:

\*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Scott  
Clerk of Court/ Deputy ClerkCourt Reporter: J. Williams

PTUP

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk of Court for Probation COP

PRESIDING JUDGE

Judge Code:

Sentence Date:

OF ORIGINAL FILED

RICHLAND COUNTY

SOUTH CAROLINA

ST. V. ANI  
I-975321  
STATE OF SOUTH CAROLINA  
☒ County/ ☐ Municipality of  
Richland Bond Court  
THE STATE 0410298129  
against  
Willis Laverne Weary  
Address: 7220 Clifford Drive  
Columbia, SC 29223-  
Phone: (803)754-7172 SSN [REDACTED]  
Sex M Race: Height 5 7 Weight 150  
DL State: DL #  
DOB: Agency ORI #: 04000  
Prosecuting Agency: Richland County Sheriff Department  
Prosecuting Officer: William Mcroberts  
Offense: Burglary / Burglary - First degree  
Offense Code: 0079  
Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the  
☐ County/ ☐ Municipality of  
The accused  
is to be arrested and brought before me to be  
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

#### RETURN

A copy of this arrest warrant was delivered to  
defendant  
on

Signature of Constable/Law Enforcement Officer

#### RETURN WARRANT TO:

Richland General Sessions  
1701 Main Street  
P O Box 192  
Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STAT SOUTH OLIN  
☒ County/ ☐ Municipality of  
Richland Bond Court  
Personally appeared before me the affiant William Mcroberts  
being duly sworn deposes and says that defendant Willis Laverne Weary  
did within this county and state on 08/20/2005  
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland Bond Court  
in the following particulars:

DESCRIPTION OF OFFENSE: urglary / Burglary - First degree

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:

That on 08/20/05, while at 2532 Crofton Way, Apt. A, in the Dentsville Magisterial District of Richland County, one  
Willis Laverne Weary did commit the crime of Burglary 1st in that he did force entry into the victim's residence during  
the hours of darkness and steal one DVD player and two speakers valued at \$200.00 that belonged to the victim. The  
defendant cut himself at the point of entry which was a corner bedroom window of the victim's bedroom and left blood  
stains inside on the mini-blinds at the point of entry. Said blood was collected by RCSD Crime Scene Investigators and  
belonged to the defendant. The victim does not know the defendant and there is no reason his blood should be inside  
the incident location. RCSD case # 050821 81 20. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA  
☒ County/ ☐ Municipality of  
Richland Bond Court

Affiant's Address 5623 Two Notch Road  
Columbia, SC 29223-  
Affiant's Telephone (803)576-3000

#### ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 8/20/2005 defendant Willis Laverne Weary  
did violate the criminal laws of the State of South Carolina (or ordinance of  
☒ County/ ☐ Municipality of Richland Bond Court ) as set forth below.

DESCRIPTION OF OFFENSE: urglary / Burglary - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or  
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as  
soon thereafter as is practicable

Sworn to and subscribed before me  
on 12/15/2005

Signature of Issuing Judge  
V R Stroman-Boyd (L.S.)  
Judge Code: 5021

Judge's Address 201 John Mark Dial Drive  
Columbia, SC 29209-  
Judge's Telephone (803)576-3281

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

485

ORIGINAL  
FILED  
CERTIFIED TO BE  
OF ORIGINAL  
RICHLAND COUNTY  
SOUTH CAROLINA

Judge Johnson  
on January 3, 2006  
Type and Amount: \$100,000  
Name of Surety: Consentive to  
previous bond (Aston)

PRELIMINARY HEARING held by

Judge \_\_\_\_\_

on \_\_\_\_\_

Defendant Attorney: \_\_\_\_\_

Decision: \_\_\_\_\_

DISPOSITION before

Judge \_\_\_\_\_

on \_\_\_\_\_

by \_\_\_\_\_

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: \_\_\_\_\_

Sentence: \_\_\_\_\_

JURORS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

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Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

CODEFENDANTS

\_\_\_\_\_

\_\_\_\_\_

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 03/08/10  
 OMCOMITA RELEASE DATE SCREEN C040481

SCDC# > 283431 LOC: MCCORMICK

WEARY, WILLIS - SCDC CLASSIFICATION... VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N

SEXUAL PREDATOR...: NOT APP

DNA STATUS...: COMPLETED

GPS REQUIREMENT...: N

PREA DECISION...:

CURRENT SENTENCE: 018-00-000

CONSECUTIVE SENTENCE ...: N

018-00-000

CURRENT SENT START DATE: 09/23/2005

PROJECTED COMPLETION DATES

MAXOUT DATE .....: 01/06/2021

CURRENT EWC ..: 3 F 5

YOA SIX YEAR DATE: / /

CURRENT EEC ..: NOT CURRENTLY EARNING EEC

INITIAL PAROLE DATE: 00/00/0000

NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED .....: 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS ...: 000382

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS .....: 000000

CATEGORY 4 OR 5 OFFENSE

TOTAL EXTRA EARNED CREDITS ..: 000

TOTAL SERVICE TIME EARNED ...: 001605

PFKEYS: 5:HISTORY OF DATE CHANGES

4-@ 1 Sess-1 167.7.50.33 SCDC1232 3/11

WEARY, WILLIS  
 OFFENDER TYPE...

WEARY, WILLIS

WEARY, WILLIS

WEARY, WILLIS

WEARY, WILLIS

WEARY, WILLIS

WEARY, WILLIS

WEARY, WILLIS

WEARY, WILLIS

WEARY, WILLIS

WEARY, WILLIS

WEARY, WILLIS

WEARY, WILLIS

WEARY, WILLIS

## SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 03/03/10

E049

WEARY, WILLIS - FRI # 216373400 SID# SC01419446 SCID # 288431

DEFENDER TYPE: ADULT-STRAIGHT SENTENCE

INSTITUTION: MCCORMICK CORR INST

SECURITY/CLUST: 3 MINIMUM IN

CURR INCARC SENT: 18 YRS 0 MOS 0 DYS

CENTRAL MONITORING: YES

SOCIAL SECURITY #: [REDACTED]

DORM: F101A5B

RACE: R SEX: M

PROJ MAXOUT DATE: 01/04/2021

PROJ PAROLE DATE: 00/00/0000

FMC JOB: GENERAL WORKER

EDUC PGM: NO CURR EDUC PROGRAM

FMC LEVEL: 2FS FFC LEVEL:

ASSIGNMENT: ROUTING DETAIL RUM

CURRENT PROGRAM: NO CURRENT PROGRAM

AGE: 35 DATE OF BIRTH: [REDACTED]

## PREVIOUS NUMBERS:

\*\* NO PREVIOUS NUMBERS \*\*

| CURRENT OFFENSES         | SENTENCE | YRS | MOS | DYS | COUNTY   | START    | U/NU | CATEGORY |
|--------------------------|----------|-----|-----|-----|----------|----------|------|----------|
| BURGLARY-2ND DEG/NON-VIO | 9        | 0   | 0   | 0   | RICHLAND | 9/23/20  | 5 N  | 3        |
| BURGLARY-1ST DEGREE      | 18       | 0   | 0   | 0   | RICHLAND | 9/23/20  | 5 U  | 4        |
| ASSAULT & BATTERY        | 0        | 0   | 30  | 0   | RICHLAND | 3/25/20  | 4 N  | 3        |
| MAJ ID INJURY/PERS PROPT | 0        | 0   | 30  | 0   | RICHLAND | 3/25/20  | 4 N  | 2        |
| BURGLARY-2ND DEG/NON-VIO | 6        | 0   | 0   | 0   | RICHLAND | 12/ 1/20 | 0 N  | 3        |

| PREVIOUS SCDC OFFENSES (COMPLETED) | SENTENCE | YRS | MOS | DYS | COUNTY   | START    | U/NU | CATEGORY |
|------------------------------------|----------|-----|-----|-----|----------|----------|------|----------|
| GRAND LARCENY                      | 5        | 0   | 0   | 0   | RICHLAND | 12/ 1/20 | 0 N  | 2        |
| BURGLARY-2ND DEG/NON-VIO           | 5        | 0   | 0   | 0   | RICHLAND | 12/ 1/20 | 0 N  | 3        |
| THREAT LIFE/FAM PURS OFF           | 5        | 0   | 0   | 0   | RICHLAND | 12/ 1/20 | 0 N  | 4        |

## PRIOR COMMITMENTS OVER 90 DAYS:

\*MISSING PRIORS DATA\*

## DETAINEES (HOLD, WANTED, NOTIFY):

\*NO DETAINEES\*

## ESCAPES:

\*NO ESCAPE HISTORY\*

## CRIMINAL CHARGES:

\*NO CRIMINAL CHARGES HISTORY\*

## ASSAULTIVE DISCIPLINARIES:

12/24/ 3 FIGHTING WITHOUT A WEAPON CONVICTED MAJOR

9/20/ 3 FIGHTING WITHOUT A WEAPON CONVICTED MAJOR

## NON-ASSAULTIVE DISCIPLINARIES:

8/25/ 9 EXHIBITIONISM AND PURS TO CONVICTED MAJOR

10/26/ 8 POSS. OR/ATTEMPT TO POSS CONVICTED MAJOR

4/ 6/ 8 OUT OF PLACE OTHER

11/ 1/ 3 REFUSING OR FAILING OBEY DROPPED MAJOR

9/26/ 2 OUT OF PLACE DROPPED MAJOR

9/ 8/ 2 MUTILATION CONVICTED MINOR

8/ 7/ 2 REFUSING OR FAILING OBEY CONVICTED MINOR

## HISTORY OF MOVEMENTS:

2/14/ 8 MCCORMICK INCARCERATED ADMINISTRATIVE

2/13/ 8 KIRKLAND INCARCERATED MEDICAL

1/31/ 8 MCCORMICK INCARCERATED ADMINISTRATIVE

1/31/ 8 SUMTER CO AUTH ABSENCE (AWL) MEDICAL

12/ 6/ 7 MCCORMICK INCARCERATED ADMINISTRATIVE

12/ 5/ 7 KIRKLAND INCARCERATED MEDICAL

11/15/ 7 MCCORMICK INCARCERATED ADMINISTRATIVE

11/14/ 7 KIRKLAND INCARCERATED MEDICAL

11/ 5/ 7 MCCORMICK INCARCERATED ADMINISTRATIVE

11/ 2/ 7 IFF INCARCERATED ADMINISTRATIVE

11/ 2/ 2 THOMMY REGIONAL AUTH ABSENCE (AWL) MEDICAL

11/ 1/ 7 IFF INCARCERATED MEDICAL

9/20/ 7 MCCORMICK INCARCERATED ADMINISTRATIVE

DEARY, WILLIS - FBI # 216373WHO SID# SC0141944A SCDC # 283431 (CONTINUED)

|         |             |                    |                          |
|---------|-------------|--------------------|--------------------------|
| 9/19/ 7 | KIRKLAND    | INCARCERATED       | MEDICAL                  |
| 6/27/ 7 | MCDORMICK   | INCARCERATED       | ADMINISTRATIVE           |
| 6/27/ 7 | KIRKLAND    | INCARCERATED       | MEDICAL                  |
| 5/ 3/ 7 | MCDORMICK   | INCARCERATED       | ADMINISTRATIVE           |
| 4/27/ 7 | KIRKLAND    | INCARCERATED       | RETURN FROM COURT        |
| 4/27/ 7 | RICHLAND CO | AUTH ABSENCE (AWI) | TO COURT                 |
| 3/ 6/ 7 | KIRKLAND    | INCARCERATED       | NEW ADMISSION            |
| 6/29/ 4 | LINK        | RELEASE            | PAROLE SATISFIED         |
| 2/ 5/ 4 | RICHLAND CO | PAROLE             | PAROLE BOARD ACTION      |
| 1/ 7/ 4 | TYGER RIVER | INCARCERATED       | ADMINISTRATIVE           |
| 1/ 7/ 4 | PERRY       | INCARCERATED       | COURT/PAROLE HEARING VIA |
| 7/ 9/ 3 | TYGER RIVER | INCARCERATED       | ADMINISTRATIVE           |
| 5/ 8/ 3 | RIDGELAND   | INCARCERATED       | ADMINISTRATIVE           |
| 4/18/ 2 | KIRKLAND    | INCARCERATED       | NEW ADMISSION            |

#### HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

| JOB DESCRIPTION      | START DATE | END DATE | TERMINATION REASON      | JOB |
|----------------------|------------|----------|-------------------------|-----|
| GENERAL WORKER       | 06/25/09   | 0/ 0/ 0  |                         | REF |
| WARDKEEPER ASSISTANT | 11/16/07   | 11/10/ 8 | PLACED IN ST/SP CUSTODY | REF |
| WARDKEEPER ASSISTANT | 05/08/07   | 11/ 5/ 7 | INSTIT TRANSFER         | REF |
| FOOD SERVICE AIDE    | 01/08/04   | 2/ 5/ 4  | RELEASED/PAROLED        | REF |
| GENERAL WORKER       | 10/31/03   | 12/25/ 3 | PLACED IN ST/SP CUSTODY | REF |
| GENERAL WORKER       | 07/10/03   | 9/20/ 3  | PLACED IN ST/SP CUSTODY | REF |
| GENERAL WORKER       | 07/10/03   | 7/10/ 3  | CUSTODY REVOKED         | REF |

#### HISTORY OF EARNED EDUCATION CREDITS:

| EFC DESCRIPTION            | START DATE | END DATE | TERMINATION REASON       |
|----------------------------|------------|----------|--------------------------|
| BONUS 15 OR MORE           | 01/08/04   | 2/ 5/ 4  | RELEASED/PAROLED         |
| BONUS 15 OR MORE           | 11/11/03   | 12/25/ 3 | PLACED IN ST/SP CUSTODY  |
| BONUS 15 OR MORE           | 07/10/03   | 9/20/ 3  | PLACED IN ST/SP CUSTODY  |
| LVI 2 - FULL TIME (NO EDC) | 05/31/02   | 7/ 9/ 3  | INSTIT TRANSFER          |
| LVI 3 - FULL TIME (NO EDC) | 05/23/02   | 5/30/ 2  | NOT ELIGIBLE FOR LEVEL 2 |

\*\*\*\*\* END OF REPORT \*\*\*\*\*

-attempts to contact V at Known contact were made

490

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF  
STATE

Richland  
VS.

INDICTMENT/CASE#:

06

GS -

40

01066

AKA:

Race: B

Sex: M

Age:

Address:

City, State, Zip

DL# 1D0565593 SID# 01419496

AW#:

DP-06034

Date of Offense:

Sept 23, 2005

S.C. Code §:

17-25-30

CDR Code #:

0101113

☐ CASE RESTORED

SENTENCE SHEET

☒ PLEA

☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Assault and Battery

in violation of § 22-5-150 of the S.C. Code of Laws, bearing CDR Code # 0161113

☒ NON-VIOLENT

☐ VIOLENT

☐ SERIOUS

☐ MOST SERIOUS

☐ Mandatory GPS (CSC

☐ §17-25-45

w/minor 1<sup>st</sup> or Lewd Act)

The charge is: ☐ As Indicted; ☒ Lesser Included Offense; ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation; ☒ Negotiated Sentence; ☐ Recommendation by the State.

ATTEST:

Margaret Teit x  
Solicitor

Defendant

Time served  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☒ County Detention Center,

for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of

\$ \_\_\_\_\_, plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_ months/years

and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §11-25-55.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:

☐ set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |
|----------------------------------------|---------|
| \$14-1-206 (Assessments 107.5%)        | \$      |
| \$14-1-211(A)(1) (Conv. Surcharge)     | \$100   |
| \$14-1-211(A)(2) (DUI Surcharge)       | \$100   |
| \$56-5-2995 (DUI Assessment)           | \$12    |
| \$35.13 (Public Def/Prob)              | \$500   |
| \$73.3, 1B TP (Law Enforce. Funding)   | \$25    |
| \$33.7, 1B TP (Drug Court Surcharge)   | \$100   |
| \$50-21-114(BUI Breath Test Fee)       | \$50    |
| \$56-5-2942(J) (Vehicle Assessment)    | \$40/ea |
| 3% to County (if paid in installments) | \$      |
| TOTAL                                  | \$      |

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, \$35.13 TP  
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

7101217  
4/29/07



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF  
STATERichland

VS.

Willis Weary

AKA:

Race: BSex: MAge: DOB: SS#: Address: City, State, Zip: DL# 100565593 SID# 01419446

INDICTMENT/CASE#:

06

- GS -

401065

AW#:

DP 06033

Date of Offense:

Sept. 23, 2005

S.C. Code §:

16-11-510

CDR Code #:

0191912☐ CASE RESTORED

SENTENCE SHEET

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Mal. Injury to Personal Property less than \$1000in violation of § 16-11-510 of the S.C. Code of Laws, bearing CDR Code # 0191912☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ \$17-25-45  
w/minor 1<sup>st</sup> or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)The plea is: ☒ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Margaret Lent  
SolicitorWillis Weary  
DefendantDee Dee  
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☒ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of

\$ \_\_\_\_\_ plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_ months/years

and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-15.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:

☐ set by SCDPPPS

Recipient:

\*Fine:

\$14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ \_\_\_\_\_

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

\$56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

\$35.13 (Public Def/Prob) \$500 \$ \_\_\_\_\_

\$73.3, 1B TP (Law Enforcement Funding) \$25 \$ \_\_\_\_\_

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_

\$50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

Clerk of Court/ Deputy Clerk

ASGOC/SCX: Inman 492

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT#:

County of Richland  
STATE VS.

01 -GS- 40 - 09125

Willis Weary 2007 MAR 27 PM 10:00C/W#: W-40-05-1013

AKA: \_\_\_\_\_

Name of Original Offense: Burg 2ndRace: B Sex: MConviction S.C. Code §: 16-11-312DOB: [REDACTED]Conviction CDR Code #: 0, 0, 0, 0SSN: [REDACTED]Date of Original Offense: 11/3/00SID#: 1419446Original Sentence: 15 yrs ss on 6 yrs & 5 yrsDP01551 ORDER Prob

The above named defendant has been charged with violating the conditions of probation ordered on 4/15/02 in the Court of General Sessions of Richland County as set forth in the attached warrant or citation dated 9/28/05. After hearing the evidence and being duly advised, in the (presence) (absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special condition as provided in the affidavit) 1, 2, 4, 6, 7, 9, 10 and 11

## Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 9 Nine or months/years the remainder of the original sentence, and/or pay \$xxx probation terminated
- ☐ the suspended sentence be revoked and the above named defendant be required to serve \_\_\_\_\_ months/years of the original sentence and/or pay \$ \_\_\_\_\_; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.

☒ Additional Conditions ordered by the Court:All sentences this date to run concurrentAmended to reflect accurate possible revocation time.☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.☒ The defendant has previously served 6 months/years on this sentence.  
(split sentence time and/or prior partial revocation time)his 23 day of March 2007  
Columbia, SC.

[Signature]  
Presiding Judge  
[Signature] Cooper  
Judicial Circuit

you are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

it is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Defendant's Signature

Witnessed by

Signed this \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, SC  
Day Month Year City  
Hawke 10/6

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

493

COUNTY OF  
STATERichland  
VS.

AKA:

Race:

Sex:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

INDICTMENT/CASE#:

GS -

I 975321

8-20-05

14-11-311

0 / 0 / 7 / 9

☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary - First degreein violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 7 / 9☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45 w/minor 1<sup>st</sup> or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Margaret Fent  
Solicitor

Defendant

[Signature]  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_, plus costs and assessments as applicable\*; the balance is suspended with **probation** for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:

☐ set by SCDPPPS

Recipient:

\*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§35-13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Scott  
Clerk of Court/ Deputy ClerkCourt Reporter: J. Williams

PTUP

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2 / 1 / 2 / 16

3-2-07