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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

ALFRED GUY HENSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001273

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 ALFRED HENSON,) 2011-GS-42-351
8 DEFENDANT.) 2011-GS-42-352
9

10
11 October 10th, 2012
12 Spartanburg, South Carolina

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge, and a jury.

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

16 TIMI POULOS
17 ASSISTANT SOLICITOR
18 Attorney for the State

19 MAX SINGLETON
20 ESQ.
21 Attorney for the Defendant

22
23
24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

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P R O C E E D I N G S

1
2
3 THE COURT: All right. I'm on the record in the case
4 of the State of South Carolina versus Alfred Henson. There
5 are two indictments before the Court. The first is case
6 Number 11-GS-42-0351. That's for burglary in the first
7 degree. The second indictment is 11-GS-42-0352. That is
8 for grand larceny. I'm informed that the burglary in the
9 first degree indictment has been amended, and for that
10 reason I am going to arraign Mr. Henson.

11 Mr. Henson, if you would, please stand.

12 Please swear Mr. Henson for me.

13 (WHEREUPON, the defendant was placed under oath at this
14 time.)

15 THE COURT: Mr. Henson, I'm going to go over with you
16 the amended indictment for the charge of burglary in the
17 first degree. If you'll listen carefully I'll have some
18 questions when I finish.

19 The indictments states that the defendant, Alfred
20 Henson, did in Spartanburg County on or about November 8th
21 of 2010 willfully and unlawfully enter a dwelling belonging
22 to Leslie Ofori, O-F-O-R-I, located at Byers Street in
23 Greer, South Carolina without consent and with the intent to
24 commit a crime therein, and either in effecting entry or
25 while in the dwelling or in immediate flight, he or another

7
1 participant in the crime, one, was armed with a deadly
2 weapon and/or caused physical injury to any person who was
3 not a participant in the crime and/or used or threatened the
4 use of a dangerous instrument and/or displayed what was or
5 appeared to be a knife, pistol, revolver, revolver, rifle,
6 shotgun, machine gun, or other firearm and/or entered the
7 dwelling during the nighttime and/or committed the crime
8 while possessing a prior record of two or more convictions
9 for burglary or house breaking or a combination of both.
10 All in violation of Section 16-11-311 of the Code of Laws of
11 South Carolina, 1976 as amended, against the peace and
12 dignity of the State and contrary to the statute in such
13 case made and provided.

14 Mr. Henson, did you understand the indictment I just
15 read?

16 DEFENDANT: Yes, sir.

17 THE COURT: You have the right to plead either guilty
18 or not guilty to the indictment.

19 How do you plead?

20 DEFENDANT: Not guilty.

21 THE COURT: And do you desire a trial by a jury?

22 DEFENDANT: Yes, sir.

23 THE COURT: God grant you a speed delivery. Sir, you
24 can be seated.

25 I do note in the indictment for burglary in the first

1 it refers -- if you'll get that, Mr. Singleton?

2 MR. SINGLETON: Yes, Your Honor.

3 THE COURT: Let me find the spot where I noticed
4 something. Right above the numbered paragraphs it says
5 either in effecting entry or while in the dwelling or in
6 immediate flight, it refers to a her.

7 MR. SINGLETON: Yes, Your Honor.

8 THE COURT: It should be a him --

9 MR. SINGLETON: Yes, Your Honor.

10 THE COURT -- or he I guess.

11 SOLICITOR POULOS: Yes, sir, Your Honor.

12 THE COURT: Any objection to my striking out the offer?

13 MR. SINGLETON: None, Your Honor.

14 THE COURT: All right. I'll do so. Thank you, sir.

15 MR. SINGLETON: Your Honor, may -- do you want me to go
16 ahead and, my witnesses, and bring them in?

17 THE COURT: Yes, sir. Please do. If you'll have them
18 seated in the chairs in front of the bar, and I notice the
19 State's witnesses, I'll ask you to move in front of the bar
20 and have a seat in these chairs right hear, gentlemen.
21 Thank you very much.

22 (Pause.)

23 THE COURT: Mr. Singleton, I didn't put it on the
24 record, but I believe your client has already been arraigned
25 on the grand larceny, is that correct?

1 MR. SINGLETON: Yes, Your Honor.

2 THE COURT: Still pleading not guilty?

3 MR. SINGLETON: Yes, Your Honor.

4 THE COURT: All right. Can I ask the attorneys to
5 approach briefly?

6 (WHEREUPON, a bench conference was held at this time.)

7 SOLICITOR POULOS: Your Honor, may we approach briefly?

8 THE COURT: Mr. Singleton, come on up.

9 Ms. Poulos.

10 SOLICITOR POULOS: Yes, sir.

11 (WHEREUPON, a bench conference was held while the
12 entire jury panel was brought into the courtroom.)

13 THE COURT: Mr. Hipp, do we have everyone?

14 BAILIFF: Yes, sir.

15 THE COURT: Okay.

16 All right. Ladies and gentlemen of the jury, we're
17 about to begin the trial of the State of South Carolina
18 versus Alfred Henson. I have in front of me two documents
19 and these documents are what is known legally as
20 indictments, and let me explain to you what an indictment
21 is.

22 An indictment is a document that has been forwarded to
23 this Court. It alleges the commission of certain crimes.
24 The purpose of the indictment is to inform the defendant of
25 the crimes that have been lodged against him, and the

1 purpose's also is to inform this Court of the charges that
2 are to be tried.

3 An indictment does not represent evidence against a
4 defendant, and an indictment can not be used by a jury in
5 any manner or fashion in determining the question of the
6 guilt or innocence of a defendant. It is simply the
7 document which brings the case before this Court for trial.

8 Now, I will inform you that the indictments in this
9 case, the first one that I will go over with you is Case
10 Number 11-GS-42-0351. That indictment is for the crime of
11 burglary in the first degree.

12 The indictment, and I'm not going to read it to you in
13 full at this time, but it alleges that the defendant did, in
14 Spartanburg County, on or about the date of November the
15 8th of 2010, enter a dwelling belonging to Leslie Ofori,
16 it's O-F-O-R-I, that dwelling is located at Byers Street
17 in Greer, South Carolina, without consent and with the
18 intent to commit a crime therein.

19 The other indictment is in the Case Number
20 2011-GS-42-0352. That indictment is for the offense of
21 grand larceny. That indictment alleges that the defendant,
22 Alfred Henson, did, in Spartanburg County, on or about
23 November 8th of 2010, take away goods or property
24 belonging to Derrick and Lindsey Ofori valued at more than
25 \$2,000 but less than \$10,000, and it goes on to describe the

1 property and the statutes that would of been violated by the
2 taking of those items.

3 Now, again, those two indictments bring the case before
4 this Court, and I've gone over them to be, gone over them
5 with you, to the extent that I have, for the purpose of
6 letting you know what the defendant has been charged with,
7 the names of the people that were involved, the location,
8 and the proximate date of the alleged crime. That
9 information should give you some information from which you
10 should be able to answer some questions that I'm about to
11 ask you that pertains specifically to this case.

12 Now, as we did before, it is necessary that we assure
13 ourselves that you, the jury, answer the questions that I'm
14 about to ask truthfully and honestly and completely, and for
15 that reason, again, it's necessary that you be sworn in this
16 case to tell the truth concerning the Court's questions.

17 Madam Clerk, please swear the prospective jury panel
18 for me.

19 (WHEREUPON, the jury panel was placed under oath at
20 this time.)

21 THE COURT: Now, if any member of the jury panel either
22 failed or refused to take the oath just administered by the
23 clerk, I'd ask that you now please stand.

24 (No response.)

25 THE COURT: The record then will reflect that all

1 prospective jurors have been sworn for purposes of this
2 case.

3 Now, before I begin to ask questions, I'm going to ask
4 that the attorneys that are involved in the trial of this
5 case introduce themselves to you, and in the case of the
6 State, is the victim present at this time?

7 SOLICITOR POULOS: Yes, sir, Your Honor.

8 THE COURT: All right. If you'll introduce the alleged
9 victim please, ma'am.

10 SOLICITOR POULOS: My name is Timi Poulos. I'm the
11 prosecutor for the Seventh Circuit Solicitor's Office. This
12 is the victim in the case, Mrs. Leslie Ofori.

13 THE COURT: Ma'am, if you'll turn all the way around
14 for me so they can see your face.

15 (Party complies.)

16 THE COURT: Thank you very much.

17 And for the defense, if you'll introduce yourself, Mr.
18 Singleton.

19 MR. SINGLETON: My name is Max Singleton. I'm the
20 attorney for my client/applicant.

21 THE COURT: Mr. Henson, turn around.

22 (Defendant complies.)

23 THE COURT: Thank you, sir. You can be seated.

24 (Defendant complies.)

25 THE COURT: Now, ladies and gentlemen, we're going to

1 go through the process very similar to what we did during
2 qualification. I'm going to ask you questions and I'll ask
3 if you have responses to any of these questions to please
4 stand. Again, before I discuss your responses, it will be
5 necessary that I get your name and your number on the record
6 so that we can identify who's responding to the questions
7 that I'm asking.

8 Now, is there any member of the jury panel who is ever
9 been related by marriage or are you related by blood to
10 either the defendant, Alfred G. Henson, or the alleged
11 victims, Derrick and Leslie Ofori?

12 SOLICITOR POULOS: Ofori, Your Honor.

13 THE COURT: Ofori. I'll get it right in a minute.
14 If that's true, please stand.

15 (No response.)

16 THE COURT: Is there any member of the jury panel who
17 is ever had a close personal or a social relationship with
18 either the defendant in this case or the alleged victims,
19 Derrick and Leslie Ofori, if that's true, please stand.

20 (No response.)

21 THE COURT: Now, has any member of the jury panel ever
22 been represented by any of the attorneys that are involved
23 in the trial of this case or have they ever appeared on the
24 other side of a legal matter from you, if that's true,
25 please stand.

1 (No response.)

2 THE COURT: Has any member of the jury panel ever been
3 related by marriage or are you related by blood or have you
4 had a close personal or a social relationship with either of
5 the attorneys that are involved in the trial of this case,
6 if that is true, please stand.

7 (No response.)

8 THE COURT: I'm going to now read a list of potential
9 witnesses in this case, and if they are present I'll be
10 asking that they please stand and face the jury panel. Then
11 I'll have some questions about these witnesses.

12 First of all, Deputy Kevin Murphy with the Spartanburg
13 County Sheriff's Office.

14 (Witness stands.)

15 THE COURT: Thank you, sir.

16 Sergeant Travis Barnette with the Spartanburg County
17 Sheriff's Office.

18 (Witness stands.)

19 THE COURT: Thank you.

20 Investigator Chris Raymond with the Sheriff's Office.

21 Deputy Jason Wilson with the Spartanburg County
22 Sheriff's Office.

23 (Witness stands.)

24 THE COURT: Thank you.

25 Deputy Nicholas Turner with the Spartanburg County

1 Sheriff's Office.

2 (Witness stands.)

3 THE COURT: Thank you.

4 Deputy Chaney Brent Brown with the Spartanburg County
5 Sheriff's Office.

6 (Witness stands.)

7 THE COURT: Deputy Robert Talanges with the Spartanburg
8 County Sheriff's Office.

9 Leslie Ofori, if you'll stand again please, ma'am.

10 (Witness stands.)

11 THE COURT: And John Ofori.

12 Other potential witnesses, Mrs. Diane Vaughn.

13 Ma'am, is that you?

14 WITNESS: Yes, sir.

15 THE COURT: She's got a problem with standing, but
16 she's seated over here to my far right, and Mr. Tommy
17 Vaughn.

18 Sir, if you'll stand and face the jury panel for me.

19 (Witness stands.)

20 THE COURT: Thank you very much.

21 Now, as to the individuals that I have identified as
22 potential witnesses in this case, has any member of the jury
23 panel ever been related by marriage or are you related by
24 blood or have you had a close personal or a social
25 relationship with any of the individuals that I have

1 identified as potential witnesses in this trial, if that's
2 true, please stand.

3 (Juror responds.)

4 THE COURT: Your name and number please, ma'am?

5 WITNESS: 92, Karen Turner.

6 THE COURT: Yes, ma'am.

7 JUROR: Mr. Murphy was a neighbor friend of my
8 children's.

9 THE COURT: All right. Would that fact affect your
10 ability to be fair and impartial if that person testified in
11 this case?

12 JUROR: It might.

13 THE COURT: All right, ma'am. I'm gonna excuse you
14 from the trial of this case, but I'll ask you to remain
15 seated. Thank you very much and you don't have to answer
16 any more questions, ma'am.

17 Anyone else?

18 (No response.)

19 MR. SINGLETON: Your Honor, what number was she?

20 THE COURT: Your Honor, your number please, ma'am?
21 Your number?

22 JUROR: Oh, number again. 92.

23 THE COURT: Thank you very much.

24 Has any member of the jury panel or a member of your
25 immediate family or a close personal friend of yours ever

1 been arrested, charged with, or convicted of a crime which
2 may involve burglary, larceny, or theft, if that's true,
3 please stand.

4 (Jurors respond.)

5 THE COURT: Name and number please, ma'am?

6 JUROR: Laura Vaughn, 169.

7 THE COURT: Your situation please?

8 JUROR: My son was arrested.

9 THE COURT: All right. And has that matter been ended
10 at this time?

11 JUROR: Yes.

12 THE COURT: Did that go on here in Spartanburg County?

13 JUROR: Yes.

14 THE COURT: All right. Now, ma'am, would that fact
15 affect your ability to be fair and impartial in the trial of
16 this matter?

17 JUROR: No.

18 THE COURT: All right. Thank you. You can be seated.

19 Name and number please, ma'am?

20 JUROR: Loretta Jones, Number 86.

21 THE COURT: Yes, ma'am.

22 JUROR: I had a step son arrested for burglary.

23 THE COURT: All right. Is that matter been ended at
24 this time?

25 JUROR: Yes.

1 THE COURT: Did that occur here in Spartanburg County?

2 JUROR: Yes.

3 THE COURT: And would that affect your ability to be
4 fair and impartial in this matter?

5 JUROR: No, sir.

6 THE COURT: Thank you, ma'am. You can be seated.

7 Anyone else?

8 (No response.)

9 THE COURT: Has any member of the jury panel gathered
10 any information prior to this date such that, about this
11 case such that it would have caused you to form or express
12 an opinion about any issue or matter that might be involved
13 in this trial, if that's true, please stand.

14 (No response.)

15 THE COURT: Is there any member of the jury panel who
16 is aware of any bias or prejudice that you might have either
17 for or against either the state or the defendant in this
18 matter, if that's true, please stand.

19 (No response.)

20 THE COURT: Is there any member of this jury panel that
21 may have been a member of the Grand Jury which issued the
22 indictments in this case?

23 Those indictments were issued on September 15th of
24 2011.

25 If that's true, please stand.

1 (No response.)

2 THE COURT: One of the indictments was also issued on
3 February the 18th of 2011. If that affects anyone's
4 response, please stand.

5 (No response.)

6 THE COURT: Is there any member of this jury panel who
7 is a member of or a contributor to some group that has as
8 its primary concern the promotion of law enforcement or
9 victims rights?

10 These groups would include but not be limited to such
11 groups as Mothers Against Drunk Driving, Students Against
12 Drunk Driving, Citizens Against Violent Crime, the South
13 Carolina Troopers Association, the South Carolina Sheriff's
14 Association, or other similarly oriented organizations.

15 If that is true, please stand.

16 (No response.)

17 THE COURT: Does any member of this jury panel know of
18 any reason whatsoever why he or she should not serve as a
19 juror in this case with particular emphasis being placed
20 upon your ability to be both fair and impartial to both the
21 State and the defense, if that's true, please stand.

22 (No response.)

23 THE COURT: Are there additional questions from the
24 State?

25 SOLICITOR POULOS: No, sir, Your Honor.

1 THE COURT: Are there additional questions from the
2 defense?

3 MR. SINGLETON: None, Your Honor.

4 THE COURT: All right. I'll declare then, with the
5 exception of the lady that I excused, that the jury is
6 qualified to proceed as jurors in this case.

7 Now, I'm instructing then that the clerk will begin to
8 prepare a list of prospective jurors.

9 Let me explain to you a little bit about the process
10 that we're going through as far as that's concerned. Years
11 ago we use to select juries by putting everyone's name in a
12 barrel, and we would spin it, spin and we had a blind
13 person, someone that was legally blind, pull the names from
14 the barrel to be sure that it was a blind draw.

15 Now we use computers. We use a random search engine
16 that pulls names from the jury list. And, so, I guess we've
17 now legally declared that computers are blind, and they --
18 it will then pick the jury panel. She'll be giving me a
19 list of prospective jurors. The process that we will go
20 through is we'll call your names in the order in which the
21 names appear upon the list.

22 Now, when your name is called, we're going to ask you
23 to come forward down the aisle to where the clerk is, stop
24 and face the back-door of the courthouse, courtroom there,
25 and at that time the attorneys will be in a position to

1 exercise their strikes in the case.

2 Now, if you are selected to serve on this jury you'll
3 immediately go have a seat in the jury box over here. So,
4 anyone who has a personal item, ladies purses or whatever,
5 bring it with you when your name is called cause if you're
6 selected you won't go back to your seat. You'll be going to
7 the jury box over here to my left.

8 In this case, the State will have five strikes. The
9 defense will have ten strikes, and we'll select one
10 alternate. The State having one strike. Defense having
11 two.

12 All right. Madam Clerk, at this time you can begin the
13 jury selection process.

14 (WHEREUPON, the following takes place during the
15 striking of the jury panel after Mr. Singleton had already
16 exercised ten strikes.)

17 THE COURT: Wait a second. How many strikes does the
18 defense have?

19 CLERK: Ten.

20 THE COURT: Already?

21 CLERK: Yes, sir.

22 THE COURT: You have cause for that -- ma'am, step
23 forward please.

24 JUROR: Okay. I'm sorry.

25 THE COURT: I'm at ten. I've got ten already.

1 MR. SINGLETON: I apologize.

2 THE COURT: Cause for this juror to be excused?

3 MR. SINGLETON: None, Your Honor.

4 THE COURT: You don't have cause?

5 I mean -- you excused her. I'm asking you if you have
6 cause.

7 MR. SINGLETON: No, Your Honor. I mean -- I just --
8 cause -- can I come to your bench, Your Honor?

9 THE COURT: Please do.

10 (WHEREUPON, a bench conference was held out of the
11 hearing of the jury at this time.)

12 THE COURT: Seat the juror.

13 (WHEREUPON, the jury panel was seated at this time.)

14 THE COURT: This is for the alternate.

15 (WHEREUPON, the alternate juror was seated at this
16 time.)

17 THE COURT: Any objections to the jury selection
18 process from the State?

19 SOLICITOR POULOS: Nothing from the State, Your Honor.

20 THE COURT: Any objections from the defense?

21 MR. SINGLETON: None, Your Honor.

22 THE COURT: All right.

23 (Pause.)

24 THE COURT: Ask the attorneys to approach while the
25 jury is retiring.

1 (WHEREUPON, a bench conference was held out of the
2 hearing of the jury at this time.)

3 THE COURT: All right. Ladies and gentlemen, you have
4 been selected as jurors in this case, and in discussing some
5 matters with the attorneys there's some issues that are
6 going to be taken by pretrial motion before the Court, and,
7 of course, you won't be involved in those motions. So, at
8 this point, it's about five minutes till 12:00 according to
9 the court, courthouse clock and that's pretty close to being
10 right, I'm gonna excuse you for lunch at this time, and it
11 will be an extended lunch cause we'll have to conduct these
12 hearings, and there's no need in you sitting and waiting
13 while we do that.

14 So I'm going to ask you to be back in the jury room
15 that's in use for this trial at 2:15 this afternoon. We
16 should be in a position then to have completed the pretrial
17 motions, and be in a position to start the trial of this
18 case.

19 Now, during the break, let me caution you about a
20 couple of things. When you come back to the courtroom and
21 the trial starts, you'll be taking an oath. That oath is to
22 decide this case based solely upon the evidence that's
23 presented during trial and the law as given to you by the
24 Court.

25 Now, I'm going to tell you, the only evidence that

1 you're going to hear about this case will be witnesses who
2 have been sworn to tell the truth and who will testify from
3 this witness stand and whatever documents or other evidence
4 comes into the record of the case through that testimony.

5 So, therefore, under your oath, it would be improper
6 for you to try to gather any information about this Court,
7 this case from any place outside of the courtroom. So,
8 therefore, don't go on the Internet. Don't try to read any
9 articles. Don't try to gather anything, any information on
10 your own. I can assure you, over the next couple of days,
11 you're gonna hear plenty about the case, and you'll know all
12 about it once we finish presenting the evidence. But,
13 again, don't try to gather any information on your own.

14 I don't know whether or not this case will be reported
15 in the media, and I'm going to ask you, if you're listening
16 to a radio or watching a television, don't watch, listen, or
17 read any media reports about the case. I don't control what
18 they put on the media. Don't want to control that. But I
19 will tell you that that information, quite often, is
20 information that would not be admissible under the rules
21 that govern the introduction of evidence in a trial, and,
22 therefore, can't be used by a jury in any fashion in
23 reaching a verdict in this case.

24 So, don't listen to, watch, or read media reports. I'm
25 also going to caution you that you've been selected as fair

1 and impartial jurors. We've gone through a questioning
2 process to determine people who have no preconceived notions
3 about the case. You have an open mind about the case at
4 this time. Keep that open mind, and for that reason, I'm
5 going to ask you not to discuss the case with anyone, even
6 among yourselves if you see each other leaving the
7 courthouse or whatever. I hope you realize that even the
8 most innocent conversation that you might have with a fellow
9 juror or someone else, even if it's just about what the case
10 is about, might begin to change or cloud that open mind, and
11 I want you to only consider the evidence that's admitted
12 during the trial.

13 So, don't discuss the case with anyone. Don't allow
14 anyone to discuss it with you. I've already mentioned the
15 fact that jury tampering is a crime in this state, and
16 should anyone try to contact you concerning your service on
17 this jury, I'll ask that you report that to the Court upon
18 your return. I can assure you I take those matters
19 seriously. The proper investigation will be begun should
20 anyone attempt to contact you concerning your service.

21 So, at this point in time I'm going to excuse you for
22 lunch. Again, 2:15, be back in the jury room. The bailiffs
23 will show you the room that's in use for this trial. Don't
24 go back to the assembly room. Come here to this jury room.
25 We would be able to begin the trial shortly thereafter. I

1 hope you have a good lunch and you're free to go at this
2 time.

3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 THE COURT: All right. I've been informed that they're
6 certain pretrial motions.

7 Any from the State?

8 SOLICITOR POULOS: Your Honor, there is. We have filed
9 a motion to exclude third party guilt. I have a copy of
10 that, Your Honor, that we've served to Mr. Singleton.

11 THE COURT: If you'll pass that up please.

12 SOLICITOR POULOS: Yes, sir.

13 THE COURT: All right. Mr. Singleton, does the
14 defendant intend, intend to offer evidence of a third
15 party's guilt?

16 MR. SINGLETON: Your Honor, my client could testify
17 that he bought this, these items from an individual. But we
18 have no -- we can not find this individual.

19 THE COURT: I'm sorry. I didn't understand what you're
20 saying.

21 Your client will testify as to what now?

22 MR. SINGLETON: That he bought the items from an, from
23 an individual. He bought the camera from an individual. He
24 could state when he bought it, how much he paid for it, what
25 happened after, when he left, what is happened since he's

1 been---

2 THE COURT: So, the evidence your client intends to
3 present would be that he did not steal the item, but he's
4 not going to attempt to show the other person did?

5 MR. SINGLETON: Well, we don't know how the other
6 person got the items.

7 THE COURT: All right. I'll ask for the State's
8 position in that regard.

9 SOLICITOR POULOS: Your Honor, it's our position that,
10 if that's the position he's gonna take, that he bought them
11 from somebody else, we would require him produce that
12 witness. Otherwise, just to stand up and say he bought it
13 from somebody else, that -- I believe, Your Honor, we, we
14 would ask that he produce that witness.

15 THE COURT: Any evidence of that?

16 MR. SINGLETON: I've tried to locate the witness and
17 he's not to be found.

18 THE COURT: So, you don't have any witnesses, other
19 than your client, having said that?

20 MR. SINGLETON: No, Your Honor.

21 THE COURT: All right. Well, I would, I would
22 generally exclude that particular evidence unless there's
23 some direct evidence that, that would support that and point
24 directly toward someone else being responsible and you say
25 there's not any?

1 MR. SINGLETON: None. Just my client, Your Honor.

2 THE COURT: Okay, sir. Now, any other motions from the
3 State?

4 SOLICITOR POULOS: Your Honor, no motions, but just the
5 stipulation that we had mentioned earlier at the bench. I'm
6 not sure how Your Honor wants to---

7 THE COURT: I, I don't know what they are. I heard it
8 mentioned.

9 SOLICITOR POULOS: Yes, sir.

10 THE COURT: But I'm not sure I know what that is.

11 SOLICITOR POULOS: Yes, sir, Your Honor. At this time
12 I want to make it part of the record that this, the
13 defendant has agreed to stipulate as to having two prior
14 convictions for burglary. There was a 1993 conviction for
15 burglary second degree from Greenville County, and 2001
16 conviction for burglary third degree from Spartanburg
17 County. He is been provided with copies, certified copies
18 of those convictions, Your Honor. He has signed a
19 stipulation form that, that details that, Your Honor, and
20 has agreed that the convictions would be read during the
21 trial and made part of the record. I have not filed those
22 stipulations, Your Honor, but I wanted to make that a part
23 of the record at the appropriate time. I don't know how
24 Your Honor would like to handle that.

25 THE COURT: Well, let's see, Mr. Singleton, you'd agree

1 that that stipulation is correct?

2 MR. SINGLETON: Yes, Your Honor. She's provided me
3 with indictments and---

4 THE COURT: And the information is true, that your
5 client's been served with a copy of the certified copy?

6 MR. SINGLETON: Yes, Your Honor.

7 THE COURT: All right. Then I'll have that made as a
8 Court's Exhibit as a stipulation. If you'll present it to
9 the court reporter it will be marked.

10 SOLICITOR POULOS: Yes, sir.

11 (WHEREUPON, the stipulation was marked as Court's
12 Exhibit No. 1 for identification purposes only at this
13 time.)

14 THE COURT: Anything else from the State?

15 SOLICITOR POULOS: No, Your Honor.

16 THE COURT: All right. Mr. Singleton, I understand you
17 may have some pretrial motions.

18 MR. SINGLETON: Yes, Your Honor. We have a motion to
19 file, motion to suppress the evidence that was gained after
20 he was arrested. He was initially pulled over for a traffic
21 stop. Once that traffic stop took place he was arrested and
22 handcuffed and put in the back of the car. We're asking
23 everything that they found, after the pat down search, to be
24 excluded as evidence. That included the, the items, the
25 camera, the credit cards, and debit cards that were found up

1 under the car on his property.

2 THE COURT: You want to---

3 SOLICITOR POULOS: Your Honor, I'd like to give a
4 little bit more clarification.

5 You're asking for suppression of the camera and the
6 credit cards?

7 MR. SINGLETON: Yes, Your Honor.

8 SOLICITOR POULOS: Those are the only items?

9 MR. SINGLETON: Yes, Your Honor, because those are the
10 items, the main items that were found.

11 THE COURT: And, and the basis for that motion is?

12 MR. SINGLETON: Because it was not in plain view.

13 They -- what they did is they only -- the only reason they
14 pulled him over is for a traffic stop.

15 THE COURT: Right.

16 MR. SINGLETON: The testimony will show that they saw
17 him a couple hours earlier at a convenience store, ran his
18 name, saw that he was supposedly not suppose to be driving a
19 moped because they had, they determined he did not have a
20 moped license. In that area they saw him pulling into a
21 driveway, pulled him over. He got off of the moped. He --
22 and they said, they said that they saw him supposedly throw
23 a camera and credit cards up under a car. Once he got off
24 the moped, they, they handcuffed him and told him he was
25 under arrest.

1 THE COURT: Now, the moped, I thought -- I heard you
2 say that it was located on his property?

3 MR. SINGLETON: Yes, the moped was on his property.

4 THE COURT: How about where he threw, where the
5 camera---

6 MR. SINGLETON: The card and everything was, was --
7 everything occurred on his property.

8 THE COURT: I see. Okay.

9 MR. SINGLETON: The car was not abandoned. It was his
10 car, his parent's car. Once they, he got off the moped,
11 they hand -- they ordered him to the ground, stood him up,
12 handcuffed him, and---

13 THE COURT: Well, I understand what you're saying.
14 All right. State ready to proceed in that regard?

15 SOLICITOR POULOS: Yes, Your Honor.

16 THE COURT: All right. We'll proceed with the hearing.
17 You may call your first witness.

18 SOLICITOR POULOS: Thank you, Your Honor.

19 The State calls Deputy Jason Wilson.

20 THE COURT: Sir, come forward to my left and be sworn.

21 JASON WILSON, having been first duly
22 sworn, testified as follows:

23 THE COURT: Have a seat please, sir. And once you're
24 seated I'd ask that you state your name.

25 WITNESS: Jason Wilson.

Jason Wilson - Direct examination
by Solicitor Poulos

1 THE COURT: Thank you.

2 Ms. Poulos, your witness.

3 SOLICITOR POULOS: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY SOLICITOR POULOS:

6 Q Deputy, were you on duty on November the 8th, 2010?

7 A Yes.

8 Q And where were you around 12:00 or 12:30 p.m. that day?

9 A We were at the Grand Food Stuff at 1880 Highway 101
10 South.

11 Q And is that in Spartanburg County?

12 A Yes, it is.

13 Q And what happened that day?

14 A We were having lunch there at, at the Grand Food Stuff,
15 and I went outside to have a cigarette, and while I was
16 standing out there Mr. Henson drove up in a blue moped. He
17 got off the moped and he was -- he kind of looked through
18 the windows at the other deputies, and he, he told me he
19 didn't know who, didn't know me and he thought I was
20 someone, someone else. I asked him his, his name and he
21 said Al, and I asked his last name. He said I'm not saying,
22 and that's when he got back on his moped and drove south on
23 Highway 101.

24 Q What did you do at that point?

25 A I went back inside the store, and told the other

Jason Wilson - Direct examination
by Solicitor Poulos

1 deputies what just occurred, and---

2 Q Were y'all able to determine his last name?

3 A Yes.

4 Q What was that?

5 A Henson.

6 Q And what else were you able to determine?

7 A We were able to determine that he had a, didn't have a
8 valid moped license.

9 Q Did he have a valid driver's license?

10 A His, his license was suspended from more than six
11 months. So, he had to have a moped license.

12 Q Okay. Now, after you finished your lunch, did you go
13 back out on patrol?

14 A Yes.

15 Q What happened then?

16 A Around 1:52 p.m. we were on patrol on Highway 296,
17 Reidville Road, near Bennetts Bridge Road. Looked up in the
18 rearview mirror, and I saw Mr. Henson on the same blue
19 moped. He pulled up in his driveway, and I pulled in behind
20 him, turned on my blue lights. As he was jumping off the
21 moped, I saw him throw a camera underneath the car, and we
22 placed him in handcuffs, and we ordered him to the, to the
23 ground and placed him in handcuffs.

24 Q Now, where was this?

25 When you first saw him, where were you?

Jason Wilson - Direct examination
by Solicitor Poulos

1 A It was Reidville Road just about the intersection of
2 Bennetts Bridge Road.

3 Q And you stated that it was the same blue moped you had
4 seen him driving before?

5 A Yes.

6 Q And was he wearing the same clothing?

7 A Correct. He had on brown coveralls.

8 Q Okay. Now, you said that he threw out a camera and
9 credit cards.

10 What was the name on the credit cards?

11 A Leslie Ofori.

12 Q And were you able to determine an address for the
13 victim?

14 A Yes, we determined it was Byers Court.

15 Q And where is that?

16 A It's in Greer in Spartanburg County.

17 Q Okay. Approximately how much time passed by from the
18 time that you first saw him outside the restaurant to the
19 time that you activated your blue lights to initiate the
20 traffic?

21 A It was just under, just under two hours.

22 Q And---

23 A Right around two hours.

24 Q Okay. And how far was the defendant's home where you,
25 where you stopped him during the traffic stop from the

Jason Wilson - Direct examination
by Solicitor Poulos

1 location of the victim's home at Byers Court?

2 A I believe it's just a little over two miles.

3 Q Okay. That's all I have. Please answer any questions
4 Mr. Singleton may have for you.

5 THE COURT: Mr. Singleton, your witness.

6 CROSS-EXAMINATION

7 BY MR. SINGLETON:

8 Q Deputy Wilson, when you were in the convenience store,
9 did you -- you determined that he did not have a moped
10 license, correct, or he was not suppose to be driving a
11 moped?

12 A That he was suppose to have a moped -- yes, sir.

13 Q And you determined he did not have one, a license?

14 A Correct.

15 Q Why did you not go and arrest him right then?

16 A Because he was -- he had already left.

17 Q Okay.

18 A He was already down the road at this time.

19 Q How, how long did, was it before you determined that he
20 didn't have a license from the time---

21 A It's probably about, probably about ten, fifteen
22 minutes.

23 Q Okay. When you say he pulled over on this moped, did
24 he go into the -- isn't there a convenience store connected
25 to a liquor store?

Jason Wilson - Cross-examination
by Mr. Singleton

1 A Yes.

2 Q Did he go inside that liquor store?

3 A I'm not sure if he did or not. I can't remember.

4 Q Okay. But you don't know if he -- did you see him
5 coming out of the liquor store or --?

6 A No, he -- I believe he was -- I think he just got off
7 the moped. I'm -- quite honestly I don't remember.

8 Q Okay. So, you don't know if he was coming off, coming
9 out of the liquor store or into, or into the liquor store?

10 A Correct. I don't know if he -- once he got off the
11 moped I don't know if he went into the liquor store or---

12 Q Okay.

13 A I don't.

14 Q Now, you stated that your -- did you just happen to be
15 in the area---

16 A Yes, sir.

17 Q ---of his house---

18 A Yes, sir.

19 Q ---when you were there---

20 A Yes, sir.

21 Q ---two hours later?

22 A Huh?

23 Q Okay. You stated that you saw him in his, in your
24 rearview mirror on Reidville Road.

25 Were you going towards Greenville County or were you

Jason Wilson - Cross-examination
by Mr. Singleton

1 going away from Greenville County?

2 A Yes, sir, I was traveling west or I was facing west.

3 Q Which is going towards --

4 A Yes.

5 Q -- Greenville County?

6 A Yes.

7 Q So -- and isn't his house the last house on the left---

8 A Correct.

9 Q ---just before you cross into Greenville County?

10 A Yes.

11 Q Okay. Were you actually -- was your car actually
12 moving at that point in time or were you sitting on Bennetts
13 Bridge Road doing patrol, looking for speeders or anything
14 like---

15 A No, I was on patrol.

16 Q Okay.

17 A I was moving.

18 Q And, so, he was behind you and you'd already passed his
19 house?

20 A Either right at his house or approaching his house. It
21 was---

22 Q Okay.

23 A ---right around that area.

24 Q Okay. So, he was behind you. So, he didn't -- so, you
25 wouldn't have put on -- did you put on your blue lights once

Jason Wilson - Cross-examination
by Mr. Singleton

1 he got into his property?

2 A Once he got into the driveway we pulled in right behind
3 him, and that's when my blue lights were activated.

4 Q Okay. But you would of had to turn around somewhere,
5 wouldn't you?

6 A Yeah, I think -- if I, if I remember correctly, he kind
7 of veered off and we were able to either do a J-point turn
8 or it was right close. It was either right at his driveway
9 or we either had to stop and do a J-point turn.

10 Q Okay. So, you didn't go across the bridge into
11 Greenville County?

12 A No.

13 Q You made a turn around and came back?

14 A No, it was right there.

15 Q Okay. Do you know the make-up of his driveway and
16 what, how, how his driveway is shaped?

17 A If I remember it's just straight off Highway 296, and
18 it's like, if I'm not mistaken, it was a dirt or gravel
19 drive.

20 Q Okay. Do you know if it was just a, I guess like a
21 typical driveway, just straight or did it have a circle?

22 A If I remember correctly it was just straight.

23 Q Okay. Well, what if I was to tell you it was actually
24 in a circle and it actually goes straight and then it's a
25 circle around?

1 A Well, that -- yes, his, but I'm talking about where he
2 pulled up it was straight.

3 Q Okay. And then---

4 A There was two -- there was two driveways.

5 Q Okay. And when he pulled in his driveway, which
6 direction did he go?

7 Did he go straight to the house or did he go to the
8 right of the house?

9 A No, he went straight up like I guess to the back area
10 of his property and jumped off.

11 Q Okay. And where, where did he pull his, his moped up
12 to?

13 Did he -- I mean---

14 A Kind of like parallel next to a car that was parked on
15 the property.

16 Q Okay. And where were your cars parked?

17 A Directly behind the moped.

18 Q And you stated that he jumped off the moped?

19 A Yes.

20 Q And you stated that he -- you saw him throw a camera?

21 A Correct.

22 Q You saw him put credit cards---

23 A No, I did not.

24 Q Okay. So, you just -- but you were -- were you still
25 in your patrol car when you saw this?

Jason Wilson - Cross-examination
by Mr. Singleton

1 A Yes.

2 Q Okay. How is it possible that you saw him throw a
3 camera when you're in the patrol car behind him and he had
4 to throw it underneath the car?

5 I mean the car would of been below where you were
6 sitting?

7 How, how is it possible that you saw -- are you sure
8 you saw a camera or you saw an item?

9 A No, I saw a camera. I mean the camera was a good size
10 camera.

11 Q Okay. Can you describe the camera from your
12 recollection?

13 A It was a black and it was one of those larger I believe
14 digital cameras.

15 Q Okay. Was it just a camera or was it in a camera bag
16 or---

17 A It's just -- it was by itself. It wasn't in a bag. It
18 just had a strap on it I believe.

19 Q Had a strap on it?

20 A I believe so.

21 Q Okay. When you pulled him over, did you have any idea
22 a, a burglary had occurred?

23 A No, sir.

24 Q Had the burglary been reported from Byers Street---

25 A No, sir.

- 1 Q ---when you pulled behind him?
- 2 A No, sir.
- 3 Q So, what was the purpose of you pulling him over?
- 4 A Cause I knew he had, he was suspended and didn't have a
- 5 moped license.
- 6 Q Okay. So, the only reason you pulled him over was for
- 7 the traffic stop, to issue him---
- 8 A Correct.
- 9 Q ---a license citation?
- 10 A Correct.
- 11 Q And what happened when he got off the moped?
- 12 A Well, he jumped off the moped. As he was getting off
- 13 the moped he threw the camera underneath the car.
- 14 Q Okay. And then what happened after that?
- 15 A We ordered him to the ground. We placed him in
- 16 handcuffs.
- 17 Q Okay.
- 18 A Placed him under arrest.
- 19 Q Did you tell him what he was under arrest for?
- 20 A Yes.
- 21 Q What was he under arrest for?
- 22 A Driving without, driving under suspension.
- 23 Q Did you then take him back to your police car?
- 24 A I believe another deputy did that.
- 25 Q Okay. Did they take him right then and there as soon

Jason Wilson - Cross-examination
by Mr. Singleton

1 as y'all arrested him and read him his rights?

2 A I believe another deputy did that.

3 Q Okay. But it was soon --

4 A Yes.

5 Q -- shortly thereafter?

6 And then what happened after he was placed in the
7 police car?

8 A I believe another deputy went underneath to see if,
9 what was underneath the car and verified it was a camera and
10 they found the credit cards---

11 Q Okay. How did---

12 A ---next to the, where the---

13 Q Okay. How were they able to see the camera up under
14 the car?

15 A Because we -- I saw the camera being thrown when he --
16 so, I mean I knew it was there.

17 Q Okay.

18 A And we was just determining if it was his or somebody
19 else's.

20 Q But you did not been reported that a burglary had taken
21 place?

22 A No, sir.

23 Q Is that correct?

24 A No, sir.

25 Q And nobody ever received a 9-1-1 call from Byers

Jason Wilson - Cross-examination
by Mr. Singleton

1 Street?

2 A No, sir.

3 Q So, the sole purpose of you pulling him over was a
4 moped license violation?

5 A Correct.

6 Q Do you remember -- did you pull up, the camera out from
7 underneath the car?

8 A I don't, I don't -- I can't remember, but I don't think
9 I did.

10 Q Okay. So, you -- so, if you ever pulled the camera --
11 did you see who pulled the camera out from up under the car?

12 A I believe it was another deputy.

13 Q Okay.

14 A I don't think it was me.

15 Q So, they had to walk from the moped to the car to get
16 to the, the camera, is that correct?

17 A Well, I mean it was -- yeah, I mean it was only like
18 three feet tops.

19 Q Would they have to get down on their knees?

20 A I don't recall.

21 Q Okay. Could you tell if it was his or not his just by
22 looking at the camera?

23 A No, sir.

24 Q Okay. Could you see the, the credit cards from your
25 police car?

Jason Wilson - Cross-examination
by Mr. Singleton

1 A No.

2 Q Could you see the camera ten -- I mean could you see
3 the camera and credit cards ten feet from, ten feet from the
4 car that it was supposedly thrown up under?

5 A I, I don't remember.

6 Q Okay. Do you remember if there was grass up
7 underneath, up under the car?

8 A I don't recall.

9 Q I mean obviously there was grass up under the car, but
10 do you remember if it was---

11 A Yeah, I understand.

12 Q How high the grass was?

13 A I don't recall.

14 Q Were you able to determine whose names were on the -- I
15 believe it was a credit card and a debit card?

16 A If I remember, yes, sir, it was.

17 Q Were you able to determine whose name it was?

18 A Yes.

19 Q Let me finish. Were you able to determine whose name
20 it was without taking the cards I mean from under the car?

21 A No.

22 Q Okay. And this car was how many, how many feet from
23 the moped?

24 A It was two or three feet tops.

25 Q Okay. And, again, you had no indication, at the time

1 you pulled him over, that a robbery had taken place?

2 A No, sir.

3 Q And did you ask him if he could look up under, if you
4 could look up under the car?

5 A No, sir.

6 Q Okay. So, he didn't give you permission to look up
7 under the car?

8 A No.

9 Q Did you ask his parents if they could look at, you
10 could look up under the car?

11 A No.

12 Q So, you didn't have permission from his parents as
13 well?

14 A No.

15 Q So, what was -- I mean what was your reasoning for
16 looking up under the car if you were pulling him over for a
17 traffic citation?

18 A Because we didn't know what we had. We knew it wasn't
19 normal behavior for a person to jump off a moped and throw a
20 camera underneath the car. We didn't know -- quite frankly
21 we didn't know if we had a car breaking or what had just
22 happened. So, we were just trying to determine, trying to
23 find ownership of the, of the camera.

24 Q Okay.

25 A And while we were there -- and while the camera was

Jason Wilson - Cross-examination
by Mr. Singleton

1 there we noticed the, the credit cards.

2 Q But you had determined, before you even saw him the
3 second time, that he lived at -- Reidville Road?

4 A I'm sorry?

5 Q Did you determine -- when, when you left the
6 convenience store, did you know what his address was?

7 A Yes.

8 Q So, you knew when you pulled into that driveway that
9 was his address?

10 A Correct.

11 Q Okay. So, it didn't just seem that he, since that's
12 his address, he was just throwing his camera up under the---

13 A Yes, those actions don't indicate, I mean why you throw
14 a perfectly good camera underneath a car like that.

15 Q Well -- so, what happened after you found the camera?

16 A I -- that's when other deputies noticed -- when they
17 pulled the camera out, they noticed the other items
18 underneath the car.

19 Q Okay. Then what happened next?

20 A Investigators were called. Sergeant Barnette was
21 called.

22 Q Okay. How long was it from the time you entered his
23 property till the time that Sergeant Barnette was called?

24 A It wasn't very long. I'd say within five minutes.

25 Q Okay. And then how long did it take sergeant -- where

Jason Wilson - Cross-examination
by Mr. Singleton

1 was Sergeant Barnette when you called him?

2 Do you have any idea?

3 A I don't know, sir.

4 Q How long did it take him to get to that residence?

5 A How long did it take Sergeant Barnette?

6 Q Yeah, from the time you made the call.

7 A I don't know, sir.

8 Q Five minutes, ten minutes, fifteen minutes?

9 A I don't recall. It wasn't, it wasn't too terribly
10 long.

11 Q Well, this is important. I mean was it the same length
12 of time it took you to call him from the time you got on the
13 property till the time---

14 A Well, I don't know, I don't know where he was when I
15 spoke to him on the phone.

16 Q So, you don't know if it was five, ten, fifteen
17 minutes?

18 A No, sir.

19 Q Okay. And then what happened once the detectives
20 showed up or Sergeant Barnette showed up?

21 A They, they took over the investigation.

22 Q Okay. And then what happened next?

23 I mean do you know how long Sergeant Barnette stayed on
24 the scene?

25 A He, he stayed there briefly and then went over to

Jason Wilson - Cross-examination
by Mr. Singleton

1 Byers Court.

2 Q Okay. But the whole reason is -- just to reiterate,
3 the whole reason you pulled him over was a traffic stop for
4 something you learned two hours earlier and you knew that
5 that was his property?

6 A Correct.

7 Q Yeah.

8 No 9-1-1 call came to your at Byers Street?

9 A No.

10 Q Correct?

11 No one had alerteded you to know that, over your police
12 radio, that a, that some, a burglary or items were missing
13 from Byers Street---

14 A No, sir.

15 Q ---at the time you pulled him over?

16 A No, sir.

17 Q When did you learn that these items were missing from
18 Byers Street?

19 A Once Sergeant Barnette went over to the address.

20 Q Okay. So, that would of been like thirty minutes later
21 maybe?

22 A I can't testify to that time cause I don't know.

23 Q Okay. Were you still on the scene when he told you
24 that?

25 A I was still at Reidville Road.

Jason Wilson - Cross-examination
by Mr. Singleton

1 Q Reidville Road?

2 A Yeah.

3 Q Okay. And what did you -- when you did the pat down --
4 did you do the pat down on Mr.---

5 A No, sir.

6 Q ---Henson?

7 Okay. Do you know what items were found when the pat
8 down was done?

9 A I didn't, I didn't do the pat down. So, I can't
10 testify to that.

11 MR. SINGLETON: Okay. That's all the questions I have,
12 Your Honor.

13 THE COURT: Ms. Poulos, any questions of the witness?

14 SOLICITOR POULOS: No, sir, Your Honor.

15 THE COURT: You may step down.

16 State may call its next witness.

17 SOLICITOR POULOS: Yes, sir, Your Honor.

18 State calls Sergeant Travis Barnette.

19 MR. SINGLETON: Come forward, sir, to my left and be
20 sworn.

21 TRAVIS BARNETTE, having been first duly
22 sworn, testified as follows:

23 THE COURT: Have a seat please, sir. Once you're
24 seated state your name

25 WITNESS: My name is Sergeant Travis Barnette.

Travis Barnette - Direct examination
by Solicitor Poulos

1 THE COURT: Ms. Poulos, your witness.

2 SOLICITOR POULOS: Thank you.

3 DIRECT EXAMINATION

4 BY SOLICITOR POULOS:

5 Q Sergeant Barnette, were you on duty on November the
6 8th, 2010?

7 A Yes, ma'am.

8 Q And where were you around 12:00 or 12:30 p.m. that day?

9 A I was at 1880 Highway 101 at the Grand Food Stuff.

10 Q Okay. Where is that?

11 A It's located here in Spartanburg County. It's right
12 near where 85 and or, where Interstate 85 and Highway 101
13 intersect.

14 Q Okay. And what happened that day?

15 A I was sitting there eating lunch. I noticed Mr. Henson
16 peering into the window and I actually recognized him, but
17 wasn't sure what his name was. Mr. Henson and I went to
18 high school together, and he use to hang out with one of
19 cousins.

20 So, saw him interacting with Deputy Wilson. Probably
21 ten minutes later or so Deputy Wilson came back in, advised
22 me kind of a little bit of how their interaction went, was
23 able to figure out his name, and, at that point, was able to
24 determine that he did not have a moped license and his
25 license were suspended indefinitely.

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1 Q And did you advise Deputy Wilson that his license had
2 been suspended and he did not have a valid moped license,
3 and, therefore, obviously he was driving a moped illegally?

4 A I did.

5 Q Okay. What happened after that?

6 A After that everybody left, went back on patrol.
7 Probably right around two o'clock, I think it was, in the
8 afternoon is when Deputy Wilson called me. He stated that
9 he was, had conducted a traffic stop of Mr. Henson.

10 Q And you went out to the scene?

11 A I did.

12 Q All right. What happened at the scene?

13 A Once I got there, spoke with Deputy Wilson a little bit
14 about what happened, what had taken place during the traffic
15 stop, noticed Mr. Henson was in the back seat of the
16 vehicle, walked over, opened the door, greeted him. He and
17 I had a cordial conversation. At that point I believe he
18 recognized who I was. We spoke about, you know, back the
19 old days, a few people, where they had been in life, and
20 after that, closed the door. I went back over and noticed
21 the credit cards or actually they were the -- I think they
22 were a couple debit cards and a credit card.

23 Q And what was the name on those cards?

24 A One of the cards had Leslie Ofori on it and it had a
25 picture of a black female printed on it, and another, the

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1 Capital One card actually had Leslie Robinson.

2 Q And were you able to determine an address?

3 A We were.

4 Q Okay. What was that address?

5 A Byers Court in Greer.

6 Q And is that Spartanburg County?

7 A It is.

8 Q Did you go to that location?

9 A I did.

10 Q Did you speak with Mrs. Ofori?

11 A I did.

12 Q What did she tell you?

13 A When I knocked on the door I asked would she open the
14 door, and I asked her if she was Mrs. Ofori. Of course, I
15 recognized her due to the pictures being on the, the card.
16 She stated that she was. I asked her if she knew a
17 gentleman by the name of Al Henson. She stated that she did
18 not. At that point I asked her was there any reason that
19 Mr. Henson would be in possession of several of the FTC
20 cards that had her name. She said no, there would not.

21 And then asked her if she knew a white, a white male
22 who drove a moped and she stated no. But at that point she
23 said, you know, it's kind of funny because a few minutes
24 before you got here she was upstairs taking a shower. She
25 heard, thought she had someone downstairs walking around.

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1 So, she called out cause she thought it was her husband and
2 actually called his name, got no reply. A few minutes later
3 she got dressed, came downstairs, and found two doors that
4 were opened. Both were kind of like in a little laundry
5 room. One door leads to the garage. The other door comes
6 out into a hallway.

7 I asked her if she would, if they had any type of
8 camera. She immediately turned around, went into the room,
9 my facing the residence, went into a room off to the left
10 and stated oh, my God, my husband's camera's gone.

11 Q Did she say anything else?

12 A I don't recall at that point what --?

13 Q Did she see the defendant or anybody?

14 A She stated that she had seen an individual on a moped,
15 but couldn't really describe it. She stated that a few
16 minutes before I got, I got here, got there, she noticed an
17 individual on a moped going out of her driveway.

18 Q Okay. So, at that point when you had a conversation
19 with her, she had not realized that her home had been or
20 that items had been stolen from her home, she just knew that
21 there was some suspicious activity and it wasn't until after
22 you told her about the credit cards and the camera that she
23 realized that---

24 A That's correct. Once I mentioned about the credit
25 cards she went to her wallet or her purse, which is located

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1 inside the living room, which was I guess approximately 20
2 feet just inside the door, and she said, advised that her
3 wallet was missing from her purse.

4 (WHEREUPON, the driving record was marked as State's
5 Exhibit No. 1 for identification purposes at this time.)

6 Q And just briefly, Sergeant Barnette, I'm showing you
7 what's been marked as State's Exhibit 1 for purposes of the
8 suppression hearing.

9 Do you recognize this document?

10 A Yes, ma'am.

11 Q And what is that?

12 A It's a certified copy of the driving record for Mr.
13 Henson.

14 Q And that document is generated by which agency?

15 A The South Carolina Department of Public Safety.

16 Q Okay. And have you had an opportunity to review that
17 document?

18 A I have.

19 Q Has it been certified by the South Carolina Department
20 of Motor Vehicles?

21 A Yes, ma'am.

22 Q And is that document considered a public document?

23 A Yes, ma'am.

24 Q Okay. And based on your review of information
25 contained in that record, could you tell that the

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1 defendant's driver's license has been suspended on the date
2 of this incident, November---

3 A Yes, ma'am.

4 Q ---8th, 2010?

5 A Yes, ma'am.

6 Q Okay. Thank you. That's all I have at this time.

7 THE COURT: Any questions?

8 MR. SINGLETON: May it please the Court?

9 CROSS-EXAMINATION

10 BY MR. SINGLETON:

11 Q Sergeant Barnette, you stated you saw my client at the
12 convenience store on 101?

13 A I did.

14 Q Do you know what time that was?

15 A Roughly around 12:30 or so. I'm not really positive.

16 Q And y'all had eaten lunch there, stuff they took like
17 at a convenience store, stuff like that french fries and
18 stuff like that, corn dogs, and stuff?

19 A Yes, sir.

20 Q Why is it -- and you told Deputy Wilson that he did not
21 have a moped license?

22 A Correct.

23 Q Is that correct?

24 A Correct.

25 Q Why is it that y'all did not go try to find him since

Travis Barnette - Cross-examination
by Mr. Singleton

1 y'all were going back on patrol?

2 A We were roughly ten, fifteen minutes later, and I mean
3 on a moped, at that part of town, you can be anywhere.

4 Q Okay. But y'all didn't attempt to try to find him or
5 anything at that point in time?

6 A No.

7 Q Okay. When did you get a call from -- you didn't pull
8 over Mr. Henson, did you?

9 A I did not, no, sir.

10 Q When did you get a call from Deputy Wilson that Mr.
11 Henson had been pulled over?

12 A Roughly round two o'clock I believe it was.

13 Q Okay. So, he called you after Mr. Henson had already
14 been pulled over, is that correct?

15 A Correct.

16 Q Okay. Where were you when you got the call?

17 A I don't recall.

18 Q You don't remember if you were on 101 or if you were at
19 the Sheriff's office?

20 A No, sir, it's a little over almost a year ago.

21 Q Okay.

22 A I don't, I don't recall my exact location at the time,
23 no, sir.

24 Q Okay. So, you don't remember how long it took you to
25 get there?

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by Mr. Singleton

1 A No, sir, I don't.

2 Q Okay. So, what happened once you got there at the, to
3 the scene?

4 A Once I got there, spoke with Deputy Wilson, he kind of
5 told me a little bit about the camera being thrown and all
6 that. Like I said, then I went to, saw Mr. Henson in the
7 back seat of the car, opened the door. That's when he
8 recognized who I was, and, like I said, we had a little
9 brief conversation about the old days and people we knew and
10 where they were at in life and --

11 Q Okay.

12 A -- that was about it.

13 Q So, you were not there to see how, how the traffic stop
14 took place?

15 A No, I wasn't.

16 Q So, you have no idea -- no -- you couldn't testify
17 about where the camera was or---

18 A No, sir.

19 Q ---anything to that effect?

20 A No, sir.

21 Q When you pulled into Reidville, Reidville
22 where Mr. Henson lived, at that point in time did you
23 receive a call that a burglary or a break-in had taken place
24 at Byers Street?

25 A No, sir, had not.

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by Mr. Singleton

1 Q The entire time that you were at the scene, did you
2 receive a call from 9-1-1 or anybody---

3 A No.

4 Q ---anybody from the police department?

5 A No, sir.

6 Q And when Mr., when Deputy Wilson called, phoned you or
7 said, you know, got in contact with you, did he tell you
8 that he pulled him over just for a traffic stop?

9 A No, he said he had stopped him, but I don't know, I
10 don't recall the exact conversation that he and I had.

11 Q Okay. But I believe you earlier said that Deputy
12 Wilson told you that he, he just pulled him over for a
13 traffic stop?

14 A Yeah, I don't -- I mean I don't recall the exact
15 conversation, no, sir.

16 Q But you knew, from earlier, that he was allowed to be
17 driving the moped supposedly because he didn't have a moped
18 license?

19 A That is correct.

20 Q Okay. But Deputy Wilson didn't mention anything to you
21 about Mr. Henson just burglarizing the residence or anything
22 like that?

23 A No, he didn't say anything like that, no, sir.

24 Q Okay. How long were you at the Reidville Road, Mr.
25 Henson's residence, before you left to go to Byers Street?

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by Mr. Singleton

1 A I don't recall the exact amount, but roughly five to
2 ten minutes. It wasn't very long.

3 Q Okay. And did you take the items with you, the credit
4 cards and the debit card and the camera with you?

5 A No, sir, I did not.

6 Q Okay. Where did, where did they stay?

7 They stayed at the scene?

8 A They did.

9 Q Okay. Whose possession were they in?

10 A I don't recall.

11 Q Okay. And when you went to Byers Street, you went
12 to the front door of Mrs. Ofori's residence?

13 A Yes, sir.

14 Q And you asked her if she knew Mr. Henson?

15 A I did.

16 Q And she said no?

17 A Correct.

18 Q Did she tell you about the moped first or did you tell
19 her about the moped first?

20 A No, I asked her if she knew a white male who drove a
21 moped.

22 Q Okay. And what did she say?

23 A That's when she replied no, but it was strange that she
24 had, that I asked her that because she had just saw an
25 individual on a moped leaving her driveway.

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1 Q Okay. Did she say where in the driveway she saw the
2 moped leave?

3 A It was at the end of the driveway.

4 Q At the end of the driveway?

5 A Yes, sir.

6 Q Okay. And did she say when she, how soon it was before
7 you arrived that she heard the, these so called footsteps?

8 A I don't recall if she did or not.

9 MR. SINGLETON: Okay. No other questions, Your Honor.

10 THE COURT: Anything further from the State from this
11 witness?

12 SOLICITOR POULOS: No, sir, Your Honor.

13 THE COURT: You may step down, sir.

14 WITNESS: Yes, sir.

15 THE COURT: Just one second.

16 WITNESS: Yes, sir.

17 THE COURT: When did you first come into contact with
18 the credit card?

19 WITNESS: When I arrived at the scene when he had
20 stopped him.

21 THE COURT: They were in the possession of the other
22 deputy---

23 WITNESS: Yes, sir.

24 THE COURT: ---at that time?

25 WITNESS: Yes, sir.

1 THE COURT: Did he indicate where he had gotten them?

2 WITNESS: No, sir.

3 THE COURT: All right. Thank you, sir.

4 Any question to follow up?

5 SOLICITOR POULOS: None, Your Honor.

6 THE COURT: All right. You may step down.

7 WITNESS: Thank you, sir.

8 THE COURT: State have any other witnesses?

9 SOLICITOR POULOS: No, sir, Your Honor.

10 THE COURT: All right. Defense want to call witnesses
11 in connection with this motion?

12 MR. SINGLETON: No, Your Honor. No, Your Honor, we
13 don't have any witnesses.

14 THE COURT: All right. I'll, I'll hear argument then.
15 Your motion, Mr. Singleton.

16 MR. SINGLETON: Your Honor, we believe that this, this,
17 these items were not found in the search incident to arrest.
18 I believe that once one of the officer states in their, in
19 their police report, search incident to arrest. My client,
20 they knew two hours earlier, approximately, that my client
21 did not have a moped license according to DMV records. They
22 knew his address. When they saw him they were out in front
23 of his, just happened to be out in front of his residence,
24 saw him in a rear view mirror.

25 Deputy Wilson stated that the only reason he pulled him

1 over is because of what he found out two hours earlier in
2 the convenience store.

3 THE COURT: Was it your position that it was an illegal
4 stop?

5 MR. SINGLETON: No, it's not. I think the stop was
6 legal. I think the search, once he was, there was no reason
7 for them to search the property after once he was stopped
8 and arrested. He was not -- they had no -- according to---

9 THE COURT: Well, now, did this really require a
10 search?

11 They did look under the car to see it.

12 MR. SINGLETON: Well, they had to search the property.

13 THE COURT: Apparently the testimony was they saw
14 something tossed under there. Thought it was a camera.

15 MR. SINGLETON: Well, I mean they didn't -- it was his
16 property. They had no report that it was a robbery or
17 anything. They were just taking a traffic stop. There was
18 no reason for them to look at, for that because there was
19 no -- if they had known that a robbery had taken place
20 earlier that would of given them probable cause to look up
21 under the car because they might of known that a camera had
22 been stolen.

23 THE COURT: So, it's your position if you're arresting
24 someone, and you see them, they're in the process of being
25 arrested, you see them toss something under a car, that the

1 police have no right to take a look under the car?

2 MR. SINGLETON: Well, according to the incident to
3 arrest up under State versus Brown of 2010, talking about,
4 you know, searching the vehicle or search incident to
5 arrest---

6 THE COURT: Well, that's searching a vehicle.

7 Wasn't Brown a vehicle?

8 MR. SINGLETON: Yes, it was a vehicle, but they had
9 also -- they determined that the only reason he needed to
10 look at that anywhere else in the vehicle was they didn't
11 determine -- once he had arrested him for, for open
12 container---

13 THE COURT: They got a right to do a cursory search for
14 any, you know, weapons, things like that.

15 MR. SINGLETON: Yeah, but there was no indication that
16 he, that nothing had happened. They were pulling, merely
17 pulling him over for a traffic stop.

18 THE COURT: Yeah, here you got somebody stopping and
19 you see them throwing something under a vehicle.

20 Wouldn't that raise some suspicions?

21 MR. SINGLETON: Well, I mean it would if it was not his
22 property. I mean not -- I mean it was his property. I mean
23 he may of thrown it up there so they wouldn't, you know, so
24 they wouldn't damage it when they arrested him.

25 THE COURT: Could of been a weapon.

1 MR. SINGLETON: Well, it could of been a weapon, but
2 they didn't know that he -- there was no reason to think
3 that he had a weapon. They just saw him two hours earlier
4 at the convenience store and they---

5 THE COURT: They didn't search him, did they?

6 MR. SINGLETON: They searched him at the, at the scene.
7 They had already patted him down. They had already patted
8 him down.

9 THE COURT: I'm talking when they saw him earlier.

10 MR. SINGLETON: No, they didn't search him. There was
11 no reason to search him cause they were, they, they were
12 just doing small talk. I mean he was at a convenience store
13 just doing small talk.

14 THE COURT: I understand that. I'm just -- you're
15 talking like that, that because they talked to him earlier
16 they knew he was not armed.

17 MR. SINGLETON: Well, I don't think -- no, I'm not
18 saying that. I'm saying that they, from the time that they
19 saw him at the convenience store to the time that they saw
20 him about two hours later, there have been no report of
21 burglary, no reason to think he was armed. They were only
22 pulling him over for a traffic stop.

23 THE COURT: Now, the credit cards were under the car
24 with the camera?

25 MR. SINGLETON: According to their testimony they

1 were -- everything was up under the car. It was not in
2 plain view.

3 THE COURT: All right. Well, now, let's talk about
4 that.

5 You mean that something underneath a car is not in
6 plain view?

7 MR. SINGLETON: Not when that car had -- they could
8 tell the condition of the car. I mean the car had been
9 moved. Obviously grass had grown up, up underneath it.

10 THE COURT: That doesn't have anything to do with
11 whether it's in view or not.

12 MR. SINGLETON: Well, they could tell it was in plain
13 view, but they couldn't tell who it was. They didn't know
14 if it was his. They couldn't -- I mean for all they knew
15 there was a camera that, that had been there for a while.

16 THE COURT: Well, I'm more concerned with the credit
17 cards than I am the camera because if I pick up a credit
18 card that belongs to someone else with other peoples'
19 pictures on it, that might lead, lead me to believe that
20 something's not right here.

21 MR. SINGLETON: Yeah, but they couldn't see the credit
22 cards until they got up under, till they got down on their
23 knees and looked up under the vehicle.

24 THE COURT: And they saw it.

25 MR. SINGLETON: And they pulled it out from under the

1 vehicle.

2 THE COURT: well, there's cases where they talk about
3 use of a flashlight. That does prevent something from being
4 in plain view. Police officers can do things to look.

5 MR. SINGLETON: Yeah, but---

6 THE COURT: I just don't think -- is there a case that
7 says you can't look under a car?

8 MR. SINGLETON: No, Your Honor, but I think the, the
9 reason is it has to be incident to arrest. I mean it has to
10 be---

11 THE COURT: well, he's being arrested cause they knew,
12 they knew---

13 MR. SINGLETON: Yeah, but they had already -- once they
14 had searched him, they had searched and patted him down, the
15 incident to arrest was he had no way to get back to the, to
16 the car that it was thrown up under. They had no way to get
17 back to his moped.

18 THE COURT: well, I'm looking, I'm looking at State
19 versus Wright, which is 2011 plain view case.

20 MR. SINGLETON: Uh-huh. (Affirmative).

21 THE COURT: And there the police officers went by this
22 crowd of people, a lot of lights, they had a tip that there
23 was dog fighting going on.

24 MR. SINGLETON: Uh-huh. (Affirmative).

25 THE COURT: So, they went on to the property pursuant

1 to the tip, and people scattered, took off running, and then
2 pursuing those folks, they saw a lot of things there on the
3 property that had to do with dog fighting.

4 MR. SINGLETON: Correct.

5 THE COURT: And -- but the test on plain view now is
6 are the police lawfully on the property.

7 MR. SINGLETON: Right.

8 THE COURT: Number two, is the incriminating nature of
9 the property they see apparent.

10 MR. SINGLETON: Correct. And I don't see how the
11 incriminating nature of this property is apparent when they
12 couldn't tell---

13 THE COURT: Well, if he's got credit cards that belong
14 to someone else that he's tossed under a car---

15 MR. SINGLETON: But they didn't know that beforehand.
16 They had no idea that---

17 THE COURT: Well, these people that went on the
18 property weren't sure dog fighting was going on till they
19 got on there.

20 MR. SINGLETON: Yeah, but as soon as they got on the
21 dog -- as soon as they went down the driveway, they saw what
22 clearly suggested dog fighting with lights everywhere and
23 dog fighting.

24 THE COURT: Well, no, what it says they saw was gaming
25 paraphernalia, dog fighting paraphernalia, a pit, muzzles,

1 drugs, syringes.

2 MR. SINGLETON: But that was all in plain---

3 THE COURT: They saw a lot of things in there.

4 MR. SINGLETON: That was all in plain view. It's not
5 something they had to get---

6 THE COURT: It doesn't say---

7 MR. SINGLETON: ---on their knees and look.

8 THE COURT: It doesn't say whether it was under a chair
9 or around -- it just says it was in view.

10 MR. SINGLETON: Well, obviously if you had dog fighting
11 paraphernalia, I mean if it's dog cages and stuff like
12 that---

13 THE COURT: Mr. Singleton, let's get back to my
14 question.

15 Is there a case that says that a police officer can't
16 get down on his knees and look under a car --

17 MR. SINGLETON: Well, I think it has to be---

18 THE COURT: -- for something to be in plain view.

19 MR. SINGLETON: Let me look real quick, Your Honor.

20 (Pause.)

21 MR. SINGLETON: Well, Your Honor, I go back to the, to
22 the Wright case where it talks about plain view. It says
23 the incriminating nature has to be immediately apparent. I
24 don't see how it can be immediately apparent if they
25 couldn't see the items.

1 THE COURT: Well, it said they looked at the credit
2 card. It had a picture of a black female on it.

3 MR. SINGLETON: After they had gotten on their knees
4 and looked up under the car.

5 THE COURT: Well, they looked at it, yeah. There's---

6 MR. SINGLETON: There's no -- I'm sorry, Your Honor?

7 THE COURT: They looked at it.

8 MR. SINGLETON: They looked at what?

9 THE COURT: What they found under the car. They looked
10 at it.

11 MR. SINGLETON: Yeah, but I don't think they had any
12 reason to look up under the car because there was no -- if
13 they had---

14 THE COURT: Okay. I understand your position.

15 MR. SINGLETON: I mean they had no -- if they had been
16 told thirty minutes earlier that a robbery had just taken
17 place with somebody driving a moped at the appropriate---

18 THE COURT: Mr. Singleton, had they pulled him over,
19 and gotten out of the car and he stood there beside his
20 moped, didn't do anything, I'm with you. But if they see
21 somebody throw something under a vehicle when he's being
22 stopped, that raises a suspicion in my mind. And if all
23 they have to do is get down on their knee to look under the
24 car to see the items --.

25 MR. SINGLETON: Wait a second, Your Honor.

1 THE COURT: There's cases where they said flying an
2 airplane over property, still the property's in plain view.
3 Had to get in the airplane to do it. Getting down on
4 somebody knees is a whole lot less than flying an airplane
5 over property.

6 MR. SINGLETON: Well, yes, Your Honor, I understand
7 that. If they had --.

8 THE COURT: The question is can you see it. Is it
9 something that has to be, you have to open a door or open a
10 closet door or you have to turn over stuff to find it. This
11 is -- you can see it from where -- if they were lawfully
12 where they were and they could see it, it's in plain view.

13 MR. SINGLETON: They could see it once they got -- I
14 mean they supposedly saw it when he supposedly threw it up
15 under there, but they couldn't see it, actually see it until
16 they got on their knees and saw it.

17 THE COURT: All right.

18 MR. SINGLETON: They couldn't see the credit cards. I
19 mean I don't know if the credit cards were down in the grass
20 or on top of the grass or anything like that. I mean, I
21 mean the camera---

22 THE COURT: I didn't hear that testimony.

23 MR. SINGLETON: No, I didn't hear that either.

24 THE COURT: I mean as far as I know it's just under the
25 car.

1 MR. SINGLETON: Right. So, I just -- I -- it's my --
2 this was not in plain view. Obviously you have -- so, I
3 mean it's my, it's my belief that it was not in plain view.
4 It's not incident to arrest.

5 THE COURT: So, it's your position that a police
6 officer, when he goes on a property, has to stand vertical,
7 straight up, and just look around him?

8 MR. SINGLETON: No, he can---

9 THE COURT: He can't move at all?

10 MR. SINGLETON: He could of walked around and looked
11 for it. But I don't think there would of been able to see
12 it---

13 THE COURT: Okay.

14 MR. SINGLETON: ---until they got down on their knees.

15 THE COURT: I understand your position.

16 Does the State have anything you wish to share on this?

17 SOLICITOR POULOS: No, sir, Your Honor.

18 Just for the record, I believe you covered most of it.
19 Deputy Wilson acted on the prior knowledge of the fact that
20 he was driving the moped illegally. He made the stop. He
21 clearly saw him throw out, as he testified, a camera. At
22 that point it became more than just a traffic offense.
23 There that raises suspicion, and this wasn't an item like a
24 candy wrapper or a cigarette. This was an actual item.
25 They were things of value.

1 At that point, it's our position, Your Honor, that the
2 defendant abandoned that property. Even though it was on
3 his property, he availed himself of that possessory---

4 THE COURT: Well, I don't think I'd go so far as
5 abandoning it, but obviously he---

6 SOLICITOR POULOS: Yes, sir.

7 THE COURT: ---he didn't want it to be on him when he,
8 the police got there.

9 SOLICITOR POULOS: Yes, sir.

10 As Your Honor has, has recognized that those items
11 became in plain view at that point. Common sense would tell
12 you that something was not right, and these officers acted
13 upon that belief, Your Honor. It was at that point that he
14 was detained, and those items were taken at that point, Your
15 Honor. They furthered their investigation and were able to
16 determine that those items were in connection to a burglary
17 which committed not knowing at that point, but became
18 apparent once they went to the victim's home.

19 MR. SINGLETON: Your Honor, I understand that they
20 saw -- he said that he saw a camera being thrown, but there
21 was not a weapon or something that showed that they were in
22 any sort of danger. So, that gave them no reason, no reason
23 to do a, a search. They could of gotten a search warrant.

24 THE COURT: Well, I still haven't gotten to the point
25 that they actually did a search.

1 MR. SINGLETON: I'm sorry?

2 THE COURT: I still haven't gotten to the point they
3 actually did a search. See, plain view doesn't -- it says
4 if you're lawfully where you're suppose to be, you can see
5 the item, then it's in plain view. Now, then the question
6 becomes and there's a, there's a little bit of a question in
7 this case about whether or not the incriminating nature of
8 the item is readily apparent. If you got close enough to
9 see it, you can see that there's a black lady's picture on
10 the credit card that's under there.

11 MR. SINGLETON: And you would actually have to pick it
12 up and look at it. You couldn't see it in plain view.

13 THE COURT: Well, we didn't---

14 MR. SINGLETON: All right.

15 THE COURT: That, that testimony wasn't developed
16 either other than it was picked up and it did have a black
17 lady's picture on it. I don't know when it was apparent.
18 Didn't hear questions about that. But that would lead me to
19 believe there's a problem here, that the incriminating
20 nature would be apparent at that time. He's a white male.

21 MR. SINGLETON: Yeah, but the incriminating nature
22 wouldn't come up until they actually had the credit cards in
23 their hands.

24 THE COURT: That's true. The question is whether they
25 had a right to pick it up or not.

1 MR. SINGLETON: And I claim that they don't have a
2 right to pick it up because it was not -- my
3 determination -- my reasoning is I don't believe it's in
4 plain view because, Your Honor, they'd been walking around
5 and they saw it right there, then that's plain view. But
6 they had to get down on their knees and see if there
7 actually was anything---

8 THE COURT: You need to show me a case that says you
9 can't get on your knees. Now, I don't know about that one.

10 MR. SINGLETON: I'll look it up.

11 THE COURT: I been asking for it, but I hadn't heard it
12 yet.

13 MR. SINGLETON: I'll look up under knees.

14 THE COURT: Well -- or that they have to go any length
15 to see it other than searching, you know, opening doors and
16 overturning items and things of that nature.

17 MR. SINGLETON: Well, I think it goes to, you know,
18 like when you go into a---

19 THE COURT: You know, it's like you're saying if they
20 walked up beside a car, they had to lean over and look in
21 the back window, that's not plain view. Well, it is. It's
22 in plain view because you can see it in a place that you had
23 a right to be.

24 MR. SINGLETON: Right. But I'm acting like if somebody
25 goes into a, a car and --.

1 THE COURT: Well, going into a car is different now.
2 You've just changed the rules. These people got out of
3 their patrol car to make an arrest, they were making an
4 arrest, they were standing on the property. They had every
5 legal right that I've heard so far to be there where they
6 were.

7 MR. SINGLETON: Yes, sir, I don't dispute that.

8 THE COURT: And the question's whether they can bend
9 over and look under the car when they've seen something
10 thrown under there.

11 MR. SINGLETON: And I claim they that don't because---

12 THE COURT: Well, I will disagree with you on that one.

13 MR. SINGLETON: Because it's an extra movement. I mean
14 the movement -- I mean yes, if they just had to bend over,
15 but in order to actually get to the items---

16 THE COURT: All right. Well, I'll take it under
17 advisement and make a ruling.

18 Any other motions?

19 MR. SINGLETON: Can I consult with her for one quick
20 question?

21 THE COURT: Please do.

22 (Pause.)

23 MR. SINGLETON: Nothing further, Your Honor.

24 THE COURT: All right. We'll resume then at 2:15.
25 Court's in recess for lunch. I'll announce my rulings at

1 that time. Thank you very much.

2 SOLICITOR POULOS: Thank you, Your Honor.

3 MR. SINGLETON: Thank you, Your Honor.

4 (WHEREUPON, Court was in recess for the lunch hour.)

5 THE COURT: All right. Anything further concerning the
6 motion from the State?

7 SOLICITOR POULOS: No, sir, Your Honor.

8 THE COURT: Anything further from the defense?

9 MR. SINGLETON: No, Your Honor.

10 THE COURT: All right. I'm gonna deny the motion to
11 suppress. It's my finding that the police were legally on
12 the property of the defendant. They were there because of
13 the traffic stop and had a right to be there, that the items
14 that they saw under the car were in plain view once they
15 were legally on the property, that a viewing of those items
16 would have indicated that there was a possibility or
17 potential for criminal activity that would require
18 additional investigation, and that they would have a right,
19 if nothing else, to look under the vehicle for officer
20 safety because of items being tossed under a vehicle during
21 the stop would be such that police officers would have a
22 right to look. So, I'm gonna find that the items will not
23 be suppressed for the reasons stated.

24 Anything further before we bring the jury back from the
25 State?

1 SOLICITOR POULOS: No, sir, Your Honor.

2 THE COURT: Anything further from the defense?

3 MR. SINGLETON: Nothing, Your Honor.

4 THE COURT: All right. Let's bring the jury in.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: All right. The record will reflect the
8 jury has returned to the courtroom.

9 If there was any juror who had any difficulty in
10 following my instructions that I gave you concerning your
11 activities outside of the courthouse, I'd ask that that
12 juror please stand.

13 (No response.)

14 THE COURT: It appears that all jurors have been able
15 to follow the Court's instructions in that regard. I told
16 you that upon your return to the courthouse that you would
17 be taking an oath concerning your duties and
18 responsibilities as members of this jury panel.

19 At this time, Madam Clerk, please swear the jury panel
20 for me.

21 (WHEREUPON, the jury panel was placed under oath at
22 this time.)

23 THE COURT: And if any juror failed or refused to take
24 the oath just administered by the clerk, please stand.

25 (No response.)

1 THE COURT: All members of the jury have now been sworn
2 for purposes of this case.

3 Now, ladies and gentlemen, I'm going to go over some
4 matters with you that would be, that involve the duties and
5 responsibilities of yourselves and myself and the other
6 people that will be participating in the case, and go over
7 some of the procedures that we'll be following in this case.

8 Probably, for most of you, this is your first
9 experience in actually being selected to serve and
10 participate in the trial of a case. Most people, many
11 people don't even get the opportunity to attend a trial in
12 open court. But at any rate, for those of you for whom this
13 is your first experience in serving on a jury, I want to go
14 over some things with you.

15 Probably for you, what you know about our system, our
16 jury system, you would have learned from such sources as
17 movies that you've seen or television shows that you've
18 watched, maybe books that you've read, or perhaps from your
19 schooling. And while in the case of books, and television
20 shows, and movies, those particular sources of information
21 are always entertaining. They're written to be
22 entertaining. They're designed to hold your attention.
23 They have interesting plots and twists in the plots and
24 things of that nature. Sometimes some surprises. That's
25 because those sources of information are intended to

1 entertain you. They're intended for your entertainment.

2 I can tell you that the trial that you're involved in
3 today is intended for anything but your entertainment. What
4 you're engaged in is a fundamental part of our democracy and
5 I hope that most of you understand and appreciate that fact.

6 If you look around, most of the legal systems that
7 exist in the world today, you'll find that most of them do
8 not allow direct participation by citizens in the important
9 decision making process that goes on in the courts of those
10 countries. Our jury system is a product originally embodied
11 in the Magna Carta, which was signed in the Year 1215 in
12 England. It's been handed down through our system of
13 justice. So, the jury system, and under our system of
14 justice, is got a history of over 800 years. I hope it's a,
15 it's a system of justice that we never lose touch of or
16 never lose the ability or the right to have citizens
17 participate in the judicial process that goes on in our
18 Court systems.

19 Now, what you're engaged in is a search for the truth
20 here, and you'll find that a search for the truth will be
21 slow, sometimes it may be repetitive, and, of course, if you
22 would think about a search for the truth, that's exactly
23 what you would think a search for the truth ought to be. It
24 ought to be slow, it ought to be deliberate, and in some
25 cases it ought to be repetitive.

1 Searching for the truth and trying to see that justice
2 is done between the parties that are in the court is a slow
3 process quite often, and you see this courtroom is also a
4 place of honor. It's dedicated to the preservation of
5 citizens rights through that system of justice that I've
6 referred to.

7 It's not a perfect system of justice. No system of
8 justice conceived of and operated by man will ever be
9 perfect. But it's a honest and a reasonable attempt to see
10 that justice is done between the parties that are before the
11 Court and, in this case, those parties are the State of
12 South Carolina that have brought a charge against one of its
13 citizens, the defendant, in this case.

14 Now, the attorneys that are here are here to represent
15 those client's interest. You can expect from them that they
16 will do a professional job and a reasonable job in
17 presenting those cases before you during this trial, but
18 first and foremost, those attorneys are also officers of
19 this Court. They have appeared at some point in time before
20 some tribunal in this state, and they have taken an oath,
21 and part of their oath is to assist you in your search for
22 the truth.

23 You can expect that, those attorneys to act in a
24 reasonable, a professional, and an ethical manner in the
25 presentation of their client's cases before you during this

1 trial. I'm gonna remind you too now that you've come before
2 this court, and you have taken an oath, and you're expected
3 to act in a reasonable, a professional, and an ethical
4 manner in the discharge of your duties as jurors during this
5 trial.

6 I've told you a couple of times this morning, I'll tell
7 you several more, because truly I want to thank you for your
8 willingness to come forward and serve. Again, if it wasn't
9 for good citizens such as yourselves, who are willing to do
10 so, our system couldn't function as it was designed under
11 the Constitution and the laws that govern this state and the
12 United States.

13 What I'm telling you now is not intended to serve as a
14 charge concerning the law in this case. You will find, at
15 the close of the trial, once all the arguments have been
16 made, all the evidence has been presented, at that time I
17 will give you my charge concerning the law to be applied in
18 this case. As I've told you, what I'm doing now is trying
19 to spell out the duties and responsibilities that we have
20 and the procedure that we'll follow during the trial.

21 Now, I've already gone over with you the two
22 indictments in this case, and I'm not going to go over them
23 with you in any detail at this point in time other than to
24 remind you that there are two indictments in this case. One
25 of which charges the defendant with burglary in the first

1 degree. The other indictment charges the defendant with the
2 crime of grand larceny.

3 Now, to both of those indictments the defendant has
4 pled not guilty, and, under the law and the Constitution of
5 this state, that plea places the burden of proof in this
6 case upon the State and only upon the State, and it's the
7 State's responsibility and burden to prove the allegations
8 contained in the indictments by proof beyond a reasonable
9 doubt.

10 Now, it will be your job, ladies and gentlemen, at the
11 close of this trial, to make a determination whether or not
12 the State has met that burden of proof in this case. For
13 that reason it is your purpose and your responsibility to
14 find and determine the facts in this case. Under the law
15 and the Constitution of this state, juries are always the
16 sole judges of the facts in this case.

17 Now, I will serve as the presiding officer during this
18 trial and it will be my responsibility to rule on issues
19 concerning the admissibility of evidence, the
20 appropriateness of questions that might be asked, and any
21 other procedural matters that may come up during the trial.
22 From time to time I may have a discussion with the attorneys
23 about the admissibility of evidence or the appropriateness
24 of questions that are being asked, and if it's my belief
25 that, during that discussion, the attorneys and I might

1 discuss something that would not be admissible under the
2 rules of evidence that govern the courts, during that
3 discussion I may ask you to step to the jury room while we
4 decide that issue concerning the admissibility of evidence
5 or the proper, whether or not a question is properly being
6 asked.

7 Please don't take from the fact that I've asked you to
8 leave the courtroom while I have those discussions and make
9 those rulings, don't take that to indicate to you that I
10 have any opinion one way or the other as to how you
11 determine the facts in this case. I've told you already
12 you're the sole judges of the facts in this case. The law
13 doesn't allow me an opinion concerning the facts, and I can
14 assure you I have no opinion as to how you determine the
15 facts in this case. It's simply me doing my job and my job
16 is to see that you decide the case solely upon evidence
17 that's been properly admitted into the record of the case
18 under the rules of evidence and under the rules and
19 procedure that govern the conduct of trials in this state.

20 Now, once I've made a ruling on that question, whatever
21 it might be, I will ask you to step back into the jury room,
22 I'll make the ruling on the record, and then we'll proceed
23 with the trial, but, again, don't think because I've asked
24 you to step out of the courtroom that I'm trying to
25 influence your decision in any manner whatsoever as to how

1 you determine the facts in this case.

2 Now, the same law that makes you the sole judges of the
3 facts makes me the sole judge of the law in this case. The
4 law that I give to you at the close of the trial is the only
5 law that you can use in making your determination in this
6 case. So, if you walked into this courtroom today with some
7 notion as to what the law is or you have a belief as to what
8 the law ought to be, you should leave those notions outside
9 of the jury room because, under the oath that you have taken
10 as jurors, it's your responsibility to take the law exactly
11 as I state it to you, apply it to the facts as you determine
12 them to be. That should put you in a position to render a
13 just, a true, and a fair verdict at the close of the trial.

14 Now, I've already cautioned you and you'll find I'll
15 caution you several times about gathering any information
16 outside of the courtroom or listening or watching to any
17 media reports or discussing the case with anyone. I'll
18 caution you every time you leave the courtroom on that
19 point. It's an important point because I want you to keep a
20 fair and an open mind in the case. I want you to keep an
21 open mind until you've heard all the arguments of the
22 lawyers, you've heard all the evidence to be presented by
23 the parties, and you've heard my charge on the law. Only
24 then will you have all of the information that you need to
25 carry on an intelligent discussion with your fellow jurors

1 concerning the ultimate outcome in this case.

2 So, don't discuss the case among yourselves at any
3 stage of the proceedings until I've advised you to do so and
4 don't attempt to gather information outside of the courtroom
5 because your oath is to decide the case on the evidence and
6 the law. The only evidence that you will hear will be
7 witnesses who have been sworn to tell the truth. They'll
8 testify from this witness stand and whatever evidence comes
9 into the record through that testimony under the rules of
10 evidence that I've already told you about. So, again, don't
11 attempt to gather any information from any other source.

12 In a few minutes I'm going to allow the attorneys to
13 begin the case, and they'll begin the case with what we call
14 an opening statement, some people call it an opening
15 argument. But at any rate, what they'll be doing is telling
16 you a little bit about the case, perhaps what they expect to
17 be able to show during the trial, introduce you to the
18 issues that are in the trial.

19 Now, at the close of the case, once all the evidence
20 has been presented, I'll, again, give the attorneys the
21 opportunity to make another statement or argument directly
22 to the jury. That's what we call a closing argument or a
23 closing statement, and at that time they'll sum up the
24 evidence that you've heard during the trial from their
25 client's prospective and also discuss with you the

1 application of the law to those facts.

2 Now, I'm going to tell you that statements made by
3 lawyers both at the beginning of the trial and at the close
4 of the trial, they, those statements do not constitute
5 evidence. Of course, it's the attorney's position, their
6 statements about the case. But, again, the only evidence in
7 the case is the testimony of the witnesses who will testify
8 during the trial and whatever comes into the record through
9 that testimony. But, again, it will be helpful for you to
10 get an opening statement from the attorneys, to familiarize
11 yourself with the case, and, of course, a closing statement
12 to explain the evidence from their client's prospective.

13 Now, I've already told you that you are the sole judges
14 of the facts in this case, and as the sole judges of the
15 facts in this case you are also the sole judges of the
16 credibility or believability of the witnesses that you will
17 hear. That's what credibility means. It means
18 believability. And in order, in order to determine the
19 facts in a case, it will be necessary for you to make
20 decisions as to the credibility or believability of the
21 testimony that you will hear during the trial.

22 Now, as the sole judges of the facts in this case, I
23 will tell you, you have the right to believe all of what a
24 witness tells you, part of what a witness tells you, or none
25 of what a witness tells you. You can believe one witness

1 against all the others that might testify. You can believe
2 all the others against one. You're the sole judges of the
3 credibility of witnesses. You're the sole judges of the
4 facts. You're the sole judges of the weight that you choose
5 to give to each witness' testimony during the trial.

6 You have the right and should use your own good common
7 sense in making the determinations of credibility or
8 believability. I will tell you that each one of you, every
9 day, makes common sensical decisions as to what you choose
10 to believe and what you choose not to believe, and today's
11 no different than any other days. Use your own good common
12 sense to determine the credibility or believability of the
13 witnesses.

14 You have the right to consider whether or not a witness
15 has a stake in the outcome of the trial, whether or not the
16 witness has a bias or prejudice one way or the other for or,
17 for or against one side or the other. You have the right to
18 decide whether or not the witness has the ability to know
19 the facts about which that witness testifies, and perhaps,
20 most importantly of all, some people think it's most
21 importantly of all, the witness stand in a courtroom is
22 always right beside the jury box. The reason for that is
23 that you can observe the witnesses as they testify, the way
24 they speak, how they determine, how they deliver their
25 testimony. Again, use your own good common sense. Take

1 into consideration any of those factors you want to use in,
2 in using your common sense, but make a determination as to
3 the credibility or believability of the witnesses who will
4 testify.

5 For that reason it's important that you pay close
6 attention to the witnesses. Try not to let your thoughts
7 wonder during the trial. Pay attention to what they say and
8 how they say it. That will put you in a position, at the
9 close of the trial, to be able to discuss those matters with
10 your fellow jurors during deliberations. Because you see,
11 at the close of the trial, it will be your solemn
12 responsibility to determine the guilt or the innocence of
13 the defendant in this matter.

14 Now, ladies and gentlemen of the jury, I do not appoint
15 a foreperson of the jury until I charge you concerning the
16 law. I know that in the past jurors have thought I've
17 forgotten that particular point. I haven't forgotten it. I
18 know that you will need a foreperson when you begin your
19 deliberations.

20 I do that for a couple of reasons. I like to observe
21 the jury as the trial goes on, and also I want to make a
22 point that the foreperson really has no function in the case
23 until we begin deliberations, and, at that time, the only
24 purpose of the foreperson is to preside over the
25 deliberations, write questions back to the Court, and write

1 a verdict once a verdict's been reached.

2 But I want to stress to you that, at the close of the
3 trial, before you can reach a verdict, each and every one of
4 you must agree upon that verdict. That must, means it must
5 be the verdict of all of you. Therefore, no juror has any
6 greater say than any other juror in the outcome of the case.
7 So, I don't want you to sit back and think well, the
8 foreperson's gonna take care of this or whatever. Each of
9 you has an equal say in the outcome of this case, and each
10 of you will be required to agree with the verdict before it
11 becomes the verdict of the jury in this matter.

12 Now, I want to be sure that I haven't violated anyone's
13 rights in the case through my opening comments.

14 Does the State have an objection to my opening
15 comments?

16 SOLICITOR POULOS: No, sir, Your Honor.

17 THE COURT: Does the defense have an objection?

18 MR. SINGLETON: None, Your Honor.

19 THE COURT: Now, ladies and gentlemen, I've told you
20 that the State has the burden of proof in this case. So,
21 what that means is that we allow the State to go first in
22 making the opening statements. During the presentation of
23 evidence, again, the State has the right to go first, and at
24 the close of the trial, of course, we'll have closing
25 arguments, and then once the arguments have been completed

1 I'll charge you concerning the law. So, that's the
2 procedure that we'll follow. Opening statements, proof,
3 closing statements, and charge on the law.

4 Once that's completed I'll turn the case over to you to
5 begin your deliberations and discussions concerning this
6 case. So, at this time, Ms. Poulos, you may proceed with
7 the opening statement for the State.

8 SOLICITOR POULOS: Thank you, Your Honor.

9 May it please the Court?

10 THE COURT: Yes, ma'am.

11 SOLICITOR POULOS: November the 8th, 2010, started out
12 like a typical day for a group of officers with the
13 Spartanburg County Sheriff's Office. They went about their
14 normal duties, and went about to lunchtime, and they all met
15 up for lunch.

16 When they were at the restaurant, one of the officers
17 stepped out for a break when he was approached by the
18 defendant. He walks up to him. He mumbles something. He
19 says something to the effect of that he thought he was
20 somebody, but never mind it really was somebody else.

21 So, the deputy asked what is your name?

22 He says Al.

23 Al who?

24 He refused to give his last name.

25 He gets on a blue moped and drives off.

1 Deputy Wilson then goes back into the restaurant, tells
2 the other officers what had happened, and during the course
3 of his discussion they were able to determine that his name
4 was Alfred Henson and that his driver's license had been
5 suspended indefinitely, he did not have a valid moped
6 license, and, therefore, he was driving the moped illegally.

7 A few moments later, Leslie Ofori was at her home on
8 Byers Street in Greer. She was at that time pregnant.
9 Her doctor had put her on bed rest, and she was upstairs
10 taking a shower when all of a sudden she heard someone
11 stirring around downstairs in her home. She could feel the
12 vibrations on the hardwood floor.

13 So, thinking that's a little odd, she thought maybe her
14 husband came home from work early. So, she calls out his
15 name. No response. She gets out of the shower, gets
16 dressed, carefully walked down the stairs, sees that
17 something isn't quite right. They're a couple of doors that
18 are opened that shouldn't of been opened. She looks out the
19 window and sees a moped speeding out of her driveway.

20 Well, a few minutes later, the same officers that had
21 the conversation with him at the restaurant earlier,
22 happened to see the defendant driving the same blue moped,
23 wearing the same clothes, and knowing that he's driving the
24 moped illegally, turns on the blue light and initiates a
25 traffic stop.

1 At that point the defendant jumps off his moped and
2 starts throwing items onto the ground. Well, it turns out
3 that those items were a camera, professional camera, three
4 credit cards belonging to the victim, Mrs. Leslie Ofori, who
5 had just in turn heard noises in her home a few moments
6 before.

7 why are we here today?

8 we're here because the state has brought two charges
9 against the defendant for burglary in the first degree and
10 grand larceny, and we have the burden or responsibility of
11 proving each and every element of those charges to you
12 beyond a reasonable doubt.

13 In South Carolina burglary is defined as the entering
14 of a dwelling without the consent and with the intent to
15 commit a crime therein. While in this case, armed with a
16 deadly weapon or by someone who has two prior convictions
17 for burglary.

18 Grand larceny is defined as the taking and carrying
19 away of property with the intent to permanently deprive the
20 owner.

21 I know a lot of y'all watch TV shows like Law and
22 Order, CSI, and those are all great shows, but this case
23 isn't gonna have all the drama and excitement that those
24 shows have. We may not have all the answers to all of your
25 questions, but we believe that the evidence that we have in

1 this case will place the defendant at the scene and will
2 prove to you that he entered Mrs. Leslie Ofori's home while
3 she was upstairs taking a shower, while armed with a weapon,
4 and stole items belonging to her in broad daylight. That's
5 what we're here to prove.

6 Ladies and gentlemen, on behalf of the State, I want to
7 thank you all for your service as jurors, and during the
8 course of this trial, all I ask of y'all is this. Be fair
9 to the State, be fair to the defense, and listen to both
10 sides, pay attention to the testimony as it's presented to
11 you; and, most importantly, remember to use your good old
12 common sense.

13 Thank you.

14 THE COURT: Mr. Singleton, for the defense.

15 MR. SINGLETON: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. SINGLETON: First of all, I want to thank you for,
18 all of you for being here today. As you probably, you
19 probably would like to be somewhere else today, but
20 everybody in this room is glad you're here today. The judge
21 is glad you're here today. The officers are glad you're
22 here, the solicitor's office, and especially my client and
23 his family.

24 My client has been waiting eleven months for this case
25 to come to trial cause my client is whole heartedly denied

1 that he ever set foot in this house. The State says that
2 they have all this proof that he was in the house. I
3 contend that they have no proof that he ever was in this
4 house.

5 He is charged with first degree burglary and grand
6 larceny, and the main thing you need to concern yourself I
7 believe, with the first degree burglary, is entering a
8 dwelling without consent. It is my contention that the
9 evidence will show that they have no proof that my client
10 was in this house. The victim says that she heard somebody
11 downstairs. She said that she heard somebody downstairs
12 while she was taking a shower, and that she heard, felt the
13 vibrations from, on her wood floor, and while she upstairs
14 taking a shower on the second floor.

15 To me, that doesn't seem possible.

16 How do you feel vibrations upstairs from a floor
17 downstairs?

18 To me, that doesn't seem possible. She never saw my
19 client in her house. All she heard was somebody supposedly
20 wrestling around downstairs. She never saw my client step
21 foot in her house. She never saw my client leave her
22 driveway. All she states is that she saw, she saw someone
23 on a moped leaving her driveway.

24 She doesn't describe the person that was on the moped.
25 She doesn't describe the moped itself. She doesn't give any

1 description. She just says she supposedly saw someone leave
2 her driveway on a moped.

3 What I want you to pay attention to is what can they
4 prove beyond a reasonable doubt whether he entered this
5 house. I want you to listen. They're no fingerprints.
6 There's no DNA. They'll, they'll say that they have a boot
7 print, but it's just a boot print. That boot print does not
8 have my client's name on it. When they found my client
9 there was no proof that -- there's nothing on his boot to
10 show that he had ever set foot in that house. There's
11 nothing to show that that boot print ever came from my
12 client. It could have come from a number of individuals.

13 There's no pictures of my client. There's no witnesses
14 that shows that my client ever set foot in, again, inside

15 Byers Court or Byers Street where Mrs. Ofori lived or
16 still lives. Just because they say that they, you know,
17 that there's a boot print in there doesn't mean that it's my
18 client's boot print. Just because, you know, they say that
19 they found my client with some items belonging to her does
20 not mean that my client was in her house.

21 We want you to pay attention to -- the main thing we
22 want you to do is pay attention to the witnesses. The
23 majority of the witnesses will be these police officers. We
24 want you to listen to what they have to testify, what they
25 have to say, and also what they don't say or what leave out

1 cause you're the ones that are gonna be making the decision.
2 I'm not gonna make the decision. Mr. Henson is not gonna
3 make the decision. The judge is not gonna make the
4 decision, and neither are these officers or the solicitor.
5 You're the 12 people that have been picked to make this
6 decision if they can prove beyond a reasonable doubt that my
7 client entered this house and took these items.

8 They also contend that my client entered this house
9 with a weapon.

10 Well, how can he -- how can anybody testify that he
11 entered this house with a weapon when nobody saw him inside
12 the house?

13 So, if they didn't see him inside the house, how can
14 they know if he had a weapon or not?

15 So, I contend that once you've heard all the evidence,
16 that once you go back there, use your common sense, cause we
17 all want you to use your common sense and logic, that you
18 will come to the realization that they have not proved,
19 beyond a reasonable doubt, that my client entered this house
20 and took these items.

21 Thank you very much.

22 THE COURT: The State may call its first witness.

23 SOLICITOR POULOS: Thank you, Your Honor.

24 The State calls Mrs. Leslie Ofori.

25 THE COURT: Come forward please, ma'am, to my left and

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by Solicitor Poulos

1 be sworn.

2 LESLIE OFORI, having been first duly
3 sworn, testified as follows:

4 THE COURT: Have a seat please.

5 WITNESS: Thank you.

6 THE COURT: And once seated, state your name please.

7 WITNESS: Leslie Ofori.

8 THE COURT: Your witness, Ms. Poulos.

9 SOLICITOR POULOS: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY SOLICITOR POULOS:

12 Q Mrs. Ofori, where do you live?

13 A Byers Street in Greer.

14 Q And is that in Spartanburg County?

15 A Yes, it is.

16 Q Okay. And where do you work?

17 A I work at D.R. Hill Middle School in District 5.

18 Q And where were you on November the 8th, 2010?

19 A I was at home.

20 Q Okay. And what were you doing at home?

21 A I had been put on bed rest since I was 20 weeks
22 pregnant, and, so, I was at home.

23 Q Okay. And around lunch time, what else -- what were
24 you doing?

25 A Well, initially I was just in my usual spot on the sofa

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1 watching TV reruns and things like that. Just sitting on
2 the sofa cause I was not allowed to be up very often during
3 the day.

4 Q Okay. And at some point did you go upstairs?

5 A I did. I just had this nagging thing telling me, you
6 know, to go take a shower. I was just, you know, tired of
7 sitting on the sofa. Figured I'd find something else to do.
8 Maybe if I took shower, relaxed, maybe I'd be able to take a
9 nap. So, I just went upstairs and, and took a shower.

10 Q And what happened when you went upstairs?

11 A I -- when I, I was taking a shower, and just during the
12 course of the, the shower, of course, you know, when I got
13 towards the end of the shower, I could, I could feel like
14 the vibrations of somebody walking downstairs. We have
15 hardwood floors. It's a fairly big open house. We don't
16 have a whole lot of things in there. So, I guess the sound
17 travels real easily.

18 But if, if you have really heavy shoes or, you know,
19 like my husband, you walk around, sometimes you can just
20 feel the vibrations of somebody moving around downstairs.
21 And, so, I felt those vibrations, and I was like well,
22 that's odd. You know, it just kind of sounds like
23 somebody's downstairs. It was fate that I could feel and I
24 could tell, you know, that something was going on
25 downstairs.

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1 And, so, I thought maybe my husband had come home from
2 work. He works -- he has his own family business. And, so,
3 it's not unusual for him at, you know, sometime that he can
4 get off of work early or come home for something. So, it,
5 you know, didn't really surprise me. I thought maybe he had
6 just come home.

7 And, so, it didn't really alarm me. I just finished up
8 with my shower and I got out. And as I was drying off, I
9 could still feel, you know, the, the footprints -- not
10 footprints, but feel somebody walking around downstairs.
11 And, so, I went to the door and opened up the door and I
12 yelled out for my husband and asked him if he was at home,
13 and I didn't, I didn't hear any -- I didn't get a response.
14 It just got really still.

15 And, so, I thought well, maybe I was just hearing
16 things. But I went to go get dressed, and then I heard the
17 footsteps again, then I heard the faintness of our alarm
18 system that let's you know that a door has been entered.
19 And, so, I was trying to get dressed, and on my way
20 downstairs I heard a motor. I heard something crank up.
21 And, so, I was immediately thought maybe it was UPS maybe
22 banging on the door. My husband buys stuff all the time.

23 And, so, as I came downstairs, and I was coming
24 downstairs, I saw somebody leaving my driveway, just at the
25 very end of my driveway leaving on a moped in a very fast

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1 motion toward the back, the back end of it kind of swung a
2 little bit because they, because we have a very steep and
3 long driveway.

4 Q Now, did you see what color the moped was?

5 A I didn't.

6 Q And could you tell who was driving?

7 Did you---

8 A No, it was just---

9 Q ---tell what he was wearing?

10 A No, it was just the back, and the -- it was, you know,
11 just seeing something like that, you know, you don't
12 immediately pick up on everything. It just okay, who was
13 that or was, you know, somebody just turned around, I
14 couldn't tell. So, I just saw somebody leaving, you know,
15 my driveway in a fast, in the fast, in a hurry.

16 Q But you knew it was a moped?

17 A Yes, I knew it was a moped.

18 Q Okay. Did you first notice that anything had been
19 taken from your home?

20 A No, I didn't. Not initially, no.

21 Q Okay. Now, did you think that someone had even been
22 inside your home at that point?

23 A I did. I just had a feeling and initially I called my
24 husband, and I told him, I said, I had the strangest
25 feeling. I feel like somebody has been here, but I said I

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1 can't tell that anything has been taken. I said I have just
2 the strangest feeling that somebody was here. I said I felt
3 like I could hear somebody walking around downstairs, you
4 know, I thought I heard the alarm go off, I saw, you know,
5 somebody leaving the driveway, and he said, you know, well,
6 if you notice, you know, anything's gone or, you know,
7 anything like that, you know then, you know, call the
8 police. But just at the moment I couldn't, I couldn't tell
9 and I didn't want to call, and, you know --.

10 Q Did you see any doors opened?

11 A I did. I saw the door that leads to the mud room that,
12 that then leads to the garage was opened, and it's on the
13 main floor and that's the back room that I always go to
14 being on the first floor. So, I walked by that door, you
15 know, several times to go to the bathroom and at no point in
16 time had that door been opened. I'm remindful about the,
17 you know, the doors and things like that being opened in the
18 house and it had never been opened.

19 Q Okay. And what happened after that?

20 A After that I just kind of looked and I went around
21 outside, you know, which probably is not the best thing to
22 do, but I was just curious, you know, to see if I could tell
23 if anything happened, because I didn't want to, you know,
24 call the police and not be able to, you know, substantiate
25 anything. So, I just walked around a little bit just to see

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1 if I could tell that anything else had happened or, you
2 know, anything else was opened cause I, you know -- so, I
3 just kind of looked around to see if I had noticed anything
4 and I still really hadn't outside of that door being opened,
5 and I thought it was odd cause it had been shut all day.

6 Q Were the doors unlocked?

7 A Yes, they were.

8 Q Okay. All right. What happened after that?

9 A After that I had called another friend of mine, and I
10 was just talking with her. And then while I was on the
11 phone with her, an officer came to my house and knocked on
12 the door, asked me if I knew a man named Al, Alfred Henson,
13 and I told him no, and he asked me if I knew somebody if
14 he -- I forgot how he worded it, but he stated that he drove
15 a moped, and I said oddly enough, I said somebody just left
16 my, you know, driveway on a moped. I said that's very odd
17 and then he mentioned that he had in possession some
18 credit/debits cards with my name on it and a digital camera,
19 and, so, initially then I was like wow, somebody was here.
20 So, immediately I sat down. I called my husband to let him
21 know, you know, and he came home after that.

22 Q Now, at some point were you able to identify the camera
23 and the credit cards?

24 A Yes. Yes, I was.

25 Q And did it, in fact, belong to you?

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by Solicitor Poulos

1 A Yes, the camera, I know the officers asked if I could
2 tell them any of the picture that were on there, and I knew
3 recently there was some pictures taken of my nephew's
4 graduation from high school. So, I was able to tell them a
5 couple of pictures that were on there. So, they did
6 determine that it actually was ours. So --.

7 Q Okay. And how, how much would you estimate the value
8 of the camera to be?

9 A Well, the camera by itself is \$1,600. It's a Cannon
10 70. It's a digital, high definition, SLR camera, and the
11 lense is a little over a thousand dollars by itself. My
12 husband uses it. He has a recording studio and
13 entertainment. And, so, he uses that for his music videos
14 and things like that. So, it's a high end digital camera.

15 Q All right. Do you know the defendant in this case?

16 A No, I do not.

17 Q Had you ever given him permission or anyone to be in
18 your home?

19 A No, I did not.

20 Q Okay. Anyone permission to use your camera?

21 A No.

22 Q How about your credit cards?

23 A No.

24 (WHEREUPON, 12 photographs were marked as State's
25 Exhibit Nos. 2 through 13 for identification purposes only

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1 at this time.)

2 Q Okay. Now, Mrs. Ofori, I am showing you what's been
3 marked for identification purposes as---

4 A Okay.

5 Q ---State's Exhibit 2, 3, 4, 5, 6, 7, 8, 9, and 10.

6 A Okay.

7 Q Just starting with Exhibits 2 through 7---

8 A Okay.

9 Q ---just briefly take a look at those photographs---

10 A Sure.

11 Q ---and state what those are photographs of.

12 A Okay. Well, this first one is just a, Exhibit 2, it's
13 just a picture of the front of the house.

14 Q Okay.

15 A The -- Exhibit 3 is a picture of the garage doors.
16 Four is a picture of the garage doors again. Exhibit 5 is a
17 picture of the inside of the garage. Six is still just a
18 picture of the inside of the garage, and seven is the, the
19 hallway that you would come into when you come in from the
20 garage to the mud room to get inside the actual house.

21 Q Okay. And do those photos fairly and accurately
22 reflect the way that your home looked on the date of this
23 incident?

24 A Yes.

25 SOLICITOR POULOS: Your Honor, at this time we would

Leslie Ofori - Direct examination
by Solicitor Poulos

1 ask that State's Exhibits 2 through 7 be admitted into
2 evidence.

3 THE COURT: Any objections?

4 MR. SINGLETON: I don't think so. I just want to make
5 sure they're the same ones.

6 THE COURT: Okay. Show him those exhibits.

7 MR. SINGLETON: No objection, Your Honor.

8 THE COURT: Without objections they'll be received into
9 the record of the case.

10 SOLICITOR POULOS: Thank you, Your Honor.

11 THE COURT: Without objection. They'll be received as
12 marked.

13 SOLICITOR POULOS: Thank you, Your Honor.

14 THE COURT: Yes, ma'am.

15 (WHEREUPON, State's Exhibit No. 2 through 7 were
16 received into evidence at this time.)

17 Q Mrs. Ofori, I'm now showing you what's been premarked
18 as State's Exhibit 8, 9, and 10.

19 Can you identify what those are photographs of?

20 A Exhibit 8 is a, is the camera with the lense. Exhibit
21 9 is one of the pictures on the digital camera. It was my
22 nephew at a football game with my husband, and Exhibit 10 is
23 my debit card and two credit cards that belong to me.

24 Q And do those photos, photos fairly and accurately
25 reflect the items that were taken from your home?

Leslie Ofori - Direct examination
by Solicitor Poulos

1 A Yes.

2 SOLICITOR POULOS: Your Honor, at this time we would
3 ask that State's Exhibits 8, 9, and 10 be admitted into
4 evidence.

5 THE COURT: Any objections?

6 MR. SINGLETON: No objection, Your Honor.

7 THE COURT: They'll be received into the record as
8 marked without objection.

9 (WHEREUPON, State's Exhibit Nos. 9 through 10 were
10 received into evidence at this time.)

11 SOLICITOR POULOS: Thank you, Your Honor. Permission
12 to publish to the jury?

13 THE COURT: You may publish them.

14 Q Mrs. Ofori, would you mind stepping down?

15 A No, no problem.

16 Q This is State's Exhibit 2.

17 Can you identify what is in that photograph?

18 A That is the front of my house.

19 Q Okay. This is State's Exhibit 3.

20 A This is a side-view of the garage doors. If you go out
21 to the right, that's just where the driveway, the driveway
22 is to the right and all the way down a little bit.

23 Q State's Exhibit 4.

24 A This is just another picture of the side of the garage
25 doors.

Leslie Ofori - Direct examination
by Solicitor Poulos

- 1 Q And this is State's Exhibit 5.
- 2 A Okay. That is the inside of the garage.
- 3 Q State's Exhibit 6.
- 4 A Okay. That is actually a picture of the, the door that
- 5 leads into the mud room from the garage.
- 6 Q Is that the door on the left that is---
- 7 A Yeah.
- 8 Q ---the mud room?
- 9 A Yeah, it's leads to like a little small mud room before
- 10 you actually make it into the house.
- 11 Q Okay. And State's Exhibit 7.
- 12 A Okay. That's actually once you get into the house, if
- 13 you -- it's like if the, the, the entrance to the, from the
- 14 mud room is, you know, on the inside of that hallway. Not
- 15 far down. But as soon as you come out, that's where, that's
- 16 where that is.
- 17 Q Okay. This is State's Exhibit 8.
- 18 A Okay. That is a picture of the digital camera. It's a
- 19 digital SLR camera.
- 20 Q State's Exhibit 9.
- 21 A That's a picture of my husband and my nephew at his
- 22 football.
- 23 Q That picture, that picture was on your camera---
- 24 A Yes.
- 25 Q ---at the time?

Leslie Ofori - Direct examination
by Solicitor Poulos

1 A Yes, I was -- yes.

2 Q And State's Exhibit 10.

3 A That's my debit card and two credit cards.

4 Q And they both have your -- all three of them have your
5 name on it?

6 A Yes.

7 Q And those were cards that were, were stolen?

8 A Yes.

9 Q You can have a seat.

10 A (Witness returns to the stand.)

11 Q Mrs. Ofori, how many doors would the defendant had to
12 go through to get to the inside of your home?

13 A Well, go through the garage doors, and then the initial
14 door that leads into the mud room, and then the next door
15 that gets you inside the house. So, that would be three---

16 Q Okay.

17 A ---doors you have go through.

18 Q Thank you, Mrs. Ofori. Please answer any questions Mr.
19 Singleton may have for you.

20 A Okay. Thank you.

21 THE COURT: Mr. Singleton, your witness.

22 MR. SINGLETON: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. SINGLETON:

Leslie Ofori - Cross-examination
By Mr. Singleton

- 1 Q Hello, Mrs. Ofori. How are you doing today?
- 2 A I'm all right. Thank you.
- 3 Q Now let me go back to, to November 8th, 2010, before
- 4 you got into the shower.
- 5 A Okay.
- 6 Q What had you done that day?
- 7 A Nothing. Just sat on the sofa. Well, I come
- 8 downstairs, and, you know, come down, sit on the sofa, and
- 9 that's where I stay.
- 10 Q Okay. From experience, my wife was on bed rest. I
- 11 know what bed rest means, but had you gone anywhere that
- 12 day?
- 13 A No.
- 14 Q Okay. So, you hadn't left the house that day?
- 15 A No.
- 16 Q Okay. What about the weekend before, had you gone
- 17 anywhere that Friday or Saturday before?
- 18 A Not to my knowledge, no. I just stayed at home for the
- 19 most part.
- 20 Q Okay. You didn't go anywhere with your husband or was
- 21 anything like that?
- 22 A No, I was, I was, I was actually one of the good
- 23 patients. I stayed where I was suppose to so I could---
- 24 Q Okay. Okay. By the way, how is your baby doing?
- 25 A She's great. Thank you.

Leslie Ofori - Cross-examination
By Mr. Singleton

1 Q Okay. Congratulations.

2 A Thank you.

3 Q Now, when you say you were upstairs taking a shower,
4 how do you -- do you know what time you went upstairs to
5 take a shower?

6 A It was around 1:00. It was around one o'clock, between
7 maybe 1:00, 1:15 or so when I went upstairs.

8 Q Okay. And how do you remember about what time that
9 was?

10 Did you see a clock on the wall or did you just kind of
11 generally know if you---

12 A Cause I was watching---

13 Q ---could see---

14 A I was watching my Judge Judy reruns and that came on
15 around 1:00.

16 Q You don't watch the Young and the Restless or anything?

17 A No, I don't watch those.

18 Q Okay. Now, how long of -- now, when you -- how long
19 was, did your shower take?

20 I'm sorry for asking these questions.

21 A I understand.

22 Q But how long does your shower take?

23 A I didn't take very long cause I wasn't suppose to be up
24 on my feet. I was, you know, permitted to have at least,
25 you know, one shower a day. So --

Leslie Ofori - Cross-examination
By Mr. Singleton

1 Q Okay.

2 A -- you know, maybe about ten, fifteen minutes or so
3 cause we do have a -- it's a little place for me to sit. So
4 --.

5 Q Okay. And this was upstairs in your house, not
6 downstairs, correct?

7 A No, it's upstairs.

8 Q Okay. Now, we saw a picture of your, of your house.
9 It's a very big house.

10 A Uh-huh. (Affirmative).

11 Q If you're facing your house, where is your shower in
12 relation to that house?

13 Is it on the left top?

14 A It's on the right. Like if you're facing the house,
15 it's upstairs and to the right.

16 Q Okay. So, it's on the right front or the right back?

17 A I guess it's kind of midway through the house.

18 Q Okay.

19 A But like -- I mean you can see like my bedroom from
20 the, from the house. I mean at least a door that leads to
21 the bedroom upstairs, I mean a window I guess.

22 Q Okay. So, your, your bathroom is on the right side,
23 upper right side of the house?

24 A Yes.

25 Q Okay. And you stated that you heard footsteps?

Leslie Ofori - Cross-examination
By Mr. Singleton

1 A Yes, like -- well, you can -- I could feel the
2 vibrations of somebody walking---

3 Q Okay.

4 A ---downstairs.

5 Q Okay. And how -- and I'm not very smart as Judge Couch
6 will tell you probably, but how could you feel vibrations
7 from downstairs traveling all the way upstairs in that big
8 of a house?

9 A Well, the, the floors downstairs, we have hardwood
10 floors, and we don't have a whole lot of things in the
11 house, and that was one thing my husband says that keeps
12 the, you know, the sound seems to travel very easily. You
13 can hear, you know, a lot through the house. And, so, with
14 it just being me at home, and not, not a whole lot else
15 going on, I could just feel somebody walking downstairs.

16 Q Okay. But you felt this while you were in the shower,
17 correct?

18 A Yes, I did, yes.

19 Q Okay. And did you hear anything while you were in the
20 shower?

21 A No, not---

22 Q Did you hear footprints?

23 A I didn't hear anything while I was in the shower. I
24 could just feel the vibrations of it, what, to me, felt like
25 footsteps and enough to---

Leslie Ofori - Cross-examination
By Mr. Singleton

1 Q Okay.

2 A ---you know, alter me as to it felt like, you know,
3 sounds like or feels like somebody's walking downstairs.

4 Q Okay. And then how much longer did you stay in the
5 shower before you got out?

6 A It wasn't long after that. Maybe just a couple of
7 minutes or so.

8 Q Okay. And then did you hear the, did you hear
9 footsteps when you got out of the shower?

10 A I did.

11 Q Okay.

12 A When I was, when I was drying off, I -- and then, you
13 know, could, you know, feel. It's just, you know, with the
14 footstep, I hate to say hear, but if it's real deep and if
15 the, you know, you know, if it's somebody, a bigger person
16 or heavier person walking.

17 Q Okay.

18 A I could still hear that.

19 Q And obviously you got dressed and everything before you
20 went downstairs?

21 A Well, yeah, but initially I, you know, opened the door
22 to our, you know, and yelled out for my husband and that was
23 before I got dressed.

24 Q Okay.

25 A And I just, you know, had a towel and I was just

Leslie Ofori - Cross-examination
By Mr. Singleton

1 calling out to see if it was him.

2 Q Now, when you opened the door, did you hear any
3 footsteps or---

4 A Not when I called for him I didn't hear anything. It
5 got really quiet.

6 Q Okay. Did you hear any doors shut or anything?

7 A Not at that time, no, I didn't.

8 Q Okay. So, you didn't hear any doors shut. So,
9 obviously the two doors -- you said he would have gone
10 through three doors, then come inside your house, but
11 actually two doors that exit your house. You know, the one
12 going into the mud room and the one going into the garage.

13 Did you hear any of those doors slam or shut?

14 A No, but when I was getting dressed I heard the alarm
15 that indicates that a door has been opened. It wasn't set
16 to go off. We just have alarms on the doors and it let's
17 you know which doors have been opened.

18 Q Okay.

19 A I could hear the, the, the two beeps, and then it
20 was -- I couldn't tell which door it had been opened, but I
21 heard, I heard that.

22 Q Okay. But did you hear any chimes or anything like
23 that while you were taking a shower?

24 A Well, no, no, I couldn't hear that, no, because of the
25 water.

Leslie Ofori - Cross-examination
By Mr. Singleton

1 Q Okay. Now, kind of describe the inside of your house
2 when you said you came down the stairs.

3 Are your stairs straight down or they go down and then
4 come back and curve?

5 A It's like a curved staircase.

6 Q Kind of spiral staircase sort of?

7 A Yeah, it just comes down and to the side like that.
8 It's like a---

9 Q Okay.

10 A ---like a J-shaped almost.

11 Q And when you came down those, the staircase, did you
12 see anything?

13 A When I got towards the end of the staircase, cause we
14 have a really big front door, and two big glass panels on
15 the side, I had a clear view of the end of my driveway, and
16 I saw somebody leaving on a moped---

17 Q Okay.

18 A ---really fast out of my driveway.

19 Q Okay. Now, when you were coming, when you say you were
20 coming down the steps and you looked out the window, were
21 you like at the bottom step or halfway down the steps or do
22 or remember?

23 A It was, it was further than halfway down.

24 Q Okay.

25 A I was close to like, you know, maybe just a couple of

Leslie Ofori - Cross-examination
By Mr. Singleton

1 steps from getting all the way down.

2 Q Now, when you say you looked out the window, did you
3 look out the side panel of the window or window on the door?

4 A I really couldn't tell you -- I mean it's not that
5 much, you know, wood trimming in-between to where I can't
6 say I wasn't looking out of both, but---

7 Q Okay.

8 A ---I was just describing how much window I had to look
9 out of that was---

10 Q Okay.

11 A ---clear.

12 Q Now, what -- does your window have any design on it or
13 anything?

14 I mean the, the side windows.

15 A The side, no, it doesn't, no.

16 Q They don't have any kind of a design like a curve or
17 anything like that---

18 A No, not on those side panels.

19 Q ---or anything like that---

20 A No.

21 Q Okay. Now, when you were looking out the window, kind
22 of describe your yard.

23 Does your yard have a lot of trees in it and
24 everything?

25 A Yes, it does.

Leslie Ofori - Cross-examination
By Mr. Singleton

- 1 Q Okay. Is there trees in the front yard?
- 2 A Yes.
- 3 Q Trees to, I guess -- I think in showing the pictures
4 that you have -- your driveway's kind of on the left side.
5 If you're facing the house, the drive, the driveway's kind
6 of on the left side of the house?
- 7 A That's correct.
- 8 Q There are any trees to the right of the house and the
9 front of the house?
- 10 A Say that again, they're trees---
- 11 Q Are there any trees -- if you're going up the driveway,
12 are there any trees to the right of the driveway?
- 13 A Yes.
- 14 Q Okay. Are there trees to the left of the driveway?
- 15 A Yes.
- 16 Q Okay. Now, you never saw Mr. Henson before --
- 17 A No.
- 18 Q -- this day?
- 19 Did you see him today, this day, November 8th, 2010?
- 20 A No.
- 21 Q Never saw him in your house?
- 22 A No.
- 23 Q Okay. Okay. Do you know when the last time you used
24 your debit card was?
- 25 A No, not -- I don't.

Leslie Ofori - Cross-examination
By Mr. Singleton

1 Q Okay. You don't know if you used them -- well, it
2 sounds like you didn't go anywhere the weekend before. So,
3 obviously you hadn't used them in a couple days at least?

4 A Well, I know I went to the doctor. I mean I went to
5 the doctor every Tuesday.

6 Q Okay.

7 A And, so, you know, I paid then.

8 Q Okay. So, been about a week before is the last time
9 you recollect using them?

10 A Uh-huh. (Affirmative).

11 Q What about the camera, do you remember the last time
12 you used the camera?

13 A Well, my husband uses it. It's really, it's really
14 more or less his camera.

15 Q Okay. Do you remember when, the last time you saw the
16 camera?

17 Did y'all keep it in a special place or a certain
18 place?

19 A No, not in particular.

20 Q Okay.

21 A No.

22 Q Do, do you remember when you last saw the camera?

23 A Really -- I mean no, not really. The last time I saw
24 it was, you know, when they used it for, you know, my
25 nephew's homecoming football game.

Leslie Ofori - Cross-examination
By Mr. Singleton

1 Q Do you remember when that was?

2 was it a couple days beforehand or a couple weeks or---

3 A I really can't remember.

4 Q Well, do you think it was -- this happened on a Monday
5 correct, November 8th, 2010?

6 A Yes.

7 Q Do you remember if it was that Friday before?

8 A I'm sorry. I can't really recall not, not to say at
9 all.

10 Q Did you go to the football game when those pictures
11 were taken?

12 A Yes, I did.

13 Q Okay. But you can't remember if it was two or three
14 days before or it was a couple weeks before?

15 A No, I can't recall.

16 Q And that's the last time you had seen the camera was at
17 the football game?

18 A Yes.

19 Q Okay. Now, we noticed in your, in the pictures that
20 the State showed that there was the pictures of the garage.

21 A Uh-huh. (Affirmative).

22 Q Was there some sort construction going on inside the
23 garage?

24 A We had, prior to, this was a while back where we had
25 some water issues. And, so, that had been repaired. They

Leslie Ofori - Cross-examination
By Mr. Singleton

1 took down a good bit of the ceiling in the, in the front
2 part of the garage immediately when you walk in. Had some
3 beams and things like that replaced, but that was a lot
4 earlier in the year.

5 Q Okay. So, you hadn't had workers or anything around
6 your house doing any kind of construction work or anything
7 like that?

8 A No, no, that had been a while back.

9 Q Okay. Now, when you walked around the house or
10 anything, did you notice -- I believe you said you didn't
11 notice anything out of place?

12 You didn't notice---

13 A No, I didn't.

14 Q You didn't notice the camera being missing?

15 A No, I didn't.

16 Q And you didn't notice your credit cards or your -- was
17 it your, was it your entire pocketbook was taken or the
18 purse or the wallet or how---

19 A It was actually my whole wallet that was taken.

20 Q Okay.

21 A But, no, I didn't notice it at the time cause the purse
22 was still laying in the same place that it had been.

23 Q Okay. And where was this, your purse, do you note, in
24 relation to where it was---

25 A It was on the sofa.

Leslie Ofori - Cross-examination
By Mr. Singleton

1 Q It was on the sofa?

2 A On the sofa, yes, sir.

3 Q And where is your sofa in relationship to your house?

4 Is it on the, to the left side of the front door or to
5 the right side or is it like---

6 A Like if you immediately walk in there, if you
7 immediately walk in to our front door, the staircase comes
8 down, and the living room's right, you know, after you walk,
9 you know, maybe a little bit, the living room's right there
10 with the sofa.

11 Q Okay. Did you notice any sort of footprints or
12 anything when you were walking around?

13 A Not initially, no, I didn't look.

14 Q Okay. Now, you stated you came downstairs, and when
15 you came downstairs you saw a moped leaving?

16 A Uh-huh. (Affirmative).

17 Q You have no idea who that person was on that moped?

18 A No, I didn't.

19 Q Okay. Do you even know if the moped came up into your
20 driveway?

21 A Well, they had to come in to leave.

22 Q Well, you stated earlier that you thought that the, you
23 first thought that moped may of been turning around or
24 something in your driveway?

25 A Oh, I said, I said as far as the angle -- from the part

Leslie Ofori - Cross-examination
By Mr. Singleton

1 that I saw them leaving, it was just the last half of the
2 driveway.

3 Q okay.

4 A I did hear the -- when I was on my way downstairs I did
5 hear something crank up like a motor.

6 Q okay. Okay. But you don't know the color of the moped
7 or any kind of, whether it was male or female or any kind of
8 clothing?

9 A No, I don't.

10 Q Okay. Now, from the time that that moped left, how
11 long was it before the police got there?

12 A It might have been about thirty minutes or so.

13 Q Okay. Do you remember which officer showed up?

14 A Officer Barnette showed up.

15 Q Okay. And what did he -- did he show up by himself or
16 was he with somebody else?

17 A He was by himself.

18 Q Okay.

19 A Well, he was on---

20 Q I'm sorry. Go ahead.

21 A No, you're right. Go ahead.

22 Q You -- before Officer Barnette came up or Sergeant
23 Barnette came up, you never called 9-1-1, did you?

24 A No, I didn't.

25 Q Okay. When you, when Sergeant Barnette came up, did

Leslie Ofori - Cross-examination
By Mr. Singleton

1 he, did you start talking to him first about what had
2 happened or did he start talking to you first about what---

3 A He spoke with me first.

4 Q Okay. So, he told you what they had found?

5 A Well, first he asked me if I knew Alfred Henson, and I
6 said no, I didn't know anybody by that name, and he said
7 that he meant -- somewhere, somewhere to the effect of
8 asking if I knew anybody, you know, that if he drove, drove
9 a moped or that he drove a moped, and I told him that I had
10 just seen -- I said that's odd, I said, because I just saw
11 somebody leaving my driveway on a moped.

12 Q Okay. Now, let me backtrack a little bit.

13 You said it took, from the time that you saw the moped
14 leaving until Sergeant Barnette came it was about thirty
15 minutes?

16 A Yes, sir. Yes, sir.

17 Q But in your statement you said it was about ten
18 minutes.

19 A Well, I'm sorry for the, the time frame.

20 Q So, you don't know if it's somewhere between ten and
21 thirty minutes?

22 A Closer -- yeah, closer probably to the thirty minutes.

23 Q Okay. When Sergeant Barnette showed up at your house,
24 did he have the credit cards and the camera with him?

25 A No, he didn't.

Leslie Ofori - Cross-examination
By Mr. Singleton

1 Q When did you first receive those back?

2 Did you receive them back the same day or---

3 A Yeah, it was the same day.

4 Q Okay. When you told the police -- when they, when they
5 were there and you told them your purse or your wallet was
6 missing, did you describe the wallet, what it looked like or
7 anything?

8 A Well, yeah, and it -- yeah, after they did -- I didn't
9 touch anything.

10 Q Right.

11 A Because, you know, they had went around and looked.
12 So, I hadn't touched or messed with anything until they give
13 me permission to do that, and then when I looked in my purse
14 I noticed my entire wallet was gone.

15 Q Okay. But did you describe what it looked like,
16 whether it was white, blue, pink?

17 A Yeah, I, I told them, you know, what it looked like and
18 what it was and, you know, some of the things that I had in
19 it.

20 Q Okay. Do they ever find the wallet or return the
21 wallet to you?

22 A I did have the wallet returned. They were not able to
23 find it.

24 Q Where did you find the wallet?

25 A A chiropractic office had called me. A chiropractor

Leslie Ofori - Cross-examination
By Mr. Singleton

1 that lives on the street off of the same street that, off
2 of, off of Brockman McClimon had found my wallet in his
3 driveway, and they mailed it back to me once that got in
4 touch with me because it had my -- they found one of my
5 appointment cards for the, for my doctor's appointments and
6 had called them, and they, in turn, tracked me down and got
7 the entire wallet back to me, but it was thrown in their
8 driveway.

9 Q Okay. And Brockman McClimon Road is kind of one of the
10 main roads in that area cause I happen to live near where
11 you live.

12 A Okay.

13 Q But Brockman McClimon is one of the, the main roads
14 that goes into your subdivision---

15 A It runs---

16 Q ---or your neighborhood?

17 A ---parallel to my subdivision.

18 Q But you have to go on Brockman McClimon in order to get
19 to your subdivision, is that correct?

20 A Yes.

21 Q So, when you leave your subdivision you have---

22 A I get on Brockman McClimon, yes.

23 Q Okay. Do you know in what relationship to Brockman
24 McClimon -- was it towards Reidville Road or was it towards,
25 up towards the, like you're going towards the interstate?

Leslie Ofori - Cross-examination
By Mr. Singleton

1 A I'm not---

2 Q Like if you took a left---

3 A I'm not even sure.

4 Q ---out---

5 A I'm not sure.

6 Q So, you don't know what house it was, it was actually
7 found at?

8 A No. Well, I mean I knew -- they had just told me that
9 one of the nurses at the chiropractic office had said that
10 they---

11 Q I understand.

12 A ---that, you know, the chiropractor had, you know,
13 brought it.

14 Q I understand.

15 A They were -- he had, I guess, had them to kind of---

16 Q Okay.

17 A ---figure out who it belonged to. He found it in his
18 yard.

19 Q So, you don't know what address it came from on
20 Brockman McClimon?

21 A No, they didn't tell me his address or anything. They
22 just said he lived off of Brockman McClimon.

23 Q And when did you get this returned to you?

24 A This was -- goodness. I really don't know the time
25 frame. It was like within the week they actually sent it to

Leslie Ofori - Cross-examination
By Mr. Singleton

1 a different, my old address cause that was one of the old
2 addresses that they found.

3 Q Did you notify the police and tell them?

4 A Yes, I did.

5 Q Okay. Okay. Now, when you were looking out the
6 window, did you -- when you say you saw the moped, did you
7 actually see the moped from the stairs or did you actually
8 go up to the window and look out the window?

9 A I saw it when I was close to the, to the end of the
10 stairs. You could see---

11 Q Now, how far from, from the bottom of your stairs is it
12 to the window?

13 Maybe from you where---

14 A Maybe from where I right -- you know, if I come down
15 the, if I come down the stairs, you know, maybe like right
16 there. It's not far.

17 Q Okay. And I believe in the, in the pictures that we
18 saw that there's a large tree near the, near the end of your
19 driveway.

20 A Uh-huh. (Affirmative).

21 Q Did that -- that tree didn't give you any obstruction
22 or anything like that?

23 A No, it didn't.

24 Q Okay. And you think you saw the, the moped as it was
25 turning?

Leslie Ofori - Cross-examination
By Mr. Singleton

1 Do you know if it turned right in your driveway or
2 left?

3 A It turned to the right.

4 Q Okay. How long have you lived at that address?

5 A Now it's going on two years.

6 Q Okay.

7 A Around two years.

8 Q Have you seen a lot of mopeds in the area?

9 A No, I've never seen one.

10 MR. SINGLETON: Okay. Just one minute, Your Honor.

11 THE COURT: Yes, sir.

12 (Pause.)

13 Q And just one more clarification, while you were in the
14 shower, you felt the footsteps, you didn't hear footsteps,
15 correct?

16 A Yeah, I could hear the, feel the vibrations of---

17 Q Okay. And you didn't hear the footsteps until after you
18 opened up your door and yell out for your husband?

19 A Well, well, initially when I opened the door and I
20 called out for my husband it got really quiet.

21 Q Okay.

22 A And then when I, you know, just came back in, which I
23 didn't like shut the door or anything, I could, I could hear
24 them again as I was getting dressed.

25 Q Okay. Now, are you positive that the camera was in

Leslie Ofori - Cross-examination
By Mr. Singleton

1 your house and not inside your car?

2 A Yes, it was in the house.

3 Q Okay. And you're positive that the wallet containing
4 the credit cards or whatever was inside your house and not
5 in your, I guess the red car or the red Mercedes?

6 A Yes.

7 Q Okay. But you don't know when the -- did you ever see
8 if your credit cards had been used---

9 A No.

10 Q ---by anybody after you got them returned?

11 A No, they hadn't been used.

12 Q Okay. And did you keep those credit cards or did you
13 destroy them or---

14 A Excuse me?

15 Q Did you keep the credit cards or debit cards or did you
16 destroy them?

17 A well, I kept them.

18 Q Okay. And you received -- you received them back the
19 same day?

20 A Yes, I did.

21 Q Okay. About how long did you receive them after
22 Sergeant Barnette left, left the house?

23 How long did he stay at your house?

24 A They were at my house for a while. I can't---

25 Q An hour or two?

Leslie Ofori - Cross-examination
By Mr. Singleton

1 A Maybe. Maybe between maybe an hour and two hours. It
2 was pretty, it was pretty long cause I know they kept
3 apologizing for having to stay so late or take so long. So
4 --.

5 Q Okay. Do you, do you own any boots like any kind of
6 boots like Timberland boots or anything like that?

7 A I don't know.

8 Q Brahma boots or anything?

9 A I don't.

10 Q What about your husband?

11 A My husband does.

12 Q Okay. Do you know what kind he owns?

13 A He owns some Timberlands.

14 Q Okay. Did you receive the credit cards back before
15 Sergeant Barnette left or after he left?

16 A It was through the course of while they were there.
17 There were a lot of other officers there to. So---

18 Q Okay.

19 A In and out.

20 Q Did they ever ask you to look at the moped to see if it
21 looked like the moped that may of left your driveway?

22 A No.

23 MR. SINGLETON: Okay. That's all the questions I have,
24 Your Honor.

25 THE COURT: Redirect.

Leslie Ofori - Redirect examination
by Solicitor Poulos

1 SOLICITOR POULOS: Briefly, Your Honor.

2 THE COURT: Yes, ma'am.

3 REDIRECT EXAMINATION

4 BY SOLICITOR POULOS:

5 Q Mrs. Ofori, you stated that your husband owns some
6 boots.

7 A Yes.

8 Q What size does he wear?

9 A A 13.

10 Q And would you say that the floor in your garage at that
11 time was clean or was it dusty?

12 A It was -- it's real dusty in there.

13 Q Okay. And do you and your husband typically enter and
14 exit from the basement door or the garage door? I'm sorry.

15 A No, we leave out of the, the side door from that one
16 picture you showed that it's like on a little, under that
17 terrace. That's where we enter and exit. We don't even use
18 the garage.

19 Q Okay. Thank you. That's all I have.

20 THE COURT: Recross?

21 MR. SINGLETON: No questions, Your Honor.

22 THE COURT: You may step down, ma'am. Thank you very
23 much.

24 WITNESS: Thank you.

25 THE COURT: State may call its next witness.

Jason Wilson - Direct examination
by Solicitor Poulos

1 SOLICITOR POULOS: Thank you, Your Honor.

2 State calls Deputy Jason Wilson.

3 THE COURT: Come forward, sir, to be sworn.

4 JASON WILSON, having been first
5 duly sworn, testified as follows:

6 THE COURT: Have a seat please, sir. Once seated,
7 state your name.

8 WITNESS: Jason Wilson.

9 THE COURT: Ms. Poulos, your witness.

10 THE COURT: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY SOLICITOR POULOS:

13 Q Deputy Wilson, please introduce yourself for the Court
14 and tell the jury where you are employed.

15 A I'm Jason Wilson. I'm employed with Spartanburg County
16 Sheriff's Office. I have been for about a little over ten
17 years now.

18 Q And were you on duty on November the 8th of 2010?

19 A Yes.

20 Q Okay. Where were you around 12:00, 12:30 that day?

21 A While I and several other deputies were eating lunch at
22 the Grand Food Stuff at 1881, 1880 Highway 101.

23 Q And what happened?

24 A I had stepped out for the cigarette, and I was
25 approached by a white male wearing brown coveralls. He

Jason Wilson - Direct examination
by Solicitor Poulos

1 looked through the window at other deputies and said he did
2 not know me and thought we were somebody else. I asked his
3 name. He told me it's Al. I asked his last name and he
4 said I'm not saying. He then got on a blue moped and drove
5 south on Highway 101.

6 Q Do you recall what he was wearing?

7 A Brown coveralls.

8 Q Okay. And you said that you're at Grand Food Stuff.
9 Was that Spartanburg County?

10 A Yes.

11 Q And the address of that?

12 A 1880 Highway 101 South.

13 Q Okay. Now, after he drove off you said on a blue moped
14 --

15 A Yes.

16 Q -- what happened?

17 A I went back inside and told the other deputies what had
18 happened, and Sergeant Barnette had his computer inside with
19 him, and we determined that -- well, we determined that Al,
20 Mr. Henson was Al's last name and we determined that he
21 didn't have a driver's license or moped license.

22 Q He had he---

23 A He had a driver's license, which was suspended, and did
24 not have a moped license.

25 Q Okay. And, therefore, was he driving the moped

Jason Wilson - Direct examination
by Solicitor Poulos

1 illegally?

2 A Correct.

3 Q Okay.

4 A If you're suspended for longer than six months you have
5 to have a moped license.

6 Q Now, after you finished your lunch, did you go back out
7 on patrol?

8 A Yes.

9 Q And were there any other officers with you?

10 A Deputy Brown. I had been training him that day.

11 Q Okay. And where were you patrolling?

12 A We were on Highway 296 towards the Greenville County
13 line heading west.

14 Q Okay. And what happened?

15 A Later while on patrol near Bennetts Bridge Road I
16 looked in my rearview mirror and observed Mr. Henson driving
17 the same blue moped and---

18 Q Was he wearing the same clothing.

19 A Yes, ma'am, he still had on his brown overalls.

20 Q And did you believe him to be the same person that you
21 had a conversation with just moments before?

22 A Yes, ma'am.

23 Q Okay.

24 A I turned around and tried to conduct a traffic stop on
25 Mr. Henson while he was pulling into Reidville Road,

Jason Wilson - Direct examination
by Solicitor Poulos

1 which is his, the residence.

2 Q Do recall about what time that was?

3 A It was 1:52 p.m. --

4 Q Okay.

5 A -- is when I called out on a traffic stop.

6 Q All right. Deputy Wilson, I'm showing you what's been
7 marked for identification purposes as State's Exhibit 11.

8 Do you recognize what's in that photo?

9 A Yes, that's the blue moped that Mr. Henson was driving.

10 Q Okay. And does that accurately represent the moped
11 that you saw on the time in question?

12 A Yes.

13 SOLICITOR POULOS: Your Honor, at this time the State
14 would move to have State's Exhibit 11 admitted into
15 evidence.

16 MR. SINGLETON: No objection, Your Honor.

17 THE COURT: All right. Without objection, it will be
18 received into evidence as it's been marked.

19 (WHEREUPON, State's Exhibit No. 11 was received into
20 evidence at this time.)

21 Q Now, recognizing, recognizing that this was Alfred
22 Henson, the same blue moped that you had seen earlier and
23 you had already predetermined that he was driving the moped
24 illegally, what did you then do?

25 A Well, we -- once we got behind him in the driveway, my

Jason Wilson - Direct examination
by Solicitor Poulos

1 blue lights were activated. Mr. Henson jumped off the
2 moped, and as he jumped off the moped I saw him throw a
3 camera underneath the car that was parked in the driveway.

4 Q Okay. What, what happened after that?

5 A We ordered him to get on the ground, and we placed him
6 in handcuffs.

7 Q Okay. Was there anything else that you found beside
8 the camera that he had thrown on the ground?

9 A I believe another deputy had told me that he had found
10 credit cards on the ground next to where we found the
11 camera.

12 Q And do you recall what the name was on this credit
13 card?

14 A We determined that it had Leslie Ofori.

15 Q Okay. And were y'all able to determine an address---

16 A Yes.

17 Q ---for Mrs. Ofori?

18 A We determined that she lived at Byers Court in
19 Greer.

20 Q And is that in Spartanburg County?

21 A Yes, ma'am.

22 Q Okay. Did the defendant say anything to you at that
23 point?

24 A No, ma'am.

25 Q Okay. And he was arrested as you stated?

Jason Wilson - Direct examination
by Solicitor Poulos

1 A Correct.

2 Q How far was the defendant's home where you had made
3 this stop or near his home to where the victim's home was?

4 A It was roughly a little over two, two miles.

5 Q Okay. And you stated earlier that he was wearing his
6 same clothing as when you saw him before outside the
7 restaurant?

8 A Yes.

9 Q And that was -- what was that?

10 A That was the brown over, brown coveralls, overalls.

11 Q Brown coveralls.

12 Okay. Thank you, officer. That's all the questions I
13 have for you.

14 THE COURT: Mr. Singleton, your witness.

15 MR. SINGLETON: May it please the Court?

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. SINGLETON:

19 Q Deputy Wilson, do you have a estimation of what time
20 you saw my client up at the convenience store and this
21 convenience store is on 101, correct?

22 A Yes, sir.

23 Q Is this the, near, near the interstate, correct?

24 A Just south of the interstate.

25 Q Okay. Do you know what time you saw him?

Jason Wilson - Cross-examination
by Mr. Singleton

1 A It was a little -- it was around noon.

2 Q Around noon?

3 A Uh-huh. (Affirmative).

4 Q Okay. And when you saw him, was he -- had he just
5 pulled up into the---

6 A Yes, sir.

7 Q ---convenience store parking lot?

8 Did he pull up in the front of the -- now, this
9 convenience store is attached to a liquor store, correct?

10 A Correct.

11 Q Okay. Did he pull up in front of the convenience store
12 side or the liquor store side or do you have---

13 A The liquor store side.

14 Q Liquor store side.

15 Okay. And where were you located at in front of the
16 convenience store/liquor store?

17 A I was standing in front of the window where we were all
18 sitting.

19 Q Okay.

20 A I should say just down from where we were sitting, and
21 the liquor store was right next to that.

22 Q Okay. So, kind of in the middle of the building and
23 I'm familiar with the convenience store.

24 A Right.

25 Q Okay. So, kind of in the middle of the building?

Jason Wilson - Cross-examination
by Mr. Singleton

- 1 A Correct.
- 2 Q Okay. And, so, he got off and talked to you or y'all
- 3 had some sort of conversation and then he got off---
- 4 A Right.
- 5 Q Did you see him go into the liquor store?
- 6 A I can't recall.
- 7 Q Okay. When you went back into the convenience store,
- 8 was his moped still there or is he---
- 9 A No, he had already driven off.
- 10 Q He had already driven off.
- 11 Okay. Did you see him get back on the moped?
- 12 A Yes, sir.
- 13 Q Okay. Did you see anything in his hands or anything?
- 14 A I don't recall.
- 15 Q You don't see, know if he had a bottle of---
- 16 A I don't recall.
- 17 Q ---vodka or anything like that on him?
- 18 A No, sir, I don't remember.
- 19 Q Okay. Now, you say you saw him, saw him at noon, and
- 20 how much longer did y'all stay there at the convenience
- 21 store before you left?
- 22 A I'm guesstimating probably twenty minutes probably.
- 23 Just finishing up lunch.
- 24 Q Okay. And when you left, did you automatically start
- 25 you -- when you left at 12:20 or thereabouts, you went

Jason Wilson - Cross-examination
by Mr. Singleton

1 directly to 296?

2 A No, we just were on patrol. We just drove around.

3 Q Okay. Just driving around?

4 A Either, either answering calls or just driving around
5 the area.

6 Q Okay. And at the time that you were driving around,
7 did you ever receive a 9-1-1 call or anything about a
8 burglary---

9 A No, sir.

10 Q ---or anything regarding Byers Street?

11 A No, sir.

12 Q Okay. And when you were on patrol, you didn't receive
13 a call to say be on the look for my client or a moped or
14 anything like that, did you?

15 A No, sir.

16 Q Okay. So, at the time you saw my client, you had no
17 reason to think that he had, you had -- when you saw him you
18 just saw him and thought okay, I saw him a couple hours ago
19 and noticed he had a invalid license or no license?

20 A Correct.

21 Q Now, how do you know that he didn't have a license?

22 Did you ask him for a license when you saw him at the
23 convenience store?

24 A No.

25 Q Okay. So, how did you know he didn't have a license?

Jason Wilson - Cross-examination
by Mr. Singleton

1 A Through the DMV files.

2 Q Okay. And why didn't you go after him after you had
3 determined that he didn't, he was driving without a license
4 unlawfully?

5 A Cause after we determined, that was probably 15, 20
6 minutes after we had searched and he could of been anywhere.

7 Q Okay. You didn't see which direction he left on 101?

8 A I knew he went south on 101.

9 Q Okay. So, he went towards Woodruff?

10 A Correct.

11 Q Okay. Now, you say when you, when you pulled him over
12 that you were on patrol and you just happened to be in front
13 of his house when you saw him in your rearview mirror, is
14 that correct?

15 A Yes, sir.

16 Q So, you were not stationed on -- I think when you go
17 down that road there's a road that veers off to the right.

18 A Correct.

19 Q You were not stationed on that road or anything?

20 A No, sir, I was west, westbound on Highway 296.

21 Q Okay.

22 A Just right near and in front of his house near the
23 county line.

24 Q Okay. So, he happened to be there?

25 A He just happened -- well, when I looked up I said well,

Jason Wilson - Cross-examination
by Mr. Singleton

1 there he is.

2 Q Okay. And, so, you turned around somehow?

3 A It was either like a little J-point turn, but it was
4 right there in the road. We didn't have to go down any
5 further.

6 Q Okay. So, you turned around and followed him into his
7 driveway and---

8 A Yes, sir.

9 Q ---then you pulled him over?

10 when you got out of the car, was he already off his
11 moped?

12 A He was in the process of getting off of his moped.

13 Q Okay. Did you tell him at any point in time to stop
14 and---

15 A Yes.

16 Q Okay. So, you told him to stop?

17 A To stop and get on -- we told him to stop and get on
18 the ground.

19 Q Did he get on the ground and stop?

20 A Eventually he did.

21 Q Okay. And how was it that you saw him on, throw -- how
22 is it that you could tell that he threw something up under
23 the car?

24 A Cause we were right behind him the whole time once he
25 pulled in his driveway.

Jason Wilson - Cross-examination
by Mr. Singleton

1 Q Okay. Are you sure that he threw it up under his car
2 or did he just place it up under his car?

3 A He tossed it underneath the car.

4 Q Okay. Did he toss it from the standing up position or
5 the get down and---

6 A I---

7 Q ---bend?

8 A ---don't recall that.

9 Q You have to be a pretty good shot to throw it up under
10 the car and not damage it.

11 A It's just -- I can't recall if he was standing or
12 squatting or halfway in-between.

13 Q Okay. And are you certain that he was wearing brown
14 coveralls?

15 A Yes.

16 Q Okay. And do you -- you're wearing -- you state he was
17 wearing brown coveralls when you saw him at the convenience
18 store and when you saw him at his house?

19 A Correct.

20 Q Okay. And you sure they were brown and not black?

21 A Correct.

22 Q Okay. And what did y'all find as a, as a result --
23 once you got him off the ground and handcuff him, did you do
24 a -- did somebody do a pat down search of him?

25 A Other deputies did. I did not, no.

Jason Wilson - Cross-examination
by Mr. Singleton

1 Q Okay. Did the -- did y'all find anything on, on his
2 person or let go back. Did you find anything in his, in his
3 moped up under the seat or anything?

4 Did the seat lift up?

5 A I did, I not search that. So, I can't---

6 Q Okay. Well, did you know if anybody found a liquor
7 bottle?

8 A They may have. I can't testify to that.

9 Q Okay. Well, did you find anything at the scene?

10 A I didn't search. I just saw the camera and I, I -- you
11 asked -- I can't, I can't remember who actually went down
12 there and picked up the camera.

13 Q Okay. Now, when y'all, y'all handcuffed him and put
14 him in his car or put him in the patrol car, and then what
15 happened after that, after you searched and found the items?

16 What happened after that?

17 A I notified my supervisor, Sergeant Barnette.

18 Q Okay. And how did you notify him?

19 A I think it was---

20 Q By cell phone or---

21 A I think it was by phone cause the radios don't work too
22 well out there in that area.

23 Q Okay. Do you have any idea where Sergeant Barnette was
24 when you called him?

25 A I have no idea.

Jason Wilson - Cross-examination
by Mr. Singleton

1 Q You don't know if he was on Reidville Road, if he was
2 on Brockman McClimon or 101 or up at the Sheriff's Office?

3 A I have, I have no idea.

4 Q You don't know if he was downtown Spartanburg?

5 A I don't know, sir.

6 Q Okay. Do you have an estimate of how long it took him
7 from the time you called him till the time he got there?

8 A I don't recall.

9 Q Fifteen minutes?

10 A Probably more than that.

11 Q More than that?

12 A Yeah, I'm---

13 Q So, fifteen to thirty minutes before he got there?

14 A Probably 15 to 30.

15 Q Okay. And what happened once -- what happened with all
16 these items that y'all recover?

17 Did y'all -- what happened with the credit card and the
18 camera?

19 A Once we determined where, whose name was it on there
20 and where that person, where Mrs. Ofori lived, that's when
21 Sergeant Barnette went over there and spoke with the, spoke
22 with the victim and the investigator at the time,
23 Investigator Murphy, he came out---

24 Q Okay.

25 A ---and he---

Jason Wilson - Cross-examination
by Mr. Singleton

1 Q who had possession of these items?

2 A I believe it was Sergeant Barnette.

3 Q okay. And you didn't -- you had no responsibility or
4 you didn't deposit the items into evidence or anything like
5 that?

6 A I don't believe I did, no.

7 Q Don't believe you did.

8 okay. Do you know if anybody from forensics came out
9 and took any fingerprints on the credit cards or the camera?

10 A I believe they came out to the house, but they didn't
11 come out to the---

12 Q okay. So, you don't know if any of that stuff, the
13 camera---

14 A Right.

15 Q ---or the credit card?

16 A Right.

17 Q okay. Now, once -- how long did you stay at that
18 house, stay at the house on Reidville Road before you left?

19 A I don't recall. It was probably -- we waited for the
20 investigators to get out there, and once they came out, I'm
21 not sure where, what happened next. I finished up my report
22 and went over to where Sergeant Barnette was, see if he
23 needed anything and then---

24 Q okay.

25 A ---and left.

Jason Wilson - Cross-examination
by Mr. Singleton

1 Q Did you know what -- where was Mr. Henson at this time?
2 was he still just sitting at his house in the patrol
3 car or had he already been taken to Spartanburg County?

4 A I'm not -- I can't recall, but I believe Deputy Turner
5 took him down.

6 Q Okay.

7 A I think he already left.

8 Q Do you have any idea how long it, how long Sergeant
9 Barnette stayed on the site before he went to, how long he
10 stayed on Reidville Road until he went up to Byers Street?

11 A It wasn't long, five, ten minutes.

12 Q Five to ten minutes.

13 Okay. And do you know if he took any credit cards or
14 the camera with him?

15 A I can't recall.

16 Q Okay. And you -- like I said, y'all initially
17 arrested, pulled him over for a traffic stop when you had no
18 indication that a burglary had taken place at or a supposed
19 burglary had taken place at Byers Street, is that
20 correct?

21 A That's correct.

22 Q And there's no reason to believe that my client was
23 involved in anything at Byers Street when you pulled him
24 over, is that correct?

25 A That's correct.

Jason Wilson - Cross-examination
by Mr. Singleton

1 Q Okay. And you didn't, you didn't look up under the car
2 to see the camera and the credit cards?

3 Did you or somebody else?

4 A I believe myself and Deputy Turner did, but I believe
5 Deputy Turner's the one that found---

6 Q Okay.

7 A ---the credit cards.

8 Q Did you, did you look under the car or did you bend
9 over or did you get on your knees or lay in the grass?

10 A I can't recall. I mean I could see where it was.

11 Q Okay.

12 A I just reached down there and picked it up.

13 Q And when you left -- when he, when he left the, the
14 residence or his residence at Reidville Road, at any point
15 in time had he been charged with burglary or grand larceny
16 at that point in time?

17 A I'm sorry. Say that again.

18 Q At the time you left his residence, did y'all charge
19 him with burglary---

20 A He never was in---

21 Q ---while still at that residence?

22 A He was never in my, never in my car.

23 Q Okay.

24 A So, I---

25 Q Now, you stated in your report that he had asked, when

Jason Wilson - Cross-examination
by Mr. Singleton

1 y'all were at the convenience store, that my client, I
2 guess, he looked through the window to see who was inside
3 the store?

4 A Correct.

5 Q Okay. And did he say anything about what, what he was
6 looking for?

7 A He just said he thought that somebody different,
8 somebody maybe he knew.

9 Q Okay. And you said that he asked you -- you asked him
10 his last name, but he didn't give you his last name?

11 A Yes, he stated -- he said "I'm not saying."

12 Q Okay. Now, are you positive that he said that or he
13 just walked off and---

14 A Positive.

15 Q Okay. And is there any reason for him to tell you his
16 last name?

17 He wasn't under any kind of arrest or anything?

18 A No, absolutely not. But just kind of throws up a flag
19 when somebody, somebody refuses to tell me their last name.

20 Q Okay. But just because he doesn't tell his last name
21 doesn't mean he did anything wrong, is that correct?

22 A That is absolutely correct.

23 Q Okay. And when you went to Mrs. Ofori's house, did you
24 have any interaction with Mrs. Ofori?

25 Did you talk with her?

Jason Wilson - Cross-examination
by Mr. Singleton

1 A No, sir.

2 Q Did you talk to her husband?

3 A No, sir.

4 Q Okay. So, you just went there and observed the scene,
5 the house or whatever?

6 A Yes, sir, I just asked Sergeant Barnette if he needed
7 any more help and that was it.

8 Q Did you ever go inside the house?

9 A I think I looked in from the doorway and that was about
10 it.

11 Q Okay.

12 Okay. Just give me one minute, Your Honor.

13 THE COURT: Yes, sir.

14 (Pause.)

15 MR. SINGLETON: No other questions, Your Honor.

16 THE COURT: Redirect?

17 SOLICITOR POULOS: No, sir, Your Honor.

18 THE COURT: You may step down, sir. Thank you very
19 much.

20 All right. Ladies and gentlemen of the jury, we've
21 been going for a brief period of time, about an hour and a
22 half actually, and it's a good time to take a break. During
23 the break, as always, I will caution you not to discuss the
24 case among yourselves. You only heard a small portion of
25 the testimony, and it would be improper for you to begin any

1 discussions at this time.

2 Now, during the break, if any of you are smokers, I
3 don't know if you are, the bailiff will accompany you
4 outside if that's necessary. And if you need something,
5 just let the bailiffs know.

6 So, at this time you may retire to the jury room for
7 your break. Thank you very much.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. Court will be in recess ten to
11 fifteen minutes.

12 The defendant remains in custody.

13 (WHEREUPON, a short recess was taken at this time.)

14 THE COURT: State ready to go forward?

15 SOLICITOR POULOS: Yes, sir, Your Honor.

16 THE COURT: Defense ready?

17 MR. SINGLETON: Yes, sir, Your Honor.

18 THE COURT: Bring the jury in.

19 (WHEREUPON, the following takes place within the
20 presence of the jury.)

21 THE COURT: All right. The record will reflect the
22 jury's returned to the courtroom.

23 At this time, the State may call its next witness.

24 SOLICITOR POULOS: Thank you, Your Honor.

25 The State calls Deputy Nick Turner.

Nick Turner - Direct examination
by Solicitor Poulos

1 THE COURT: Come forward, sir, to my left and be sworn
2 please.

3 NICK TURNER, having been first duly
4 sworn, testified as follows:

5 THE COURT: Have a seat please, and once you're seated
6 I'll ask that you state your name.

7 WITNESS: Nick Turner.

8 THE COURT: Your witness.

9 SOLICITOR POULOS: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY SOLICITOR POULOS:

12 Q Deputy Turner, where are you employed?

13 A Spartanburg County Sheriff's Office.

14 Q And how long have you been employed there?

15 A A little over three years.

16 Q Were you on duty on November 8th, 2010?

17 A I was.

18 Q And how did you become involved in this case?

19 A Deputy Wilson contacted me by phone, cell phones and
20 said that Al, Alfred Henson was behind him, and I was kind
21 of in the area also, and he was gonna try to initiate a
22 traffic stop, and I followed him into the driveway of
23 Reidville Road.

24 Q Is that in Spartanburg County?

25 A It is.

Nick Turner - Direct examination
by Solicitor Poulos

1 Q Approximately what time was this?

2 A It's approximately 1:52 p.m.

3 Q And what happened when you arrived?

4 A Deputy Wilson was already out of his car along with
5 Deputy Brown, and they had the suspect on the ground, and I
6 quickly got out of my car and placed handcuffs on him,
7 placed him under arrest.

8 Q Did you advise him of his Miranda rights?

9 THE COURT: Yes, sir.

10 MR. SINGLETON: I'm sorry. Can he speak up?

11 I can't hear him.

12 THE COURT: Move a little closer to the microphone,
13 sir. Speak up. Thank you.

14 SOLICITOR POULOS: I'll repeat the question, Your
15 Honor.

16 Q You did arrest the defendant?

17 A I did.

18 Q And did you advise him of his Miranda rights?

19 A I did.

20 Q And what were those rights?

21 A I read them from my card here.

22 Q Would you read---

23 A You want me to read this?

24 You have the right to remain silent. Anything you say
25 can and will be used against you in a court of law. You

Nick Turner - Direct examination
by Solicitor Poulos

1 have the right to talk to an attorney and have him or her
2 present with you while you're being questioned. If you can
3 not afford to hire an attorney one will be appointed to
4 represent you before any questioning if you want. You can
5 decide at anytime to exercise these rights and not answer
6 any questions or make statements. Do you understand these
7 rights I've explained to you. Having these rights in mind,
8 do you wish to talk to us now.

9 Q And did he indicate he understood those rights?

10 A He did indicate he understood these rights.

11 Q Were there any other officers present when you read
12 them?

13 A Deputy Brown was next to me.

14 Q Who was that?

15 A Deputy Brown was next to me.

16 Q And did you search the area where the defendant was
17 seen throwing the items?

18 A I did.

19 Q And what did you find?

20 A I found two credit cards underneath the car right next
21 to the blue moped.

22 Q Was there also a debit card as well?

23 A There was.

24 Q And where were the items in relation to the moped?

25 A Five feet or so next to the moped.

Nick Turner - Direct examination
by Solicitor Poulos

1 Q Did you then transport the defendant to the Spartanburg
2 Sheriff's office?

3 A I did.

4 Q Thank you. That's all I have. Please answer any
5 questions Mr. Singleton may have for you.

6 THE COURT: Mr. Singleton, your witness.

7 MR. SINGLETON: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. SINGLETON:

11 Q Deputy Turner, you said that you received a call from
12 Deputy Wilson?

13 A Yes, sir.

14 Q Did you receive it in a phone call or---

15 A It was a phone call.

16 Q Okay. And what did he say to you?

17 Again, what did he say to you when he called you?

18 A He said that Al Henson was behind him on a moped.

19 Q Did you know who Al, Alfred Henson was?

20 A I did.

21 Q Who was he?

22 A He was the individual we talked to at the Grand Food
23 stuff---

24 Q Okay.

25 A ---at lunch.

Nick Turner - Cross-examination
by Mr. Singleton

1 Q So, y'all were on the look out for him since y'all left
2 the convenience store?

3 A No, he---

4 Q Okay.

5 A We were in the area.

6 Q You just -- his name stayed in your mind the last
7 couple of hours?

8 A Yeah, it had just been a few hours.

9 Q Okay. Where were you when he called you?

10 A I was on Reidville Road just inside Spartanburg County.

11 Q Where at?

12 I mean were you---

13 A I was---

14 Q Reidville Road goes way---

15 A Right at the, right at the county line near Bennetts
16 Bridge Road. I think I was---

17 Q Okay. So, were you with Deputy Wilson or behind him?

18 A Well, I think, if I remember right, I was going towards
19 Spartanburg on Reidville Road and he was going towards
20 Greenville. He was probably like fifty yards or so in front
21 of me.

22 Q So, you had just passed each other?

23 A Not quite yet.

24 Q Were you still in Greenville County?

25 A I was, I was never in Greenville County. I was in

Nick Turner - Cross-examination
by Mr. Singleton

1 Spartanburg County I think.

2 Q Okay. Because -- well, I'm kind of confused.

3 Do you know where Mr. Henson's house is?

4 A I do.

5 Q Okay. Isn't it the last house on the left?

6 If you're going into Greenville County, it's the last
7 house on the left before you cross into the roads into
8 Greenville County.

9 A (Witness nods affirmatively.)

10 Q Where were you when you received the call from Deputy
11 Wilson?

12 A I guess in relations to where his house is, I guess it
13 would of been right by his driveway on Reidville Road cause
14 the county line's right past the house.

15 Q So, when you received the call from Deputy Wilson, you
16 were behind Deputy Wilson?

17 A Uh-huh. (Affirmative).

18 I was in front of him.

19 Q Okay. Okay. I got you now.

20 A Like we're gonna cross each other.

21 Q When you were in front of him and he was behind you.
22 I'm still kind of confused about it.

23 A He was going westbound. I guess I was going eastbound.

24 Q So, y'all were coming in opposite directions?

25 A Yeah, we would of passed.

Nick Turner - Cross-examination
by Mr. Singleton

1 Q Okay. Are you -- so, you don't know -- at first you
2 said y'all weren't going in opposite directions. Now you
3 said you are going in opposite directions.

4 A Well, we, we were going opposite directions. We would
5 of passed. He was going west. I was going east.

6 Q So, you did pass each other?

7 A No, we never passed each other cause he turned in the
8 driveway---

9 Q Okay.

10 A ---to make the traffic stop.

11 Q But how is it that he -- who was the first car into
12 the, the driveway?

13 A That would of been Deputy Wilson.

14 Q Okay. Did you observe Deputy Wilson turn around on
15 Reidville Road?

16 A Yeah, he was in front of me.

17 Q He was in front of you?

18 A (Witness nods affirmatively.)

19 Q Okay. Now, across the street from -- I'm still kind of
20 confused about where you were, but across the street from --
21 if you're going in, into Greenville County, Mr. Henson's
22 house is on the left, and there's a road that veers off to
23 the right right there across the street from his house---

24 A Uh-huh. (Affirmative).

25 Q ---were you on that street?

Nick Turner - Cross-examination
by Mr. Singleton

- 1 A No, but I was right across from it.
- 2 Q Okay.
- 3 A That's, that's Bennetts Bridge Road.
- 4 Q But you stated you were going -- when you got the call,
- 5 you were going east and he was going west?
- 6 A I was going towards Highway 101, and I guess he was
- 7 going away from it---
- 8 Q Right.
- 9 A ---if that makes sense.
- 10 Q But y'all never passed each other?
- 11 A We never passed each other cause he turned in the
- 12 driveway---
- 13 Q Okay.
- 14 A ---with the traffic stop.
- 15 Q But you say -- how did you not go into Greenville
- 16 County?
- 17 A I turned around before the county line.
- 18 Q Okay. So, you got the call before you---
- 19 A Yeah.
- 20 Q Okay. So, you just did a U-turn in Reidville Road or
- 21 whatever?
- 22 A Yes.
- 23 Q Okay. So, you were the second car in, into the
- 24 driveway?
- 25 A I was.

Nick Turner - Cross-examination
by Mr. Singleton

1 Q Okay. What did you observe when you pulled into the
2 driveway?

3 A When I put my car in park the suspect was already on
4 the ground giving orders to---

5 Q So, you didn't see anything thrown or anything?

6 A I did not see anything thrown.

7 Q Okay. When you pulled into the driveway, was your
8 understanding that y'all were pulling him over just for the
9 traffic violation?

10 A That was my understanding.

11 Q Okay. When you pulled him over, had you, had you heard
12 anything over the radio, the police radio, or however y'all
13 get calls, that anything had happened at Byers Street?

14 A No, sir.

15 Q How long did you stay on the scene at Reidville Road?

16 A I was there -- I'm not sure of the time I left, but I
17 left with Mr. Henson---

18 Q Okay..

19 A ---in my car.

20 Q Do you think you were there for an hour?

21 A An hour maybe.

22 Q Okay.

23 A Best of my recollection.

24 Q Was Mr. Henson in -- once you handcuffed him and read
25 him his rights and put him in the car, did he stay in the

Nick Turner - Cross-examination
by Mr. Singleton

1 car the entire time?

2 A He was.

3 Q Okay. Did you go to Byers Street at any point in
4 time or did you go straight from Reidville Road to the
5 detention center?

6 A I went from Reidville Road to the Sheriff's Office.

7 Q Okay.

8 A I never went to the jail.

9 Q Sheriff's Office. I'm sorry.

10 When you read him his Miranda rights, what was he being
11 arrested for?

12 A The moped license.

13 Q Okay. At any point in time from the time that you got
14 to, you left Reidville Road till the time you got to the
15 Sheriff's Office, had he ever been charged with first degree
16 burglary or grand larceny?

17 A (Witness nods affirmatively.)

18 Q Okay. From the time that you left Reidville Road and
19 got to the Sheriff's Office, did you know what was going on
20 at Byers Street?

21 A I did.

22 Q Okay. And who told -- how did you come to look up
23 under the car?

24 Were you told to look up under the car?

25 A I was told the camera was recovered from underneath the

Nick Turner - Cross-examination
by Mr. Singleton

1 car, and I just did a second look where the camera was, and
2 as soon as I looked under there I saw three credit cards.

3 Q Okay. The camera had already been taken out --

4 A Uh-huh. (Affirmative).

5 Q -- by the time you looked up under there?

6 A (Witness nods affirmatively.)

7 Q Were you there when Sergeant Barnette arrived?

8 A I was.

9 Q How long was it before, from the time you got there,
10 until Sergeant Barnette arrived on, at Reidville Road?

11 A I can't recall.

12 Q Fifteen, thirty minutes?

13 A Fifteen, thirty minutes.

14 Q Okay. Do you know how long he stayed there before you
15 left---

16 A I can't---

17 Q ---or did you pay attention?

18 A I can't, I can't recall the time.

19 MR. SINGLETON: Okay. One second, Your Honor.

20 THE COURT: Yes, sir.

21 (Pause.)

22 Q Were you driving your patrol car when you initiated
23 this stop and on this date, on November 8th, were you
24 driving your patrol car?

25 A I was driving my patrol car.

Nick Turner - Cross-examination
by Mr. Singleton

1 Q okay. Thank you.

2 Does your patrol car have a dash cam or cameras?

3 A It does.

4 Q Did y'all use that that day?

5 A I did not use mine.

6 Q Okay. And why didn't you use them that day?

7 A I never activated my emergency lights. I didn't
8 initiate a traffic stop.

9 Q Okay. Do you have any idea, Deputy Wilson, used his
10 dash cam?

11 A That I do not know.

12 MR. SINGLETON: Okay. That's all the questions I have,
13 Your Honor.

14 THE COURT: Redirect?

15 SOLICITOR POULOS: Nothing further, Your Honor.

16 THE COURT: You may step down.

17 The State may call its next witness.

18 SOLICITOR POULOS: Thank you, Your Honor.

19 State calls Deputy Brent Brown.

20 THE COURT: Come forward, sir, and be sworn.

21 BRENT BROWN, having been first duly
22 sworn, testified as follows:

23 THE COURT: Have a seat please, sir. Once seated,
24 state your name.

25 WITNESS: Brent Brown.

Brent Brown - Direct examination
by Solicitor Poulos

1 THE COURT: Your witness, Ms. Poulos.

2 SOLICITOR POULOS: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY SOLICITOR POULOS:

5 Q Where are you employed, Deputy Brown?

6 A I'm employed with the Spartanburg County Sheriff's
7 Office.

8 Q And how long have you been employed there?

9 A About a year and a half.

10 Q Okay. And were you on duty on November the 8th of
11 2010?

12 A Yes, I was.

13 Q And where were you at around 12:00 p.m. on that day?

14 A I was with the other deputies eating lunch at the Grand
15 Food Stuff at 1880 Highway 101.

16 Q And what happened that day?

17 A We were eating lunch at the Grand Food Stuff when
18 Deputy Wilson stepped outside to take a break, and as soon
19 as he stepped outside a gentleman approached him. They had
20 interaction. We were all inside eating and saw the
21 interaction take place through the window, and then the
22 subject left and Deputy Wilson came inside and told us what
23 had happened.

24 Q Okay. And after you finished your lunch, did you go
25 back out on patrol?

Brent Brown - Direct examination
by Solicitor Poulos

- 1 A We did.
- 2 Q Okay. And were you with Deputy Wilson at that time?
- 3 A I was, yes.
- 4 Q Where were you patrolling?
- 5 A We were patrolling on Reidville Road.
- 6 Q And what happened?
- 7 A We were on Reidville Road, Reidville Road patrolling
- 8 when Deputy Wilson looked up in his rearview mirror and said
- 9 hey, I believe that's Al. He then, he then conducted a
- 10 traffic stop by turning his blue lights on. We were right
- 11 at the driveway of Reidville Road, and Mr. Henson, on
- 12 the moped, turned up the driveway, went up the driveway. We
- 13 then did a J-turn, followed him into the driveway where we
- 14 got in behind him. He then jumped off his moped and began
- 15 throwing items under the car.
- 16 Q Did you see him throwing the items?
- 17 A I did.
- 18 Q What did you see him throw?
- 19 A I saw him throw what seemed to be a large object and
- 20 then a couple small objects under the car, but I couldn't
- 21 tell you what they were.
- 22 Q Did he say anything to you?
- 23 The defendant, that is.
- 24 A He didn't.
- 25 Q Okay. Now, Deputy Turner testified that he placed him

Brent Brown - Direct examination
by Solicitor Poulos

1 under arrest.

2 Did you search him?

3 A I did.

4 Q And did you recover anything on his person?

5 A I did. I recovered various items. One of those items
6 being a pocketknife.

7 Q Okay. Can you describe what this knife looked like?

8 A It was a folding pocketknife. It was a dark colored
9 knife. Not real sure what the color was. It could of been
10 a black knife. The blade was probably three to four inches
11 long and it had a pocket grip on its side.

12 Q And where did you find this knife on the defendant?

13 A I found it in his right front pants pocket.

14 Q Okay. What did you do then with the knife?

15 A The knife, along with the various other objects that I
16 did find on him, were placed on the hood of the car that was
17 next to the moped.

18 Q Okay. And did you take the knife into evidence that
19 time?

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

21 Q Okay. And why did you not?

22 A Various subjects that we get out with and arrest,
23 usually during a pat down, for safety reasons, we usually do
24 find pocket knives, and a lot of times we don't take those
25 knives into custody just simply because we don't want to

Brent Brown - Direct examination
by Solicitor Poulos

1 introduce a weapon into the jail system, and, therefore, the
2 knives usually are turned over to either a family member or
3 someone on the scene that the person would like the object
4 to go to.

5 Q And at that time did you know that this weapon was or
6 allegedly used in connection with the burglary?

7 A No, ma'am.

8 Q Okay.

9 A We did not.

10 Q And do you recall what you did with the knife?

11 A I do not. All I know is I placed it on the hood of
12 that car.

13 Q All right. Thank you. That's all that I have.

14 THE COURT: Your witness, Mr. Singleton.

15 MR. SINGLETON: May it please the Court?

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. SINGLETON:

19 Q Deputy Brown, were you riding with Deputy Wilson?

20 A Yes, sir, I was.

21 Q Okay. And I believe you stated earlier that y'all were
22 driving down I guess it's west on Reidville Road when he
23 said he looked in y'all's rearview mirror and saw
24 Mr. Wilson, I mean Mr. Henson?

25 A Yes, that's correct.

Brent Brown - Cross-examination
by Mr. Singleton

1 Q And did Mr. Henson turn into the driveway before y'all
2 did the U-turn or whatever you call it or after that, after
3 that?

4 A I believe he turned into the driveway before.

5 Q Okay. So, y'all went a few feet and then turned around
6 and went into his driveway and followed him up the driveway?

7 A I believe that's correct.

8 Q Okay. Now, you stated you saw -- when he, when you
9 pulled into the driveway, where was he at that point in
10 time?

11 A When, when we pulled into the driveway?

12 Q Yeah.

13 When you first got into the driveway, how far had he
14 made it up that driveway?

15 A Not very far at all.

16 Q Okay.

17 A We, we, we were able to catch up to him pretty quickly.

18 Q Okay. And you stated he then got off the moped and
19 threw some objects, and you have no clue what those objects
20 were, correct?

21 A I have no clue.

22 Q Okay. You didn't know at that time what, you couldn't
23 tell what they were?

24 You couldn't tell if it was a camera or---

25 A That's correct.

Brent Brown - Cross-examination
by Mr. Singleton

1 Q ---or what---

2 A That's correct. I just -- I could just tell he was
3 throwing something under the vehicle.

4 Q Okay. So, you didn't see the objects, you just saw the
5 motion?

6 A Correct.

7 Q Okay. Now, had y'all -- I'm still -- the way y'all
8 talk -- what did Mr., Deputy Wilson say when he saw Mr.
9 Henson in his rear view mirror?

10 Didn't you say that he hey, I think I see Al in, behind
11 me?

12 A Something to that effect, yes.

13 Q Okay. Did you remember who -- did you automatically
14 know who he was talking about?

15 A Yes.

16 Q How did you know who he was talking about when he said
17 Al?

18 A Because he had mentioned the subject Al that we had,
19 that he encountered at lunchtime.

20 Q So, you still remember Al or Alfred or Alfred Henson
21 from two hours earlier?

22 A Correct.

23 Q Okay. When you -- did you make the call to Sergeant
24 Barnette or did, did Deputy Wilson call Barnette, Sergeant
25 Barnette?

Brent Brown - Cross-examination
by Mr. Singleton

1 A I believe Deputy Wilson called Sergeant Barnette.

2 Q Okay. Do you, do you have any idea how long it took
3 for him or do you have any idea how long it was by the time
4 Deputy Wilson called him and he arrived on scene?

5 A I couldn't tell you.

6 Q Okay. Did you take possession of the credit cards?

7 A I'm sorry?

8 Q Did you take -- when y'all had done your search, did
9 you take possession of the credit cards and the camera?

10 A No, sir, I did not.

11 Q Who had the credit cards and the camera?

12 A I'm not sure who had those items.

13 Q Where were they?

14 Do you have idea where they were?

15 Were they on top of the car, sitting on top of the
16 moped?

17 Were they sitting on top of the police car and where
18 were they?

19 A I couldn't tell you.

20 Q Okay. So, when you took my client to -- you didn't
21 take my client to the jail?

22 I'm sorry.

23 You searched him and found a pocket knife, correct?

24 A That is correct, yes.

25 Q But you -- there's no evidence of this pocketknife

Brent Brown - Cross-examination
by Mr. Singleton

1 existing?

2 There's nothing -- it was not deposited into the
3 evidence lock box or whatever you call it or no pictures
4 were taken, is that correct?

5 A That's correct.

6 Q So, we have no idea that this, that this pocketknife
7 exist or not except for your testimony, is that correct?

8 A Yes, that would be correct.

9 Q Okay. When you arrived -- before you pulled into that
10 parking lot, did you ever get a 9-1-1 call or anything over
11 the police radio saying something had happened at Byers
12 Street?

13 A No, we did not.

14 Q Okay. Did the entire, the time that you were there,
15 did you, at the Reidville Road, at that site, did you hear
16 anything about anything going on at Byers Street?

17 A I'm sorry. Rephrase the question please.

18 Q When you were at Reidville Road -- how long were you at
19 Reidville Road before you left?

20 A We were there for quite some time. I'm not sure
21 exactly how long we were there.

22 Q Hour or two, hour and a half?

23 A Something to that.

24 Q Okay. Where did you go from there?

25 Did you go to Byers Street?

Brent Brown - Cross-examination
by Mr. Singleton

1 A We did. We went to Byers.

2 Q Okay. And when you left Mr. Henson's house, was he
3 still there or had he already been taken away to the
4 Sheriff's Office?

5 A I believe Deputy Turner had already taken him to the
6 Sheriff's Office. I could be wrong about that.

7 Q Okay. And you say that this supposed pocketknife that
8 you saw, what did you do with that pocketknife?

9 A When I took it off of Mr. Henson's person, I placed it
10 on the hood of the car that was parked next to the moped.

11 Q Okay. And what happened when y'all went to Byers
12 Street?

13 Did you speak to Mrs. Ofori or anybody that lived at
14 Byers Street?

15 A I did not.

16 Q Did you go inside the house?

17 A I briefly peeked inside.

18 Q You peeked in the front door or the garage door or---

19 A Through the front door.

20 Q Okay. But you didn't go around and look around the
21 area of the living room or the hallways or anything like
22 that?

23 A No.

24 Q Okay. Do y'all patrol that area a lot?

25 A I don't work that area. So, I, I can't say.

Brent Brown - Cross-examination
by Mr. Singleton

1 Q And I believe you were in training that day, is that
2 correct?

3 A Yes, sir, I was.

4 Q Okay. So, you were -- were you new to the force?

5 A Yes.

6 Q Okay. How long you been on, on, with Spartanburg
7 County at that time?

8 A I believe I'd been employed there for six months.

9 Q Okay. So, you were not familiar with this area of what
10 they call Greer, even though it's no where near downtown
11 Greer?

12 A No, I'm not familiar with that area.

13 Q Okay. Now, did you say that you looked up under the
14 car and found the credit cards or did somebody else find the
15 credit cards?

16 A Someone else found the credit cards.

17 Q Okay. In your report it says that Deputy Turner and
18 Deputy -- oh, somebody else found them. Okay. I'm sorry.

19 How long did you stay at Mrs. Ofori's house before you
20 left?

21 A I'm not really sure. We didn't stay there that long.

22 MR. SINGLETON: Okay. May it please the Court, one
23 moment?

24 THE COURT: Yes, sir.

25 (Pause.)

Travis Barnette - Direct examination
by Solicitor Poulos

1 MR. SINGLETON: Nothing further, Your Honor.

2 THE COURT: Redirect?

3 SOLICITOR POULOS: No, sir, Your Honor.

4 THE COURT: You may step down.

5 State may call its next witness.

6 SOLICITOR POULOS: Thank you, Your Honor.

7 The State calls Sergeant Travis Barnette.

8 THE COURT: Come forward, sir, to my left and be sworn.

9 TRAVIS BARNETTE, having been first
10 duly sworn, testified as follows:

11 THE COURT: Have a seat please, and once seated, state
12 your name.

13 WITNESS: Thank you, sir. I'm Travis Barnette.

14 THE COURT: Ms. Poulos, your witness.

15 SOLICITOR POULOS: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY SOLICITOR POULOS:

18 Q Where are you employed, Sergeant Barnette?

19 A At Spartanburg County Sheriff's Office.

20 Q And how long have you been employed there?

21 A I've been here for approximately nine years, and I've
22 been a police officer for 17 and a half years.

23 Q And were you on duty on November the 8th, 2010?

24 A I was.

25 Q Where were you around 12:00 to 12:30 p.m. that day?

Travis Barnette - Direct examination
by Solicitor Poulos

1 A I was at the Grand Food Stuff at 1880 Highway 101
2 South.

3 Q And what happened?

4 A While I was there the guys were eating lunch. I had
5 went over to discuss some business with them, had taken my
6 computer inside, and Deputy Wilson stepped out to smoke a
7 cigarette. While he was out there, the way we were sitting,
8 there's this huge window. Noticed Mr. Henson peering inside
9 the window. He and Deputy Wilson got in, were, became
10 engaged into a conversation. Probably ten minutes later I
11 guess Deputy Wilson came back inside, and advised me of the
12 conversation that they had had.

13 Q And did you -- were you able to determine the last name
14 for Mr. Henson, for the defendant?

15 A We were.

16 Q And what was that name?

17 A His last name was Henson.

18 Q And through your investigation did you determine that
19 his driver's license had been suspended?

20 A I did.

21 Q How long had it been suspended for?

22 A It was suspended indefinitely at that point.

23 Q Okay. And did he have a valid moped license?

24 A He did not.

25 Q And, so, therefore was he driving the moped illegally?

Travis Barnette - Direct examination
by Solicitor Poulos

1 A He was. In the State of South Carolina either you're
2 required to have a valid South Carolina driver's license.
3 If your license has been suspended for six months or less
4 you may drive without a moped license. However, if it's
5 suspended for six months or more you're required to obtain a
6 moped license.

7 Q And did you advise Deputy Wilson that, of what you had
8 found searching through the records?

9 A I did.

10 Q Okay. And did you all finish your lunch?

11 A (Witness nods affirmatively.)

12 Q What happened after that?

13 A After that we all went back out on patrol.

14 Q All right. And did you receive a call at some point?

15 A I did.

16 Q And what was that call pertaining to?

17 A Deputy Wilson gave me, called me on the cell phone and
18 stated that he had stopped Mr. Henson for the moped
19 violation.

20 Q Did you go out onto the scene on Reidville Road?

21 A I did.

22 Q And you see Mr. Henson---

23 A I did.

24 Q ---at that time and he was under arrest, correct?

25 A He was.

Travis Barnette - Direct examination
by Solicitor Poulos

1 Q And what happened at the scene?

2 A Actually, once I got there, I had recognized Mr. Henson
3 earlier. I couldn't recall his name. He and I actually
4 went to school together, but it had been 20 something years
5 since I'd seen him. Once I heard his name it hit me. So,
6 once I got there, got out of the car, spoke with the
7 deputies for just a few minutes, walked up to Deputy
8 Turner's car where Mr. Henson was seated, opened the door.
9 He and I spoke for just a few minutes about, you know, life
10 back in the 80's and 90's, who was where, and where they
11 weren't, and had a fairly cordial conversation for just a
12 minute. He actually asked about my brother and then ended
13 the conversation.

14 Q Did you see the camera and the credit cards at the
15 scene?

16 A I did.

17 Q Okay. And were you able to determine an address for
18 the victim's name that was on the credit cards?

19 A We were. The credit cards were actually on I think
20 Deputy Wilson's hood.

21 Q What was that address?

22 A It was Byers Court in Greer, South Carolina.

23 Q Is that in Spartanburg County?

24 A It is.

25 Q And did you go to Byers Street?

Travis Barnette - Direct examination
by Solicitor Poulos

1 A Yes, ma'am.

2 Q Did you speak with the victim, Mrs. Leslie Ofori?

3 A I did.

4 Q What did she tell you?

5 A I actually knocked on the door, and when she answered
6 the door I asked her if she knew a gentleman by the name of
7 Alfred Henson, and she stated that she did not. I asked her
8 if she knew any white males who operated a moped, and she
9 stated that she did not, but then told me it was kind of
10 strange that I asked that because she had just seen an
11 individual on a moped exit her driveway.

12 Q Did you ask about the credit cards?

13 A I did. I asked her would there be any reason for Mr.
14 Henson to be in possession of two Bank of America cards as
15 well as a Capital One card with her name on it and one of
16 them actually had her photograph on it, and she said no,
17 that he should not be.

18 Q Did you look around the residence?

19 A I did.

20 Q And did you notice anything unusual?

21 A I asked her -- after I asked her about the, the final
22 transaction cards, I asked her if she knew anything about
23 maybe a camera. At that point she invited me into her home.
24 She immediately went to a room. If you enter the front
25 door, to the left there's just a small hallway, and another

Travis Barnette - Direct examination
by Solicitor Poulos

1 hallway shoots off to the right and then it goes into -- I
2 guess it's like the parlor room, and once she walked in
3 there and could see through the door, she said something to
4 the effect, oh, my God, my husband's camera is gone, and
5 then, while she was in there, the way the parlor was there,
6 I guess there's two French doors opened up on to a terrace,
7 the light from that was coming in on the hardwood floors,
8 which was extremely shiny, and I saw what appeared to be
9 some type of boot prints.

10 Q Okay. Sergeant Barnette, I'm showing you what's been
11 marked as State's Exhibit 12 for identification purposes,
12 and do you recall what that is?

13 A It appears to be one of the bootprints that was in Mrs.
14 Ofori's residence.

15 Q Okay. And is that the photo of one of the shoe prints
16 that you found in the home?

17 A Yes, ma'am.

18 Q How many of those would you say are in the home?

19 A I'm not real sure, but there were several. Probably 15
20 or so. I'm not real sure. I didn't sit and count each one.

21 Q Okay. And does that photo fair and accurately reflect
22 the way that shot prints that you located looked inside Mrs.
23 Ofori's home at that time?

24 A Yes, ma'am.

25 SOLICITOR POULOS: Your Honor, at this time we would

Travis Barnette - Direct examination
by Solicitor Poulos

1 ask that State's Exhibit 12 be admitted into evidence.

2 THE COURT: Any objection?

3 MR. SINGLETON: No objection, Your Honor.

4 SOLICITOR POULOS: Permission to publish this exhibit,
5 Your Honor?

6 THE COURT: It will be admitted as marked.

7 You may publish.

8 (WHEREUPON, State's Exhibit No. 12 was received into
9 evidence at this time.)

10 Q Okay. Sergeant Barnette, do you recall where in the
11 home that print was located?

12 A I don't know where that particular print was located,
13 but---

14 Q Was it downstairs in the victim's home?

15 A It was downstairs. It was, it was there -- the prints
16 that I was able to locate and actually locate a few very
17 faint prints using my flashlights shining across the floor
18 were all between this parlor room and into this hallway,
19 which leads into what you call the mud room, which are two
20 doors or a door, a small room, another door, and that leads
21 into the garage, and there were a couple of prints that went
22 from that same direction from those doors into the living
23 room where her purse was located.

24 Q Thank you. That's all the questions that I have.

25 THE COURT: Mr. Singleton, your witness.

Travis Barnette - Cross-examination
by Mr. Singleton

1 CROSS-EXAMINATION

2 BY MR. SINGLETON:

3 Q Sergeant Barnette, what happened when you left the
4 conveniences store?

5 A I went back on patrol.

6 Q Where did you go?

7 Did you go---

8 A I don't recall.

9 Q You don't remember if you went towards Woodruff or
10 towards Greer?

11 A No, sir, I'm actually responsible for almost a quarter
12 of the south end of the county. So --.

13 Q Okay. So, you don't know which direction you went that
14 day?

15 A No, sir, I don't recall.

16 Q Okay. Well, did you actually see Mr. Henson at the
17 convenience store?

18 A I did.

19 Q Okay. You just saw him through the window?

20 A Yes, sir.

21 Q Okay. Did you see what he was wearing or what he was
22 driving or anything like that?

23 A No, sir, I didn't pay that much attention, no, sir.

24 Q Okay. And you stated that when you, you got a call
25 from Deputy Wilson that you just, that he just found these

Travis Barnette - Cross-examination
by Mr. Singleton

1 objects on Reidville Road, is that correct?

2 A That's correct.

3 Q When you got there, did he show you the, the, the
4 items?

5 Did he show you the credit cards and the camera?

6 A They were on the hood of his car I believe.

7 Q Okay. Did you look at them or touch them or pick them
8 up and look at them?

9 A I did.

10 Q Did you turn on the camera or anything?

11 A No, I did not.

12 Q Okay. And then you stayed there for several minutes or
13 whatever and then went to Byers Street?

14 A Yes, sir.

15 Q Did you take those items with you?

16 A No, I did not.

17 Q Okay. Where, where were those items when you left?

18 A The last I seen they were on the hood of his vehicle.

19 Q Okay. Hood of Deputy Wilson's vehicle?

20 A Yes, sir.

21 Q Okay. And when you got to Mrs. Ofori's house, you
22 stated she went in through the front door, is that correct?

23 A That's correct, sir.

24 Q Okay. And did she tell you -- so, you told her what
25 y'all had found at Reidville Road, is that correct?

Travis Barnette - Cross-examination
by Mr. Singleton

1 You told her that y'all had found some credit cards and
2 a camera?

3 A Yes, sir, after I asked if there was any reason that he
4 would be in possession of those.

5 Q But she didn't tell you those items were missing?

6 A No, she did not.

7 Q Okay. So, she didn't tell you when was the last time
8 she saw those items?

9 A No, sir.

10 Q Okay. Did you ask her when she last saw them?

11 A No.

12 Q Okay.

13 A I don't recall. I'm sorry.

14 Q Now, she told you -- did she tell you that anything
15 else was missing besides her credit cards and her, her
16 camera?

17 I mean did she tell you that anything else was missing
18 from her purse?

19 A She actually, she actually said her wallet was missing
20 from her purse after I had mentioned the credit cards.

21 Q Did y'all -- did you find the wallet at Reidville Road?

22 A No, sir, I searched for it after completing the initial
23 report at her residence and---

24 Q Did you---

25 A ---I went up and down Bennetts Bridge Road, went up and

Travis Barnette - Cross-examination
by Mr. Singleton

1 down Brockman McClimon, and actually just stayed there
2 probably about an hour walking the road and trying to find
3 it.

4 Q Okay. So -- and for, for the people, Brockman McClimon
5 is basically a two lane road, is that correct?

6 A Yes, sir.

7 Q And on either side they have ditches or---

8 A Correct.

9 Q ---or grown up grass or whatever you want to call it?

10 A A couple houses here and there.

11 Q And, so, you searched up and down the road?

12 A I did.

13 Q Did you -- were you in your patrol car or were you on
14 foot or both?

15 A No, I was on foot. I parked my patrol car on the side.

16 Q Okay. How far did you go up Brockman McClimon or---

17 A I don't really recall.

18 Q Okay. Did you go maybe a half a mile either direction
19 or maybe just one direction?

20 A I don't know.

21 Q Okay.

22 A I was looking down most of the time and it's hard to
23 calculate a distance.

24 Q Now, Mrs. Ofori said that she received her wallet in
25 the mail about a week or so later.

Travis Barnette - Cross-examination
by Mr. Singleton

1 Did she call you -- she said she called the sheriff's
2 office.

3 Did she talk to you or who did she talk to?

4 A I don't know who she spoke to. She didn't speak to me,
5 no.

6 Q So, y'all didn't -- did you do additional investigation
7 after this day and as to what happened?

8 A No, sir, I've had no further contact with Mrs. Ofori
9 until today.

10 Q Okay. But y'all didn't do any other additional search
11 for the wallets up and down Brockman McClimon or Reidville
12 Road or any other roads around there?

13 A No, not on that next day. That evening I did. But not
14 the next day, no.

15 Q So, basically your investigation had concluded with a
16 couple of hours after the---

17 A Pretty much.

18 Q ---incident took place?

19 A Correct.

20 Q Right after Mr. Henson had been pulled over?

21 A Correct.

22 Q Okay. So, no, nobody else, as far as you know, did any
23 additional investigation?

24 A I'm not sure if Kevin Murphy was -- he was the
25 investigator at that, during that time. I'm not sure if he

Travis Barnette - Cross-examination
by Mr. Singleton

1 did or not.

2 Q Okay.

3 A I can't speak for his actions.

4 Q So, you state you went inside the house.

5 Did you enter the house through the front door?

6 A I did.

7 Q Do you remember what the front door looked like?

8 Do you remember if it had windows or a whole door
9 windows?

10 A The front door -- I don't really recall exactly. I
11 think it's -- it was more of a wooden door. I think there
12 was some designs on the window inside the door, but it had
13 two fairly large glass---

14 Q Okay.

15 A ---beside it.

16 Q Do you remember the designs on the side of it?

17 A I don't recall any designs on it cause I think I was
18 actually peeking through the window and she walked to the
19 door.

20 Q Okay. When you entered the house, did you -- which way
21 did you go in the house?

22 Did you go upstairs or did you just stay downstairs?

23 A I stayed downstairs. I never entered the upstairs
24 portion of the residence.

25 Q Did you go throughout, out, throughout the entire

Travis Barnette - Cross-examination
by Mr. Singleton

1 downstairs or just certain areas that were downstairs?

2 A No, just certain areas downstairs.

3 Q Okay.

4 A We never entered the kitchen area or anything like
5 that.

6 Q Okay. And I think Mrs. Ofori stated that the, when you
7 go in her house, the basement and the living room's off to
8 the left I believe a little bit?

9 A The living room -- if you -- once you go into the
10 residence, the living room's actually kind of straight in
11 front of you there.

12 Q Okay.

13 A The sofa's off to the right.

14 Q Okay.

15 A And there's a love seat in-between here and then her
16 staircase went up this way.

17 Q And where did you see these, these boot prints or
18 footprints in the house?

19 Did you see them in the living room area only or the
20 living or the hallway only or both or where?

21 A At that point I was in the foyer. I didn't see them
22 actually there until she and I both went into the parlor
23 area where she noticed that the camera was missing. That's
24 when I noticed the footprints. I asked her to step back out
25 from there, and she and I neither -- neither one of us went

Travis Barnette - Cross-examination
by Mr. Singleton

1 any further than that because there were several footprints
2 or bootprints that were pretty, pretty evident.

3 Q Okay. The entire time that you were there talking to
4 Mrs. Ofori did she ever state that she saw Mr. Henson in her
5 house?

6 A No.

7 Q The entire time that you were at, at Mrs., Mrs. Ofori's
8 house, she never mentioned she saw Mr. Henson in her
9 driveway?

10 A No, the, the only thing she said she saw that was in
11 her driveway was a moped, but she couldn't give any
12 description of the moped or the individual on it.

13 Q Okay. Now, the bootprints that she saw or footprints,
14 were they going only in one direction or were they going in
15 both directions or kind of---

16 A Both directions.

17 Q So, they were kind of stepped over and stuff?

18 A No. Well, yeah, I mean they -- there weren't once --
19 they were probably a little more than 15 of them, but it
20 wasn't---

21 Q Okay. Did you take a picture -- did you take that
22 picture of that boot print?

23 A I did not.

24 Q Okay. When you looked at that boot print, did it have
25 anybody's name on it?

Travis Barnette - Cross-examination
by Mr. Singleton

1 A No, sir.

2 Q Could you tell what kind of boot it was?

3 A No, sir.

4 Q Okay. So, we don't have, know what kind of boot -- by
5 looking at that boot print you have no clue what kind of
6 boot it is?

7 A No, sir, I don't.

8 Q Okay. Do you have any clue what size that boot was?

9 A No, sir, I don't.

10 Q Okay. And how long did you stay at Mrs. Ofori's
11 residence?

12 A Probably an hour and a half to maybe two hours. I was
13 there quite some time.

14 Q Okay.

15 A I had to wait on the forensics officer who took the
16 photographs to arrive. So --.

17 Q Okay. Were -- so, you were there the entire time that
18 the forensics officer there was?

19 A Yes, sir, I was.

20 Q Okay. When the forensics officer, officer was there,
21 at any point in time did the credit cards and camera arrive
22 at the house?

23 A I don't recall if he was still there or not. I know
24 Investigator Murphy -- actually I believe he was still there
25 when Investigator Murphy brought the camera and the credit

Travis Barnette - Cross-examination
by Mr. Singleton

1 cards back to the residence, yes.

2 Q Okay. Do you know if the forensic officer
3 fingerprinted those---

4 A I don't.

5 Q ---items?

6 A I don't know if he fingerprinted those items.

7 Q Did you instruct him to fingerprint those items?

8 A No, I did not. By that time there had been three or
9 four deputies who had actually touched those items. So --.

10 Q Okay. What about the camera, did you instruct him to
11 fingerprint or test the camera for any kind of DNA?

12 A No, sir, I did not.

13 Q Did you actually -- did you look at the pictures on the
14 camera at any point in time?

15 A I did not, no.

16 Q So, you don't know when the last picture was taken on
17 the camera?

18 A No, sir.

19 Q Okay. Before today did you ever hear about where the,
20 the wallet was found?

21 A No, sir, I did not.

22 Q So, today was the first time you heard it was found?

23 A That's correct.

24 Q Okay. When you were looking up and down -- was it just
25 Brockman McClimon or was it just the other road?

Travis Barnette - Cross-examination
by Mr. Singleton

1 A No, I went on Bennetts Bridge as well.

2 Q Bennetts Bridge as well.

3 A Yes, sir.

4 Q Did you just -- did you search any other yards or
5 anything like that or just search the side of the road?

6 A Just searched on the side of the roads within the area,
7 within the right of way to the roadway itself.

8 Q Okay. So, did you -- when you, when you leave her
9 subdivision, you can go to the right out of her subdivision.
10 It goes back towards Reidville Road. If you turn left it
11 goes back towards the interstate.

12 A That's correct.

13 Q Did you just search to the right of that?

14 A Yes.

15 Q So, you never went down to the left or anything like
16 that?

17 A I did not.

18 Q Okay. Why is that?

19 A At that point I was just trying to get some things
20 done. Trying to see if we could find it, and plus it was
21 roughly right around 5:30, six o'clock, beginning to get
22 dark anyway.

23 Q But you didn't go out the next day or anytime or any
24 other time in the last 12 months to look for it?

25 A No, sir.

Travis Barnette - Cross-examination
by Mr. Singleton

1 Q Okay. Well, do you think that would be a pretty
2 important piece of evidence to find?

3 A I would say it would. That's why I looked for it that
4 day.

5 Q Okay. But you just looked a few hours?

6 A Yes, sir.

7 MR. SINGLETON: Okay. One minute, Your Honor.

8 THE COURT: Yes, sir.

9 (Pause.)

10 Q Did you happen, while you were at Mrs. Ofori's
11 residence, did you happen to go look in the garage?

12 A I did.

13 Q And what did that garage look like at the time?

14 A It was dusty. There was some type of background
15 hanging. The actual doors to the garage looked to me like
16 what I would call castle doors.

17 Q Right.

18 A And when you open them up, there's some type of
19 background hanging there, a couple poles. The floor was
20 rather dusty and there was some like fake hundred dollar
21 bills that actually had written on it used for film
22 production.

23 Q Okay.

24 A She advised me that her husband actually did some rap
25 videos and things of that nature. So --.

Travis Barnette - Cross-examination
by Mr. Singleton

1 Q Okay. Did you actually -- did it appear that there
2 any, there was any sort of forced entry into any of those
3 doors---

4 A No, sir.

5 Q ---or did you get close enough to look at the doors?

6 A No, I looked at them. I didn't, I didn't see any type
7 of forced entry, no.

8 Q Okay.

9 A The garage door was unlocked when we approached it, and
10 the other two doors I never touched them. I just looked at
11 them.

12 Q Where did you -- how close did you get to the doors?

13 A To which doors?

14 Q The inside the doors I call inside of her house. The
15 one that leads from the garage -- the one that goes from the
16 garage to the mud room, the mud room to the residence.

17 A The one from the garage to the mud room, probably
18 15 feet.

19 Q Okay.

20 A The door from the inside to the mud room, a matter of
21 ten feet cause---

22 Q Okay.

23 A ---like I said, once I -- probably about eight feet.

24 Q Okay.

25 A Once I saw the feet, the bootprints, I didn't go any

Travis Barnette - Cross-examination
by Mr. Singleton

1 further. Didn't want to disturb any of that until it was
2 photographed.

3 Q Okay. I may of already asked this question, I'm not
4 positive, but did you ask Mrs. Ofori when she last saw her
5 credit cards?

6 A I don't recall that I did.

7 Q Did you ask her when she last used her credit cards or
8 her debit cards?

9 A I don't recall that, no, I don't.

10 Q Okay. And did you ask her when she last saw the camera
11 or used the camera?

12 A I don't recall asking her, but I believe she made the
13 comment that her husband had actually used it the weekend
14 prior at a football game.

15 MR. SINGLETON: Okay. That's all the questions I have,
16 Your Honor?

17 THE COURT: Redirect?

18 SOLICITOR POULOS: Nothing, Your Honor.

19 THE COURT: You may step tell down.

20 WITNESS: Thank you, sir.

21 THE COURT: Ask the attorneys to approach.

22 (WHEREUPON, a bench conference was held out of the
23 hearing of the jury at this time.)

24 THE COURT: All right. All right. Ladies and
25 gentlemen of the jury, we're about ten minutes till five

1 o'clock, and rather than try to get another witness in,
2 we're gonna break at this time for the afternoon.

3 Same cautions that I gave you when you left the
4 courthouse for lunch, and that is not to attempt to gather
5 any information on your own, not to listen to, watch, or
6 read media reports. Don't discuss the case with anyone, and
7 don't allow anyone to discuss the case with you. If anyone
8 attempts to do that, again, report that upon your return in
9 the morning.

10 We'll start at nine o'clock in the morning. If you'll
11 be back in the jury room just prior to that we should be
12 able to start pretty close to on time.

13 I hope everyone has a good evening and you're free to
14 go at this time. Thank you very much.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. The Court will be in recess
18 until nine o'clock in the morning.

19 Defendant remains in custody.

20 I would like to see the attorneys in chambers just
21 briefly.

22 Thank you very much.

23 MR. SINGLETON: Thank you, Your Honor.

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* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 ALFRED GUY HENSON,)
)
 DEFENDANT.)
 _____)

2011-GS-42-0351 AND 0352

October 11, 2011

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE ROGER L. COUCH, JUDGE

APPEARANCES:

TIMI POULOS, ESQUIRE
ATTORNEY FOR THE STATE

MAX SINGLETON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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STATE'S EXHIBITS

NO	DESCRIPTION	ID	EV
13	Photograph of bottom of Defendant's shoes worn when arrested	16	16

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

1	Stipulation of parties	22	

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had.)

3 **October 11, 2011**

4 THE COURT: All right. We're on the record in
5 the case of the State of South Carolina versus Alfred G.
6 Henson. We had a short break this morning and during the
7 break, I had a chambers conference with both attorneys.
8 And during that conference Mr. Singleton made the Court
9 aware that Mr. Henson believed that he had been seen by a
10 juror while he was in shackles.

11 Do you want to put that on the record, Mr. Singleton,
12 of what your client informed you of?

13 MR. SINGLETON: Yes, Your Honor. He told me that
14 when he was brought up from downstairs, from the jail right
15 behind the courthouse, at some point during that time he
16 came across one of the jurors he recognized. He said that
17 they looked at each other eye-to-eye, that he was wearing
18 his orange jumpsuit and shackles.

19 THE COURT: Does your client wish for me to
20 inquire of that juror as to whether or not he was
21 recognized or whether or not that would affect that juror's
22 impartiality?

23 MR. SINGLETON: Yes, Your Honor.

24 THE COURT: Can you identify the juror to the
25 Court?

1 MR. SINGLETON: He tells me it was a white male,
2 close to his age, which is his forties. The biggest built
3 white male in there. I don't think he had any glasses on.
4 He was basically muscular build. I guess weighed about two
5 hundred pounds.

6 THE COURT: Mr. Bailiff, do you have that
7 description?

8 THE BAILIFF: Yes, sir.

9 THE COURT: See if you can locate a juror that
10 fits that description.

11 Your client does wish for me to inquire into this. Is
12 that correct?

13 MR. SINGLETON: Yes, Your Honor.

14 THE COURT: All right. When the juror enters the
15 courtroom, I'm going to ask if your client will identify
16 him and will indicate whether that is the person he's
17 talking about before we start anything.

18 MR. SINGLETON: Yes, Your Honor.

19 (WHEREUPON, the bailiff enters the courtroom with the
20 juror.)

21 MR. SINGLETON: No, Your Honor.

22 THE COURT: All right. Let's take him back.
23 Well, let's bring the whole jury in. Thank you.

24 (WHEREUPON, the jury entered the open court at
25 approximately 11:11 a.m.)

1 THE COURT: I would ask the attorneys to
2 approach, please?

3 (WHEREUPON, Ms. Poulos and Mr. Singleton approached
4 the bar.)

5 THE COURT: Sir, I'm going to ask you to remain
6 seated. I'll ask the rest of the jury to retire to the
7 jury room. Thank you, very much. You, sir, if you'll
8 remain seated. In the front row, sir, right there, just
9 remain seated. Thank you.

10 (WHEREUPON, the jury exited the open court at
11 approximately 11:13 a.m.)

12 THE COURT: All right. Mr. Singleton, have I
13 identified the correct juror at this time?

14 MR. SINGLETON: Yes, Your Honor.

15 THE COURT: All right. Your name, sir?

16 THE JUROR: Steven Blackwell.

17 THE COURT: Mr. Blackwell, I'm going to remind
18 you that you've been placed under oath previously by the
19 Court to answer my questions truthfully, honestly and
20 completely and you remain under that oath at this time. Do
21 you understand that, sir?

22 THE JUROR: Yes, sir.

23 THE COURT: There's been some indication that you
24 may have had some contact with the Defendant this morning
25 upon your entering the courthouse. Do you recall having

1 any contact with the Defendant?

2 THE JUROR: If passing him in the hallway would
3 be considered contact, then yes.

4 THE COURT: Yes, sir. Can you describe to me
5 what happened?

6 THE JUROR: We just passed each other in the
7 hallway. He was being escorted by some officers. I was on
8 my way into the jury room, pretty much is all. There were
9 no words exchanged.

10 THE COURT: I understand. At that time, sir, he
11 apparently was in shackles and in prison garb. Is that
12 correct?

13 THE JUROR: Yes, sir.

14 THE COURT: All right. Now, sir, does the fact
15 that the Defendant may have been in custody at this time
16 and been in that condition, would that affect your ability
17 to continue as a juror and would it affect your ability to
18 be fair and impartial in this case?

19 THE JUROR: No, sir.

20 THE COURT: All right, sir. I'm going to ask if
21 the Defense has any specific questions you'd like for me to
22 ask of the juror?

23 MR. SINGLETON: None, Your Honor.

24 THE COURT: All right. Any that the State would
25 like to ask of this juror?

1 MS. POULOS: No, sir, Your Honor.

2 THE COURT: All right. Sir, I'm going to ask
3 that you return to the jury room and I'm also going to ask
4 you not to discuss this matter with any other juror or in
5 any way indicate to the other jurors that you have viewed
6 the Defendant in that particular state. Do you understand
7 that, sir?

8 THE JUROR: Yes, sir.

9 THE COURT: Okay. Thank you, sir. You can
10 return to the jury room.

11 (WHEREUPON, the juror returned to the jury room.)

12 THE COURT: All right. In regard to this
13 particular juror, does the Defense wish to make any motions
14 concerning that juror?

15 MR. SINGLETON: We would ask that he be dismissed
16 as a juror since he saw him. He says it has no bearing on
17 what the outcome of his decision will be, but, you know,
18 normally there's a reason why they don't come to Court with
19 prison garb on, with a prison uniform on. If the juror
20 sees that, they automatically may or may not think that
21 he's guilty. So we ask that we dismiss the juror because
22 he was seen with him being shackled.

23 THE COURT: Does the State have a position?

24 MS. POULOS: Your Honor, it's our position that
25 we would ask that you allow him to continue to serve on the

State of South Carolina -vs- Alfred Guy Henson (2011-GS-42-0351 and 0352)
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1 jury. He said that he saw him in passing. He stated it
2 would not affect his ability to serve as juror, would not
3 have any effect on his decision in rendering a verdict just
4 by seeing him in the prison garb and we would ask that you
5 allow him to serve.

6 THE COURT: All right. It's my understanding of
7 the law that I'm not required to dismiss the juror. It's
8 within my discretion. However, we do have an alternate in
9 this case. And in an abundance caution, I am going to
10 excuse the juror from the jury at this time.

11 Would you ask that particular juror to return to the
12 courtroom, please?

13 (WHEREUPON, the bailiff and the juror entered the
14 courtroom.)

15 THE COURT: Sir, you can be seated right there.
16 I have certain discretion concerning jurors sitting on
17 juries in this particular case. In an abundance of
18 caution, and certainly it's because of no fault of your own
19 or anything that you did wrong, you happened to just be in
20 that position and happened to have observed the Defendant
21 in that condition, I'm going to excuse you from service on
22 this case. I want to be sure that that factor would not
23 enter into anyone's decision in the matter. So I'm going
24 to excuse you and I'll ask you to call back in after six
25 o'clock this afternoon using the number. So the Bailiff's

1 will show you out. Thank you for your service. Again,
2 you've done nothing wrong. It's just I want to be sure
3 that the jury is fair and impartial and would not take that
4 factor into consideration in any way.

5 THE JUROR: No hard feelings on my part.

6 Thank you. I appreciate that. If you'll step out,
7 the Bailiff will show you out. Thank you, sir.

8 (WHEREUPON, the juror was dismissed from service on
9 this jury and exited the courtroom.)

10 THE COURT: All right. Any other matters that
11 need to be considered before we bring the jury in from the
12 State's perspective?

13 MS. POULOS: No, sir, Your Honor.

14 THE COURT: From the Defense perspective?

15 MR. SINGLETON: None, Your Honor.

16 THE COURT: All right. Is the State ready to
17 proceed?

18 MS. POULOS: Yes, sir.

19 THE COURT: Is the Defense ready to proceed?

20 MS. POULOS: Yes, Your Honor.

21 THE COURT: Bring the jury in.

22 (WHEREUPON, the jury entered the open court at
23 approximately 11:19 a.m.)

24 THE COURT: All right. Ms. Heck, you're the
25 alternate in this case. I have excused one of the jurors

1 in this matter, so now you are a member of the jury panel
2 as a regular member, so you no longer have to sit in that
3 seat. You're fine right now, but when you come in you'll
4 be seated with the remainder of the jury. Do you
5 understand?

6 THE JUROR: Yes, sir.

7 THE COURT: All right. When we broke yesterday I
8 gave you some instructions concerning your behavior. If
9 any juror failed or refused to follow my instructions, I'd
10 like for that juror to please stand.

11 It appears that all jurors have been able to comply
12 with the Court's instructions. At this time, we'll proceed
13 with the State's case in this matter. You may call your
14 next witness.

15 MS. POULOS: Thank you, Your Honor. The State
16 calls Deputy Kevin Murphy.

17 THE COURT: Come forward, sir, to my left and be
18 sworn.

19 THE CLERK: Do you swear or affirm the testimony
20 you give will be the truth, whole truth and nothing but the
21 truth, so help you God?

22 WITNESS: I do.

23 THE COURT: Be seated, sir. Once seated, please
24 state your name.

25 WITNESS: Kevin Murphy.

1 THE COURT: You may proceed.

2 KEVIN MURPHY,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. POULOS:

6 Q. Deputy Murphy, tell the jury where you are employed?

7 A. Spartanburg County Sheriff's Office.

8 Q. And were you on duty on November the 8th of 2010?

9 A. I was.

10 Q. How did you become involved in this case?

11 A. I was contacted by Deputy Wilson in reference to this
12 case. At the time, I was working as an investigator for
13 the Sheriff's Office.

14 Q. What was that call and what did he tell you?

15 A. He advised me that he had conducted a traffic stop on
16 an individual and when the individual jumped off the moped
17 he threw some items up under a car and that they possibly
18 could be stolen.

19 Q. So you went to the scene to investigate?

20 A. Yes.

21 Q. And did you see the Defendant?

22 A. I did.

23 Q. Did you have any conversations with him?

24 A. Just briefly.

25 Q. Do you recall what he was wearing at the time?

State of South Carolina -vs- Alfred Guy Henson (2011-GS-42-0351 and 0352)
Kevin Murphy - Direct Examination by Ms. Poulos

13

1 A. He was wearing some coveralls, they were dark colored.
2 Could have been brown or black. I'm not exactly sure. I
3 don't remember.

4 Q. All right. What happened at the scene?

5 A. I went to the scene, looked at the items that were
6 recovered. The camera and the three credit cards, saw that
7 there was a name of Leslie Ofori on the credit cards, along
8 with the picture of a black female. I also looked on the
9 camera at pictures on the camera. I was able to see that
10 there were some football pictures, a black male -- two
11 black males standing beside each other, it appeared to be
12 at a Burns football game or something like that.

13 Q. Did you then go to the victim's home?

14 A. I did.

15 Q. And did you speak with Ms. Ofori?

16 A. I did.

17 Q. What was the location of that?

18 A. I believe it was Meyers Street.

19 Q. What did Ms. Ofori tell you?

20 A. She told me that she had been upstairs taking a
21 shower, that she heard something downstairs, you know, she
22 later went out, called out to her husband, called his name
23 out, didn't hear anything. She finished getting dressed,
24 went downstairs, noticed that the doors were open into her
25 garage and the mud room area. And she thought something

1 was odd so she called her husband. She started checking
2 things out. Then later Deputy Sergeant Barnett arrived at
3 her house.

4 Q. Did she tell you that she saw the Defendant?

5 A. She stated that she saw someone on a moped leaving her
6 driveway.

7 Q. Now, you stated that when you were at the scene when
8 the Defendant was arrested there was a camera and three
9 credit cards?

10 A. Yes.

11 Q. Did Ms. Ofori identify those items as being hers?

12 A. Yes.

13 Q. Did she state that she had given him or anybody
14 permission to have her camera or the credit cards?

15 A. She had given no one permission to have those things.

16 Q. Did you have an opportunity to look around the
17 residence?

18 A. I did.

19 Q. Did you notice anything unusual?

20 A. I noticed footprints on the hardwood floors in the
21 house.

22 Q. How many footprints would you say there were?

23 A. There were several.

24 Q. Now, do you recall, were any fingerprints located in
25 the home to your knowledge?

State of South Carolina -vs- Alfred Guy Henson (2011-GS-42-0351 and 0352)
Kevin Murphy - Direct Examination by Ms. Poulos

15

1 A. There were not.

2 Q. After you left the victim's home, did you go to the
3 Sheriff's Office to speak with the Defendant?

4 A. I did.

5 Q. And did you advise him of his rights at that time?

6 A. I did.

7 Q. Did he voluntarily sign a pre-interrogation form?

8 A. He did.

9 Q. Did he give a written statement?

10 A. No.

11 Q. Did you ask for consent to search his person?

12 A. I did.

13 Q. And did he voluntarily sign a permission to search?

14 A. Yes, he did.

15 Q. And did you obtain the shoes that he was wearing when
16 he was arrested?

17 A. I did.

18 Q. Do you recall what type of shoes they were?

19 A. They were Timberland boots.

20 Q. Do you recall what size they were?

21 A. They were ten mediums.

22 Q. Okay. Deputy Murphy, I'm showing you what's been
23 marked as State's Exhibit 13 for identification purposes.

24 Can you identify what's in that picture?

25 A. It's a picture of the boots that the Defendant was

1 wearing.

2 Q. And you were present when that photograph was taken?

3 A. I was.

4 Q. To your recollection does that photo fairly and
5 accurately represent a photograph of the bottom of the
6 Defendant's shoe that he was wearing at the time of this
7 incident?

8 A. Yes.

9 MS. POULOS: Your Honor, at this time we'd ask
10 that State's Exhibit 13 be admitted into evidence.

11 THE COURT: Any objection?

12 MR. SINGLETON: No objection.

13 THE COURT: Without objection, it will be
14 received into evidence as marked.

15 MS. POULOS: Thank you, Your Honor.

16 (WHEREUPON, State Exhibit Number 13 was marked and
17 admitted into evidence.)

18 MS. POULOS: Permission to publish?

19 THE COURT: You may publish.

20 (WHEREUPON, State Exhibit Number 13 was published for
21 the jury.)

22 Q. Now, Deputy Murphy, you testified earlier that you
23 observed shoe prints in the home. How many prints did you
24 say you saw?

25 A. There were several.

State of South Carolina -vs- Alfred Guy Henson (2011-GS-42-0351 and 0352)
Kevin Murphy - Cross Examination by Mr. Singleton

17

1 Q. And where were those prints located?

2 A. In the hallway leading from the door from the garage
3 area.

4 Q. I'm showing you what's already been admitted into
5 evidence as State's Exhibit 12. Can you identify what's in
6 that photograph?

7 A. It's the shoe print that was on the hardwood floors
8 inside the house, one of the shoe prints.

9 Q. Now, Deputy Murphy, were you the officer who obtained
10 the warrants for the Defendant?

11 A. I was.

12 Q. And what were those warrants for?

13 A. Burglary first and grand larceny.

14 Q. Thank you. Please answer any questions that Mr.
15 Singleton may have.

16 THE COURT: Do you need the lights up or down?

17 MR. SINGLETON: I'd ask that they stay up, if
18 possible.

19 THE COURT: You want to leave the lights up?
20 Okay.

21 MR. SINGLETON: Yes, Your Honor.

22 THE COURT: You may proceed. Your witness.

23 MR. SINGLETON: May it please the Court?

24 THE COURT: Yes, sir.

25

CROSS-EXAMINATION

1 BY MR. SINGLETON:

2 Q. Investigator Murphy, what time did you receive a call
3 from Deputy Wilson.

4 A. It was around, probably around two-thirty or so.

5 Q. Around two-thirty? Were you -- when you got on the
6 scene, who was already at the scene on Reidville Road?

7 A. When I got there it was Deputy Wilson, Deputy Turner
8 and Deputy Brown.

9 Q. Anybody else there? Sergeant Barnett or anybody else
10 there?

11 A. He'd already left.

12 Q. Okay. And how long did you stay at the scene?

13 A. Probably fifteen, twenty minutes.

14 Q. And did you transport Mr. Henson to the jail or did
15 you just meet him up there?

16 A. Deputy Turner transported him to the Sheriff's office.

17 Q. Okay. And you observed -- you stated earlier you
18 observed several footprints in the home, is that correct?

19 A. Yes, sir.

20 Q. Could you tell where those footprints were coming
21 from? Where they were coming from or where they were going
22 to?

23 A. I don't recall.

24 Q. How close did you get to the footprints?

25 A. Probably three or four feet away.

State of South Carolina -vs- Alfred Guy Henson (2011-GS-42-0351 and 0352)
Kevin Murphy - Redirect Examination by Ms. Poulos

19

1 Q. Okay. And did you take those photographs or anything?

2 A. I did not.

3 Q. So you didn't take either one of these photographs?

4 A. No, sir. Well, I believe I took a picture of the
5 actual boot.

6 Q. What about the photo on the right, was that taken by
7 the forensic officer?

8 A. That was taken by the forensic officer.

9 Q. Do you have any idea what size boot that is on the
10 right-hand side?

11 A. I do not know.

12 Q. You couldn't tell by looking at it?

13 A. No, sir.

14 Q. So you have no idea whose boot print that is, do you?

15 A. No, sir.

16 Q. And you can't tell from this picture whether it was a
17 size ten or whether it was a size thirteen or a size eight
18 or nine or anything like that, can you?

19 A. No, sir.

20 Q. Okay.

21 MR. SINGLETON: No other questions, Your Honor.

22 THE COURT: Ms. Poulos, you wish to ask any
23 additional questions? You may redirect.

24 MS. POULOS: Thank you, Your Honor.

25

REDIRECT EXAMINATION

1 **BY Ms. POULOS:**

2 Q. Deputy Murphy, you did not take the photograph on the
3 right. But you stated earlier that you were present when
4 that photograph was taken, correct?

5 A. I was.

6 Q. And that photograph clearly and accurately represents
7 the photograph of the prints in the home?

8 A. It does.

9 Q. Thank you.

10 THE COURT: Any other questions?

11 MR. SINGLETON: None, Your Honor.

12 THE COURT: You may step down. Thank you very
13 much. The State may call its next witness.

14 MS. POULOS: Your Honor, that would be all of the
15 State's Witnesses.

16 THE COURT: Do you have other matters you wish to
17 place on the record?

18 MS. POULOS: Yes, sir, Your Honor. The State and
19 Defense has agreed to stipulations I'd like to pass up.

20 THE COURT: If you'll pass it up, please. You
21 can hand it to the officer. Thank you.

22 Mr. Singleton it is correct that the Defense has
23 entered into the stipulation that has been to the Court as
24 well. Is that correct?

25 MR. SINGLETON: Yes, Your Honor.

1 THE COURT: Ladies and gentlemen, let me explain
2 to you what we're doing at this point in time. When the
3 attorneys in a case and the parties agree upon the fact
4 that certain matters are true, those matters are not
5 required to be proven by testimony or evidence. They're
6 placed into the record by way of a stipulation. A
7 stipulation is an agreement between the parties that
8 certain facts are, in fact, true and can be considered by
9 you in reaching your verdict in the case.

10 I'm going to read the stipulation that I've been
11 handed in this matter. Of course, at the top indicates
12 this case and the case numbers that are involved.

13 The body of the stipulation says:

14 The parties hereby stipulate to the following as fact:
15 That the Defendant, Alfred Henson has two prior convictions
16 for burglary. These convictions are as follows: 1993,
17 burglary second degree; 2001, burglary third degree.
18 Attached are certified copies of both convictions and are
19 part of this stipulation. The parties agree that these
20 convictions will be read during the trial and made a part
21 of the record. That was signed and entered into by the
22 attorneys, the Defendant, on the 10th day of October. It
23 has been marked as Court's Exhibit Number 1 and is now a
24 part of the record of the case.

25 Mr. Bishop, if you'll hand that down to the Court,

1 Reporter for me.

2

3 (WHEREUPON, Court Exhibit Number 1 was marked for
4 identification.)

5 Any other matters from the State before you rest?

6 MS. POULOS: No, sir, Your Honor, the State
7 rests.

8 THE COURT: All right. Ladies and gentlemen, the
9 State has rested in this case. That completes the
10 presentation of the evidence by the State. Now, there's
11 some matters that I have to take up with the attorneys
12 before the Defense has the opportunity to call any
13 witnesses that the defense chooses to call. And at this
14 time, again, I'll ask you to step back to the jury room.
15 And don't discuss any matters concerning the case or
16 anything that has to do with the case until I've advised
17 you to do so. You may retire to the jury room. Thank you
18 very much.

19 (WHEREUPON, the jury exited the open court at
20 approximately 11:31 a.m.)

21 THE COURT: Any motions at this time from the
22 State?

23 MS. POULOS: Nothing from the State, Your Honor.

24 THE COURT: Any from the Defense?

25 MR. SINGLETON: We'd ask for a directed verdict,

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Kevin Murphy - Redirect Examination by Ms. Poulos

23

1 Your Honor.

2 THE COURT: All right. Considering the evidence
3 I find that there is sufficient evidence to justify the
4 case going forward to the jury. So the motion for directed
5 verdict would be denied. Is there any specific matters
6 you'd like for me to consider in that regard?

7 MR. SINGLETON: Well, Your Honor, in regards to
8 the grand larceny -- I don't know if you want me to go each
9 charge-by-charge.

10 THE COURT: However you want to present it.

11 MR. SINGLETON: Well, in regards to the grand
12 larceny, according to, you know, the definition of larceny
13 is the taking of goods that are not -- there's no proof
14 that he took these items. All they have proof of is that
15 he was in possession of these items. They have no proof.
16 Nobody saw him take a camera, nobody saw him take the
17 credit cards. Already taken from this house at least.
18 Nobody saw him take them from the house. Nobody saw him
19 take them from the side of the road or anywhere. All
20 they've got is him in possession of these items.

21 Regarding the burglary, obviously he's got two prior
22 convictions of burglary second and burglary third. But
23 even to get to that point, they have to prove that he
24 entered into the house. There's no indication that he ever
25 set foot in the house. All they have is the boot prints.

1 A boot print. That the victim has already stated that her
2 husband wears Timberland boots. My client was found with
3 Timberland boots on that date, but they didn't identify
4 that those boot prints were Timberland boot prints. Nobody
5 said they were Timberland boot prints. There's no
6 eyewitness that saw my client inside the house. Ms. Ofori
7 didn't see him inside the house. There's no DNA, there's
8 no fingerprints, there's no witness or neighbors that saw
9 him leave the house or anything. There's nothing to show
10 that he set foot in the house. All they've got is a moped
11 leaving the driveway and then my client being found in
12 possession of those items.

13 THE COURT: Anything from the State on those
14 questions?

15 MS. POULOS: Yes, sir, Your Honor. Your Honor,
16 we believe that we have developed sufficient testimony as
17 to both of the charges in the case, although a lot of the
18 evidence is circumstantial. In this situation we believe
19 it would be sufficient to allow the case to go forward to
20 the jury.

21 THE COURT: I am required in this situation to
22 not only review the evidence but also any inferences that
23 can be reasonably drawn from the evidence. In other words,
24 circumstantial evidence. And in this case it appears that
25 the State has presented evidence that the Defendant was in

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1 possession of recently stolen goods. The time frame and
2 proximity concerning the location -- locations where he was
3 seen that day by the police and also the location where he
4 was apprehended, are all within a reasonable distance of
5 the location that occurred. We have evidence from the
6 victim that she heard a person in her home and viewed a
7 person leaving her home on a moped, which the Defendant had
8 been seen on two occasions that day riding on a moped.
9 Footprints were found in the home, which match the shoes
10 that the Defendant had on as far as make of shoe. I
11 realize that's not conclusive, but it's another evidentiary
12 fact from which a reasonable inference might be drawn. And
13 the Defendant was in possession of recently stolen goods,
14 some of which had identifying marks on them tracing them
15 directly back to the victim in this case.

16 I think all of those factors, when you take them
17 together, a reasonable inference could be drawn by a juror
18 sufficient to send the case to the jury for their decision.
19 So the motion is denied.

20 MR. SINGLETON: Thank you, Your Honor.

21 THE COURT: Are there any other matters or
22 motions that the Defense wishes to present to the Court at
23 this time?

24 MR. SINGLETON: None, Your Honor. Do you want to
25 inquire ---

1 THE COURT: I'm going to inquire of your client
2 concerning his right to testify.

3 Madam Clerk, at this time, if you would, please, swear
4 the Defendant.

5 THE CLERK: Please stand and raise your right
6 hand? Do you swear or affirm the testimony you will give
7 will be truth, whole truth and nothing but the truth so
8 help you God?

9 MR. HENSON: I do.

10 THE COURT: You can be seated, Mr. Henson.

11 At this time I'm going to explain to you certain of
12 your Constitutional rights. When I finish if there's
13 anything that you didn't understand or anything that you
14 feel that I need to explain further, please let me know and
15 I'll be glad to go over this again to be sure that you
16 understand these rights that I've explained.

17 We've reached the stage of the trial where you have
18 the right to present your Defense. In doing so, you have
19 the right also to claim the protections which are given to
20 you by the Fifth Amendment to the United State's
21 Constitution. That Amendment reads in part that no person
22 shall be compelled in any criminal case to be a witness
23 against himself. Now, what that means is that you cannot
24 be required to testify in this case. Certainly, you do
25 have the right to testify on your own behalf, but no one

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1 can make you testify. The right to remain silent during a
2 trial such as this is a personal right that you have. No
3 one can give up that right to remain silent except
4 yourself.

5 I will advise you that if you decide to testify you'll
6 be subject to the rules that govern other witnesses'
7 testimony. That means that you will be examined by your
8 lawyer and you would also be cross-examined by the State's
9 attorney. And in addition to that cross-examination,
10 should you have any convictions on your record that have
11 involved dishonesty or false statements or for crimes which
12 were punishable by the imprisonment of yourself for more
13 than one year and then this Court makes a determination
14 that the probative value of admitting this evidence
15 concerning your credibility outweighs its prejudicial
16 effect, then the Solicitor would be able, if I make that
17 finding, to introduce that record to attack your
18 credibility.

19 Now, if you decide to testify, that decision on your
20 part must be made freely, voluntarily, and intelligently.
21 That means that you have knowledge of the protections which
22 are given to you by the Fifth Amendment and the
23 consequences that might result from your decision to
24 testify. I will advise you that if you decide not to
25 testify that I will instruct the jury that the fact that

1 you have not testified cannot be considered by them at all
2 in reaching a decision in this case. In other words, that
3 there would be absolutely no prejudice to you because you
4 did not testify.

5 Now, the decision to testify is left entirely up to
6 you. You have the right to discuss that decision with your
7 attorney, your family members, your friends or anyone else
8 that you choose to discuss it with. But the final decision
9 is yours and yours alone. Mr. Henson, do you understand
10 what I've explained to you about these rights?

11 MR. HENSON: Yes, sir.

12 THE COURT: Do you have any questions or
13 misunderstandings concerning what I've explained?

14 MR. HENSON: No, sir.

15 THE COURT: Have you had an opportunity to
16 discuss the decision as to whether or not to testify with
17 your lawyer in this case?

18 MR. HENSON: Briefly.

19 THE COURT: Do you wish to discuss it further
20 with him?

21 MR. HENSON: Yes, sir.

22 THE COURT: All right, sir. The Court will take
23 a short recess. I will allow you to return back to the
24 jail room where you can discuss this. The Court is in
25 recess until this discussion is complete. Thank you very

1 much.

2 (WHEREUPON, the court stood at recess for a short
3 break.)

4 THE COURT: All right. We're back on the record
5 in the case of the State of South Carolina versus Alfred
6 Henson. Mr. Henson, have you had an opportunity to discuss
7 this decision?

8 MR. HENSON: Yes, sir.

9 THE COURT: Have you discussed it with everyone
10 you'd like to discuss it with?

11 MR. HENSON: Yes, sir.

12 THE COURT: Have you made a decision as to
13 whether or not you wish to testify in the case?

14 MR. HENSON: Yes, sir.

15 THE COURT: Are you going to testify?

16 MR. HENSON: No, sir.

17 THE COURT: Okay. Anything further from the
18 Defense before we proceed?

19 MR. SINGLETON: Nothing, Your Honor. I didn't
20 know if you wanted -- what we talked about in your chamber
21 about the proffer of testimony.

22 THE COURT: Oh, yes. Let's do talk about that
23 briefly. I mentioned to your lawyer, Mr. Henson, this
24 morning that there was some discussion at the beginning of
25 the trial concerning the possibility that you would present

1 evidence of third-party guilt. And at that time he
2 verbally told me what he intended to produce, but I did not
3 receive the actual testimony or evidence on that point.
4 And, again, I will revisit that decision if you would like
5 to go over with me the specific evidence that you might be
6 willing to -- or be in a position to produce concerning a
7 third-party's guilt in this matter. So if you would like
8 to discuss this with your lawyer, please do and then I'll
9 find out from you whether you wish to make your proffer on
10 that point.

11 MR. HENSON: Thank you. No, Your Honor.

12 THE COURT: Mr. Henson, do you wish to make a
13 proffer on that point concerning that evidence?

14 MR. HENSON: No, sir.

15 THE COURT: So what's been presented was
16 sufficient?

17 MR. HENSON: Yes, sir.

18 THE COURT: My ruling would remain the same then
19 in viewing the evidence and the strength of the evidence
20 that was indicated by the Defense, that it would not be
21 sufficient to allow that testimony to be presented to the
22 jury. Does the Defense intend to call witnesses?

23 MR. SINGLETON: Yes, Your Honor. The only
24 witness we intend to call is Deputy Wilson.

25 THE COURT: All right. Well, let's get the jury

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1 in and we'll take care of that.

2 MR. SINGLETON: Thank you, Your Honor.

3 THE COURT: Is the State ready?

4 MS. POULOS: Yes, sir, Your Honor.

5 THE COURT: Is the Defense ready?

6 MR. SINGLETON: Yes, Your Honor.

7 THE COURT: Bring the jury in.

8 (WHEREUPON, the jury entered the open court at
9 approximately 11:52 a.m.)

10 THE COURT: All right. The record will reflect
11 that the jury has returned to the courtroom. At this time,
12 the Defense has the right to call any witnesses that the
13 Defense chooses to call. Mr. Singleton.

14 MR. SINGLETON: Your Honor, we'd call Deputy
15 Wilson.

16 THE COURT: Deputy Wilson, if you'll return to
17 the jury stand -- I mean, the witness stand, excuse me. I
18 would remind you that you've been placed under oath for
19 purposes of this trial and that oath still applies. Do you
20 understand that?

21 DEPUTY WILSON: Yes, sir.

22 THE COURT: Have a seat, please. Mr. Singleton,
23 your witness.

24 JASON WILSON,

25 HAVING PREVIOUSLY BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION

2 BY MR. SINGLETON:

3 Q. Good morning, Deputy Wilson.

4 A. Good morning.

5 Q. I just want to ask you a few brief questions. I just
6 want to go back to when you said you saw Mr. Henson at the
7 convenience store earlier that day at noon. And you
8 stated, I believe, that y'all had a conversation.

9 A. Correct.

10 Q. And did you feel that that conversation -- you say
11 that he didn't give you his last name. You asked for his
12 last name, but he didn't give it to you.

13 A. Correct.

14 Q. Did he say it in any sort of derogatory manner or did
15 he say ---

16 A. No, sir.

17 Q. He just said, I'm not going to -- he said, I'm not
18 going to tell you?

19 A. He just kind of said, well, I'm not saying.

20 Q. Okay. So he didn't say it like in a mean way or use
21 any curse words or anything like that?

22 A. No, sir.

23 Q. Do you remember what he was wearing that day? I mean,
24 what kind of clothing, what kind of shirt or pants or
25 anything he was wearing?

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1 A. It appeared to be brown, dark brown overalls.

2 Q. Okay. And yesterday you said you were certain about
3 what he wore, about what color he wore?

4 A. Right.

5 MR. SINGLETON: Your Honor, may I approach the
6 witness?

7 THE COURT: You may.

8 Q. This is a bag. Can you state what's written on that
9 bag?

10 A. Henson, Alfred Guy.

11 Q. Is there a number on top of the bag?

12 A. It looks like L-81 or 281.

13 Q. Okay. And this is evidence -- not evidence, I'm
14 sorry. These are a bag that I received from the detention
15 center this morning of what he was wearing when he was
16 booked in.

17 A. Okay.

18 Q. And you stated he was -- what, was he wearing a brown
19 shirt or a brown coveralls?

20 A. It was like dark brown coveralls.

21 Q. Okay.

22 MR. SINGLETON: Can I approach, Your Honor.

23 THE COURT: You may.

24 Q. How close did you get to Mr. Henson before -- at the
25 convenience store? How close were y'all?

1 A. Six, ten feet away.

2 Q. Closer than this or closer to ---

3 A. Closer to you.

4 Q. Okay. What do those look like to you? Do those look
5 black or brown?

6 A. They look black.

7 Q. Okay. But you were certain yesterday they were brown?

8 A. Yes, sir.

9 Q. But today they're black?

10 A. Correct.

11 Q. Okay. So your certainty is -- obviously, you made a
12 mistake when you said they were brown?

13 A. It appears that my color was wrong.

14 Q. Okay. Now, when you went to the scene at Reidville
15 Road, you stated you saw my client throw a camera?

16 A. Correct.

17 Q. Are you certain you saw him throw a camera?

18 A. Yes, sir.

19 Q. Your co-worker testified that he saw a throwing
20 motion. But you're certain you saw him throw a camera, not
21 an object or not a throwing motion?

22 A. Correct.

23 Q. Okay. Are you certain it was a throwing motion and
24 not a placement motion?

25 A. Well, like I said, I couldn't remember. It looked

1 like it was just being tossed.

2 Q. Tossed underhanded or like a baseball.

3 A. It wasn't like a baseball.

4 Q. So it was basically underhanded?

5 A. Correct.

6 Q. And you're certain that you saw him toss a camera and
7 not just an object?

8 A. Yes, sir.

9 Q. And, again, just to reiterate. When he was talking to
10 you that morning, he wasn't talking to you in a derogatory
11 manner or anything like that?

12 A. No, sir.

13 Q. Was he cordial to you, except for the response he gave
14 you?

15 A. Correct, yes.

16 Q. But he didn't give it to you in a mean manner or
17 anything like that?

18 A. No, sir.

19 Q. How was he at the scene when you pulled him over on
20 Reidville Road? Was he -- because we have testimony from
21 Sergeant Barnett that he was cordial to him. Was he nice
22 to you?

23 A. Yeah. He really didn't say anything out there.

24 MR. SINGLETON: Nothing further, Your Honor.

25 THE COURT: The State may cross-examine.

1

CROSS-EXAMINATION

2 BY MS. POULOS:

3 Q. Deputy Wilson when you saw the Defendant outside the
4 restaurant, he was wearing coveralls, correct?

5 A. Correct.

6 Q. They were a dark color, correct?

7 A. Correct.

8 Q. They weren't red, correct?

9 A. No.

10 Q. They weren't yellow?

11 A. No.

12 Q. It wasn't a coat?

13 A. No.

14 Q. It was coveralls?

15 A. Correct.

16 Q. Okay. Now, later on you saw him on the same blue
17 moped, correct, wearing coveralls?

18 A. Correct.

19 Q. A dark color coveralls, correct?

20 A. Yes.

21 Q. And you're absolutely sure it was the same guy you had
22 seen earlier?

23 A. Yes.

24 Q. And he was the same person that you saw throwing out
25 the camera, correct?

1 A. Yes.

2 Q. Credit cards? Well, the camera.

3 A. The camera.

4 Q. Yes, sir.

5 MS. POULOS: Your Honor, may I have a moment?

6 THE COURT: Yes, ma'am.

7 MS. POULOS: Thank you, Your Honor. That's all I
8 have.

9 THE COURT: Anything on redirect?

10 MR. SINGLETON: Just one or two questions, Your
11 Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. SINGLETON:**

14 Q. Deputy Wilson, you said you saw him throw underhanded
15 a camera. Did you see him throw anything else or was it
16 just a camera?

17 A. All I saw was the camera.

18 Q. Okay.

19 MR. SINGLETON: That's all, Your Honor.

20 THE COURT: Anything further, Ms. Poulos?

21 MS. POULOS: No, sir.

22 THE COURT: You may step down. Does the Defense
23 wish to call any other witness?

24 MR. SINGLETON: No, Your Honor.

25 THE COURT: Does the State wish to call any

1 witnesses in reply or rebuttal?

2 MS. POULOS: No, sir, Your Honor.

3 THE COURT: All right. Ladies and gentlemen of
4 the jury, that concludes the presentation of all of the
5 evidence in this case and at this point in time we'll be
6 proceeding -- our next step in the trial will be the
7 closing arguments by counsel. I also note that because of
8 our problems this morning, we've already reach noon today.
9 So I'm going to break at this time for lunch. We'll be
10 back and you'll be back in the jury room at one-fifteen
11 this afternoon and we'll resume the trial at that point in
12 time. I'm going to ask that you wait just a moment.

13 Because of the court reporter situation I want to be sure
14 that we can start at that time. So let me check on that
15 before I finally release you.

16 I'll give you the same instructions though on leaving
17 the courthouse that I always give you, that is not to
18 gather any information on your own, don't listen to, watch
19 or read any media reports. Don't discuss the case with
20 anyone and don't allow anyone to discuss the case with you.
21 Please report any contact that you might have concerning
22 this case upon your return to the courthouse.

23 At this time, I'll ask you to step into the jury room.
24 Let me check on my court reporter situation before I give
25 you the exact time to be back. If you'll have a seat in

1 the jury room, I'd appreciate it. Thank you very much.

2 (WHEREUPON, the jury exited the open court at 11:58
3 a.m.)

4 THE COURT: All right. Tell the jury one-fifteen
5 is correct. All right. Court's in recess until one-
6 fifteen. Thank you very much.

7 (WHEREUPON, the court stood at recess for a lunch
8 break.)

9 THE COURT: All right. Is the State ready to
10 proceed in the case?

11 MS. POULOS: Yes, sir, Your Honor.

12 THE COURT: Is the Defense ready to proceed?

13 MR. SINGLETON: Yes, Your Honor. But I just want
14 to make my motion for directed verdict again.

15 THE COURT: Yes, sir. You may do so.

16 MR. SINGLETON: Just on the same basis I did
17 toward the end of the State's case using the same grounds
18 as I did before.

19 THE COURT: The motion is noted and the Court
20 would make the same ruling.

21 MR. SINGLETON: Thank you, Your Honor.

22 THE COURT: All right. You did present evidence,
23 Mr. Singleton, so you'll be going first in the closing
24 arguments. Are you aware of that?

25 MR. SINGLETON: I thought I went last again.

1 Okay.

2 THE COURT: And the Defense [sic] will be going
3 last. All right. Is the State ready?

4 MS. POULOS: Yes, sir, Your Honor. The State
5 gets to go last, correct, Your Honor?

6 THE COURT: That's right.

7 MS. POULOS: I just wanted to make sure.

8 THE COURT: Since he presented evidence.

9 MS. POULOS: Yes, sir.

10 THE COURT: Is the Defense ready?

11 MR. SINGLETON: Yes, Your Honor.

12 THE COURT: Bring the jury in.

13 (WHEREUPON, the jury entered the open courtroom at
14 approximately 1:15 p.m.)

15 THE COURT: All right. The record will reflect
16 that the jury has returned to the courtroom. Did any juror
17 have any difficulty in following my instructions during the
18 break? If anyone did, I'd ask that you now please stand.
19 It appears that all jurors have been able to comply with my
20 instructions.

21 I told you that upon our return we would go into the
22 phase of the trial where the attorneys are allowed to give
23 their final statement or argument in the case. In this
24 case, the Defense will be going first. Mr. Singleton, you
25 may proceed.

1 MR. SINGLETON: May it please the Court?

2 THE COURT: Yes, sir.

3 **CLOSING STATEMENT**

4 **BY MR. SINGLETON:**

5 Ladies and gentlemen, thank you for giving us your
6 attention the last, I guess, day and a half now. What I
7 asked you to do at the beginning of this case on yesterday
8 was that you pay attention and that you would listen to
9 everybody that testified, all the officers that testified
10 and all -- and the victim that testified and take into
11 account what they were saying and not saying. And I just
12 want to briefly go over kind of a summary of what was
13 stated in the last day and a half.

14 My client is here for two reasons. Well, he has two
15 charges pending against him. He has a grand larceny and a
16 burglary first degree. In order to prove him guilty, you
17 have to prove him guilty beyond a reasonable doubt. Not
18 just that maybe he did it or the possibility he did it.
19 The Judge will give you instructions on what reasonable
20 doubt means. But you have to have some strong belief that
21 he committed this crime.

22 I contend to you that there's no evidence that he
23 committed either of these crimes. In order to find him
24 guilty -- first of all, I want to go to the time line, back
25 up a little bit to the time line because I believe the time

1 line is important.

2 There was -- the victim stated that she got into the
3 shower at one o'clock, because she remembers that time.
4 That's when Judge Judy was on. However, you could go --
5 and the officers stated that they pulled him over at one
6 fifty-two. But if you listen to what their testimony was,
7 all five officers -- I believe it was five if I can add
8 correctly -- and what the victim states, the time line to
9 me does not match up. At one fifty-two they pulled Mr.
10 Henson over in his driveway. They did not get a 9-1-1 call
11 or anything to be on the lookout for Mr. Henson or anybody
12 on a moped because a burglary had just been committed up
13 the road. The reason for that is because nobody knew that
14 anything happened. So at one fifty-two they pulled him
15 over for a traffic violation. The officer -- Deputy Wilson
16 and Sergeant Barnett, I believe, both testified that Deputy
17 Wilson called Sergeant Barnett on his cell phone about two
18 o'clock or so. Sergeant Barnett and the other officers
19 could not tell with certainty or any kind of reasonableness
20 how long it took him to get to the scene. So I asked him
21 if it was fifteen to thirty minutes? He said, well, yeah
22 it could have been fifteen or thirty minutes or it could
23 have been more. But I've given him the benefit of the
24 doubt that somewhere in between fifteen and thirty minutes
25 would be twenty-two minutes. So let's say he arrived on

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1 scene at Reidville Road at two twenty-two, which would be
2 twenty-two minutes later after he got the call from Mr.
3 Wilson or Deputy Wilson. He stated Sergeant Barnett stated
4 that he was on the scene for about ten minutes, talked to
5 my client in the back of the car, talked about their high
6 school days or whatever, had a cordial conversation, and
7 then they determined the identity of the person on the
8 credit cards and their current address. Ten minutes --
9 after he'd been on the scene for ten minutes, Sergeant
10 Barnett drives up the street, which I believe he stated and
11 another officer stated was about two, two and a half miles
12 away from my client's house. Usually, if somebody's
13 driving about two, two and half miles, it takes them about
14 five minutes to get there I would say. On these back
15 roads, you know, the police can -- I think they can drive
16 however fast they want to but normally people like us do
17 the speed limit, which I think on that road is thirty-five.
18 So let's just say five minutes to get there. He was there
19 for ten minutes. At two twenty-two he was there for ten
20 minutes, that puts him leaving the house at about two
21 thirty-two or somewhere. It takes him five minutes to get
22 to the house, there at two thirty-seven. Knocks on the
23 door and talks with Ms. Ofori. Ms. Ofori, they have a
24 conversation and he asked her if she knew Mr. Henson, if
25 there was any reason for him to have those items and she

1 said no, to both of those. If you go back and listen --
2 and remember those time line and go back to what she said,
3 she stated in her testimony that she believed from the time
4 she saw the moped leave her driveway until the time that
5 Sergeant Barnett arrived was close to -- I asked her if it
6 was fifteen to thirty -- ten to thirty minutes, and she
7 said it was closer to thirty minutes. So if you take
8 thirty minutes -- in her statement she said it was ten
9 minutes. Where they -- from the time that the moped left
10 until Sergeant Barnett arrived. And then now in the
11 testimony she says its thirty minutes. So lets combine
12 those and give her twenty minutes. So according to that
13 time line, whatever happened at that time, whoever was
14 making these noises downstairs or whatever, had to have
15 happened at about two fifteen or two twenty. So there's no
16 way my client could have done that because he was already
17 in police custody at one fifty-two. He'd already been in
18 police custody for almost close to twenty or thirty minutes
19 if you put those two time lines together.

20 And I think that's very important and obviously the
21 solicitor is going to try to say that, you know, the time
22 lines are not exact. But you've got to believe beyond a
23 reasonable doubt that my client committed this crime. And
24 you can't just say, you know, all that -- you know, what I
25 say is not evidence. You look at the evidence. You listen

1 to the testimony if you need to. But I'm saying that's
2 what I perceive the evidence to be. The time line does not
3 match up. There's no way that my client could have been
4 arrested -- you know, detained at one fifty-two by the
5 police and then if you go by both time lines that the
6 offices provided and Ms. Ofori provided, be at the house at
7 two fifteen when this supposed occurred, when she
8 supposedly heard something downstairs. You know, maybe
9 she's mistaken on the time or maybe somebody's mistaken on
10 the time, but it doesn't just add up.

11 Now, let's go to the burglary issue. It seems to me
12 that they're trying to say that my client committed the act
13 of burglary in one of two ways. He does have a prior
14 record of burglary second degree and burglary third degree.
15 That's one of the elements as the Judge will point out to
16 you in the statute that you can use -- a partial way to
17 find my client guilty of burglary first degree. But those
18 crimes were committed in the last twenty years and he owned
19 up to those crimes. We're not here about those crimes.
20 We're about what he's charged with today. We're here about
21 the burglary first degree, not whether he was in possession
22 of the items, but whether he went into that house and took
23 those items. In order to get to the element of second
24 degree or third degree, being convicted of those crimes,
25 you have to find out that he entered that dwelling. There

1 is no proof that he set foot in that house. There is
2 absolutely no proof that he set foot in that house. There
3 is -- the victim did not see anybody in that house. She
4 says that she -- she admitted that she has never seen Mr.
5 Henson before, did not see him in the house, did not see
6 him outside the house. She stated that she didn't see
7 anybody in her house. All she saw was somebody leaving her
8 driveway on a moped. She states that she was in the shower
9 -- taking a shower upstairs and felt vibrations from the
10 first floor, from somebody walking on her first floor,
11 hardwood floors. Now, I'm -- I just don't see how that's
12 possible. I don't see how you can feel the vibrations of
13 somebody walking all the way upstairs. If you look at her
14 house, if you look at the pictures that was provided to
15 you, he would have entered on the left side of the house,
16 or whoever was in there supposedly that day, would have
17 entered from the left side of the house and her shower was
18 on the top right of the house. And she -- all she heard --
19 she didn't say she heard footprints, she said she felt the
20 vibrations from downstairs. I don't understand how you can
21 feel vibrations from somebody walking on wood floors, that
22 weighs basically as much as I do or a little bit less, from
23 just walking. Yes, if they were jumping up and down,
24 running around or something like that, throwing stuff
25 around, you might could have felt something, but not just

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1 walking. She doesn't say she heard anything crashing to
2 the floor. She doesn't say she heard any doors slamming or
3 any of that thing. She said she felt vibrations while she
4 was taking a shower. I don't see how that's possible. She
5 states that she opened up the door -- from when she got out
6 of the shower, that she opened up the door and heard a
7 chime. Well, she felt vibrations from the first floor, but
8 she didn't hear -- you know, and she heard a chime when the
9 door opened as if somebody -- she felt somebody was
10 leaving. That doesn't prove that my client was in that
11 house. That doesn't prove anything. You know, normally if
12 you think of a vibration, I don't see how vibration can
13 travel on hardwood floors all the way upstairs to a second
14 floor on the opposite side of the house. I just doesn't
15 make sense. She may have felt vibrations, but that doesn't
16 mean it was vibrations from somebody walking. Maybe there
17 was a truck that was driving by, an eighteen wheeler that
18 was driving by in front of her house that caused it to
19 vibrate. Maybe there was a small earthquake. I don't
20 know. But I don't see how you can have vibrations that go
21 up to the second floor of the house with somebody
22 supposedly walking around. It just doesn't make sense.

23 Also, there's no DNA found that connects my client to
24 this house. They did not find any fingerprints, hair
25 strands or anything like that inside the house that

1 connects my client. There was no eyewitnesses. As I
2 stated, the victim did not see my client inside the house.
3 There's no allegations from neighbors that say they saw him
4 in the vicinity of the house or in the yard or leaving the
5 garage or anything of that nature. And, also, there's no
6 fingerprints. If you'd listen -- if you go back and listen
7 to what Ms. Ofori says, she stated it was about -- when she
8 first felt the tremors or the vibrations and until she went
9 downstairs, it was about -- until she heard the footsteps
10 leaving her house or heard the chime, it was about ten
11 minutes. If he was in there for ten minutes or if anybody
12 was in there for ten minutes that did not belong there,
13 they would have found fingerprints. And the reason I say
14 that is because when they arrested him at Reidville Road
15 and when they booked him, took him to the Sheriff's Office
16 and patted him down, you heard nobody say that they found
17 gloves on him. No gloves were found. So if he's in there
18 for five or ten minutes, he would have had to have opened
19 the door to the garage, touched that door twice, whoever
20 was in that house, touched the door from the garage to the
21 mud room twice, touched the door from the mud room into the
22 hallway twice. And then whatever they were doing inside
23 the house -- if this even occurred that day. And we don't
24 even know when these items went missing. She just noticed
25 that day that these items were gone. She stated that she

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1 had not used or seen her credit cards since she went to the
2 doctor on Tuesday the week before, which was six days
3 before because she was put on bed rest and she said that
4 she was a good patient and she did not do -- she did what
5 the doctor told her to do. So she only went to the doctor
6 and basically stayed home. But she does not remember using
7 the credit cards or the debit cards for at least six days.
8 She couldn't tell you when was the last time she saw the
9 camera because it wasn't her camera. So she couldn't tell
10 if it was -- you know, she stated that it was -- she
11 believed it was last used at high school football game.
12 But she doesn't state if it was used the previous Friday,
13 which would have been three days beforehand or if it was
14 used a week earlier. She doesn't know when that item was
15 last used.

16 So we don't -- she may have heard something that day,
17 but it doesn't mean anything was taken that day. She has
18 no recollection and she has no idea when those items went
19 missing. She just noticed that they were missing when
20 Sergeant Barnett came up and asked her is there any reason
21 for my client to be in possession of those items. It
22 doesn't mean they were taken that day by anybody. She
23 could have lost those items. They found her purse, her
24 wallet, somewhere nearby her house in a chiropractor's
25 office -- I mean, a chiropractor's yard or driveway. They

1 could have been laying there and my client could have been
2 driving up and down that road, since he lives nearby and
3 found those items on the side of the road. There's no
4 proof that those items were stolen November 8, 2010. Only
5 that she noticed they were missing. So there's a gap of
6 six days where those items could have been lost or missing.
7 There's no proof that they were gone or stolen on November
8 8th, 2010 around two o'clock. There's no proof whatsoever.

9 Now, regarding the boot print. They found boot
10 prints, as Ms. Ofori stated and the officer stated, leading
11 -- or coming from -- well, basically going to or from the
12 mud room and the hallway near the garage. Now, if you look
13 at the boot prints that you saw -- and the boot that my
14 client was wearing was a Timberland boot. But nobody came
15 in here and told you that that footprint or that boot print
16 was made by a Timberland boot. And if it was a Timberland
17 boot that made that footprint, Ms. Ofori testified that her
18 own husband owns Timberland boots. So who's to say that
19 those footprints were not made by her husband some time
20 before that? You know, that morning he went out to the
21 garage to get something out of the garage or that Sunday he
22 went out to get something out of the garage and came back
23 in and nobody had swept anything up. There's no testimony
24 -- there's no way -- well, you could maybe say, well, it's
25 possibly it's his boot print, but nobody came -- no officer

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1 testified that they could say without a shadow of a doubt
2 or they could tell you what kind of boot print that was. I
3 asked the officers and they said, I don't know what kind of
4 boot print that was. They just put them up side-by-side.
5 They couldn't tell you what size the boot print was. They
6 couldn't tell you whose boot print that was. I asked them
7 if there was a name on them? The officer said there's not
8 a name on the prints, the shoes. You know, nobody's going
9 to write their name on the bottom of their foot. But there
10 is no way that you can say beyond a reasonable doubt that
11 that boot print they found in that house was my client's.
12 Because the victim already testified that her own husband
13 wears the same type of boots. Now, she stated -- did state
14 that normally her and her husband, when they go out of the
15 house, they go out of the front door or go out the side
16 door. But is it far-reaching to make an inference that
17 they -- he could have went out to the garage and got
18 something out of the garage because that's where he kept
19 his work material for his recordings to make videos and
20 stuff? Is it beyond comprehension or beyond -- to make the
21 inference that he could have went out there, went through
22 the garage to get to his cars or to her car to get
23 something out of the car and just, you know, came in, made
24 the prints and didn't realize he made the prints and
25 didn't, you know, bother to sweep it up or anything like

1 that? No, it's not far-fetched to say that. There's
2 nothing to say beyond a reasonable doubt that those boot
3 prints or those -- that were found by the police officers
4 were my client's. It's just not possible. You can say,
5 well, possibly it's his and possibly it's her husband's.
6 Well, is it a fifty percent chance they're his or whoever's
7 they were, or there's a fifty percent chance of her
8 husband's? I say there's a zero chance they were my
9 client's because he never set foot in that house. But
10 there's at least a fifty percent chance that those boot
11 prints are her husband's. And to me, that's not beyond a
12 reasonable doubt.

13 One of the other ways that seems to me that the
14 prosecution is trying to say that my client is guilty of
15 first degree murder is because he was -- one officer
16 testified that when they had patted him down they found a
17 knife on him. The knife was not saved for evidence. You
18 heard the officer testify he took the switchblade or
19 whatever out of my client's pocket, put it on the car and
20 left it there. Left a knife sitting on the car. Did not
21 give it to anybody, just left it sitting there. Why did he
22 leave it there? Because he didn't think anything of it.
23 Didn't think it was useful. Went up to the Sheriff's
24 Office, booked him in and didn't even bother to go back and
25 try to find the knife. All they -- they don't even have a

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1 picture of the knife. All you've got is one officer saying
2 that he saw -- that he took a knife out of my client's
3 pocket. But you know what, even if he had that knife in
4 his pocket, it doesn't mean he entered the house. There is
5 no -- in order to find him guilty of burglary first degree,
6 you have to have beyond a reasonable doubt that he entered
7 that house. I keep going back to that because that's the
8 main thing. You have to have proof that he entered that
9 house and took these items. There is absolutely no proof
10 that he entered that house. All you've got is
11 circumstantial evidence that at best -- that a fifty
12 percent chance that those boot prints were her husband's.

13 Now, there's other elements to the crime of first
14 degree burglary. Let me go back to the knife issue. You
15 remember the Deputy that testified, the Officer that
16 testified, I asked him why he didn't take the knife into
17 possession, into evidence or anything like that. And I
18 believe his testimony was something along the line that he
19 didn't take them into evidence because they don't like to
20 introduce those items into the jail. He wasn't taken to
21 the jail. He was taken to the Sheriff's Office. They
22 don't -- when somebody's accused of murder or anything like
23 that, does that mean they leave the gun at the scene? No,
24 they take it into evidence. There's no reason for him, if
25 he thought that that knife was in anyway part of a crime or

1 anything, that he should have taken that item into
2 evidence. He should have not just left it on somebody's
3 car and then drove off. So I think that's very important
4 because he says -- you know, he said that it wasn't taken
5 into evidence because they don't want to introduce it into
6 the jail system. Well, he wasn't taken to the jail. They
7 stated that he was taken to the Sheriff's Office first and
8 then obviously taken to the jail. They say at the
9 Sheriff's Office they patted him down again, took his
10 clothing off and everything and then took him and searched
11 his clothing and then took him to the jail. So it just
12 doesn't make sense that they didn't take the knife, if it
13 was supposedly used by my client. But I contend it was not
14 used by my client because my client did not step foot in
15 that house. There's no proof that even -- there's just no
16 proof that he set foot in that house, absolutely none.

17 The most my client could be possibly guilty of was
18 being in possession of these items. The items were found
19 on his property, found up under a car that belonged -- that
20 was on his property, but that's it. There's no proof when
21 these items went missing, whether they went missing that
22 afternoon when she first realized they were missing, or if
23 they went missing sometime within the six days beforehand,
24 because that's the longest it could have been that these
25 items went missing is six days, because she last remembered

1 using her credit card six days earlier at the doctor's
2 office. So there's a six day gap that she has no clue if
3 she saw the items, if she saw her wallet, her purse -- I
4 mean, her credit cards, her debit cards or the camera. She
5 does remember seeing them, according to her testimony,
6 during that time. So is it so farfetched to say or an
7 inference to be made that those items could have possibly
8 went missing sometime during that six-day period and she
9 just happened to notice that they were gone on November
10 8th, 2011. There's no other proof on those six days that
11 anybody else was -- there's a six-day gap that we have to
12 take into account of whether those items could have been
13 missing. To me, that's a big gap to go from -- to prove
14 beyond a reasonable doubt. It's just a gap of six days.

15 I want you to pay attention to the time line that I
16 state. You know, what I say is not evidence. You've got
17 the evidence and you've heard the evidence and you, as the
18 Judge will state, you can go back and request to hear
19 certain testimony or not. But what I want you to do is to
20 listen. Listen, remember what you heard, listen to the
21 instructions that the judge gives you and see if you can
22 prove beyond a reasonable -- if the State has proved beyond
23 a reasonable doubt that my client committed this crime. I
24 contend they did not. They didn't even come close because
25 there's no proof, again, that he entered that house. All

1 you've got proof of supposedly is they heard -- is Ms.
2 Ofori heard vibrations or felt vibrations. I just don't
3 see how it's possible that somebody could feel vibrations
4 upstairs if somebody's just walking on the floor, if that's
5 even going to happen. Like I say, it could have been an
6 eighteen-wheeler driving by her house. You know, she
7 doesn't live on the interstate or anything like that, but
8 it's possible that something else could have happened or
9 she could have felt something else. It just doesn't make
10 sense how a -- supposedly a person could make that much
11 vibration or do that much chaos by walking to cause
12 vibrations to go all the way upstairs, you know, travel up
13 the stairs or travel up the walls to the second floor. It
14 just doesn't make sense.

15 And I want you to remember that we're here about this
16 crime, about these charges that he's facing, grand larceny
17 and the burglary. We're not here about what occurred in
18 the last twenty years. He's already done everything he was
19 required to do from those charges. And I also want you to
20 remember regarding the boot prints that Ms. Ofori stated
21 that basically what she did when she was at home is sit on
22 the couch and watch T.V. because she was a good patient.
23 When she went around -- when she came downstairs and
24 searched around her house before Sergeant Barnett got
25 there, she didn't realize anything was missing. She had

1 looked around her house, didn't think anything. You know,
2 she kind of thought something was out of the ordinary, that
3 the doors were open or something like that, but she didn't
4 realize anything was missing and she called her husband.
5 Nobody seemed too concerned about it. And I say she didn't
6 seem too concerned about it because she called her husband
7 and then she got on the phone with a friend. She didn't
8 call 9-1-1. She didn't call anybody. She was talking to
9 her friend and I guess they were talking about what she
10 felt or what had just happened, but she didn't realize
11 anything was missing. She didn't think it was too strange
12 that the doors were open to call the police. Only when the
13 officers came did she realize that something was missing.

14 I don't believe they've proved beyond a reasonable
15 that anybody entered that home, much less my client, on
16 November 8th, 2010, around two o'clock in the afternoon.
17 This occurred during the day so there's no way that the
18 element of this occurring at night could factor into your
19 decision as being a burglary first.

20 So I just want you to concentrate -- and also
21 regarding the moped, that's obviously going to be a big
22 issue. She states when she came downstairs she got to the
23 bottom of her stairs and that she saw a moped leaving her
24 driveway. But if you go back and listen to her testimony,
25 she stated that when she first saw it she thought the moped

1 was just turning around, just turning around in her
2 driveway, going and leaving. She didn't think anything of
3 it. You know, she didn't -- you know, I guess she thought
4 it was a little odd that a moped would be turning around in
5 her driveway, but I live in that area and there's mopeds
6 all over the area. I live probably three miles from my
7 client -- I mean, from Ms. Ofori. And when she says that
8 she heard a motor cranking, it's not too farfetched to make
9 an inference that, you know, that that person may have been
10 turning around in her driveway because, you know, they were
11 turning around to go back out because at the end of that
12 road is a dead-end road and they may have realized that
13 that was a dead-end road, they turned around and when they
14 turned around the motor cut off, so they crank it back up.
15 It's not too farfetched to say that. If it's too
16 farfetched to say that, then it's too farfetched for you to
17 make any other inferences that that boot print in that
18 house was my client's or anybody else's besides her
19 husband. Like I said, she's already testified that he owns
20 the same type of boots. And they're trying to say that
21 it's not his boot print probably because he didn't go in
22 and out of the garage. But she doesn't know if he went in
23 and out of the garage that morning or that weekend, because
24 she was basically on bed rest the entire time. She
25 basically stated, you know, was a good patient and didn't

1 do any strenuous activity or anything. So it's not too
2 farfetched to say that those boot prints came from her
3 husband going in and out of the garage that morning or the
4 day before.

5 And also regarding the fact, you know, Ms. Ofori
6 stated that she -- her wallet was also missing that day and
7 it was sent to her about a week or so later in the mail
8 from a chiropractor that lived nearby her. You know, I
9 find interesting that the police did not even go question
10 the chiropractor. They did not do any search of any areas.
11 Basically, they ended their investigation of this case that
12 afternoon when it got dark. One of the officers testified
13 that he went out and looked up and down Brockman McClimon
14 Road, I believe it is. Walked up and down the road for a
15 little bit until it got dark. They did not go back out the
16 next day. They did not go out a week or two later when Ms.
17 Ofori said she called the police and told them that she had
18 gotten her wallet back. They didn't do any of that stuff.
19 So who's to say that those items were not just sitting
20 there on the side of the road? Her wallet was supposedly
21 sitting on the side of the road, near the chiropractor's
22 driveway or yard, but who's to say those other items
23 weren't just sitting on the side of the road. It's not too
24 farfetched that if her camera was sitting there -- I mean,
25 if her wallet was sitting there, that everything else was

1 sitting there or somewhere nearby, as well. They completed
2 their investigation because that evening, for some reason
3 at five o'clock or whenever it got dark on November, I
4 guess it gets darker earlier then, and so it got dark
5 around five or six, but they completed their investigation
6 within a few hours after he'd been pulled over for
7 initially a traffic violation on a moped, which they knew
8 he had committed two hours earlier.

9 So it just doesn't -- there's a lot of inferences that
10 can be made on both sides but just because inferences can
11 be made doesn't mean that it proves beyond a reasonable
12 doubt that my client entered that house on November 8th,
13 2010. It doesn't prove -- they don't have proof that
14 anybody was in that house, like I said. And I'm sorry, I
15 keep saying it five or six times over, but it's very
16 important because we're -- this is a very important case
17 for my client. If this was your son, your grandson, your
18 daughter, your brother, anybody in your family, do you
19 think ---

20 MS. POULOS: The State objects.

21 THE COURT: I'll sustain the objection.

22 MS. POULOS: Thank you, Your Honor.

23 THE COURT: Strike the last comment from the
24 record.

25

CLOSING STATEMENT CONTINUED

1 **BY MR. SINGLETON:**

2 Just look at the evidence. Look at what was said.
3 Look what was placed into evidence and see if you believe
4 beyond a reasonable doubt that they can prove that my
5 client entered that home on November 8th, 2010. I contend
6 that they did not.

7 I thank you for your time. I thank you for your
8 paying attention for the last day and a half. And thank
9 you.

10 THE COURT: Ms. Poulos, you may proceed with a
11 statement.

12 MS. POULOS: Thank you, Your Honor. May it
13 please the Court?

14 THE COURT: Yes, ma'am.

15 **CLOSING STATEMENT**

16 **BY MS. POULOS:**

17 You've heard the saying, a person's home is their
18 castle. Leslie Ofori's home was her castle, her and her
19 husband's haven, a place where they felt comfortable, safe
20 and secure until November the 8th, 2010, when the
21 Defendant, Alfred Henson, took away that comfort, that
22 safety and that security that they have.

23 On that day, Alfred Henson drove up on his moped, onto
24 private property, without permission, went through the
25 garage, through three doors, went into the victim's home

1 and stole a professional camera and credit cards. That
2 camera was worth close to three thousand dollars, you've
3 heard Ms. Ofori testify. He did this on broad daylight,
4 all the time while Ms. Ofori was upstairs. She was a
5 school teacher and she was at home and she was put on bed
6 rest for her pregnancy. She was upstairs taking a shower
7 and you heard her testify that she heard something, she
8 heard some noises, she felt vibrations. She told you that
9 her home is pretty open. And you'll see in the pictures
10 when you have those in the jury room, you'll see the layout
11 of her house a little bit closely. So when she heard those
12 steps she also heard -- when she turned the shower off and
13 got out, she called out her husband's name, didn't hear
14 anything and she heard the alarm to indicate that the door
15 was either opening or closing. So, obviously, she was
16 confused. She thought maybe it was her husband who was
17 home from work. When she called out and didn't hear
18 anything, that was -- also raised some concern for her so
19 she gets dressed and carefully walks down, and she heard a
20 moped crank up, crank up outside her house. And she looked
21 out the window and she saw the moped speeding out of her
22 driveway. She didn't see the moped turning around in the
23 driveway. She saw the moped speeding out of her driveway,
24 and I believe she said make a right-hand turn, and almost
25 lost it a little bit. He was in a hurry. He was in a

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1 hurry to get out of there because he knew that she was onto
2 him. She knew that she heard something and he knew that he
3 was hoping that he would not be seen, but he was seen. He
4 was seen on his moped.

5 Now, she didn't call 9-1-1. Mr. Singleton made a big
6 deal about the fact that there was no 9-1-1 call at the
7 time. Well, there was no 9-1-1 call at the time because
8 she didn't realize what exactly had happened. She
9 testified that she called her husband to tell him what had
10 happened and she got on the phone with a friend and it was
11 at that time that the officer came knocking on her door
12 saying, do you know Alfred Henson? Did you have anything
13 that was stolen? And at that point, then it became a
14 burglary. That's why there's no 9-1-1 call, ladies and
15 gentlemen. She was not aware at the time what was going
16 on. Now, she didn't see the face. She didn't see who
17 exactly was driving it, but she didn't have to because just
18 a few minutes after she saw the moped speed out of the
19 driveway, Deputy Wilson, who obviously was at a great spot,
20 just happened to see that same person, wearing the same
21 coveralls, driving the same blue moped that he'd seen
22 earlier outside the restaurant. And, remember, he already
23 had a conversation with him, knew what he looked like, knew
24 what he was dressed like, knew the moped that he was
25 driving. Already had determined with the other officers

1 that his driver's license had been suspended, that he
2 didn't have a valid moped license, so he knew exactly who
3 he was. So he cuts on his blue lights to initiate a
4 traffic stop and what does the Defendant do? The Defendant
5 starts throwing items out onto the ground. I want y'all to
6 think about that for a minute. He starts throwing items
7 out onto the ground. That's evidence of guilt, ladies and
8 gentlemen. Why in the world would you start throwing items
9 out onto the ground that apparently he legitimately thought
10 was his? It's evidence of guilt, but that's up to the
11 twelve of you to decide.

12 I also wanted to point out that the Defendant, who was
13 stopped near his home, at his home, only lived about two
14 point two miles away from the victim.

15 Defense in this case wants you to believe that it
16 wasn't him, it was somebody else. I like to call that the
17 mystery man defense. How did the Defendant get those in
18 his possession? He had them. He was heard at the victim's
19 home on the moped, saw speeding out of the driveway.
20 Moments later, Deputy Wilson saw him. He's throwing out
21 the items. Close in time, close in proximity, that's
22 what's important. And that evidence of guilt, that
23 throwing out, trying to hide those items under that car.
24 Maybe the officer won't see. I don't know. I'll let you
25 deal with that. Evidence of guilt.

1 Now, let's talk a little bit about the knife. There
2 was a lot of talk about the knife that was found. Deputy
3 Brown testified that when he searched the Defendant there
4 was a knife in his front pants pocket. The Defense made a
5 big deal about why we don't have the knife, why we don't
6 have pictures of the knife. And if you choose to believe
7 Deputy Brown's testimony, I would encourage you to do so,
8 but that will be up to you to weigh the credibility and for
9 you to decide whether or not you believe him or not. But
10 he testified that he found a knife in his pants pocket.
11 The reason why that knife was not taken into evidence, as
12 you heard him testify, was because they didn't know it was
13 a burglary at the time. They did not know that that knife
14 could have been used or allegedly was used in the
15 connection of a burglary. Hindsight's twenty-twenty. Had
16 they know that at the time, I'm sure they would have done
17 their job and gotten the knife and take it into evidence.
18 But they didn't know that at the time. They had no idea
19 what was going on. And that's why -- that's the reason for
20 the knife.

21 Let's talk about the shoe prints a little bit. You
22 saw a picture of the shoe print found in the home. And
23 Sergeant Barnett, I believe, and Deputy Murphy testified
24 that there were several of those shoe prints found in the
25 home. There wasn't just one faint print corner, there were

1 several all over the home. And Ms. Ofori testified that
2 the prints were there after -- she didn't say that she saw
3 the prints there before she went up to take a shower.
4 You'll see the pictures of her home. She keeps a pretty
5 neat house. I think she would have noticed a whole bunch
6 of fresh shoe prints all over the first level of her home,
7 all over the hardwood floor, but she didn't, because those
8 prints were not there before she went up to take a shower.
9 Those prints were there after. Those prints were put there
10 by the Defendant, who would have gone through a dusty
11 garage area, as you heard the testimony, and walked in and
12 happened to leave tracks behind. He didn't know that, but
13 he did. Now, is it a match? I'll let you all be the
14 judges of that.

15 The Defense made also a lot of points about what we
16 didn't have. We didn't have this, we didn't have DNA, we
17 didn't have fingerprints, we don't have a glove. Well,
18 maybe there was a glove. Maybe the Defendant threw it out
19 like he threw out the camera and the credit cards. Who
20 knows what he did with it.

21 But I would ask you, ladies and gentlemen, to focus on
22 what we do have. This is a circumstantial case, but I
23 would ask you to connect the dots and look at what we do
24 have. We've got a victim who heard noises in her home.
25 When she came down, she heard a moped crank up. She saw a

1 moped driving out of her driveway. And minutes later, the
2 Defendant was stopped, throwing out items that belong to
3 Ms. Ofori. Just connect the dots. You've got his shoe
4 prints that were in the home. All you've got to do is just
5 use your common sense, connect the dots and what you feel
6 makes sense in this case.

7 Now, burglary in the first degree, ladies and
8 gentlemen, in South Carolina, Judge Couch is going to
9 instruct you a little more detail about this, but burglary
10 in the first degree is when a person enters the dwelling
11 without the consent and with the intent to commit a crime.
12 One of the elements of that is while armed with a deadly
13 weapon. We believe that we have proven that he was armed
14 with a deadly weapon. He had the knife in his possession
15 when he was stopped and arrested. Now, if you believe for
16 some reason maybe he left the knife out on the ground, he
17 left it on his moped, he didn't have it at all, that's
18 totally fine. Maybe he was in the house and he had the
19 knife pulled out. We don't know that. Maybe he had it in
20 his hand. Maybe he still had it in his pocket. We don't
21 know that. But there is evidence that he was in possession
22 of a weapon at the time. There's also evidence of two or
23 more prior convictions for burglary. And we're not
24 offering the burglary convictions to show that he -- the
25 nature of the offenses that he committed before. But an

1 element of what we have to prove for burglary, one of the
2 elements, is that he has two prior convictions. And he
3 signed a document and agreed that he had those two prior
4 burglary convictions on his record.

5 We believe that we've met our burden in proving this
6 case to you beyond a reasonable doubt that the Defendant is
7 guilty of burglary first degree and grand larceny, but it
8 doesn't matter what I say. It doesn't matter what Mr.
9 Singleton says. All that matters is what's right and that
10 you leave this courthouse today and in the end you have
11 done what you feel is right. I don't make up these facts.
12 I just interpret them, present them to you in the best way
13 that I know how. And as long as you feel like justice has
14 been done, you have done your job.

15 Thank you all for your patience during the last couple
16 of days. I want thank you all for your service as jurors.
17 And remember when you go back to the deliberation room,
18 what I told y'all at the very beginning of this trial, use
19 your common sense and let justice be done. Thank you.

20 **CHARGE**

21 **BY THE COURT:**

22 All right. Ladies and gentlemen of the jury, that
23 completes the arguments by counsel in this case. And I
24 told you at the beginning of the trial once we reach this
25 stage of the proceedings, it would be my responsibility to

1 charge you concerning the law to be applied in this case.

2 I began the case earlier by telling you about the
3 indictments that are in the case. We did that during jury
4 selection as well. And there are two indictments in this
5 case. And I've explained to you that the indictment is the
6 document that brings the case before the Court and contains
7 the charges that are presented to the Court. And I'm going
8 to go over those or read those documents to you at this
9 time because they do contain the charges and the elements
10 of the crime, which the State is required to prove in this
11 case.

12 The first indictment I will discuss with you is case
13 number 11-GS-42-0351. That indictment is for the offense
14 of burglary in the first degree. The indictment states
15 that the Defendant, Alfred Henson, did in Spartanburg
16 County, on or about November 8th, 2010, willfully and
17 unlawfully enter a dwelling belonging to Leslie Ofori,
18 located at Byers Street, Greer, South Carolina, without
19 consent and with the intent to commit a crime therein. And
20 either in effecting entry or while in the dwelling or in
21 immediate flight, he or another participant in the crime,
22 and there are several different possibilities: One, was
23 armed with a deadly weapon and/or caused physical injury to
24 any person who was not a participant in the crime, and/or
25 used or threatened the use of a dangerous instrument,

1 and/or displayed what appeared to be a knife, pistol,
2 revolver, rifle, shotgun, machine gun, or other firearm,
3 and/or entered the dwelling during the nighttime, and/or
4 committed the crime while possession a prior record of two
5 or more convictions for burglary or housebreaking or a
6 combination of both, all in violation of code section 16-
7 11-311 of the Code of Laws of South Carolina 1976, as
8 amended, against the peace and dignity of the State, and
9 contrary to the statute and such case made and provided.

10 That's the first indictment in the case.

11 Now, the second indictment in the case is case number
12 11-GS-42-0352. That indictment is for the offense of the
13 grand larceny. The indictment states that Alfred Henson
14 did in Spartanburg County, on or about November 8th of
15 2010, feloniously take and carry away the goods of Derrick
16 and Leslie Ofori, valued at more than two thousand dollars
17 but less than ten thousand dollars, described as follows:
18 a Cannon digital camera and/or credit cards with the intent
19 to deprive the owner permanently of such property, all in
20 violation of Code Section 16-13-30(b)(1) and Section 16-157
21 of the Code of Laws of South Carolina, 1976, as amended,
22 against the peace and dignity of the State and contrary to
23 the statute in such case made and provided.

24 I'm going to remind you that those are simply the
25 documents that bring the case before the Court. They're

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1 important because they set out the charges. They notify
2 this Court of the charges which are to be tried. They
3 notify the Defendant of the charges that have been lodged
4 against him. And I will remind you, the fact that a
5 Defendant or the Defendant was arrested, charged and
6 indicted in this case is not evidence in the case and
7 cannot be considered by you as evidence of guilt in the
8 case, nor do those facts create any presumption or
9 inference of guilty. Those are the documents that bring
10 the case before the Court. They're the formal documents
11 that have informed us of the case to be tried.

12 Now, as I indicated to you earlier, the fact that a
13 Defendant has been arrested or charged or indicted is not
14 evidence in this case and cannot be used by you as evidence
15 in this case. And in this case, the Defendant has pled not
16 guilty to those indictments. And that plea places the
17 burden upon the State. And the State has the only burden
18 in this case, and that burden is to prove the Defendant
19 guilty. A person charged with the commission of a crime or
20 an offense in South Carolina is never required to prove
21 himself innocent of that charge. And I charge you that
22 it's an important rule of law that a Defendant in a
23 criminal case, no matter what the seriousness of the charge
24 might be, will always be presumed to be innocent of that
25 crime, the crime for which the indictment was issued, until

1 and unless guilt has been proven by evidence that satisfies
2 you, the jury, of that guilt beyond a reasonable doubt.

3 Now, the presumption of innocence doesn't end when you
4 begin your deliberations. The presumption of innocence
5 accompanies the Defendant throughout the proceedings and
6 into your deliberations. Some people describe the
7 presumption of innocence somewhat like the robe that I wear
8 into the courtroom. That presumption of innocence remains
9 about the Defendant's shoulders throughout the trial and
10 into your deliberations until such time as it has been
11 stripped from him by evidence that satisfies you of the
12 Defendant's guilt beyond a reasonable doubt. The
13 presumption of innocence is not a mere legal theory. It's
14 not just a legal phrase. The presumption of innocence is a
15 substantial right to which every Defendant is entitled to
16 until and unless you, the jury, find the Defendant guilty
17 by proof that satisfies you of that guilt beyond a
18 reasonable doubt.

19 Now, you have heard me mention on a couple of
20 occasions already the fact that the State has that burden
21 of proof and that burden of proof is to prove the
22 Defendant's guilt beyond a reasonable doubt. And you may
23 be asking yourself, well, just what is meant by a
24 reasonable doubt? What is a reasonable doubt? The law
25 defines a reasonable doubt as that kind of doubt that would

Charge

1 cause a reasonable person to hesitate to act. The State
2 has the burden of proving the Defendant guilty beyond a
3 reasonable doubt. Now, some of you may have been involved
4 in other types of legal actions, civil actions. Civil
5 actions are where someone is seeking monetary damage from
6 someone and it can be because of a breach of contract or
7 failure to pay a debt or personal injury of some kind, and
8 those are civil cases. And in civil cases where monetary
9 damages are sought, the standard of proof is different. In
10 those cases, the standard of proof is proof by the greater
11 weight of the preponderance of the evidence. That means
12 the scales of justice tilting ever so slightly one way or
13 the other. That's the standard of proof in a civil case.
14 The standard of proof in a criminal case, such as this one,
15 is much more powerful than that. It's proof beyond a
16 reasonable doubt.

17 Now, proof beyond a reasonable doubt is that kind of
18 proof which would leave you firmly convinced of the
19 Defendant's guilt. Now, there's very few things that go on
20 in human life that can be proven beyond any doubt
21 whatsoever. And that's not the standard of proof to which
22 the State is put. The State does not have to prove -- to
23 present proof that does away with every possible doubt.
24 Again, the standard of proof is proof beyond a reasonable
25 doubt. I will tell you that, if based on your

1 consideration of the evidence, if you are firmly convinced
2 that the Defendant is guilty beyond a reasonable doubt, you
3 must find the Defendant guilty. However, on the other
4 hand, if you think there's a real possibility that the
5 Defendant is not guilty, then you must give the Defendant
6 the benefit of that doubt and find the Defendant not
7 guilty. And I'll remind you, I discussed with you at the
8 beginning of the trial that you and I have different duties
9 and responsibilities to perform during the trial of this
10 case. And as the Trial Judge, it's been my responsibility
11 to preside over the trial and to rule on certain questions
12 that may have come up during the trial. And you are to
13 consider only the evidence that's in the record of the
14 trial. If I excluded anything during the trial, you should
15 disregard those matters in their entirety. You are only to
16 consider the evidence that's been placed into the record of
17 the case during the trial in reaching your verdict in this
18 case. And you have the right to consider the testimony,
19 any evidence or documents that were put into the record
20 through that testimony, and any stipulations made by
21 counsel as to the truth of certain facts.

22 I also have the additional duty of charging you
23 concerning the law that's applicable in this case. And as
24 the Presiding Judge, I've told you, I am the sole Judge of
25 the law that's to be applied in this case and it's your

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1 duty as jurors under the oath that you've taken to accept
2 the law as I give it to you and apply it to the facts as
3 you've determined those facts to be. Again, if you have an
4 idea as to what the law is or what it ought to be, leave
5 those notions outside of the jury room. You should take
6 only the law that I give you into the jury room and use
7 that law in your deliberations in this case. I've also
8 told you earlier that in every case in this State tried by
9 a jury, the jury is the sole and exclusive judge of the
10 facts in this case. You should not take from anything that
11 I do in the discharge of my duties to indicate to you in
12 any fashion that I have an opinion as to how you determine
13 the facts in this case. I've told you already, the law
14 doesn't allow me an opinion concerning the facts in this
15 case and I have no opinion as to how you determine the
16 facts in this case. The determination of the facts is a
17 matter solely for the jury to determine. And as jurors,
18 it's your duty to determine the effect, the value and the
19 weight of the evidence that's been presented during the
20 trial.

21 Now, in considering the evidence, and I will tell you
22 that there are two types of evidence that you, the jury,
23 have the right to consider. And I'll try to explain to you
24 what I mean by two types of evidence. The first type of
25 evidence that you have the right to consider is evidence

1 that we call direct evidence. Now, direct evidence is
2 testimony from a witness who claims to have direct
3 knowledge of the facts about which that person testifies.
4 That means someone who claims to have seen the event that
5 happened, to have heard the words spoken, to have smelled
6 or tasted or directly experienced the facts about which
7 that person is testifying. And that's what we mean by
8 direct evidence.

9 Now, there's another type of evidence that you have
10 the right to consider as a jury and that evidence is
11 described as circumstantial evidence. Now, circumstantial
12 evidence is proof of a chain of facts or circumstances that
13 indicate the existence of some other fact. It's been
14 described legally as proof of collateral facts from which a
15 main fact could be reasonably inferred. I like to use a
16 very simple example to explain what is meant or describe
17 what is meant by proof of a fact by circumstantial
18 evidence. Let's say last night before you went to bed at
19 home, you looked outside the window and the stars were
20 shining and it was a beautiful night and you went to bed
21 and you slept well all night, didn't wake up. The next
22 morning, you look out the same window, the sun's shining,
23 but there's water dripping from all the trees, the grass in
24 front of the house is wet, there's puddles in the driveway
25 or the road out in front of your home, and so you didn't

1 see it rain that night and you didn't hear it rain because
2 you slept well all night. But from the chain of facts that
3 you know to be true, those circumstances, you could
4 reasonably infer that at some time during the night it, in
5 fact, rained. So that's what's meant by proof of a chain
6 of facts or circumstances or proof of collateral facts,
7 from which a main fact could be reasonably inferred. So
8 circumstantial evidence is evidence which establishes
9 collateral facts from which some other fact can be
10 reasonably inferred. So circumstantial evidence is based
11 on inference and not on personal knowledge or observation.

12 Now, the law makes absolutely no distinction between
13 the weight or value that you the jury should give to either
14 direct or circumstantial evidence, nor is there a greater
15 degree of certainty required of circumstantial evidence
16 than of direct. You, the jury, should weigh all of the
17 evidence in this case, both direct and circumstantial
18 evidence. And after weighing all of that evidence, if you
19 are not convinced of the Defendant's guilt beyond a
20 reasonable doubt, you must find the Defendant not guilty.
21 However, on the other hand, if you are firmly convinced of
22 the Defendant's guilt beyond a reasonable doubt, you must
23 find the Defendant guilty.

24 I told you at the beginning of the trial that you were
25 going to be required to determine the credibility or the

1 believability of the testimony that you heard during the
2 trial. And it's your job as jurors to determine
3 credibility and believability in the testimony that you
4 hear during the trial. It's your duty as a juror to
5 analyze and evaluate the evidence and determine which
6 evidence convinces you of its truth. In determining
7 believability of witnesses who've testified in this case,
8 I've told you, you can believe one witness against the
9 others or all the others against one. You have the right
10 to believe all, part of or none of what a witness has told
11 you in the case. You can determine or raise such factors
12 as whether or not a witness has exhibited an interest, a
13 bias or a prejudice or any other motive in testifying in
14 this case. And you have the right to consider the
15 appearance and the manner in which the witness has
16 presented its testimony during the trial.

17 Now, I'm going to instruct you and I'm going to
18 emphasize to you that the fact that the Defendant did not
19 testify in this case is not a factor to be considered by
20 you in any fashion whatsoever in reaching your verdict and
21 in your deliberations or consideration of the case. It
22 must not be considered by you in any manner whatsoever.
23 You see, a Defendant has a Constitutional right to remain
24 silent. And the assertion of this right is not to be
25 considered by you, the jury, in your deliberations. And

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1 I'll repeat, that under your oath as jurors, you are to
2 draw no conclusions whatsoever from the fact that the
3 Defendant did not testify. In fact, the fact that the
4 Defendant did not testify should not even be discussed by
5 you or mentioned by you in your deliberations in this case.
6 As I've told you, the only burden of proof in a criminal
7 trial is upon the State. The Defendant is not required to
8 prove himself innocent of the charge. The burden of proof
9 remains upon the State to prove guilt, as I've told you,
10 beyond a reasonable doubt.

11 Now, in order to establish criminal liability in any
12 case, criminal intent is an element which must be proven or
13 shown. Later on I'm going to charge you concerning the law
14 on the offenses that have been charged and you should
15 listen to that charge for the words requiring intent.
16 Certain intents have to be found in order for those
17 elements to be satisfied. So criminal intent is always an
18 issue in a case. For example, that's the mental state
19 that's required to be proven by the State for a particular
20 crime. And that mental state might be purpose. It might
21 be direct intent. It might be knowledge, recklessness or
22 criminal negligence. You'll listen to the charge on the
23 law, you will hear those words requiring intent. Criminal
24 intent must be proven by the State, again, beyond a
25 reasonable doubt. And I will tell you, however, that

1 criminal intent is a matter which must always be shown by
2 inference based on the circumstances that existed at the
3 time of the event. The reason for that is we have no
4 scientific way of looking inside someone's head at the time
5 they're committing certain acts to determine what they
6 intended to do when they did that, so there's no scientific
7 or mathematical way to show what someone intended when they
8 did something. So criminal intent is a matter that's
9 always proven from the circumstances that are shown to have
10 existed at the time that the act occurred. That's how you
11 make a determination as to whether or not the element
12 requiring intent is present. And it's not necessary to
13 establish intent, therefore, by direct evidence. But
14 intent may be established by inference, by circumstantial
15 evidence, the way any other fact can be shown, again,
16 taking into consideration the acts of the parties and all
17 the facts and circumstances of the case as you determine
18 them to be. Criminal intent, I will tell you, however, is
19 a mental state. It's a conscious wrongdoing and it's up to
20 you to determine what the Defendant intended to do based on
21 the circumstances that have been shown to have existed at
22 the time the acts in question were committed.

23 Now, I will charge you that under the law of this
24 State if a Defendant is found in possession or possessing
25 recently stolen goods, that evidence may be used as

1 evidence that the Defendant stole the goods. This would
2 simply be an evidentiary fact to be taken into
3 consideration by you, along with other evidence in the case
4 and you give it the weight that you think that it should
5 have.

6 Now, I want to go over the first charge I discussed
7 with you from the indictment and that is burglary in the
8 first degree. And the Defendant has been charged with
9 burglary in the first degree. And to prove that particular
10 offense, the State must prove beyond a reasonable doubt
11 that the Defendant entered a dwelling without consent.

12 Now, a dwelling is any building or a portion of a building
13 in which a person might ordinarily sleep. A building
14 constructed as a dwelling, but has never been occupied,
15 cannot be considered as a dwelling for purposes of burglary
16 in this case. Now, in order to prove that a Defendant
17 entered a dwelling, the State does not have to show even
18 that the Defendant's entire body entered the dwelling. The
19 smallest entry, however slight, of a person's body into a
20 dwelling constitutes an entry into that dwelling.

21 Next, the State must prove that beyond a reasonable
22 doubt that when the Defendant entered the dwelling, the
23 Defendant intended to commit a crime therein, either a
24 felony or a misdemeanor, at the time of the entry. Mere
25 entry into a dwelling without consent is not burglary. If

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1 the intent to commit a crime is formed after the entry, it
2 is not burglary. On the other hand, if the Defendant
3 intended to commit a crime at the time of the entry, it is
4 burglary even if later the intent was abandoned. It does
5 not matter that the intended crime was not completed. Now,
6 intent, I've told you, can be shown by acts and conduct of
7 the Defendant or other circumstances from which a person
8 might reasonably or naturally infer intent.

9 Now, the State must also prove, in this case, perhaps
10 two other elements. One, that the Defendant has a prior
11 record of two or more convictions for burglary and/or
12 housebreaking. Evidence of prior offenses committed by the
13 Defendant was not offered in this case to prove that the
14 Defendant had a bad character or to prove that the
15 Defendant committed the burglary that's involved on this
16 occasion. The prior convictions may be considered by you
17 only for the purpose of determining whether or not it
18 satisfies that element of offense that makes it first
19 degree burglary if you enter a dwelling without consent to
20 commit a crime and you have two prior convictions for
21 burglary and/or housebreaking at the time that that occurs.
22 Before you can even consider the evidence of the
23 Defendant's prior burglaries and/or housebreaking
24 convictions, you must first find that the State has proved,
25 beyond a reasonable doubt, that a burglary was committed by

1 the Defendant.

2 Also, the State may prove that when entering or while
3 in the dwelling or when fleeing, the Defendant or an
4 accomplice was armed with a deadly weapon. A deadly weapon
5 is any article or instrument or substance which is likely
6 to cause death or great bodily harm. Whether an instrument
7 has been used as a deadly weapon depends upon the facts or
8 circumstances of the case. I'll tell you that the
9 following items are items which have been found to be
10 deadly weapons. Those are things such as pistols, a
11 shotgun, a rifle, a dirk, a dagger, a knife, a slingshot,
12 metal knuckles, a razor, gasoline and even firebombs have
13 been found to be deadly weapons. The determination of
14 whether an item constitutes a deadly weapon must be made by
15 the jury from the facts and circumstances that have been
16 shown to have existed at the time of the commission of the
17 offense.

18 The other crime charged is the crime of grand larceny,
19 and the Defendant was charged with grand larceny. And in
20 the case of grand larceny, the State must prove, again,
21 beyond a reasonable doubt, that the Defendant took and
22 carried away the property of another, against that person's
23 will or without the consent of the other person. The
24 slightest removal of the property or the complete
25 possession of the property, if even for an instant by the

1 Defendant, is enough to show a taking and carrying away.
2 The State must also prove beyond a reasonable doubt that
3 the Defendant intended to permanently deprive the owner of
4 the property that was taken. Finally, the State must prove
5 that the value of the property in this case that was taken
6 was more than two thousand dollars but less than ten
7 thousand dollars.

8 Now, ladies and gentlemen of the jury, there are two
9 separate charges. I've gone over both of those, grand
10 larceny and burglary. And in this case, it is necessary
11 that you write a verdict for each charge, separate and
12 distinct, from your verdict on the other charge. That is,
13 you should consider each indictment separately and
14 determine whether or not the State has met its burden of
15 proof concerning each charge and write a separate verdict
16 for each of the charges that are before the Court.

17 Mr. Chappel, that gentleman in the back, back there.

18 MR. CHAPPEL: Yes, sir.

19 THE COURT: You're going to be the foreperson of
20 the jury. That means you will be the person who will be
21 responsible to conduct the deliberations of the jury. As I
22 told you at the beginning of the trial, that gives you no
23 greater say in the outcome of the case than any other
24 juror. It's simply you're the person who will be
25 conducting the deliberations or presiding over the

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1 deliberations. Now, if during deliberations the jury
2 should have a question that you'd like to ask of the Court,
3 I'm going to ask you to be the person to write the question
4 on a piece of paper, knock on the door and tell the bailiff
5 you have a question and send it to me. And I'll tell the
6 jury, I can't answer each and every question you may have
7 during your deliberations. I've told you that we have
8 separate functions and I can't enter into your discussions
9 nor decisions concerning the facts in this case. Now, Mr.
10 Foreman, don't edit the questions. Write down whatever the
11 jury wants to ask and submit it to me. I will make a
12 decision as to whether or not I can answer the question or
13 what answer is appropriate. I can answer questions
14 concerning the law involved in the case. I can answer
15 questions concerning the procedure that we followed and in
16 some cases, some answers concerning the evidence. But,
17 again, whatever the question is write it down and I'll
18 determine the appropriate response it should be given. It
19 will also be your responsibility, once a verdict is reached
20 on each indictment, to record that verdict on a form that I
21 will give you. And once both verdicts have been reached
22 you will sign that form. Again, knock on the door, inform
23 the bailiff that the verdict has been reached and we'll
24 return the jury into the courtroom to receive the verdict
25 in this matter.

1 Now, I've told you the verdict must be unanimous.
2 Each and everyone of you must agree upon the verdict before
3 it becomes the verdict of the jury.

4 Now, I've gone over a lot of things with you on my
5 charge and there's some evidence so what we're going to do,
6 I'm going to be sure that I haven't misspoken on something
7 in the charge or haven't made some type of mistake. I'm
8 also going to be sure that the evidence that goes back into
9 the jury room with you is only the evidence that's been
10 properly admitted during the course of the trial. So
11 there's some housekeeping things I'll be doing for just a
12 minute.

13 Mr. Foreman, I'm going to ask you to take the jury
14 back to the jury room. Do not allow any discussions or
15 deliberations to begin until I bring you back into the
16 courtroom for final instructions. You may retire to the
17 jury room at this time. And, sir, you'll be taking that
18 first seat on the front row right there. Thank you.

19 (WHEREUPON, the jury exited the open court at
20 approximately 2:27 p.m.)

21 THE COURT: All right. Objections to the charge
22 from the State?

23 MS. POULOS: No, sir, Your Honor.

24 THE COURT: Any objections from the Defense?

25 MR. SINGLETON: None, Your Honor.

1 THE COURT: I'll ask you to come forward and go
2 over the evidence and be sure only the properly admitted
3 evidence is submitted to the jury. Tonya has printed the
4 verdict form. I'd like for you to look at that and see if
5 there's any objection to the verdict form.

6 MS. POULOS: Your Honor, do you send the
7 indictment back there? We're just curious.

8 THE COURT: I normally do send the indictment.
9 We've got an amended one in this case, so we probably ought
10 to be sure we have the right ones.

11 MS. POULOS: Yes, sir. Thank you. No objections
12 from the State, Your Honor.

13 THE COURT: Any objections?

14 MR. SINGLETON: None, Your Honor.

15 THE COURT: All right. All right. Bring the
16 jury in.

17 (WHEREUPON, the jury entered the open court at
18 approximately 2:30 p.m.)

19 THE COURT: All right. The record will reflect
20 that the jury has returned to the courtroom. Mr. Chappel,
21 I'm going to hand you a couple of documents to take with
22 you. First of all, if the bailiff will hand these over.
23 Mr. Chappel, those are the original indictments in this
24 case. That's for your review as the jury does its
25 deliberations to look over the charges if necessary. Mr.

1 Bailiff, if you'll hand this over to Mr. Chappel, as well.
2 Sir, this is the verdict form that I told you that I would
3 supply to you and I must go over it. If you'll look at it
4 with me. At the top you see it says State of South
5 Carolina, County of Spartanburg, over to the right it
6 states the Court that we're in. Below that's the caption
7 of The State versus Mr. Henson. Over to the right again,
8 it indicates the verdict form of the two indictments.
9 Below that is the body of the verdict. The first one as to
10 the indictment for first degree burglary, there are two
11 choices, either not guilty or guilty. If you'll put a
12 check or an "X" on the line beside the appropriate verdict
13 once it's reached for that charge. And below that is the
14 other indictment for grand larceny. Again, there's a
15 choice of not guilty or guilty and you'll put a mark or a
16 check beside the appropriate verdict. Once that's
17 finished, you'll sign at the bottom where it says
18 foreperson. And once that form has been completed and the
19 jury has reached unanimous verdicts on both charges, knock
20 on the door and tell the bailiff a verdict has been
21 reached.

22 Now, let me caution the jury, please don't take from
23 the fact that I have placed the choices in any order
24 somehow to indicate that I have a preference one way or the
25 other as to how you decide the case. I can tell you that

1 on every case I've tried for almost eight years now, I've
2 used that same order. So it doesn't show a preference.
3 It's always not guilty on top and guilty on the bottom.
4 Again, don't take from the fact that I've done anything in
5 the case to indicate to you that I have a preference one
6 way or the other as to how you determine the facts in this
7 case. The verdict form is no different.

8 Now, Mr. Bailiff, if you would get the exhibits here
9 on the witness stand. Those, Mr. Foreman, will be given to
10 you to take back to the jury room. The jury has the right
11 to take a look at that evidence as you do your
12 deliberations.

13 Now, at this time I'm going to instruct you to retire
14 to the jury room and begin your deliberations until such
15 time as you reach a verdict. You may retire.

16 (WHEREUPON, the jury exited the open courtroom at
17 approximately 2:34 p.m.)

18 THE COURT: Any objections to the final
19 instructions given by the Court from the State?

20 MS. POULOS: Nothing from the State, Your Honor.

21 THE COURT: Any from the Defense?

22 MR. SINGLETON: None, Your Honor.

23 THE COURT: All right. This Court's in recess
24 then until such time as a verdict is reached. Thank you
25 very much.

1 (WHEREUPON, the verdict forms and State Exhibits 2
2 through 13 were presented to the jury and the Court
3 stood at recess awaiting the verdict of the jury at
4 approximately 2:34 p.m.)

5 THE COURT: All right. I'm informed a verdict
6 has been reached. Is the State ready to receive the
7 verdict?

8 MS. POULOS: Yes, sir, Your Honor.

9 THE COURT: Is the Defense ready to receive the
10 verdict?

11 MR. SINGLETON: Yes, Your Honor.

12 THE COURT: Bring the jury in.

13 (WHEREUPON, the jury entered the open court at
14 approximately 3:36 p.m.)

15 THE COURT: All right. The jury has returned to
16 the courtroom. Mr. Foreman, I'm informed that a verdict
17 has been reached. Is that correct?

18 MR. FOREMAN: That's correct.

19 THE COURT: Pass the form to the bailiff. Thank
20 you, sir. Madam Clerk, I'll ask you to publish the
21 verdict.

22 THE CLERK: In the State of South Carolina,
23 County of Spartanburg, the State of South Carolina versus
24 Alfred Guy Henson, as to indictment number 2011-GS-42-0351
25 for first degree burglary, the jury has the verdict of

State of South Carolina -vs- Alfred Guy Henson (2011-GS-42-0351 and 0352)
Charge

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1 guilty.

2 As to indictment number 2001-GS-42-0352 for grand
3 larceny, the jury finds the Defendant guilty. Signed by
4 the foreperson this 11th day of October, 2011. Ladies and
5 gentlemen of the jury, is this your verdict and still your
6 verdict? If so, please raise your right hand.

7 (WHEREUPON, all jurors' right hands were raised.)

8 THE COURT: Anything further from the State
9 before I release the jury?

10 MS. POULOS: No, sir.

11 THE COURT: Anything further from the Defense
12 before I release the jury?

13 MR. SINGLETON: No, Your Honor.

14 THE COURT: All right. Ladies and gentlemen of
15 the jury, this completes your service in this case and I
16 want to thank you very much for your service and your
17 attention to your duties. I wish I could tell you this
18 ends your service for the week, but I can't tell you that.
19 I'm going to release you in this case now and ask that you
20 call in to the number after six o'clock today. There
21 should be additional instructions at that time.

22 Throughout the trial, I have told you not to discuss
23 the case with anyone. I will now tell you that you have
24 the right to do so if you choose to do that. You also have
25 the right not to discuss the case with anyone. A juror

1 owes no one an explanation for your service on the jury and
2 if you choose to speak about it, that will be your choice.
3 If anyone should harass you or bother you concerning your
4 service on this jury, please report that to the Clerk's
5 office. I can assure you, we'll take the appropriate
6 action should that occur. The bailiffs will be checking
7 you out. If you would like to be present for sentencing in
8 this case, you have the right to come into the back of the
9 courtroom, but it's not required that you be here for that
10 purpose. That would be a choice, again, that you should
11 make.

12 Again, thank you very much for your attention to your
13 duties. Mr. Foreman, you're going to need to see the Clerk
14 before you leave. If you'll step right here. The
15 remainder of the jury can go back to the jury room.

16 (WHEREUPON, the jury exited the open court at
17 approximately 3:39 p.m.)

18 THE COURT: Anything further from the State at
19 this time?

20 MS. POULOS: No, Your Honor.

21 THE COURT: Anything from the Defense at this
22 time?

23 MR. SINGLETON: No, sir.

24 THE COURT: All right. Do you want to preparing
25 a sentencing sheet?

State of South Carolina -vs- Alfred Guy Henson (2011-GS-42-0351 and 0352)
Charge

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1 MS. POULOS: Yes, sir, Your Honor. I have them
2 prepared.

3 THE COURT: All right. If you'll approach the
4 bar, please.

5 (WHEREUPON, Ms. Poulos, Mr. Singleton and the
6 Defendant approached the bar.)

7 THE COURT: All right. Ms. Poulos, I'll hear
8 from you.

9 MS. POULOS: Thank you, Your Honor. Your Honor,
10 you heard the facts in this case, so I'm not going to go
11 into the facts. I would like to go into his prior record
12 and the victim would like to address the Court.

13 THE COURT: All right.

14 MS. POULOS: Your Honor, he has a 1993 burglary
15 second, larceny; 1994, public drunk, malicious injury to
16 personal property; 1997, possession of crack cocaine,
17 probation revocation; 2000, operating an uninsured motor
18 vehicle, DUS; 2001, burglary third, DUS, possession of
19 controlled substance; 2003, DUS; 2006, shoplifting,
20 possession of twenty-eight grams or less of marijuana, DUS;
21 2009, financial transaction card theft and financial
22 transaction card fraud.

23 THE COURT: All right. I'll hear from you, Mr.
24 Singleton, in connection with the appropriate sentencing.

25 MR. SINGLETON: May it please the Court?

1 THE COURT: Yes, sir.

2 MR. SINGLETON: Your Honor, as Ms. Poulos said,
3 you've already hear the facts in the case. They've
4 returned their verdict. We ask that you give him the
5 minimum sentence. He does have a prior second degree
6 burglary and third degree burglary more than twenty years
7 ago and one ten years ago. In speaking and knowing Mr.
8 Henson for the last several months, I've had nothing but
9 good talks with him, with his family. His family lives
10 about a half mile from me. I didn't know them before I was
11 hired for this case, but I've come to know his parents
12 fairly well. He comes from a good family. In talking with
13 Mr. Henson about his, you know, just small talk and stuff
14 like that, talking to Mr. Henson about his prior record, he
15 said to me that when he was committed the earlier crimes,
16 he was under the influence of either pills or alcohol or
17 both. You know, obviously, there was a time when he was
18 hanging around with the wrong people that were not -- as I
19 state, I'm not blaming anybody else. He takes
20 responsibility for what he's done in the past. He's
21 already faced those charges. You know, obviously, we're
22 sorry for the verdict, but we ask that you give him the
23 minimum. He is on disability before he got arrested
24 because he's had injuries to his neck. He's been in the
25 jail for the last eleven months, since that day. He never

State of South Carolina -vs- Alfred Guy Henson (2011-GS-42-0351 and 0352)

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Charge

1 made bond. We ask you to give him credit for that time
2 served since November 8, 2010. He never has made bond,
3 never had a bond, actually. He was always denied a bond.
4 He's been sitting in jail, trying to deal with his
5 disability, had no pain medication or anything like that.
6 Obviously, that's one of the things you deal with when
7 you're in jail.

8 He is -- you know, he's talked to me about that if he
9 was able to get out, when he does get out, he wanted to try
10 to go back because he knows Karate, he knows Tac Kwon Do
11 and stuff like that. He would like to teach that to young
12 people. So I hope that you give him the minimum sentence
13 in some form or fashion. You know, he's sorry for being
14 here today, sorry for the verdict, obviously, we are. But
15 we just ask on behalf of his parents that had to leave
16 because his mother's not feeling well, that you give him
17 the minimum.

18 THE COURT: All right. You said the victim would
19 like to be heard?

20 MS. POULOS: Yes, sir, Your Honor.

21 THE COURT: I'll be happy to hear from you.

22 MS. OFORI: Yes, I just wanted to state that I
23 can't describe the feeling that I have knowing that
24 somebody was in my home and what it has, you know, done to
25 me and for the safety of, you know, my child. I'm at home,

1 you know, a good bit with my child. You know, sometimes
2 just by myself. And it was more the matter of which that
3 he came into my home during the day when, you know, I feel
4 most comfortable, at a time where I was by myself and not
5 in a position to, you know, carefully defend myself given
6 the state that I was in, eight months pregnant. And given
7 all the factors that nothing deterred him from coming into
8 my house. I have a car parked out front. The door chime
9 alarm went off to alert, you know, that someone was there.
10 He still came into the house. The T.V. was still on. I
11 had it, you know, really low. Still came around and walked
12 around the floor of my home. And all of those things are
13 things that scare me the most, is that either he knew my
14 state and knew that I wouldn't be able to do anything about
15 it if he came in, had I been downstairs. Or that he didn't
16 care if I was at home or not. And so all of those things
17 kind of factor into how that made me feel and being
18 uncomfortable in my own home.

19 THE COURT: Thank you.

20 MS. OFORI: You're welcome.

21 THE COURT: Go over that prior record for me one
22 more time.

23 MS. POULOS: Yes, sir, Your Honor. 1993,
24 burglary second and larceny; 1994, public drunk, malicious
25 injury to personal property; 1997, possession of 'crack

State of South Carolina -vs- Alfred Guy Henson (2011-GS-42-0351 and 0352)
Charge

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1 cocaine, probation revocation; 2000, operating an uninsured
2 motor vehicle, DUS; 2001, burglary third, DUS, possession
3 of a controlled substance; 2003, DUS; 2006, shoplifting,
4 possession of twenty-eight grams or less marijuana, DUS;
5 and 2009, financial transaction card theft and financial
6 transaction card fraud.

7 THE COURT: Mr. Henson, you indicated you do not
8 wish to speak. Is that correct? Do you wish to speak?

9 MR. HENSON: I don't think I can.

10 THE COURT: I beg your pardon?

11 MR. HENSON: I don't think I can.

12 THE COURT: You don't think you can speak?

13 MR. HENSON: (Negative nod).

14 THE COURT: Do you wish to speak?

15 MR. HENSON: No, sir. I just, well, I just want
16 to know -- I just wanted to get back to my parents and take
17 care of them. I hate what happened today. I just hope
18 you'll show some mercy.

19 THE COURT: All right. I have run the sentences
20 concurrently. On the grand larceny, it's my understanding
21 it's a third or subsequent property offense.

22 MS. POULOS: Yes, sir.

23 THE COURT: It carries a maximum of ten years.

24 MS. POULOS: Yes, sir.

25 THE COURT: The sentence is ten years on that to

State of South Carolina -vs- Alfred Guy Henson (2011-GS-42-0351 and 0352)
Charge

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1 run concurrently. He's given credit for time served as
2 determined by the Department of Corrections. I recommended
3 the Addiction Treatment Unit while he's in. On the
4 burglary, the sentence is twenty years. I've run that
5 concurrently, give him credit for time served as determined
6 by the Department of Corrections and refer him to the
7 Addiction Treatment Unit for that, as well. Good luck to
8 you, sir.

9 MR. SINGLETON: Thank you, Your Honor.

10 MS. POULOS: Thank you, Your Honor.

11

12 (END OF REQUESTED TRANSCRIPT OF RECORD)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Roger L. Couch, Circuit Court Judge

Case No. 2011-GS-42-0351

Case No. 2011-GS-42-0352

The State,

Respondent,

v.

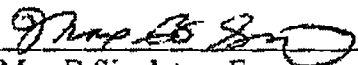
Alfred Guy Henson,

Appellant.

NOTICE OF APPEAL

Alfred Henson appeals his conviction of First Degree Burglary and Grand Larceny, and his sentence of 20 years in prison for First Degree Burglary and concurrent sentence of 10 years in Department of Corrections for Grand Larceny. Mr. Henson was found guilty on October 11, 2011 and his sentence to twenty (20) years in prison and concurrent sentence of 10 years was handed down by the Honorable Roger L. Couch on October 11, 2011. This appeal is taken from the Jury finding Mr. Jones guilty on October 11, 2011 and from The Honorable Roger L. Couch denial of a directed verdict at the end of the State's case and at the end of the Defense case on October 11, 2011.

October 21, 2011


Max B Singleton, Esq.
2607 Woodruff Road
Suite E-342
Simpsonville, SC 29681
(864)421-2911
Attorney for Appellant

Assistant Solicitor Timi Poulos
7th Judicial Circuit
180 Magnolia Street, 3rd Floor
Spartanburg, SC 29306
Attorney for Respondent

LG 78 11 13 100 110

15 10

The South Carolina Court of Appeals

The State, Respondent,
v.
Alfred Guy Henson, Respondent.

Appellate Case No. 2012-209007

The Honorable Roger L. Couch
Spartanburg County
Trial Court Case No. 2011GS4200352, 2011GS4200351

FILED
SEP 24 2012
M. HOPE BLACKLEY
AM 11:08

ORDER

It appears that Appellant, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Cleve Allen, Deputy
CLERK

Columbia, South Carolina

cc:
Salley W. Elliott
J. Falkner Wilkes

FILED
10-12-12-06



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

FILED
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COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1839
www.sccourts.org

September 14, 2012

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Henson, Alfred
Lower Court Case No. 2011GS4200352, 2011GS4200351
Appellate Case No. 2012-209007

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Salley W. Elliott
J. Falkner Wilkes

FORM 5

STATE OF SOUTH CAROLINA)

County of Spartanburg)Alfred Guy Henson, 00242989)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-42-1936

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution, 386 Redemption Way,
McCormick, SC 29899
2. Name and location of Court which imposed sentence General Sessions Spartanburg, 180 Magnolia Street, Spartanburg, SC
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-42-0351 Burglary 1st
 - (b) 2011-GS-42-0352 Grand Larceny

CLERK OF COURT
SPARTANBURG

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- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 11, 2011
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty x
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal was dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 12, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Order dated June 12, 2012, SC Court of Appeals
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- 2013 APR 25 PM 1:33
INDEXED - COMPLETE

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SPRINGFIELD, MA
2013 APR 25 PM 1:35

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel.
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachment A.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. NA
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

CLERK OF COURT
SPARTANBURG, SC
2013 APR 25 PM 1:35
JANICE J. CULLEN

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No.

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

(a) which grounds have been presented:

- i. NA
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

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

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Revised 3/2003

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) NA
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? No
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Max Singleton, 2607 Woodruff Road, Ste., E-342, Simpsonville, SC 29681
for the trial of the case and filing of the notice of appeal
- ii. J. Falkner Wilkes, 114 Whitsett Street, Greenville, SC 29601
for the review of the appeal
- iii. J. Falkner Wilkes, 114 Whitsett Street, Greenville, SC 29601
for the Post Conviction Relief Action
- (b) the proceedings at which each such attorney represented you:
- i. see above
- ii. _____
- iii. _____
- 2018 APR 25 PM 1:35

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SPRINGFIELD
2018 APR 25 PM 1:35
MAIL ROOM

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

To be granted a new trial.

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

No.

STATE OF SOUTH CAROLINA

VERIFICATION

County of Spartanburg

I, Alfred Guy Henson, 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.

Alfred Guy Henson

SWORN to and subscribed before me this 21st day of April, 2013.

[Signature] (L.S.)
Notary Public

My Commission Expires: 2-12-14

CLERK OF COURT
SPARTANBURG
2013 APR 25 PM 1:35
[Signature]

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

I, Alfred Guy Henson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Alfred Guy Henson
Applicant

SWORN or affirmed to and subscribed before me this

21 day of April, 2013
[Signature]
Notary Public

My Commission Expires: 2.12.14

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SARASOTA
FLORIDA

Alfred Guy Henson v. State of South Carolina

Attachment A

1. Trial counsel was ineffective for the following reasons:

Failure to properly prepare and investigate the case. Failure to properly present an adequate defense based on the facts and circumstances of the case. Failure to properly conduct discovery in the case. Failure to properly subpoena and call witnesses and present evidence in the case. Failure to raise proper objections during the trial to present and preserve evidentiary issues. Improper stipulations entered during the trial which were adverse to the defense of the case. Failure to move for a Jackson v. Denno hearing and properly object to the testimony of witnesses concerning statements allegedly made by the Applicant. Failure to properly and effectively cross-examine the State's witnesses. Failure to raise and properly argue and preserve record as to the issue of the whole jury seeing the Applicant in shackles during the trial. Failure to make a proffer of evidence when warranted by the circumstances of the case to properly present and preserve issues for appeal. By failing to properly advise the Applicant as to the law regarding a proffer and its purpose and applicability in the case. Failure to consider how the introduction of evidence would cause the loss of last argument in the case. Failure of counsel to communicate all plea offers to the Applicant and to discuss same. Failure to properly discuss the case and advise the Applicant on the applicable law and procedure.

2. Failure of the State to produce all discoverable evidence.

Failure of the State to produce discovery including but not limited to the dash cam video or any relevant recordings of the stop and arrest of the Applicant.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2013-CP-42-1936
Alfred Guy Henson, #242989,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed April 25, 2013, 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 Spartanburg County Clerk of Court. He was indicted at the February and September 2011 terms of the Spartanburg County Grand Jury for burglary – 1st degree (2011-GS-42-0351) and grand larceny 3rd or subsequent (2011-GS-42-0352). The Applicant was represented by Max B. Singleton, Esquire. On October 11, 2011, the Applicant proceeded to trial and was convicted of both charges. The Honorable Roger L. Couch sentenced Applicant to concurrent sentences of twenty years for burglary – 1st degree and ten years for larceny.

A timely notice of appeal was filed on Applicant's behalf. Following the Applicant's request to withdraw his direct appeal, the South Carolina Court of Appeals dismissed the Applicant's appeal by Order on June 12, 2012. The Remittitur was returned on September 14, 2012.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, Applicant's appellate records and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

- a. Ineffective assistance of counsel, in that;
 - i. Counsel failed to properly prepare and investigate the case,
 - ii. Counsel failed to properly present an adequate defense based on the facts and circumstances of the case,
 - iii. Counsel failed to properly conduct discovery,
 - iv. Counsel failed to properly subpoena and call witnesses to present evidence in the case,
 - v. Counsel failed to raise proper objections during the trial to present and preserve evidentiary issues,
 - vi. Counsel failed to move for a Jackson v. Denno hearing and failed to object to the testimony of witnesses concerning statements allegedly made by Applicant,
 - vii. Counsel failed to properly and effectively cross-examine the State's witnesses,
 - viii. Counsel failed to properly raise, argue, and preserve record as to the issue of the jury seeing Applicant in shackles during trial,
 - ix. Counsel failed to make a proffer of evidence when warranted to properly present and preserve issues for appeal,
 - x. Counsel failed to properly advise Applicant as to law regarding a proffer,
 - xi. Counsel failed to consider how the introduction of evidence would cause the loss of last argument in the case,
 - xii. Counsel failed to communicate and discuss all plea offers with Applicant,

- xiii. Counsel failed to properly discuss the case and advise the Applicant on the applicable law and procedure;
- b. Brady violation, in that;
 - i. State failed to produce discovery including but not limited to the dash cam video or any relevant recordings of the stop and arrest of Applicant.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

The Applicant also alleges that the State withheld favorable evidence in violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, ___ S.C. ___, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

The Respondent submits that this ground for relief is totally without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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May 8, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Alfred Guy Henson,

2013-CP-42-1936

Applicant,

v.

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

J. Falkner Wilkes, Esquire
114 Whitsett Street
Greenville, South Carolina 29601



Anne A. Mueller

Legal Assistant for the Respondent

DATED this 8th day of May, 2014.

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) COMMON PLEAS
3) OF THE SEVENTH
4) JUDICIAL CIRCUIT
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November 9, 2016
Spartanburg, South Carolina

B E F O R E:

HONORABLE FRANK R. ADDY, Judge.

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

J. FALKNER WILKES, ESQUIRE
For Plaintiff

ALICIA OLIVE, ESQUIRE
For Defendant

Julie A. Ashbrook,
Circuit Court Reporter
Seventh Judicial Circuit

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ALFRED GUY HENSON VERSUS THE STATE OF SOUTH CAROLINA

THE COURT: I think the next case up that we are hoping to address is Alfred Henderson (sic), Case 2013-CP-42-1936. Mr. Henson is present with Mr. Wilkes. I know that we had -- are we good to proceed, Ms. Olive, from your perspective?

MS. OLIVE: Yes, Your Honor.

THE COURT: Okay. And, Mr. Wilkes, are you ready to proceed, sir?

MR. WILKES: Yes, sir.

THE COURT: Call your first witness.

MR. WILKES: Thank you, Your Honor. We'll call Alfred Henson to the stand.

THE COURT: Sir, if you'll come around and have a seat over here, please. (Complies.)

If you'll just raise your right hand as best you can. (Complies.)

Do you swear or affirm the testimony you're about to give is the truth?

THE WITNESS: Yes, sir.

THE COURT: Mr. Wilkes.

MR. WILKES: Thank you, Your Honor.

ALFRED GUY HENSON,
having been duly sworn, testified as follows:

DIRECT EXAMINATION

1 BY MR. WILKES:

2 Q. Mr. Henson, tell me, you were convicted of what
3 charges?

4 A. Burglary first and grand larceny.

5 Q. And when did that happen?

6 A. In 2010.

7 Q. In 2010. You were arrested in 2010?

8 A. Right. Yes, sir.

9 Q. And tried in 2011?

10 A. Yes, sir.

11 Q. Is that right?

12 A. (Nods head up and down.)

13 Q. Who represented you initially on those charges?

14 A. Max Singleton.. No. I mean, Matthew Shealy, I'm
15 sorry.

16 Q. Okay. And tell me how you came to meet with Mr.
17 Shealy.

18 A. He came by the jail.

19 Q. Okay. And so you were in jail, no bond?

20 A. Yeah.

21 Q. And he came to see you?

22 A. Yes, sir.

23 Q. Okay. Between the time that you were arrested
24 and the time that you went to trial were you ever
25 released on bond?

1 A. No, sir.

2 Q. Okay. Now, tell me about your initial meeting
3 with Mr. Shealy.

4 A. He just came by and we discussed some of the ---

5 Q. Can you speak up?

6 A. Yeah.

7 Q. Try to get a little closer to the microphone,
8 please.

9 A. He just came by and we discussed some of the
10 facts of the case.

11 Q. Okay. And do you recall when it was or how long
12 you had been in jail?

13 A. Several, maybe a month or two after I was in
14 jail. And there was probably a 30-minute visit.

15 Q. Okay. And during that time you say you discussed
16 the facts of the case?

17 A. Yeah, basic outline of the case.

18 Q. Did you tell him the facts or did he know the
19 facts?

20 A. I told him pretty much what had happened and --
21 yeah, that's about it.

22 Q. All right. And did you have any other meetings
23 with Mr. Shealy?

24 A. Yes, one more.

25 Q. And how long after the first meeting was that?

1 A. I think several weeks or maybe a month.

2 Q. And what happened at that meeting?

3 A.. Well, basically we just went over a few other
4 things and he ---

5 Q. Do you recall ever discussing a plea offer with
6 Mr. Shealy?

7 A. No, I don't.

8 Q. Do you recall going over any kind of discovery
9 with Mr. Shealy?

10 A. No, sir. As far as I know he didn't have it at
11 the time.

12 Q. Now, what happened -- you later became -- came to
13 be represented by Mr. Singleton?

14 A. That's correct.

15 Q. Tell me how that happened.

16 A. Well, Matthew wouldn't meet with me and discuss
17 the case, so I decided to hire Mr. Singleton.

18 Q. Okay. And do you recall about when that was?

19 A. It was like five -- four or five months into my
20 incarceration.

21 Q. And how long before the trial?

22 A. Like six months.

23 Q. Now, when you met with Mr. Singleton, did you go
24 over the facts of the case with him?

25 A. Yes.

1 Q. Do you recall how many times you met with Mr.
2 Singleton?

3 A. Probably two, maybe three times at the most.

4 Q. How long was it before the trial -- well, what
5 was the time distance, distance and time, between the
6 last meeting you had with Mr. Singleton and the trial?

7 A. Approximately a week.

8 Q. Okay. And tell me about that last meeting.

9 A. He came to show me that the prosecution was going
10 to enter a stipulation on my record.

11 Q. What kind of stipulation?

12 A. On my past record, my two priors.

13 Q. Okay. In other words, you were charged with
14 burglary first initially, correct?

15 A. Initially I was charged with receiving stolen
16 goods.

17 Q. Okay. And ---

18 A. And then several days later it was burglary
19 first.

20 Q. And the first indictment for burglary first
21 alleged only the possession of a knife, correct?

22 A. A knife, right.

23 Q. Okay. Now, were you aware that just prior to the
24 trial you were reindicted and the indictment amended to
25 include the two prior, either housebreaking or

1 burglaries?

2 A. No, sir. I didn't know, really, anything about
3 indictments at the time.

4 Q. All right. Tell me about the discussion you had
5 with Mr. Singleton when you were informed about the
6 stipulation.

7 A. Well, he just basically said that they were gonna
8 present a stipulation about my two priors. And at the
9 time it kind of floored me because I hadn't heard
10 anything about it. And I really panicked because I
11 didn't want my priors entered into a trial because I
12 know it would prejudice, you know, a jury against me.
13 So I tried to get him to see if he could work out a plea
14 with them somehow.

15 (Whereupon, Plaintiff's Exhibit Number 1, Court
16 Administration Letter Dated 9/15/16, was marked for
17 identification.)

18 (Whereupon, Plaintiff's Exhibit Number 2,
19 Stipulation, was marked for identification.)

20 (Whereupon, Plaintiff's Exhibit Number 3,
21 Indictments and Sentencing Sheets, was marked for
22 identification.)

23 (Whereupon, Plaintiff's Exhibit Number 4,
24 Criminal History, was marked for identification.)

25 BY MR. WILKES:

1 Q. Mr. Henson, if you'll take a look at what's
2 marked Plaintiff's Exhibit 2, would that be the
3 stipulation you're talking about?

4 A. Yes.

5 Q. And tell me what that is.

6 A. The stipulation to show that I had two prior
7 convictions of burglary.

8 Q. Okay. And who signed that?

9 A. I did.

10 Q. Okay. And why did you sign that?

11 A. Because I asked Max and he said we didn't have a
12 choice.

13 Q. Okay.

14 A. And that if I didn't they would just call the
15 clerk to testify that I had them.

16 Q. Okay. I'll show you what's Plaintiff's Exhibit 3
17 for identification. The burglary third, the initial
18 burglary third -- let's see, well, let me make sure I
19 get this right -- showing your two offenses that the
20 solicitor referenced, one from 1993.

21 A. Uh-huh.

22 Q. And one from, it looks like, 2000; is that right?

23 A. Sounds right.

24 Q. Are those the same -- those are the same
25 convictions that are referenced in the stipulation?

1 A. Yes, sir.

2 Q. And on the 19 -- well, tell me, tell me about
3 both of those cases. You had the burglary charge from
4 1993. How was that case resolved in court?

5 A. Well, when I was arrested I was met with the
6 detective and we discussed it and he basically said that
7 if I pled that he could help me get my own recognizance
8 signed out on bond and so -- and talking about some
9 other things, but...

10 Q. Did you plead guilty?

11 A. Yes, sir.

12 Q. And did you have a lawyer?

13 A. No.

14 Q. Okay. Did you plead guilty on the 2000 charge?

15 A. Yes.

16 Q. And in 2000 did you have a lawyer?

17 A. No, sir.

18 Q. And are the sentencing sheets and the indictments
19 all there on those two charges?

20 A. Yes, sir.

21 Q. Now, on the '93 charge what was your sentence?
22 Was it five years and \$500 restitution?

23 A. That sounds right.

24 Q. Or, I'm sorry, 15 years with five years
25 probation?

1 A. Right.

2 Q. Okay. And in the 1993 case, if you'll look at
3 Plaintiff's Exhibit 4, on the '93 case, on 8/11 of '97,
4 were you sent back to Perry on a parole revocation?

5 A. Yes, sir.

6 Q. And how long did you spend in jail on that '93
7 charge?

8 A. I'm like a week short of a year.

9 Q. Okay. Now, at the time that you pled guilty in
10 19 -- in 19 -- in 2000 you pled guilty in front of Judge
11 Few.

12 A. Uh-huh. Yes, sir.

13 Q. '93 in front of Judge Eppes?

14 A. Yes, sir.

15 Q. And tell me about the plea that day. How did
16 that work? You showed up, what happened?

17 A. We showed up and he took care of a few people.
18 He was calling groups of people to come up and plead
19 guilty. And there was about ten of us and we just went
20 up and he would go down the line and give us our
21 sentencing after we pled guilty.

22 MR. WILKES: Okay. And, Your Honor, I would
23 offer these into evidence. I would also offer Exhibit 1
24 into evidence, which is correspondence with South
25 Carolina Court Administration just indicating that there

1 are no transcripts or other records that can be obtained
2 from 1993 or 2000.

3 THE COURT: Okay. Without objection, Plaintiff's
4 1 and 2 will be in evidence.

5 (Whereupon, Plaintiff's Exhibits 1 and 2 were
6 entered into the record.)

7 MR. WILKES: And it's -- I actually had one, two,
8 three and four.

9 THE COURT: All right. One through four then are
10 in evidence.

11 (Whereupon, Plaintiff's Exhibits 3 and 4 are
12 entered into evidence.)

13 BY MR. WILKES:

14 Q. Now, leading up to the trial did you discuss your
15 case with Mr. Singleton?

16 A. Yes, sir.

17 Q. And was one of the lines of strategy he discussed
18 with you making an objection to the evidence which was
19 primarily a camera, a strap and some credit cards in the
20 camera, correct?

21 A. Yes, sir.

22 Q. All right. Now, tell me from the beginning of
23 Mr. Singleton's representation, what did he explain to
24 you about the case? The trial strategy, what was the
25 approach at that point?

1 A. Well, we focused in on illegal search and seizure
2 of the camera and how the traffic stop took place and
3 all. And when I hired him I was hoping that, you know,
4 I asked him to try to get me a bond in front of the
5 judge and to get in front of a judge to try to suppress
6 his illegal search and seizure. And that's what, you
7 know, he said he was going to try to do.

8 Q. Okay. And get up to the point where you said it
9 was a week or so before trial and you were presented
10 with the stipulation that they would introduce your
11 prior convictions as elements of the crime, correct?

12 A. Right. It was -- that was quite a shock because
13 I knew that there was no way I could -- I didn't want to
14 go to a trial and bring up prior history like that.

15 Q. Okay.

16 A. So...

17 Q. And at that point was there still some strategy
18 on the search and seizure issue?

19 A. Yeah. We -- he still believed that we could get
20 it dropped by illegal search and seizure.

21 Q. Okay.

22 A. And I was under the impression that we would go
23 to a hearing before the day of the court. And that
24 would give me time, you know whether we won that
25 suppression or not, to decided what to do with the, you

1 know, the trial.

2 Q. Okay. And if, if you had been told -- did he
3 give you an impression on the strength of the search and
4 seizure issue?

5 A. He was confident we could get it dropped.

6 Q. Okay. If knowing that the search and seizure
7 issue was very likely not to prevail that week that you
8 received notice that they would use those two prior
9 convictions in your case, would that have affected your
10 decision as to going to trial or pleading guilty?

11 A. Of course. I would have, I would have pled
12 guilty.

13 Q. And what was the primary reason that you
14 persisted into a trial at that point knowing that they
15 would be using those convictions against you?

16 A. Because I believed it wasn't going to go to a
17 trial. I believed it was going to be dropped.

18 Q. And why did you believe that?

19 A. Because that's what my lawyer told me. And from
20 the transcripts that's what the, the officers testified
21 to. They couldn't see it, so I mean it fits.

22 Q. From what you were told?

23 A. Right.

24 Q. Okay. All right. Now, when the trial began,
25 tell me about the discussions and the jury selection.

1 First thing that starts with the trial, the jury
2 selection, tell me about jury selection.

3 A. Well, jury selection started and we had a
4 conversation about who we should pick and who we
5 shouldn't pick and...

6 Q. Okay. Well, what -- who would, who would you not
7 pick?

8 A. Well, he seemed to think we shouldn't pick
9 someone of color because they might not be fair to me.

10 Q. Why would that be?

11 A. Because the victim in the case was black.

12 Q. Okay.

13 MS. OLIVE: Your Honor, I'm gonna object at this
14 point. The testimony, if we're gonna raise a Batson
15 issue here, that has not been pleaded. This is the
16 first I'm hearing of it. The State is not prepared to
17 address the Batson issue today. I would ask that any
18 testimony in relation to a Batson motion are gonna be
19 restricted.

20 THE COURT: All right. I may sustain the
21 objection, but for a different reason. He's not
22 entitled to a trial by any particular individual or a
23 jury, just a fair jury. I assume that no Batson issue
24 was made at trial. Is that -- or no Batson motion was
25 made by anybody at trial?

1 MS. OLIVE: No, Your Honor.

2 MR. WILKES: Well, here's -- I will profer what
3 the basis or the substance of the testimony would be.
4 My client has indicated that counsel actually made
5 strikes on a non-racially neutral basis. Actually,
6 specifically a racial basis. His counsel did, which he
7 can't object to his own Batson violation.

8 THE COURT: Correct.

9 MR. WILKES: And what his testimony has been and
10 what he believes and would testify to is that it became
11 by the end of the selection, Mr. Hensen has indicated
12 that it was --

13 THE WITNESS: Apparent.

14 MR. WILKES: -- apparent, I think palpable. It
15 was evident to the jury that he was striking blacks from
16 the jury and that that was clearly sensed by the jury
17 and did affect his case. And I think that ---

18 THE COURT: Well, what the jury sensed reeks of
19 speculation unless you have a juror who's prepared to
20 testify that they were personally offended that the
21 manner in which trial counsel struck the jury. I'm not
22 hearing the State made a Batson motion against trial
23 counsel.

24 MR. WILKES: No, they did not.

25 THE COURT: So, I don't -- I understand your

1 position, but regardless of why the jury was struck, I
2 don't see how that could be a relevant issue or how he
3 could be prejudiced absent some testimony that doesn't
4 rely on speculation or conjecture, so...

5 MR. WILKES: And -- yeah, I understand. And our
6 position would be that a Batson violation is per se an
7 unconstitutional act and a prejudicial act. And if I
8 may proffer as an exhibit the strike list just showing
9 the racial strikes as a proffer for the record.

10 THE COURT: You may do that, if you wish.

11 MR. WILKES: Thank you.

12 THE COURT: That's perfectly fine. But, again,
13 the Court's not in a position to make that kind of a
14 finding. Even if the Court could, I don't see how that
15 will be relevant or germane to any issue involved in
16 this case, especially since it's the trial judge's
17 obligation to make that finding, so...

18 MS. OLIVE: And, Your Honor, again, just for the
19 record I would object to the introduction of the strike
20 sheet. I mean, it is technically part of the lower
21 court record.

22 And just in general, Your Honor, I should have
23 made this motion prior, but, you know, we're dealing
24 here with pleadings. This is a post-conviction relief
25 action. We've done our return on the basis of what was

1 included in a post-conviction relief action. That's
2 what the State is prepared to go forward on today. Your
3 Honor, we just object to issues being raised with the
4 State because it's not the legal narrative that could
5 potentially prejudice the State. And, certainly, in
6 this instance it does.

7 THE COURT: Okay. I understand your position.
8 This names as the sole ground on the PCR ineffective
9 assistance of counsel. That's what I've looked at here,
10 unless there was a supplemental finding. Go ahead,
11 though, and continue, please, Mr. Wilkes.

12 MR. WILKES: Thank you, Your Honor. And not my
13 intention to ambush. I'm just --

14 THE COURT: No, not at all.

15 MR. WILKES: -- trying to cover everything that
16 he's raised here today.

17 (Whereupon, Court's Exhibit Number 1, Strike
18 Sheet, was marked for proffer identification.)

19 (Whereupon, Court's Exhibit Number 1 was entered
20 into the record.)

21 BY MR. WILKES:

22 Q. During the pretrial or at the trial, did your
23 attorney ever raise any issue as to the use of the prior
24 convictions in your case?

25 A. I don't understand the question.

1 Q. Did your -- you had said that your attorney told
2 you, you had to sign the stipulation.

3 A. Right.

4 Q. Did he explain or discuss the possibility of any
5 valid objections to it?

6 A. He didn't explain anything. He just said I
7 needed to sign it.

8 Q. If you had known that there was a possible
9 objection to the use of those prior convictions, would
10 you have signed that stipulation?

11 A. Of course not.

12 Q. During the cross-examine of the officer, do you
13 remember the discussion about the brown or the black or
14 the dark coveralls?

15 A. Yes.

16 Q. All right. After the State rested your attorney
17 called back one of the police officers.

18 A. That's right.

19 Q. And asked some more cross-examination questions.
20 Do you recall that?

21 A. Yes, sir.

22 Q. Did you discuss that strategy with him?

23 A. Yes, sir.

24 Q. And was that -- what was the purpose of calling a
25 State's witness, who had already testified and been

1 cross-examined, why call him back in your case? Do you
2 remember?

3 A. Well, I was trying to -- we were trying to show a
4 pattern of his testimony.

5 Q. Okay. Were there any questions asked in the
6 second go around that couldn't have been asked on
7 cross-examination?

8 A. Well, we were trying to determine where the vest
9 camera was.

10 Q. Okay. Could that have been asked in the first
11 cross-examination?

12 A. It could, yes.

13 Q. Okay. And do you believe that that was an error
14 on his part not to ask all of the questions that should
15 have been asked in cross-examination?

16 A. Yes. That's something we talked about earlier.

17 Q. And you talked about -- you say you talked about
18 it earlier. Did you discuss those topics with him prior
19 to the trial?

20 A. Yes, sir.

21 Q. Prior to the testimony of the officer?

22 A. Yes, sir.

23 Q. And so he would have had enough information at
24 the time to properly cross-examine the officer in the
25 State's case in chief?

1 A. Yes, sir.

2 Q. During the trial your -- you believe your main
3 defense being the search and seizure issue on the
4 warrant?

5 A. Yeah.

6 Q. Okay. Was there any reason that you're aware of
7 that that was not actually raised during the trial
8 before the jury?

9 A. No, sir.

10 Q. In other words, you had -- you recall having a
11 pretrial motion on it?

12 A. Right.

13 Q. But it was not raised during the trial after
14 that?

15 A. No, sir.

16 Q. And was there any discussion on why that was? Do
17 you know why that was?

18 A. No. The day of the trial we couldn't seem to
19 communicate too well. He was, he was a little
20 preoccupied, I would say.

21 Q. Describe it, please.

22 A. He was just real preoccupied. Nervous. Didn't
23 ask any of the questions that we had already discussed.
24 And when I reminded him, he would go and ask the wrong
25 witness the questions that we discussed, things like

1 that.

2 Q. Okay. Do you believe from your recollection of
3 the trial, do you think he was focused on the things
4 that needed to be focused on from you all's discussions?

5 A. Absolutely not.

6 Q. In what way?

7 A. He just wasn't focused on what we discussed. It
8 was like he was starting to bring a new thought process
9 during the trial.

10 Q. Okay. Now, do you believe that he did -- do you
11 believe that he was effective in his representation?

12 A. No, I don't.

13 Q. Tell me, are there any other issues or any other
14 observations that I have not asked about that are
15 relevant to the defense of the case?

16 A. Not that I can think of, no.

17 Q. Tell me about any plea offers, plea discussions.
18 Did you have any discussions about pleas with
19 Mr. Singleton?

20 A. Well, after he presented the stipulations I kind
21 of panicked and asked him to try to work out a plea for
22 me.

23 Q. And do you know if he did that?

24 A. At the time I don't know whether he did. He said
25 he did, but I don't know if he did or not.

1 Q. Okay. And, again, if you would have known -- if
2 you would have know ahead of time about the two
3 burglaries or housebreakings being used against you or
4 that the suppression issue was not as strong as you
5 thought it was, would it have changed your mind about
6 going to trial?

7 A. Oh, absolutely. And another thing was about the
8 knife that was on the indictment.

9 Q. Okay.

10 A. We discussed it and he said since the officers
11 didn't follow procedure and it wasn't in custody that we
12 were gonna try not to have it presented at trial too.

13 Q. Okay. And was that a big discussion throughout
14 the buildup to the trial, the knife issue?

15 A. That was one of them, yeah.

16 Q. And you said, I believe you said, that the
17 original indictment in February of '11 alleged only
18 possession of the knife, correct?

19 A. Right.

20 Q. And then the indictment from September that
21 amended it then added in the two burglaries.

22 A. My two priors.

23 Q. Or the burglary and housebreaking.

24 A. It was just a simple little pocket knife that --
25 and I never used a knife on anyone or threatened anyone,

1 so...

2 Q. And what was it in particular about the knife
3 that you believed, or Mr. Singleton told you, would be
4 critical in the case in the defense of the case?

5 A. We discussed everything from the size of it to
6 the officers not taking it into custody when they took
7 me into custody.

8 Q. And what did he lead you to believe on, on that?

9 A. That it should be inadmissible. It had no effect
10 on the charge whatsoever.

11 Q. Very good. Is there anything else that you have
12 not explained fully?

13 A. I don't think so.

14 MR. WILKES: That's all I have, Your Honor.

15 THE COURT: Ms. Olive.

16 MS. OLIVE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. OLIVE:

19 Q. Mr. Henson, how was the knife recovered from --
20 in the first place? Do you recall?

21 A. The officer took it.

22 Q. Was that after they patted you down after they
23 arrested you?

24 A. Yes, ma'am.

25 Q. Okay. And you're stating that you -- in

1 hindsight you would have accepted a plea offer, was that
2 your testimony?

3 A. Yes, ma'am.

4 Q. Okay. Are you stating that you would have
5 accepted the initial plea offer that was made to you on
6 by your -- excuse me. What plea offer did you receive
7 in this case?

8 A. That's just it. I've been informed that I
9 received a plea offer, but I don't recall any plea
10 offer.

11 Q. Okay. And yet today you're saying that you would
12 have accepted a plea officer?

13 A. After the stipulation come out, yeah, I would
14 because I knew I didn't have a shot at a trial. So I
15 was accusing of something they bring up two priors.

16 Q. But was there an offer on the table at that time,
17 to your knowledge?

18 A. Not to my knowledge.

19 Q. Do you recall your attorney arguing the issue
20 regarding the search and seizure at trial?

21 A. Before trial like at the preliminary, yeah.

22 Q. Before the trial?

23 A. Yes, ma'am. But he didn't do what we'd already
24 discussed for a while either.

25 Q. Okay. And you said ---

1 Beg the Court's indulgence, Your Honor.

2 Mr. Henson, did you have an attorney on those
3 first -- on those prior burglary convictions?

4 A. No, ma'am.

5 Q. On either one of them?

6 A. No, ma'am.

7 Q. Okay. Did both of them result in jail time?

8 A. No. Only the first one, I believe.

9 Q. And how much jail time did you get on that?

10 A. I was sentenced to two years. I done one year.

11 Q. And that was after your probation was revoked; is
12 that right?

13 A. Yes, ma'am. May I say something?

14 Q. Mr. Henson, please let me ask the questions.

15 A. Okay.

16 Q. If your attorney feels he needs to followup with
17 something he can. And you said he called back police
18 officers to testify because you were trying to show some
19 sort of -- he was trying to show some sort of pattern
20 with their testimony?

21 A. Yes, ma'am.

22 MS. OLIVE: Thank you. That's all the questions
23 I have.

24 THE COURT: Okay. Sir, you may step down. Thank
25 you.

1 (Whereupon, witness leaves witness stand.)

2 Call your next witness, Mr. Wilkes.

3 MR. WILKES: That's all we have from our side.

4 THE COURT: Ms. Olive.

5 MS. OLIVE: Your Honor, the State would call Max
6 Singleton.

7 THE COURT: Sir, if you'll come forward, please.

8 (Complies.)

9 I know you're not feeling well. Sorry about
10 that. Just raise your right hand, if you could, please.

11 (Complies.)

12 Swear or affirm the testimony you're about to
13 give is the truth?

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: If you feel a little ill at any point
16 in time, just let me know and we'll take a break
17 immediately. Okay, sir?

18 THE WITNESS: I will.

19 THE COURT: Go ahead, Attorney General.

20 MS. OLIVE: Thank you, Your Honor.

21 MAX SINGLETON,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. OLIVE:

25 Q. And, Mr. Singleton, I apologize to make you come

1 into court today when you're not feeling well. Do you
2 recall this case?

3 A. Yes, ma'am. Yes, ma'am.

4 Q. Okay. And you and I have had previous
5 discussions about this case.

6 A. Yes, ma'am.

7 Q. Okay. Do you recall what sort of preparation you
8 did prior to this trial?

9 A. I mean, I don't know specifics because it
10 happened six years ago, but I met with Mr. Henson
11 numerous times in jail and did my own separate research,
12 legal research and stuff.

13 Q. What kind of research, do you recall?

14 A. Just used more like a legal research was on the
15 issue of search and seizure. And then I also did some
16 research on the victim or on what Alfred told me and
17 stuff like that.

18 Q. And did you, did you make an argument -- did you
19 have a pretrial suppression hearing?

20 A. Yeah. Regarding the evidence that they found on
21 Mr. Henson's or his parent's property, I believe, is
22 where it was.

23 Q. And the judge denied that motion?

24 A. Yes, ma'am.

25 Q. Did you feel that you had extensive -- do you

1 feel -- did you feel prepared to make that argument to
2 the Court?

3 A. Yes, ma'am.

4 Q. And you stated you had done research --

5 A. Yes, ma'am.

6 Q. -- in reference to such?

7 A. Yes, ma'am.

8 Q. Did you feel that was a strong issue to put
9 before the court?

10 A. Yes, ma'am. Because from what Mr. Henson told me
11 the -- he told me how the -- what day of the incident
12 was, from the morning of the incident until he was
13 arrested later on that day, that they found most of the
14 evidence up under a, a parked car on his parent's
15 property or an abandoned car up underneath it.

16 Q. And do you recall how it was that the officers
17 came upon that evidence? I know it's been a while.

18 A. From what I can recollect, they were -- saw Mr.
19 Henson driving, I believe it was, a moped or whatever.
20 And I guess they pulled him over. He lived right on the
21 county border of Greenville/Spartanburg County. And
22 they saw him driving a moped and I guess they were
23 following him or turned around and followed him into his
24 parent's property.

25 And I believe they saw him -- they say they saw

1 him when he got off the moped or while he was on the
2 moped stopped. That they saw him put some stuff,
3 supposedly threw some stuff up under a car or whatever,
4 is what they said.

5 Q. Okay. And the basis of your argument was that
6 those arguments were not in plain view?

7 A. Yeah. From what Mr. Henson said is that they
8 pulled in after him and that there was no way they could
9 have seen because I believe it was an abandoned car and
10 the grass was growing up, up underneath it. And the
11 only way they would have been able to see -- I think our
12 argument was that they had got down on their knees and
13 crawled up under there to find it.

14 That they couldn't tell what it was just by
15 supposedly his actions or his arm going out by his side
16 or throwing something. I think they found a wallet and
17 a camera or something. I'm not fully sure exactly what
18 they found.

19 Q. And were those items -- what was the significance
20 of those items?

21 A. I believe the camera was the camera from the
22 house that had been broken into. They looked at the
23 pictures and they, I guess, there was a picture of the
24 lawyer or the man and children on the camera. And I
25 think, I guess they found a wallet that belonged to one

1 of the victims or someone who lived at that house. I'm
2 not sure what else they found up under the car. I can't
3 think of anything else.

4 Q. I know it's been a while for you. Do you recall
5 whether you made any argument about the knife?

6 A. I can't remember. I mean, I don't think the
7 knife ever came into question because the alleged victim
8 never saw him in her house or anything, that she just
9 saw him, saw somebody leaving their driveway, or
10 whatever, on a moped and that was it.

11 Q. But he was -- when he was arrested he was armed
12 with that knife?

13 A. I guess so.

14 Q. Is that your ---

15 A. Whatever the evidence is, I'm not sure. I think
16 I heard you say earlier that he was testifying that they
17 patted him down and found it on his person.

18 Q. If there had been a reason to exclude that
19 evidence would you have had made that argument?

20 A. I believe so, yes, ma'am.

21 Q. Do you recall what other kind of investigation
22 you did in advance of this trial?

23 A. I drove out to the victim's house, I believe, or
24 the neighborhood to see how far the neighborhood was
25 from his house. They said it was somewhat close to his

1 house. You can see the path that, I mean, different
2 routes you can get to the house. I think I drove by the
3 house just to see the size of the house and what it
4 looked like and the makeup of the yard and the trees.

5 She said that she -- I believe the victim was a
6 female and she heard some noise while she was upstairs
7 in the shower or something. And when she came
8 downstairs she saw somebody leaving and go around the
9 ben in her driveway leaving and that's all she saw.

10 Q. Do you recall what your theory was at the trial?

11 A. My main argument was that the suppression hearing
12 I remember me and Mr. Henson had talked about that
13 extensively. And that was the whole basis to try to get
14 that evidence suppressed. And also to say that, you
15 know -- I forgot what the timeline was from when she
16 called the police and they found him or they -- whatever
17 Mr. Henson, I think it was the same day within a couple
18 of hours or something like that.

19 The fact that she didn't see anybody or couldn't
20 identify Mr. Henson or he -- any markings of Mr. Henson
21 or had any kind of idea who the person was, whether they
22 were black or white or female or male or anything like
23 that. Just because he had her property on him wasn't
24 enough.

25 Q. So part of your theory was that she couldn't

1 identify him?

2 A. Yeah. She couldn't tell. You know, she had no
3 idea who it was. I mean, she saw the back of somebody
4 driving off on a moped and going around the corner and
5 they were gone from the end of her driveway to the road.
6 I believe that's what she was testifying to.

7 Q. Did you attempt to argue third-party guilt at
8 all?

9 A. I believe it came out at trial that they found
10 some of her property at somebody else's along the route
11 from her house. I don't know if that's what happened,
12 but in between her house and arresting Mr. Henson they
13 found property belonging to her that somebody else's --
14 on somebody else's property and that came out at trial
15 and that's by one of the officers. That was the first
16 we had heard that.

17 MS. OLIVE: Beg the Court's indulgence one
18 moment, Your Honor.

19 THE COURT: Yes, ma'am.

20 BY MS. OLIVE:

21 Q. Mr. Singleton, I'm going to show you a portion of
22 the transcript. I realize that it has been a while for
23 you and it's also been a while since we've discussed
24 this as well.

25 May I approach the witness, Your Honor?

1 THE COURT: Please.

2 MS. OLIVE: And for the Court's reference I'm
3 referring to page 124 of the transcript. This is the
4 victim's testimony.

5 BY MS. OLIVE:

6 Q. You don't need to read it out loud or anything,
7 but I guess start --- (indicating.)

8 A. You want me to read Page 124?

9 Q. Yes.

10 A. Okay.

11 Q. Is that what you were just referring to in
12 regards to other evidence being found?

13 A. Yeah. I thought it was one of the officers that
14 found it, but apparently an individual found her wallet
15 on the side of the road near her house.

16 Q. Okay.

17 A. Between her house and the victim's house.

18 Q. And when you say her wallet, are you referring to
19 the victim?

20 A. The victim's wallet, sorry. Between the victim's
21 house and where they arrested Mr. Henson they found her
22 wallet on one of those main roads.

23 Q. Okay. And when you say they, we're not talking
24 about the authorities, right?

25 A. Yeah, the police. I'm sorry, I thought it was

1 the police that testified to it at trial that somebody
2 found it.

3 Q. Well ---

4 A. I believe it was or a police officer or somebody.
5 Was that the victim testifying?

6 Q. Right.

7 A. Yeah. I thought somebody said that.

8 Q. Okay. Did she say that the authorities were able
9 to find her wallet?

10 A. No. It said that an individual, a chiropractor,
11 you know, who lived off of State Street, found it on his
12 property in his driveway.

13 Q. Okay. So that's how she -- the wallet came to be
14 back in her possession?

15 A. Yes, ma'am.

16 Q. Okay.

17 A. According to the testimony.

18 Q. Okay. So as far as you know the evidence --
19 after refreshing your memory, was there any evidence
20 found other than what was found in the driveway, the
21 evidence that was the issue of the --

22 A. Not that I remember.

23 Q. -- search and seizure?

24 A. Not that I remember, no.

25 Q. And to clarify, I'm asking about this. Was there

1 any evidence other than the evidence that Mr. Henson,
2 that they saw him throwing off his moped into his yard?
3 That's the only evidence you're aware of?

4 A. Yes. Yes, ma'am. As far as I remember.

5 MS. OLIVE: Beg the Court's indulgence, Your
6 Honor.

7 THE COURT: Yes, ma'am.

8 BY MS. OLIVE:

9 Q. Mr. Singleton, do you recall how long you
10 represented Mr. Henson prior to trial?

11 A. I believe it was several months, if not longer.
12 I'm not sure of the exact timeline.

13 Q. I think he testified six months. Does that sound
14 accurate?

15 A. Somewhere around there, yeah. Maybe a little bit
16 longer. I'm not sure.

17 Q. And you testified you met with him several times.
18 Do you recall any particular number of times you met
19 with him?

20 A. I think he said two times in his testimony. I
21 think it was at least 10 or 15 times or better.

22 Q. Was he in jail at that time?

23 A. Yes. Yes, ma'am, he was in jail the entire time.

24 Q. Do you recall whether you had any other clients
25 that you were visiting in jail at that time?

1 A. Usually when I went to the jail I would speak
2 with more than one client. I mean, I would meet with
3 them and not just say hey and goodbye, but meet with
4 them and talk with them as much as possible, or as long
5 as they wanted to talk. I wasn't given a time limit.
6 They were paying me to represent them, so I would sit
7 there and talk to them as much as they needed me to talk
8 to them.

9 Q. Did you ---

10 A. I would need to talk to them to be thorough.

11 Q. I got that. Do you recall how long these
12 meetings would be with Mr. Henson?

13 A. I mean typically they would last, I mean, the
14 shortest one probably would have been 15, 20 minutes or
15 longer than that. We would discuss whatever he wanted
16 to discuss or what I needed to discuss with him.

17 Q. And, Mr. Singleton, given that you were -- you
18 stated you were always seeing other clients at the jail,
19 did you -- would you have signed in under each of those
20 clients when you were signing in under the jail log?

21 A. No. They would not -- when I would go to the
22 jail, they would not tell me to sign in up under each
23 client I was seeing because sometimes I would go to the
24 jail with the intention of seeing one person. And then,
25 the way the Spartanburg County jail is, a lot of times

1 we would go there, there's 20 or 30 people out there
2 running around, if not more. And they would see -- they
3 would waive their hand and say can I speak to you, so I
4 would go over and speak to whoever I needed to once I
5 spoke to the people I was up there for initially for.
6 So, no, I would not have signed in under every client I
7 was going there to see.

8 Q. Thank you. Do you recall there being any -- were
9 any plea offers provided to you prior to trial?

10 A. I can't recall, but if they were provided to me I
11 would have gone over there and look with Mr. Henson as
12 soon as they were offered.

13 Q. Do you recall approaching the solicitor to
14 request any potential plea offers?

15 A. I'm sure I did if she didn't make one, whoever
16 the solicitor was. If they didn't make one, I would ask
17 for a plea offer. I mean, obviously you would try to
18 get a plea offer if at all possible. But I can't recall
19 any specific plea offers.

20 Q. Do you feel that you were prepared, that you had
21 ample time to prepare for trial?

22 A. Yes, ma'am.

23 Q. Did you discuss possible defenses with Mr.
24 Henson?

25 A. Yes, ma'am.

1 Q. Did you review all the discovery material with
2 him?

3 A. Yes, ma'am.

4 Q. Mr. Singleton, do you recall whether you had a
5 particular reason to recall a witness?

6 A. You're talking about the officer?

7 Q. (Nods head up and down.)

8 A. I guess it was because I thought when the lady
9 testified about her property being found, I called the
10 officer. I can't remember with all the testimony and
11 all, but regarding if they ever knew about that evidence
12 or knew that her property was found on somebody else's
13 property, if they investigated that.

14 Because I believe that where they found her
15 wallet was the same road that led from her house to his
16 house or his parent's house. And I believe, if I can
17 recollect it, have you ever had that, you know, if it
18 was -- whoever is disposing that property it could have
19 been the one who actually broke into her house
20 allegedly. If it was discarded on the side of the road
21 or on somebody else's property or somebody's driveway.

22 Q. Would that have -- would that have been in
23 relation to your attempt to show-third party guilt?

24 A. I believe so, yes. Yes, ma'am. Or what somebody
25 else could have done, yes, ma'am.

1 Q. In general, would you have had a reason to call a
2 witness in your case in chief, just in general?

3 A. I'm sorry, explain that. I mean, say that again.

4 Q. I'll withdraw that question. Thank you. That's
5 all the questions I have.

6 THE COURT: Cross.

7 MR. WILKES: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. WILKES:

10 Q. Mr. Singleton, you -- according to the
11 transcript, it looked like Ms. Ofori testified first and
12 then the officers after her.

13 A. Yeah. Whatever the transcript says was the
14 order.

15 Q. So if the officers testified after the victim,
16 can you tell me in your reason strategy for not asking
17 the questions on cross-examination in the State's case
18 in chief?

19 A. Only that I was caught off guard by her testimony
20 and I was -- because I didn't know anything about her
21 property being found on somebody else's property. And,
22 I guess, after the fact, after the officer testified, I
23 thought of some new questions to ask him. I would have
24 discussed it with Mr. Henson to see what he thought and
25 then I would have called him. But I'm not sure what

1 questions I asked of the officers when I brought them
2 back on the stand.

3 Q. Okay. But there was nothing keeping you from
4 asking cross-examination questions in the State's case
5 in chief?

6 A. No.

7 Q. Okay. And so, I mean, specifically can you
8 identify anything that would make you wait until your
9 case in chief?

10 A. I can't recall specifically, no.

11 Q. Would you agree with me that the last argument
12 would be lost because of that?

13 A. I'm sorry, explain that.

14 Q. If you introduce evidence in your case you lose
15 last argument, correct?

16 A. Oh, yes. Yes, I'm sorry.

17 Q. And in a circumstantial case would you agree that
18 last argument might be important?

19 A. Yes.

20 Q. Okay. Would you agree that having asked those
21 questions on cross-examination of the officer during the
22 State's case in chief and preserving last argument would
23 have been a much better approach?

24 A. Yeah, in hindsight.

25 Q. The suppression hearing, you indicated the

1 suppression hearing was a big part of the defense, a
2 focus of the defense. Is that a fair assessment?

3 A. Yes.

4 Q. And do you recall the basis of the suppression
5 motion?

6 A. No. I mean, vaguely I remember they were -- the
7 research I did when talking to Mr. Henson extensively
8 about it was that he said that they pulled -- he was
9 already on the property and he had already got off the
10 moped and they pulled up and there was no way that they
11 could see him doing things and that there's -- the items
12 were so small being up under an abandoned car that -- he
13 said the grass was growing up under it, that they could
14 not have seen it with the naked eye. That they would
15 have to get up under there and crawl.

16 Q. Okay. And they knew, according to the officer's
17 testimony, he identified it as a camera. He's -- the
18 officer testified he saw the camera.

19 A. Whatever the testimony is.

20 Q. Okay. Now leading up to the trial, did you, as
21 far as you could tell, did you give Mr. Henson the
22 impression that the search warrant issue was very
23 strong?

24 A. I thought we had a good case.

25 Q. Okay.

1 A. I mean, based on what he told me and it looked
2 like because I didn't know who the camera belonged to
3 until after -- I mean, they didn't know a robbery had
4 taken place until after the fact.

5 Q. Right. And -- okay. So the search warrant issue
6 being kind of a key to the defense, and you recall you
7 did raise it in limine, you raised it before the, I
8 think, the swearing of the jury actually.

9 A. Yes, I believe so.

10 Q. Okay. Now, do you recall I think this -- I'm
11 probably saying her name wrong. It's Ofori, O-F-O-R-I.
12 I'm gonna say Ofori.

13 A. Yeah.

14 Q. Ms. Ofori was the first witness after the jury is
15 sworn. The jury, of course, the trial starts, the jury
16 is charged and sworn, and they put her up as the first
17 witness. The record shows, I believe, that they almost
18 immediately introduce the evidence on the camera and the
19 credit cards and the strap that the camera was on and
20 the things that were the object of the search.

21 A. Okay.

22 Q. And you did not object to that.

23 A. Okay.

24 Q. Would you agree with that?

25 A. Whatever it is.

1 Q. I mean, that's what the record says.

2 A. Yes, that's what the record says.

3 Q. Okay. And if the record does say that, would
4 there be any strategy not to object to that evidence
5 coming in?

6 A. Not that I can remember.

7 Q. Okay. I mean, you agree with me that an in
8 limine motion doesn't preserve an issue, it has to be
9 raised during the trial?

10 A. Yeah. Yes.

11 Q. Okay. And the officers again throughout the
12 trial testified about the camera and testified about
13 seeing the camera all through the trial, but there was
14 no objection made at any point during the trial to the
15 evidence to preserve that issue?

16 A. Whatever the record states.

17 Q. Okay. But the question is -- I'm sorry. So
18 assuming that that is correct and that's what the record
19 shows, then would there be any trial strategy to not
20 raising an objection at any point during that trial to
21 preserve that issue?

22 A. I can't remember. Not that I can remember.

23 Q. Okay. One other thing. The issue on the
24 indictments, that they at the last minute, almost
25 literally, reindicted the case and amended the

1 indictment, correct?

2 A. I believe so. Whatever the date is on the
3 indictment.

4 Q. Okay. And the indictments are there. So if I am
5 correct that in, I believe, September, late September
6 probably, they amend it and put every possible -- they
7 almost quote the statute for first-degree burglary and
8 include the indictment, the prior convictions, would you
9 -- do you remember that or?

10 A. I don't remember what the document states but
11 whatever is in the document is what it is.

12 Q. Okay. But you know that the stipulation issue
13 came up, that they brought you a stipulation?

14 A. Yeah. I want to say yes.

15 Q. And the stipulation said we stipulate -- well...

16 A. That he has prior convictions.

17 Q. That he has a prior conviction for burglary third
18 and burglary second?

19 A. Yes.

20 Q. It's marked as Exhibit 2. Does that look like
21 that stipulation?

22 A. Yes, sir.

23 Q. And did you sign it and did you have Mr. Henson
24 sign it?

25 A. Yeah, that's my signature.

1 Q. And you would agree that it wasn't something that
2 Mr. Henson wanted to sign I'm sure?

3 A. Yes. Yes, sir.

4 Q. Okay. And was it your advice that just didn't
5 really have much choice to it?

6 A. I can't recall what my advice was.

7 Q. Okay. Do you recall raising any issue as to the
8 use of those in this case, any objection?

9 A. Did I raise any objections at the trial?

10 Q. Did you raise any objections at any point to the
11 use of uncounseled guilty plea, convictions?

12 A. I can't remember.

13 Q. Okay.

14 A. I mean, if it's not on the record then I didn't
15 on the record.

16 Q. Okay. And would there be, assuming, assuming
17 that there is an objection to raise for the use of
18 uncounseled convictions for enhancement or element of
19 crime, would you have any strategy that you can recall
20 or reason for not raising that?

21 A. Not that I can recall.

22 MR. WILKES: Very good. That's all I have, Your
23 Honor.

24 THE COURT: Sir, thank you. You can step down.

25 MS. OLIVE: Your Honor, I do briefly have

1 something on redirect. Sorry, I apologize.

2 THE COURT: Yeah, go ahead.

3 REDIRECT EXAMINATION

4 BY MS. OLIVE:

5 Q. Mr. Singleton, on your direct testimony you
6 testified that you recalled -- let me back up, excuse
7 me.

8 You did not learn about the wallet being found
9 until the victim testified.

10 A. Correct.

11 Q. And you said that that caught you off guard.

12 A. Yes.

13 Q. Okay. And Mr. Wilson, Officer Wilson, Jason, I
14 believe that's his name, was the individual that you
15 called in your case in chief?

16 A. Whatever the record states.

17 Q. Okay. Do you recall he testified directly after
18 the victim in this case?

19 A. I can't recall when he testified as to what
20 order.

21 Q. Okay. But the State was also surprised by this.
22 The State did not have this wallet as part of discovery,
23 correct?

24 A. Yeah. I mean, it wasn't -- I don't remember it
25 being in any of the pictures or any of the evidence or

1 anything like that.

2 Q. Okay. Given that one of your theories, as you
3 testified, was this third-party guilt issue, would it
4 not have been important -- let me rephrase.

5 Would his testimony have been relevant on that
6 issue, his testimony when you recalled him?

7 A. I guess. I mean, I was trying to see if he knew
8 bout the -- I guess my strategy was to see if he knew
9 about the wallet being found and if he's the
10 investigator who -- if they looked at it to see if there
11 was any evidence on the wallet or see where it was found
12 or, you know, investigate the property where it was
13 found.

14 Q. Were you aware that either of these pleas for
15 burglary second and burglary third, were you aware that
16 one of those was an uncounseled plea?

17 A. I can't recall.

18 Q. Do you recall whether Mr. Henson ever shared that
19 with you?

20 A. I can't recall.

21 Q. Did you have any reason to believe the judge
22 would change his ruling regarding the suppression motion
23 or do you have any reason to believe he would have
24 changed his pretrial ruling later in trial if you had
25 renewed your objection?

1 A. Do I believe he would have changed it? No, I
2 don't believe he would have.

3 MS. OLIVE: Thank you.

4 MR. WILKES: Your Honor, if I may?

5 THE COURT: Yes, sir.

6 RE CROSS-EXAMINATION

7 BY MR. WILKES:

8 Q. The wallet you're talking about was found a week
9 after Mr. Henson had already been put in jail, right?

10 A. I can't recall when it was found. Whatever she
11 said. Whatever she testified that she received a phone
12 call, I believe.

13 Q. Well, you said that, if I'm understanding what
14 you responded to the questions, you're saying that the
15 victim testified and you were caught off guard and you
16 wanted to ask Officer, I think it was, Barnett about
17 whatever she testified to, right, and that's why you
18 called him in your case in chief?

19 A. I can't recall. I'd have to look at the
20 transcript to see what questions I asked to the officer.

21 Q. Okay.

22 A. To see if he knew anything about the wallet being
23 found or...

24 Q. Okay. But if -- my question, if the victim
25 testifies and raises something about a wallet being

1 found and that gives you reason to question Officer
2 Barnett about it, why wouldn't you just question him
3 because he was the next witness up in the State's case
4 and cross-examine him?

5 A. Like I said, it caught me off guard. I'm not
6 certain what I -- I can't remember what my thinking was
7 six years ago.

8 MR. WILKES: Okay. No further questions. Thank
9 you, sir.

10 THE COURT: All right. Now you can step down.
11 Thank you, sir.

12 (Whereupon, witness leaves witness stand and the
13 courtroom.)

14 How many more witnesses does the State have in
15 this case?

16 MS. OLIVE: Your Honor, the State has two but
17 they should be very brief.

18 THE COURT: All right. Let me take a quick
19 five-minute break and we'll go back on the record.
20 While we're doing that, does -- I'm familiar with the
21 enhancement, but I just want to think about this while
22 we're on break. I believe with the enhancement
23 concerning counseled versus an uncounseled guilty pleas
24 as it relates to like a marijuana conviction or a
25 narcotics conviction. Is there a similar case or

1 statute on point related to burglary enhancement and
2 burglary first?

3 MR. WILKES: It would be any charge. And that
4 gets into a long line of cases, but the -- in the Lewis
5 case involves that and it goes on in. And I'll just
6 quote what I've highlighted. It involves subsequent --
7 Sixth Amendment prohibits the use of uncounseled
8 convictions in support of either guilt or enhancement of
9 a punishment. And that's Verdun versus Texas and Lowfer
10 versus Bedto and U.S. v Tucker (phonetic). And I think
11 there's a bunch of cases.

12 THE COURT: I don't know that I've had that issue
13 arise, though, in the context of South Carolina law in
14 24 years that I've been doing this, so...

15 MR. WILKES: It is a strange one. I think I may
16 even have a -- I may have some South Carolina cites as
17 well, I think.

18 THE COURT: While we're on break, if you have --

19 MR. WILKES: I think Robinson versus State is
20 actually -- and I'll just read it right quick to see if
21 this applies. "It would help if the plea counsel was
22 deficient in failing to challenge the prior conviction.
23 Petitioner did not have counsel at the magistrate
24 hearing. And although he was sentenced to serve public
25 service only, subsequently served time in jail as a

1 result of the conviction; therefore, his prior
2 conviction could not be used for tangible purposes."

3 And there's other cases too. But I think that
4 the basic rule of uncounseled convictions used to
5 enhance has been applied to also using it as elements of
6 the offense like it is in the burglary first statute.
7 So I think that that would apply with that too.

8 MS. OLIVE: And, Your Honor, if I may briefly. I
9 frankly, you know, there's nothing in my file that
10 indicates that these were uncounseled pleas. And I did
11 learn about it when speaking with Mr. Wilkes yesterday
12 evening. I have not had an opportunity to do the
13 research on this issue. I would appreciate an
14 opportunity to submit memos, not just on this but any
15 other legal issues that were raised today.

16 THE COURT: That would be fair because this
17 really is a very interesting issue.

18 MR. WILKES: Right.

19 THE COURT: And I realize we're past the time the
20 clerk's office is closed, so it's impossible to get
21 certified copies of the prior indictments maybe. I
22 think you've got -- or do you have those in the record?

23 MR. WILKES: I have put those in the record. And
24 I ---

25 THE COURT: Not just the sentencing sheets,

1 though.

2 MR. WILKES: No, I understand. The indictments
3 and the sentencing sheets are there.

4 THE COURT: In '93, that typically then typically
5 they didn't reflect whether counsel -- counsel typically
6 didn't have to sign in '93, at least when I started
7 practicing in the '80's.

8 MR. WILKES: I was actually a prosecutor in that
9 county at that time. And the general practice was you
10 wrote the name of the defense attorney on the face of
11 the indictment. But that doesn't necessarily mean that
12 it happened in every single case. But that was just --
13 that was kind of a general practice. But all I can say
14 from those records is that there is clearly no
15 indication of counsel. He's testified there wasn't.
16 And if you remember the way that Judge Eppes did it, he
17 brought everyone that was a plea no lawyer in, line them
18 up and do ten at a time, so...

19 THE COURT: Good enough. We'll be at ease for
20 five minutes and if you have those cites written down,
21 feel free just to e-mail them to my clerk and myself and
22 we can take a look at them in a couple days.

23 MR. WILKES: Will do.

24 MS. OLIVE: Thank you, Your Honor.

25 (Whereupon, a recess was had from 5:18 p.m. -

1 5:23 p.m.)

2 THE COURT: All right. We'll go back on the
3 record. Attorney General, call your next witness,
4 please.

5 MR. WILKES: All right. Judge, I have one thing
6 to put on the record.

7 THE COURT: Oh, yes, sir, go right ahead.

8 MR. WILKES: I promised the solicitor I'd do it.
9 I said all kind of bad things about the solicitor over
10 Brady material. We withdraw that claim. There was DNA,
11 touch DNA swab taken at the scene. I discovered it,
12 buried it in the record, and thought I had found
13 something hidden and it wasn't really hidden. The
14 solicitor had given all that to Max. Max didn't realize
15 it. We had it tested. It didn't have anything, so I
16 can't make it. But there was nothing hidden from the
17 defense. So whatever bad I said about the solicitor, I
18 take back.

19 THE COURT: Very good. That should limit direct
20 substantially. Call your next witness.

21 MS. OLIVE: Your Honor, the State would call Matt
22 Shealy.

23 (Whereupon, witness comes forward.)

24 THE COURT: All right. Swear or affirm the
25 testimony you're about to give is the truth?

1 THE WITNESS: I do.

2 MATTHEW SHEALY,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. OLIVE:

6 Q. Mr. Shealy, did you represent Mr. Henson at some
7 point in time?

8 A. I did.

9 Q. Were you appointed or retained?

10 A. Appointed.

11 Q. And do you recall when that would have been?

12 A. I received the file on November the 19th of 2010.

13 Q. Was a plea offer ever extended to you in this
14 case?

15 A. It was.

16 Q. Do you recall what that offer was?

17 A. I do. It was a burglary second violent. It was
18 a zero to 15 charge instead of burglary first was 15.

19 MS. OLIVE: Your Honor, may I approach the
20 witness?

21 THE COURT: Please.

22 BY MS. OLIVE:

23 Q. And how did you receive that offer?

24 A. By e-mail.

25 Q. Do you recall, do you recognize this document?

1 A. Yes, that's a copy of the e-mail.

2 Q. Okay. And that e-mail, who made the offer in
3 this case?

4 A. Ms. Poulos. She was the solicitor.

5 MS. OLIVE: Okay. Your Honor, I move to admit
6 this as State's Exhibit 1.

7 MR. WILKES: Without objection.

8 THE COURT: Without objection, State's 1 is in
9 evidence.

10 (Whereupon, State's Exhibit Number 1, E-Mail To
11 Matthew Shealy Regarding Offer, was marked for
12 identification.)

13 (Whereupon, State's Exhibit Number 1 was entered
14 into the record.)

15 BY MS. OLIVE:

16 Q. Mr. Shealy, did you extent this offer to
17 Mr. Henson?

18 A. I did.

19 Q. And did he indicate his preference in terms of
20 whether he wished to accept or reject that offer?

21 A. He did not want to accept it.

22 Q. Okay. Mr. Shealy, do you recognize this
23 document?

24 A. This is a copy of the note that I made to a
25 colleague, among other things, when I delivered the

1 offer.

2 Q. And if I can back up. On what date was the offer
3 extended to you?

4 A. It was initially extended March the 4th. She had
5 offered just a burglary second and grand larceny. And
6 hopefully I asked for a burglary second nonviolent for
7 zero to ten on March the 4th. She said no to burglary
8 second violent on the seventh.

9 Q. And did she indicate whether that offer would
10 expire at a certain point in time?

11 A. She did on March the 24th, 2011.

12 Q. And on what date did you convey the offer to Mr.
13 Henson?

14 A. The 16th of 2000 -- March 16th of 2011.

15 Q. And do you have a note of that in your file?

16 A. I do.

17 Q. And is that indicated on that copy?

18 A. It is.

19 MS. OLIVE: Your Honor, I'd move to introduce
20 this as State's Exhibit Number 2.

21 MR. WILKES: Without objection.

22 THE COURT: All right. Without objection.

23 (Whereupon, State's Exhibit Number 2, Note Dated
24 March 16, 2011, was marked for identification.)

25 (Whereupon, State's Exhibit Number 2 was entered

1 into the record.)

2 BY MS. OLIVE:

3 Q. So you provided the offer on March 16, 2011, and
4 Mr. Henson declined the offer on that same date?

5 A. Yes, ma'am.

6 Q. And at that point had you reviewed the discovery
7 with him?

8 A. Yes, ma'am.

9 Q. Did you advise him concerning the pros and cons
10 of going to trial versus pleading guilty?

11 A. Yes, ma'am.

12 MS. OLIVE: Thank you, that's all the questions I
13 have.

14 THE COURT: Cross?

15 MR. WILKES: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. WILKES:

18 Q. When did you receive discovery?

19 A. I believe it was November the 30th. At least
20 that's -- of 2010. At least that's when it's Bate
21 stamped. So I would have received it either that day or
22 December 1st, somewhere around there.

23 Q. So you had all of your discovery or a sufficient
24 amount of discovery with you at the time that you
25 discussed the plea offer?

1 A. Oh, yes, sir.

2 Q. And looking at the jail records, do you see the
3 highlighted 3/16?

4 A. I do.

5 Q. Would that be the date that you visited and
6 discussed the case?

7 A. Yes, sir.

8 Q. The plea offer?

9 A. Yes, sir.

10 Q. And what would be the time indicated there?

11 A. 9:51.

12 Q. Until?

13 A. Until 13:47.

14 Q. Which would be a very long time.

15 A. Yes. But what often happens is he was in pod
16 four, so I may have seen some other clients.

17 Q. Okay. Do you think you spent enough time with
18 him to go over the evidence adequately and put it in the
19 plea offer in context of the evidence?

20 A. Yes, sir. And that wouldn't have been the first
21 time that I had talked with him. I talked with him
22 before the hearing as well. I had gone over the
23 evidence then too.

24 Q. And at the time the indictment at that time that
25 you represented him had only the knife as an enhancement

1 as a driver?

2 A. Correct.

3 Q. And were you aware of the potential for
4 enhancement based on prior convictions?

5 A. Now, I would have gone over his prior convictions
6 with him because that's part of any plea offer. I would
7 not have looked into whether they were counseled or not.

8 Q. Okay.

9 A. I -- I ---

10 Q. Do you recall whether or not you discussed the
11 possibility of those ever being used against him in his
12 trial?

13 A. Yes. I would have told him that there are
14 certain cases that if he were to testify that certainly
15 certain convictions would be used to attack his
16 credibility.

17 Q. Credibility.

18 A. I said that. I should -- I don't have a note
19 that says that I discussed every possible enhancement or
20 every possible element of burglary first. I generally
21 do. I mean, because that's -- because usually
22 indictments are rapidly amended. I mean, it's just not
23 that odd for that to happen. So I would have thought
24 that I discussed it with him, but I don't have a note
25 that says that I certainly did.

1 MR. WILKES: Very good. No further questions.

2 THE COURT: All right, sir, you can step down.

3 Thank you. You're free to go. Thank you for being so
4 patient with us.

5 THE WITNESS: Thank you, Judge.

6 THE COURT: Call your next witness.

7 (Whereupon, witness left witness stand and
8 courtroom.)

9 MS. OLIVE: Your Honor, the State would call Timi
10 Poulos.

11 (Whereupon, witness comes forward.)

12 THE COURT: Swear or affirm the testimony you're
13 about to give is the truth?

14 THE WITNESS: Yes, sir.

15 TIMI POULOS,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. OLIVE:

19 Q. Ms. Poulos, were you the solicitor that
20 prosecuted this case?

21 A. Yes, I was.

22 Q. And did you, to your knowledge, provide all
23 discovery to Mr. Henson's counsel in this case?

24 A. Absolutely. Both to Mr. Shealy and to Mr.
25 Singleton.

1 Q. And there has been some discussion about the
2 wallet that was found. Were you aware that that wallet
3 had been returned to -- and I apologize I can't
4 pronounce it.

5 A. Ofori.

6 Q. Ofori?

7 A. Yes.

8 Q. Were you aware that it had been returned to her
9 possession prior to trial?

10 A. No, I was not aware of that. And that was
11 certainly something that was not taken, collected into
12 evidence, nor did that item appear in any of the other
13 sheets as part of the case file, from what I recall.

14 Q. So that was returned to her by a third party?

15 A. I believe so.

16 Q. Ms. Poulos, other than the offer that we
17 discussed previously for the burglary second violent,
18 did you extend any other offers in this case?

19 A. No, that was the only one.

20 Q. Did Mr. Singleton ever approach you to pursue any
21 plea offers?

22 A. He did. He actually approached me many times
23 when he was representing him and asked would I consider
24 burglary second nonviolent. I told him not only would I
25 not consider burglary second nonviolent, but I would not

1 consider any plea offer. That had been rejected and I
2 was proceeding with a trial, so...

3 Q. So there were no plea offers on the table at the
4 time that Mr. Henson proceeded to trial?

5 A. Absolutely not.

6 Q. Ms. Poulos, did you have any knowledge that these
7 -- that either of these guilty pleas or either of Mr.
8 Henson's prior burglary convictions were uncounseled?

9 A. I had no knowledge of that.

10 Q. And you all agreed to -- the defense agreed to
11 stipulate to those prior convictions in this case?

12 A. He did. Typically I would call the clerk of
13 court to testify about those. And I don't exactly
14 remember if there was discussions, but I presented Mr.
15 Singleton with a stipulation on a plea, if I recall. He
16 signed it, I sign it, Mr. Henson also signed it.

17 Q. So if he had not agreed to that stipulation
18 you're saying you would have called the Clerk of Court
19 to testify?

20 A. Yes. And that's typically something that I
21 normally do.

22 Q. Is that an element of that particular offense?

23 A. It is. That is one element of the charge of
24 burglary first. There were several other elements.
25 There was also the element of having a weapon, being in

1 possession of a weapon, which we also felt we could
2 prevail on that element too. So we typically didn't
3 need the two prior burglaries, but that was an
4 additional element, which would demonstrate in the, in
5 the original charge of burglary first.

6 MS. OLIVE: Beg the Court's indulgence.

7 BY MS. OLIVE:

8 Q. Ms. Poulos, do you recall any particular reason
9 the indictment was amended?

10 A. I don't recall back then. That's been about five
11 years ago. My only guess is that when I reviewed his
12 rap sheet, the prior record, I realized then that there
13 was an additional element that I could prove at trial.
14 Didn't need it, but certainly, as Mr. Shealy just
15 testified, it happens all the time. Indictments are
16 amended. And I felt that I -- and I did so.

17 Q. And that was in September?

18 A. Um, yes, I believe so.

19 Q. And the judge will have the indictments in his
20 materials, but...

21 So it was -- and the trial took place in October?

22 A. That's correct.

23 Q. And do you recall whether the knife was
24 introduced as evidence in this case?

25 A. I don't recall. I'm not sure if we used a

1 picture or the actual knife. I just don't remember.

2 Q. But you felt that you could have proved that
3 element at trial?

4 A. Yes, absolutely.

5 MS. OLIVE: Your Honor, that's all the questions
6 I have.

7 MR. WILKES: No questions, Your Honor.

8 THE COURT: Ma'am, thank you very much.

9 THE WITNESS: Thank you.

10 THE COURT: Take care.

11 THE WITNESS: Yes, sir.

12 (Whereupon, witness left witness stand and
13 courtroom.)

14 THE COURT: No additional witnesses from either
15 party?

16 MR. WILKES: No, sir.

17 MS. OLIVE: No, Your Honor.

18 THE COURT: I'll afford the State an opportunity
19 to look into the issue of the prior burglaries being
20 used for enhancement and that will allow me some
21 additional time to review the transcript. So if you
22 could, I think I asked maybe -- I think I said on Monday
23 or Tuesday, like two weeks on some other case. So if
24 you could have that to me like by the week after --
25 let's say two weeks from now, that will be 14 days to

1 take a look at that and get me anything you all might
2 want to get me on that particular issue.

3 MR. WILKES: Thank you very much.

4 MS. OLIVE: Thank you, Your Honor.

5 THE COURT: You all take care. Pleasure to meet
6 you, sir.

7 THE DEFENDANT: Thank you.

8 (Whereupon, hearing concluded at 5:39 p.m.)

9
10 --- THIS ENDS REQUESTED TRANSCRIPT ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Ashbrook, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 9th day of November, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

s/Julie A. Ashbrook.
Julie A. Ashbrook
Circuit Court Reporter
Seventh Judicial Circuit



South Carolina Court Administration
South Carolina Supreme Court
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September 15, 2016

Mr. J. Falkner Wilkes, Esq.
 114 Whitsett Street
 Greenville, SC 29601

Dear Mr. Wilkes:

I am writing in response to your letter dated September 12, 2016. In your letter you are asking for information about court reporters from court proceedings in 1993 and 2001. I am unable to assist you with this request. In maintaining court reporter records, we adhere strictly to Rule 607, which requires that court reporter records be kept for five years. Therefore, the records to prepare a transcript from proceedings heard before September 2011 are no longer available. I am sorry that I cannot assist you further.

If you have other questions regarding court reporters and/or transcripts, feel free to contact me.

Sincerely,



Desiree R. Allen
 Court Reporter Manager

Alicia Olive, Assistant Attorney General
 Alfred Guy Henson, 00242989



STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF SPARTANBURG) INDICTMENT NO.: 11-GS-42-351
 11-GS-42-352

STATE OF SOUTH CAROLINA)

VS.)

STIPULATIONS

ALFRED HENSON,)

DEFENDANT.)

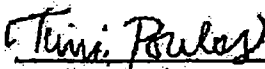
The parties hereby stipulate to the following as fact:

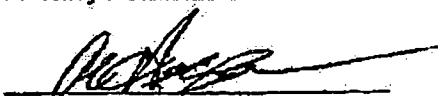
That the defendant, Alfred Henson, has two prior convictions for Burglary. These convictions are as follows:

1993 Burglary 2nd degree
 2001 Burglary 3rd degree

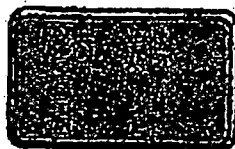
Attached are certified copies of both convictions and are part of this stipulation. The parties agree that these convictions will be read during the trial and made a part of the record.


 MAX SINGLETON
 Attorney for Defendant


 TIMI POULOS
 Assistant Solicitor, 7th Judicial Circuit


 ALFRED HENSON
 Defendant

Date: 10/10/11



WITNESSES

J. R. Yown

Spartanburg County Sheriff's Office

POB/RECEIVED

2. REPORT INDEXED
Spartanburg, SC 28304-0711

1. CARD FILLED

A. INDEXED

3. CHECKED WARRANTS

4. CHECKED SIGNATURE

5. CHECKED AND

ARREST WARRANT NUMBER

G541856 TRIC VIOLATIONS COPY

ACTION OF GRAND JURY

J. R. Yown

Foreperson of Grand Jury

Date: 11-21-00

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

00-GS-42- 6380

The State of South Carolina

County of Spartanburg

Holman C. Gossett, Solicitor

COURT OF GENERAL SESSIONS

NOV 27 2000

TERM

THE STATE
vs.

Alfred Henson

Indictment for

BURGLARY, THIRD DEGREE
(BUILDING)

SC Code: 16-11-0313

CDR Code: 428

Class FEL/E

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.

Page 121 of 122 05/14/2015



STATE OF SOUTH CAROLINA }

INDICTMENT

COUNTY OF SPARTANBURG }

NOV 21 2008

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, THIRD DEGREE**(BUILDING)**

That Alfred Henson did in Spartanburg County on or about September 11, 2000, willfully and unlawfully enter without consent and with the intent to commit a crime therein, to-wit: Entering a shed attached to a business by cutting two (2) sections of the fence belonging to NEFF Rental at 1936 Hwy 101 South, Greer, South Carolina, in violation of §16-11-0313, *THE 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.



ASSISTANT SOLICITOR

SOUTH CAROLINA
 vs.
Alfred Henson
 AKA:
 Race: W Sex: M Age: 29
 DOB: 7/30/71 SS#: 248-39-1349
 Address: 10915 Reidville Rd.
Greer, SC 29615
 DL# _____ SID#: _____

Page 120 of 222 IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#:

00 -GS- 42 - 6380

A/W#: 6541958

Date of Offense: 9/11/00

S.C. Code §: 16-11-313

CDR Code #: 0141218

☐ CASE RESTORED

SENTENCE
☒ PLEA ☐ TRIAL

☐ CONVICTED OF or ☒ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Burglary 3rd

in violation of § 16-11-313 of the S.C. Code of Laws, bearing CDR Code # 0141218

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature]
 Solicitor Russ Raine

[Signature]
 Defendant

[Signature]
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 11 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 52 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Heard, ☐ Waived, ☒ Ordered

Total: \$ 800 plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: Neff Rental

*Fine: _____ \$

\$14-1-206 (Assessments 100%).... \$ _____

\$14-1-211(A)(1) (Surcharge)..... \$ _____

\$14-1-211(A)(2) (Surcharge)..... \$ _____

\$56-5-2995 (DUI Assessment)..... \$ _____

3% in County (if paid in installments)... \$ _____

TOTAL..... \$ _____

[Signature]
 Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

Wills - Clerk

Greer - Corrections

Canary - Probation

FTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

PRESIDING JUDGE

Judge Code: 11/11/23

Sentence Date: 3/10/01

Stat - Defendant

DOCKET NO. 13-11-312(A)

The State of South Carolina
County of GREENVILLE

COURT OF GENERAL SESSIONS
SEPTEMBER TERM 1993

Indictment
PEAD GURTY THE STATE
vs.
ALFRED GUY HENSON

Indictment for Burglary
(Dwelling)

VIOLATION § 16-11-312(A)
ENTERED
ACCT.
176

WARRANT NO. D 799410

ACTION OF GRAND JURY
FREE BILL

Paul B. Williams
Paul B. Williams
Clerk of Court

VERDICT

Certified Copy
Paul B. Williams
 Clerk of Court C.P. & C.S.
 Greenville County, SC
 Date 8/19/11

Form 119 (12-27)

Page 119 of 122-05-192015

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

INDICTMENT FOR BURGLARY

(DWELLING)

VIOLATION § 16-11-211

At a Court of General Sessions, convened on September 25, 1993
 the Grand Jurors of Greenville County present upon their oaths

~~CONVICTED OF BURGLARY IN THE SECOND DEGREE~~

(DWELLING)

That _____
 did in _____ County on or about _____
 willfully and unlawfully enter the dwelling of _____
 without consent and with the intent to commit a crime therein and the defendant _____

ONE
 COUNT ~~XXX~~— BURGLARY IN THE SECOND DEGREE

(DWELLING)

That ALFRED GUY HENSON
 did in Greenville County on or about January 20, 1993
 willfully and unlawfully enter the dwelling of Luthart Claudia Hamby
 without consent and with the intent to commit a crime therein.

Against the peace and dignity of the State, and contrary to the statute in such case made and

provided.

- certified Copy

Paul B. Williams
 Clerk of Court C.P. & G.S.
 Greenville County, SC

Dated 8/19/94

Joseph J. Watson
 SOLICITOR

93-GS-23-776

NOW COMES THE DEFENDANT

ALFRED Guy HEASON

Who in open Court pleads guilty to the within indictment;

Not Waivedand consents to sentence this 15 day of DEC 19 93

ATTEST:

Cynthia W. Miller
Clerk of CourtX. Alfred Heason

SENTENCE

The defendant ALFRED Guy HEASON is
 committed to the State Dept. of Corrections/County for a term of 15 Fifteen
years and/or to pay a fine \$ _____; provided upon the service of
 _____ months/years and/or payment of \$ _____, plus pay/waive
 costs and assessments as applicable*, the balance suspended with probation for
Five 5 months/years.

Restitution

For physical injury \$ _____

Yes / ☒ No

Property damage \$ _____

to be paid

\$500 to vic

to clerk for

Other conditions Sub Prob. N/A to 6 months as for ProbALFRED Guy HEASON \$500 to P.D. Fund work 500 hrs PSDate DEC 15 1993Frank Lopez
Presiding Judge

* Costs and Assessments

Non-waivable

\$ _____

Not waived

\$ _____

Total

\$ _____

* Pay to Victim's Compensation Fund if subrogated.

Clerk of Coupled Copy

Paul B. Williams
Clerk of Court C.P. & G.S.
Greenville County, SCDate 8/19/11

ICHR 003F997249 from SCCH - November 22, 2010 at 13:35:18

SPTSL436

.ICHR.003F997249.SCCH.20101122 13:35:18

TO: SPTSL436-20594 20101122 13:35:18 003F997249
FROM: SCCH-10056265 20101122 13:35:17

ICHR REQUEST FOR RAP SHEET

ORI-SC042015A FBI-188665KA8 PUR-C

ATN-BARNETTE, BARRY

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-11/22/2010 TIME-13:37:14

REQ ORI-SC042015A 7TH JUDICIAL CIRCUIT

SID-SC00888392 FBI-188665KA8

NAME-HENSON, ALFRED GUY

SEX-M RACE-W

HEIGHT-600 WEIGHT-160 EYES-GRN HAIR-BLN SKIN-MED BORN-SC

FPC-15PM14POCO09CO122011

HENRY-15 M 25 W MOO

S 7 W 000 11

PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

* DNA - TAKEN

DATE RECORD ENTERED--03/01/1993

DATE OF LAST UPDATE--11/09/2010

ADDITIONAL IDENTIFIERS

BIRTH

NAME

DATES MARKS

SOC SEC

MISC NUM

HENSON, AL

HINSON, ALFORD GUY

HENSON, ALFRED

HENSON, FRED G

HENSON, ALBERT GUY

HENSON, ALFRED G

CONTRIBUTOR/SUBJECT

DOA/RCVD CHARGE/DISPOSITION/ETC

HENSON, ALFRED GUY

01/28/1993

SC0230000 GREENVILLE CNTY SO

CASE-108924

WARR-D799410

ARREST CHARGE 01-BURGLARY
PHOTOGRAPH AVAILABLE

WARR-D799410

ARREST CHARGE 02-GRAND

LARCEN

Y

CIT-16-11-312 FELONY

DOC-93GS2307190 WARR-D799410

COURT CHARGE 01-BURGLARY,
2ND DEGREE (NON-VIOLENT)
COURT DISP-CONVICTED;15Y

SUS

5Y PROB & REST \$500 PD

MONTHS	500HR PSE H/A NTE 6
SC040015G CENTRAL PPP WARR-D799410	COURT DATE-12/15/1993 COURT CHARGE 02-LARCENY COURT DISP-CONVICTED;10D SUSPENDED WITH PROBATION COURT DATE-12/15/1993
HINSON, ALFORD GUY SC0230300 GREER PD CASE-G94003065 WARR-049592L	11/11/1994
WARR-04958ZL	ARREST CHARGE 01-MALICIOUS DAMAGE OFFENSE DATE-11/11/1994 PHOTOGRAPH AVAILABLE
LARCEN	ARREST CHARGE 02-PETTY Y OFFENSE DATE-11/11/1994
WARR-04960ZL	ARREST CHARGE 03-PUBLIC OFFENSE DATE-11/11/1994 COURT CHARGE 01-PETIT
DRUNK	COURT DISP-NON-CONVICTION; NOT GUILTY COURT DATE-12/01/1994 COURT CHARGE 02-PUBLIC
WARR-04958ZL LARCENY	COURT DISP-CONVICTED;\$50 PLUS COURT COST COURT DATE-12/01/1994 COURT CHARGE 03-MALICIOUS DAMAGE COURT DISP-
WARR-04960ZL DRUNK	D FINE PAID RESTITUTION COURT DATE-12/01/1994
WARR-04959ZL	
CONVICTED;SUSPENDE	
HENSON, ALFRED GUY SC0230300 GREER PD CASE-108924 WARR-4960ZL	11/12/1994
DRUNK	ARREST CHARGE 01-PUBLIC PHOTOGRAPH AVAILABLE
WARR-4958ZL	ARREST CHARGE 02-PETTY Y
LARCEN	ARREST CHARGE 03-MALICIOUS DAMAGE TO PRIVATE
WARR-4959ZL	

PROPERTY

HENSON, ALFRED GUY
SC0230300 GREER PD
CASE-GR97-001320
WARR-F044876

01/22/1997

ARREST CHARGE 01-POSS CRACK
COCAINE
OFFENSE DATE-01/22/1997
PHOTOGRAPH AVAILABLE

CIT-44-53-375 (A) FELONY
DOC-97GS2307860 WARR-F044876

COURT CHARGE 01-POSS LESS
THAN ONE GRAM ICE/CRACK
COCAINE 1ST
COURT DISP-CONVICTED; 1 YR
(CTS SINCE 080897)
COURT DATE-12/11/1997

SC004015C PERRY RECPT & EVAL
CASE-242989

08/11/1997 CUSTODY STATUS-RECEIVED

START DATE-08/11/1997
COURT CHARGE 01-BURGLARY

NON

VIOLENT PROBATION

REVOCATI

ON
COURT DISP-CONVICTED; 2

YEARS

HENSON, ALFRED GUY
SCSHPO300 SC HIWAY DEPT DIST 3
ATN-
WARR-X541747

01/09/2000

ARREST CHARGE 01-OPERATING
UNINSURED VEHICLE
OFFENSE DATE-01/09/2000
PHOTOGRAPH AVAILABLE

WARR-X541748

ARREST CHARGE 02-DRIVING
UNDER SUSPENSION
OFFENSE DATE-01/09/2000
COURT CHARGE 01-OPERATING
UNINSURED MOTOR VEHICLE

DOC-R84 WARR-X541747

1ST OFF
COURT DISP-CONVICTED; \$400
COURT DATE-01/21/2000
ATN-
COURT CHARGE 02-DRIVING

DOC-R84 WARR-X541748
UNDER

SUSPENSION
COURT DISP-CONVICTED; \$200
COURT DATE-01/21/2000

HENSON, ALFRED GUY
SC0420000 SPARTANBURG CNTY SO
CASE-047383

09/14/2000



ATN- WARR-G541958	ARREST CHARGE 01-BURGLARY
3RD	OFFENSE DATE-09/14/2000 PHOTOGRAPH AVAILABLE
WARR-G541959	ARREST CHARGE 02-GRAND
LARCEN	Y OFFENSE DATE-09/14/2000
CIT-16-11-313 FELONY DOC-00GS4206380 WARR-G541958 3RD	COURT CHARGE 01-BURGLARY- DEGREE 2ND OFFENSE COURT DISP-CONVICTED;1 YR SUS 2 YRS PROB W/800.00 REST 10/25/2 JC FEW,
REVOK	E90 DYS COURT DATE-03/12/2001 ATN-
CIT-16-13-30(B)(2) FELONY DOC-00GS4206379 WARR-G541959 LARCENY	COURT CHARGE 02-GRAND , VALUE \$5,000 OR MORE COURT DISP-NON-CONVICTION; NOLLE PROSSED COURT DATE-03/14/2001
HENSON, ALFRED GUY SC0230000 GREENVILLE CNTY SO CASE-108924 ATN- WARR-63122BS	----- 10/28/2000
WARR-63123BS	ARREST CHARGE 01-DRIVING UNDER SUSPENSION 4TH PHOTOGRAPH AVAILABLE
WARR-63124BS	ARREST CHARGE 02-HABITUAL OFFENDER OFFNEDER
OF	ARREST CHARGE 03-NO PROOF INSURANCE
WARR-63125BS	ARREST CHARGE 04-FAILURE TO REGISTER VEHICLE
WARR-G629172	ARREST CHARGE 05-POSSESSION OF CONTROLLED SUBSTANCE COURT CHARGE 01-DRIVING
DOC-R84 WARR-63122BS UNDER	SUSPENSION COURT DISP-CONVICTED;NO
FINE	

CIT-44-53-370(D)(2)-UNCLASSIFIED
DOC-01GS2302610 WARR-G629172

I

OR

CIT-56-1-1100 FELONY
DOC-01GS2302609 WARR-63123BS

HENSON, ALFRED GUY
SC0420000 SPARTANBURG CNTY SO
CASE-047383
ATN-980000402588
WARR-H329419
CIT-16-13-10(B)(2)-FELONY

WARR-H329460 @
CIT-16-13-10(B)(2)-FELONY

END OF PAGE

01 - PAGE 02 TO FOLLOW

Top of page or Menu

SPTSL436	C000000002288	310	B	3987
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90DYS
COURT DATE-02/22/2001
ATN-

COURT CHARGE 02-POSS OTHER
CONTROLLED SUB IN SCHED

TO V-1ST
COURT DISP-CONVICTED;30DA

\$400
COURT DATE-11/19/2001

COURT CHARGE 03-HABITUAL
TRAFFIC OFFENDER
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-11/29/2001

ARREST CHARGE 01-FORGERY
MORE THAN \$1000 BUT LESS
THAN \$5,000
OFFENSE DATE-12/31/2002
PHOTOGRAPH AVAILABLE

ARREST CHARGE 02-FORGERY
MORE THAN \$1000 BUT LESS
THAN \$5,000
OFFENSE DATE-12/31/2002

ICHR 003F99724B from SCCH - November 22, 2010 at 13:35:19

SPTSL436

ICHR.003F99724B.SCCH.20101122 13:35:19

TO: SPTSL436-20595 20101122 13:35:19

FROM: SCCH-10056267 20101122 13:35:19

003F99724B

PAGE-02 DATE-11/22/2010 TIME-13:37:14
 REQ ORI-SC042015A 7TH JUDICIAL CIRCUIT
 SID-SC00888392 FBI-188665KA8

CONTRIBUTOR/SUBJECT

DOA/RCVD CHARGE/DISPOSITION/ETC

WARR-H329420 @
 CIT-16-13-10(B)(2)-FELONY

ARREST CHARGE 03-FORGERY
 MORE THAN \$1000 BUT LESS
 THAN \$5,000

OFFENSE DATE-12/31/2002

COURT CHARGE 01-OBTAIN

DOC-42 WARR-H329460
 SIGN/P

ROP U/FALSE PRETENSES
 COURT DISP-CONVICTED;30

DAYS

/ \$440 BY 2-17-03

COURT DATE-01/28/2003

ATN-980000402588

CIT-16-13-110(B)(1)-MISDEMEANOR
 DOC-R84 WARR-H329420

COURT CHARGE 02-SHOPLIFTING
 COURT DISP-CONVICTED;30

DAYS

CIT-16-13-10(B)(2)-FELONY
 DOC-03GS4203510 WARR-H329420
 MORE

COURT CHARGE 03-FORGERY

THAN \$1000 BUT LESS THAN
 \$5,000

COURT DISP-NON-CONVICTION;
 NOLLE PROSSED

COURT DATE-03/11/2004

CIT-16-13-10(B)(2)-FELONY
 DOC-03GS4203511 WARR-H329419
 MORE

COURT CHARGE 04-FORGERY

THAN \$1000 BUT LESS THAN
 \$5,000

COURT DISP-NON-CONVICTION;
 NOLLE PROSSED

COURT DATE-03/11/2004

HENSON, ALFRED GUY
 SC0230300 GREER PD
 CASE-GR03009444
 ATN-
 WARR-58644CL
 CIT-56-1-460-MISDEMEANOR

04/30/2003

ARREST CHARGE 01-DRIVING
 UNDER SUSPENSION
 OFFENSE DATE-04/30/2003

CIT-56-1-460-MISDEMEANOR
 DOC-R84 WARR-58644CL
 UNDER

COURT CHARGE 01-DRIVING

SUSPENSION

COURT DISP-CONVICTED;\$50

AND

CC AND TIME SERVED	
ATN-	
HENSON, ALFRED GUY SC0230300 GREER PD CASE-108924 ATN-231600045770 WARR-G548659 CIT-44-53-370(D) (2)-MISDEMEANOR I WARR-G548660 CIT-44-53-370(D) (2)-MISDEMEANOR I WARR-G548661 CIT-44-53-370(D) (2)-MISDEMEANOR I WARR-G548663 CIT-44-53-370(D) (2)-MISDEMEANOR I CIT-44-53-370(D) (2)-MISDEMEANOR DOC-03GS2308324 WARR-G548659 I CIT-44-53-370(D) (2)-MISDEMEANOR DOC-03GS2308326 WARR-G548660 I CIT-44-53-370(D) (2)-MISDEMEANOR DOC-03GS2308322 WARR-G548661	05/02/2003 ARREST CHARGE 01-POSS OTHER CONTROLLED SUB IN SCHED TO V-1ST OFFENSE DATE-05/02/2003 PHOTOGRAPH AVAILABLE ARREST CHARGE 02-POSS OTHER CONTROLLED SUB IN SCHED TO V-1ST OFFENSE DATE-05/02/2003 ARREST CHARGE 03-POSS OTHER CONTROLLED SUB IN SCHED TO V-1ST OFFENSE DATE-05/02/2003 ARREST CHARGE 04-POSS OTHER CONTROLLED SUB IN SCHED TO V-1ST OFFENSE DATE-05/02/2003 COURT CHARGE 01-POSS OTHER CONTROLLED SUB IN SCHED TO V-1ST COURT DISP-NON-CONVICTION; NOLLE PROSSED COURT DATE-07/26/2004 ATN-231600045770 COURT CHARGE 02-POSS OTHER CONTROLLED SUB IN SCHED TO V-1ST COURT DISP-NON-CONVICTION; NOLLE PROSSED COURT DATE-07/26/2004 COURT CHARGE 03-POSS OTHER CONTROLLED SUB IN SCHED

I		TO V-1ST COURT DISP-NON-CONVICTION; NOLLE PROSSED COURT DATE-07/26/2004
CIT-44-53-370(D)-MISDEMEANOR DOC-03GS2308325 WARR-G548663		COURT CHARGE 04-POSS SCHED I(B)(C) LSD/SCHED
II (COCAIN		E)-1ST COURT DISP-NON-CONVICTION; NOLLE PROSSED COURT DATE-07/26/2004
HENSON, ALFRED SC0421000 LANDRUM PD CASE-20041214 ATN-422000086502 WARR-63226CW CIT-56-5-1520(D)(1)-MISDEMEANOR	12/14/2004	ARREST CHARGE 01-SPEEDING OFFENSE DATE-12/14/2004
WARR-63227CW CIT-56-1-460-MISDEMEANOR (LICENSE MORE WARR-63228CW CIT-56-1-1100-FELONY CIT-56-1-1100-FELONY DOC-05GS4200851 WARR-63228CW		ARREST CHARGE 02-DUS NOT SUSP DUI)-3RD OR OFFENSE DATE-12/14/2004 ARREST CHARGE 03-HABITUAL TRAFFIC OFFENDER OFFENSE DATE-12/14/2004 COURT CHARGE 01-HABITUAL TRAFFIC OFFENDER COURT DISP-NON-CONVICTION; NOLLE PROSSED COURT DATE-08/26/2005 ATN-422000086502
HENSON, FRED G SC0230300 GREER PD CASE-NA ATN-990000177177 WARR-86764DI CIT-16-13-110(B)(1)-MISDEMEANOR SHOPLIFTING CIT-16-13-110(B)(1)-MISDEMEANOR DOC-R84 WARR-86764DI	04/07/2006	ARREST CHARGE 01- OFFENSE DATE-04/07/2006 PHOTOGRAPH AVAILABLE COURT CHARGE 01-SHOPLIFTING COURT DISP-CONVICTED;\$200 & CC

COURT DATE-09/11/2006 ATN-990000177177	
HENSON, ALFRED GUY SC0230300 GREER PD CASE-GR06-10867 ATN-990000191743 WARR-44710DR CIT-44-53-370(D) (4)-MISDEMEANOR	05/21/2006
OR	ARREST CHARGE 01-POSS 28G
LESS	LESS MARIJ OR 10G OR
	HASH 1ST OFFENSE DATE-05/21/2006
CIT-44-53-370(D) (4)-MISDEMEANOR WARR-44710DR	COURT CHARGE 01-POSS 28G OR LESS MARIJ OR 10G OR
LESS	HASH 1ST COURT DISP-CONVICTED;\$200 PLUS CC COURT DATE-10/20/2006 ATN-990000191743
CIT-56-1-460-MISDEMEANOR WARR-44709DR (LICENSE	COURT CHARGE 02-DUS NOT SUSP DUI)-2ND COURT DISP-CONVICTED;\$600 PLUS CC COURT DATE-10/20/2006
HENSON, ALFRED GUY SC0230000 GREENVILLE CNTY SO CASE-108924 ATN-231600187494 WARR-I803392 CIT-16-25-20(A)-MISDEMEANOR	
	07/20/2008
	ARREST CHARGE 01-CRIMINAL DOMESTIC VIOLENCE 1ST OFFENSE OFFENSE DATE-07/20/2008 PALM PRINTS AVAILABLE
HENSON, ALBERT GUY SC0230000 GREENVILLE CNTY SO CASE-108924 ATN-231600188933 WARR-I803466 CIT-16-25-20(A)-MISDEMEANOR	
	08/12/2008
	ARREST CHARGE 01-CRIMINAL DOMESTIC VIOLENCE 1ST OFFENSE OFFENSE DATE-08/12/2008 PALM PRINTS AVAILABLE

HENSON, ALFRED GUY 11/12/2008
 SCSHP0300 SC HIWAY DEPT DIST 3
 CASE-20081112
 ATN-422100143844
 WARR-D423768 @
 CIT-56-1-460-MISDEMEANOR

ARREST CHARGE 01-DRIVING
 UNDER SUSPENSION
 OFFENSE DATE-11/12/2008
 PALM PRINTS AVAILABLE

HENSON, ALFRED 11/18/2008
 SC0230300 GREER PD
 CASE-026029
 ATN-990000451974
 WARR-36878ES
 CIT-44-53-370(D) (4)-MISDEMEANOR

ARREST CHARGE 01-POSS 28G

OR

LESS MARIJ/10G OR LESS
 HASH 1ST
 OFFENSE DATE-11/18/2008

CIT-44-53-370(D) (4)-MISDEMEANOR
 DOC-R84 WARR-36878ES

COURT CHARGE 01-POSS 28G OR
 LESS MARIJ/10G OR LESS
 HASH 1ST
 COURT DISP-

CONVICTED;sentence

unknown
 ATN-990000451974

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02 - PAGE 03 TO FOLLOW

Top of page or Menu

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ICHR 003F99724C from SCCH- November 22, 2010 at 13:35:20

SPTSL436
 .ICHR.003F99724C.SCCH.20101122 13:35:20
 TO: SPTSL436-20596 20101122 13:35:20 003F99724C
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PAGE-03 DATE-11/22/2010 TIME-13:37:14
 REQ ORI-SC042015A 7TH JUDICIAL CIRCUIT
 SID-SC00888392 FBI-188665KA8

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

HENSON, ALFRED
SC0230300 GREER PD
CASE-026045
ATN-990000454564
WARR-I580283
CIT-16-13-30(B)(1)-FELONY

12/10/2008

ARREST CHARGE 01-GRAND LARCEN
Y, VALUE >\$1,000 BUT <\$5,00
0
OFFENSE DATE-12/10/2008

CIT-16-13-30(B)(2)-FELONY
DOC-09GS4201515 WARR-I580283

COURT CHARGE 01-GRAND LARCENY
, VALUE \$5,000 OR MORE
COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED
COURT DATE-01/06/2010
ATN-990000454564

HENSON, ALBERT GUY
SC0230000 GREENVILLE CNTY SO
CASE-108924
ATN-231600201909
WARR-I477353
CIT-16-14-20-FELONY

02/26/2009

ARREST CHARGE 01-FINANCIAL
TRANSACTION CARD THEFT
OFFENSE DATE-02/26/2009
PALM PRINTS AVAILABLE

CIT-16-14-20-FELONY
DOC-09GS2303373 WARR-I477353

COURT CHARGE 01-FINANCIAL
TRANSACTION CARD THEFT
COURT DISP-CONVICTED;3yrs
bal susp 3yrs probation
COURT DATE-11/05/2009
ATN-231600201909

HENSON, ALBERT GUY
SC0230000 GREENVILLE CNTY SO
CASE-108924
ATN-990000466090
WARR-I477358
CIT-16-13-160(A)(1) FELONY

A02/26/2009

ARREST CHARGE 01-BREAKING
INTO AUTO/TANKS WHERE
FUEL STORED
OFFENSE DATE-02/26/2009
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

WARR-I477355
CIT-16-14-60-MISDEMEANOR

ARREST CHARGE 02-FINANCIAL
TRANS CARD FRAUD <\$500 IN
6MTHS
OFFENSE DATE-02/26/2009

WARR-I477357
CIT-16-14-60-MISDEMEANOR

WARR-I477356 CIT-16-14-20-FELONY	ARREST CHARGE 03-FINANCIAL TRANS CARD FRAUD <\$500 IN 6MTHS OFFENSE DATE-02/26/2009
CIT-16-14-20-FELONY DOC-09GS2303374 WARR-I477356	ARREST CHARGE 04-FINANCIAL TRANSACTION CARD THEFT OFFENSE DATE-02/26/2009
CIT-16-14-60(B) (1) (2)-MISDEMEAN DOC-09GS2303375 WARR-I477357	COURT CHARGE 01-FINANCIAL TRANSACTION CARD THEFT COURT DISP-NON-CONVICTION; DISM/NOL PROS/PROS ENDED COURT DATE-11/18/2009 ATN-990000466090
CIT-16-13-160(A) (1)-FELONY DOC-09GS2303376 WARR-I477358	COURT CHARGE 02-FTC FRAUD <\$500 IN 6MTHS BY STOREOWN ER COURT DISP-NON-CONVICTION; DISM/NOL PROS/PROS ENDED COURT DATE-11/18/2009
HENSON, ALFRED GUY SC0420000 SPARTANBURG CNTY SO CASE-2009061233 ATN-422100152876 WARR-M088169 CIT-16-13-30(B) (1)-FELONY	COURT CHARGE 03-BREAKING INTO AUTO/TANKS WHERE FUEL STORED COURT DISP-NON-CONVICTION; DISM/NOL PROS/PROS ENDED COURT DATE-11/18/2009
SC023015G GREENVILLE PPP CASE-SC0230 CIT-16-14-20-FELONY	ARREST CHARGE 01-GRAND LARCEN Y, VALUE >\$1,000 BUT <\$5,00 0 OFFENSE DATE-06/21/2009 PALM PRINTS AVAILABLE
CIT-16-14-60-MISDEMEANOR	COURT CHARGE 01-FINANCIAL TRANSACTION CARD THEFT COURT DISP-CONVICTED;3 YRS SUSP., 3 YRS PROB CC ATN-23P000502140
	COURT CHARGE 02-FINANCIAL TRANS CARD FRAUD <\$500 IN 6MTHS COURT DISP-CONVICTED;1 YR

SUSP., 3 YRS PROB	
HENSON, ALFRED GUY SC0230300 GREER PD CASE-031013593 ATN-990000829874 WARR-44709DR CIT-N/A-MISDEMEANOR	08/06/2010 ARREST CHARGE 01-FAIL TO COMPLY OFFENSE DATE-08/06/2010
HENSON, ALFRED SC0420000 SPARTANBURG CNTY SO CASE-2010110373 ATN-422100173098 WARR-91280EK CIT-56-1-440-MISDEMEANOR	11/09/2010 ARREST CHARGE 01-DRIVING WITHOUT A LICENSE OFFENSE DATE-11/09/2010 PALM PRINTS AVAILABLE
WARR-M750994 CIT-16-13-180(B) (2)-FELONY	ARREST CHARGE 02-RECEIVING STOLEN GOODS >\$2,000 <\$10, 000 OFFENSE DATE-11/09/2010
WARR-91281EK CIT-N/A-MISDEMEANOR	ARREST CHARGE 03-VIOLATION ABC LAW OFFENSE DATE-11/09/2010
WARR-91299EK CIT-44-53-370(D) (4)-MISDEMEANOR	ARREST CHARGE 04-POSS 28G OR LESS MARIJ/10G OR LESS HASH 1ST OFFENSE DATE-11/09/2010
@ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER	
BASED ON SEARCH OF SCLED CJIS CCH FILE USING FBI/188665KA8 REQUESTED FOR CRIMINAL JUSTICE PURPOSES	
SCLED CJIS RECORD INDICATES SUBJECT HAS OUT OF STATE ARREST INFORMATION REQUEST FORWARDED TO NCIC FOR OUT-OF-STATE INFORMATION INFORMATION FROM OTHER STATES TO FOLLOW THRU NLETS VIA YOUR TERMINAL	
INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S	
INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN SOUTH CAROLINA	

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110 (C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS. THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** S C CJIS END OF RECORD **

Top of page or Menu

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FROM: NLETS-11987397 20101122 13:35:26

CR.FLIIIO0000

11:31 80664

11/22/2010 00735 SC042015A

*2AA3003A96

TXT

HDR/2L012AA3003A962QR

ATN/BARNETTE, BARRY

***** CRIMINAL HISTORY RECORD *****

***** Introduction *****

This rap sheet was produced in response to the following request:

FBI Number	188665KA8
State Id Number	FL02871157 ()
Purpose Code	C
Attention	BARNETTE, BARRY

The information in this rap sheet is subject to the following caveats:

BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR FUTURE USE (FL;)
THIS RECORD CONTAINS FLORIDA INFORMATION ONLY. WHEN EXPLANATION OF A

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THIS IS A MULTI-SOURCE OFFENDER RECORD. (FL;)

***** IDENTIFICATION *****

Subject Name(s)

HENSON, ALFRED GUI

Subject Description

FBI Number
188665KA8

State Id Number
FL02871157

Social Security Number

Sex
Male

Race
White

Height
6'00"

Weight
160

Date of Birth

Hair Color
Brown
(FPC)

Eye Color
Hazel

Fingerprint Pattern
15PM14POCO09CO122011

Place of Birth
SOUTH CAROLINA

Fingerprint Images

***** CRIMINAL HISTORY *****

===== Cycle 1 =====

Tracking Number 001
Earliest Event Date 1989-08-17

Arrest Date 1989-08-17
Arrest Case Number 224112
Arresting Agency FL0520000
PINELLAS COUNTY SHERIFF'S OFFICE

Arrest Type ADULT
Charge 001
Charge Number 224112
Charge Tracking Number 0002091688
Charge Literal ROBBERY-
Charge Description STRONG ARM

NCIC Offense Code 1299
Counts 001

Severity FELONY	
Disposition (1989-08-17; Unknown	
***** INDEX OF AGENCIES *****	
Agency	PINELLAS COUNTY SHERIFF'S OFFICE
; FL0520000;	
Address	
P. O. BOX 2500, LARGO, FL 34294	

Agency	PINELLAS COUNTY SHERIFF'S OFFICE
; FL0520000;	
* * * END OF RECORD * * *	
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 11/22/2010 13728 SC042015A
 *2AA3003A96
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HDR/2L012AA3003A962QR .
 ATN/BARNETTE, BARRY.
 PART 1
 THE FOLLOWING RECORD PERTAINS TO SID/OHC424104

 STATE OF OHIO, OFFICE OF THE ATTORNEY GENERAL
 BUREAU OF CRIMINAL IDENTIFICATION & INVESTIGATION (OHBCI0000)
 P.O. BOX 365, LONDON, OHIO 43140
 VALIDATED CRIMINAL HISTORY RECORD: DRE/2007JUL02 DLU/2007JUL02
 MKE/CHR PUR/C ORI/OHCCH0000 REQ/BARNETTE, BARRY DATE/2010NOV22
 TIME/13:31:56

BCI/C424104 NAM/HENSON, ALFRED GUY POB/SC AGE/39
 DOB/1971JUL30 SEX/M RAC/W HGT/604 WGT/200 EYE/BLU HAI/BAL SMT/
 FBI/188665KA8 SOC/248391349 HFP/ FPC/
 MNU/AN-625010
 LKA/68 A TAFT ST SHELBY OH
 HCC/001 MULTISTATE-OFFENDER LOADED-AT-III
 CVF/ EVF/ HVF/ RSO/ FCF/ HGF/
 CYCLE/01 DOA/2007JUN25 SEQ/01 ITN/108386PM DRE/2007JUL02
 DLU/2007JUL02
 ARREST AGENCY/OH0510000 MARION CO SO MARION
 ARREST#/625010
 01/OPERATION WITHOUT VALID LICENSE DISP/HELD
 MISD EAG/OHBCI00G5 /2007JUL02
 4507.02
 02/THEFT MISD DISP/HELD
 2913.02 EAG/OHBCI00G5 /2007JUL02
 *** NOTE: THIS IS A MULTISTATE OFFENDER
 WHERE DISPOSITIONS ARE NOT SHOWN -OR- FURTHER EXPLANATION OF A DISPOSITION
 OR CHARGE IS DESIRED, PLEASE CONTACT THE ARRESTING AGENCY.
 THIS DATA, BASED ON FINGERPRINT IDENTIFICATION BY BCI, IS ONLY TO BE USED FOR
 CRIMINAL JUSTICE PURPOSES AS DEFINED BY THE NCIC ADVISORY POLICY BOARD.
 USE \OHSIRHELP TO OBTAIN A COPY OF THE OHIO HELP FILE IF YOU HAVE ANY
 QUESTIONS ABOUT SOME OF THE FIELDS CONTAINED ON OHIO RAP SHEETS *END*
 END OF PART 1 - END OF RECORD

Top of page or Menu

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 FROM: III-14154435 20101122 13:35:25
 EL012AA3003A962QR
 SC042015A

THIS INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
 RECORD REQUEST FOR FBI/188665KA8. INDIVIDUAL'S RECORD WILL BE
 COMPLETE WHEN ALL RESPONSES ARE RECEIVED FROM THE FOLLOWING SOURCES:
 FLORIDA - STATE ID/FL02871157
 OHIO - STATE ID/OHC424104

AN ADDITIONAL RECORD MAY BE OBTAINED FROM FILES WITHIN YOUR STATE.
 END

Top of page or Menu

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SC042015A				
NO NCIC WANT FBI/188665KA8				
NO NCIC WANT SOC/248391349				
***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.				
Top of page or Menu				
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Y	Delete			

Shealy, Matthew

From: Poulos, Timi
Sent: Monday, March 07, 2011 8:53 AM
To: Shealy, Matthew
Subject: RE: Alfred Henson

No, Burg 2nd Violent

From: Shealy, Matthew
Sent: Friday, March 04, 2011 9:32 AM
To: Poulos, Timi
Subject: RE: Alfred Henson

Burg 2nd NV?

From: Poulos, Timi
Sent: Friday, March 04, 2011 9:28 AM
To: Shealy, Matthew
Subject: Alfred Henson

Mr. Henson has pending charges for Burglary 1st and Grand Larceny > \$2,000< \$10,000. I will offer a plea to the lesser Burglary 2nd and Grand Larceny. There does not appear to be any restitution.

This offer will expire on March 24, 2011.

Timi Poulos
 Assistant Solicitor
 7th Judicial Circuit
 (864) 596-2575
 (864) 596-2386 (fax)



3/16/2011

Re: will be able to testify that he had a/this
 moved to Beer

Kelly Harris - girl son of from Bert Moore
 by My Land - D-I.

→ sons - have interest. Was in medical group
 Beck.

Delivered after 200. Does not want to take it.

Spartanburg County Courthouse

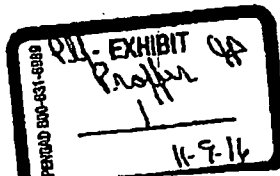
RANDOM STRIKE SHEET

JUDGE NAME : Couch, Roger L.
 TRIAL TYPE : Criminal
 PANEL ID : 2011GS420351-52
 COURTROOM EAST

DESCRIPTION : Alfred Henson

Sorted by: Random Nbr
 Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Thomas, Edward	164	B	M	()	(X)	()	
2 Scott, Tyshawn L	152	B	M	(X)	()	()	
3 Vaughn, Laura L	169	W	F	()	()	()	1
4 Adams, Charles W	1	W	M	()	()	()	2
5 Hagerty, Richard D	72	W	M	(X)	()	()	
6 Hyder, Larry R	82	W	M	()	()	()	3
7 Browne, Treva R	22	W	M	()	()	()	4
8 Carter, Samuel L	33	A	M	()	(X)	()	
9 Stroy, Rosa M	160	B	F	()	(X)	()	
10 Chappell, Willie R	34	B	M	()	()	()	5 fore person
11 Walker, Ruby S	172	W	F	()	(X)	()	
12 Puddan, Jasvinder S	130	H	M	()	()	()	6
13 Estola, Curtis A	51	W	M	()	()	()	7
14 Jolley, Severina RN	85	W	F	()	(X)	()	
15 Blackwell, Stephen W	15	W	M	()	()	()	8 Excused by Judge
16 Bulman, Shane T	23	W	M	()	(X)	()	
17 Gowan, Waynetta E	69	W	F	()	()	()	9
18 Campbell, Judith A	29	W	F	()	(X)	()	
19 Williamson, Joyce W	184	W	F	()	(X)	()	
20 Stockton, Pamela S	159	W	F	()	()	()	10
21 McCreary, Sharon T	103	B	F	()	(X)	()	
22 Blackwell, Jessica A	14	W	F	()	(X)	()	
23 Ravan, James C	133	W	M	()	()	()	11
24 Williams, Vernita P	182	B	F	()	()	()	12



**Spartanburg County Courthouse
RANDOM STRIKE SHEET**

JUDGE NAME: Couch, Roger L.
TRIAL TYPE: Criminal
PANEL ID: 2011GS420351-52
COURTROOM EAST

DESCRIPTION: Alfred Henson

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Heck, Becky A Ent	75	W	F	()	()	()	<u>13</u>
26 Loyd, Sherrie	95	W	F	()	()	()	
27 Mathias, Leah J	99	W	F	()	()	()	
28 Wheeler, Sheila D	177	B	F	()	()	()	
29 Stewart, Terry	157	B	M	()	()	()	
30 Owen, Cynthia D	120	W	F	()	()	()	
31 Bowen, Elsworth E	17	W	M	()	()	()	
32 Gustafson, Andrew M	71	W	M	()	()	()	
33 Jones, Loretta M	86	B	F	()	()	()	
34 Scott, Marie E	150	W	F	()	()	()	
35 Henerey, William J	77	W	M	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Alfred Guy Henson, #242989,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH JUDICIAL CIRCUIT

C/A No.: 2013-CP-42-1936

MEMORANDUM OF LAW IN
SUPPORT OF DENIAL OF PCR

JAN 27 AM 11:08
VOID 210638
M. HOPE BLICKLEY

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed April 25, 2013. An evidentiary hearing into the matter was convened on November 9, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by J. Falkner Wilkes. Alicia A. Olive of the Attorney General's Office appeared on behalf of Respondent. Applicant testified on his own behalf. Max B. Singleton, Matthew Shealy, and Timi Poulos also testified. Following the hearing, counsel for Respondent requested an opportunity for both parties to submit a memorandum of law concerning the issue of whether Counsel was ineffective for stipulating to Applicant's two prior convictions for burglary. Respondent does not address the remaining allegations in this memorandum, but submits that, in addition to the allegation addressed below, Applicant failed to satisfy his burden as to those remaining allegations.

ARGUMENT

Applicant alleged at the hearing that Counsel was ineffective for not objecting to the use of one of Applicant's prior burglary convictions to satisfy the element in the statute for the offense of burglary in the first degree. Respondent submits Applicant has failed to prove that trial

[Handwritten signature]

counsel ("Counsel") was deficient or that he suffered any prejudice with respect to this or any other claims adequately raised in this PCR action.

"The use of an uncounseled conviction resulting in a sentence of imprisonment to enhance the punishment in a subsequent conviction violates the Sixth and Fourteen Amendments to the United States Constitution." State v. Sosbee, 371 S.C. 104, 111, 637 S.E.2d 571, 574 (Ct. App. 2006) (citing Nichols v. United States, 511 U.S. 738, 746-47 (1994)). However, in this case, Applicant's convictions were not used to enhance the sentence, but rather, to prove one of the elements of burglary in the first degree. See State v. Washington, 338 S.C. 392, 395, 526 S.E.2d 709, 710 (2000) ("section 16-11-311 allows the State to punish Defendant's recidivism by using his previous convictions to elevate actions that would normally constitute a burglary, second degree charge to a charge of burglary, first degree").

Subsection 16-11-311(A) of the South Carolina Code of Laws provides:

(A) A person is guilty of burglary in the first degree if the person enters dwelling without consent and with intent to commit a crime in the dwelling, and either:

(1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:

(a) is armed with a deadly weapon or explosive; or . . .

(2) 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;

....

Therefore, the State can prove the elements of burglary first by proving that Applicant was armed with a deadly weapon when the offense was committed. In this case, the State chose to prove the element by establishing that Applicant had two or more prior convictions for burglary first. Timi Poulos testified on behalf of the State at the PCR hearing. She testified that had Counsel not stipulated to the prior convictions, she would have called an employee of the Clerk of Court's office to present Applicant's prior burglary offenses to prove that element of the offense.

Applicant testified that one of his prior convictions for burglary was obtained through an uncounseled guilty plea. Counsel testified he was unaware that one of Applicant's prior burglary convictions was uncounseled. Counsel had no duty to investigate whether Applicant's prior convictions were counseled. First, Applicant has failed to prove by a preponderance of the evidence that the plea was, in fact, uncounseled. Furthermore, even if it was, counsel for the State has been unable to find any case law that would have specifically precluded the use of that conviction to satisfy that element of burglary first. Accordingly, Counsel had no duty to investigate the prior conviction, but even if he had, there was no viable basis on which he could have objected to the use of the conviction. Furthermore, the face of the sentencing sheet itself does not clearly indicate whether or not Applicant was represented by Counsel at the time of his plea, although Applicant did testify he was not represented. In addition, Applicant is only sentenced to probation at that time, although his probation was later revoked.

Lastly, Applicant has failed to show he was prejudiced by the alleged deficiency of Counsel. Applicant has failed to prove that had Counsel objected to the use of the plea to prove the element of burglary in the first degree, there is a reasonable probability that the trial judge would have sustained the objection. Applicant would have had "the burden to prove by a preponderance of the evidence that [the] prior conviction [was] constitutionally defective or invalid when objecting to the use of the prior conviction *to enhance punishment of a subsequent conviction.*" Sosbee, 371 S.C. at 111, 637 S.E.2d at 574 (quoting State v. Payne, 332 S.C. 266, 269, 504 S.E.2d 335, 336 (Ct. App. 1998)). Applicant has made no such showing. Further, as previously stated, the prior conviction was not used as an enhancement, but to satisfy an element of an offense. Therefore, there is no reasonable probability that if Counsel had not stipulated to the prior conviction, the result of the trial would have been different.

CONCLUSION

Accordingly, Respondent submits that Applicant has failed to satisfy his burden of proving Counsel was ineffective with respect to allegation addressed in this memorandum, or any other allegations raised in the PCR action.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: *Alicia A. Olive*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 20, 2016.

CLERK OF COURT
SCOTT W. HARRIS, JR.
2016 DEC 28 PM 3:18
VOID CLOKED IN ERROR
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Alfred Guy Henson, #242989,	)	Case No. 2013-CP-42-1936
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

2017 MAY 23 AM 10:55
M. HOPE CLARKE

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 25, 2013. Respondent made a Return on May 8, 2014. The Court convened an evidentiary hearing into the matter on November 9, 2016 at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by J. Falkner Wilkes. Alicia A. Olive of the Attorney General's Office appeared on behalf of Respondent. Applicant testified on his own behalf. Max B. Singleton, Matthew Shealy, and Timi Poulos also testified. Following the hearing, counsel for Respondent requested an opportunity for both parties to submit a memorandum of law concerning the issue of whether Counsel was ineffective for stipulating to Applicant's two prior convictions for burglary.

The Court had before it a copy of the trial transcripts, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the pleadings, the exhibits introduced at the hearing, and the parties' submissions. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In September 2011, the

AM

Spartanburg County Grand Jury indicted Applicant for burglary—first degree (2011-GS-42-0351), and grand larceny, third or subsequent (2011-GS-42-0352). Max B. Singleton ("Counsel") represented Applicant. Assistant Solicitor Timi Poulos prosecuted the case. On October 11, 2011, Applicant proceeded to a jury trial before the Honorable Roger L. Couch. The jury found Applicant guilty of both charges as indicted. Judge Couch sentenced Applicant to imprisonment for concurrent terms of twenty (20) years for burglary and ten (10) years for larceny.

A timely notice of appeal was filed on Applicant's behalf. Pursuant to Applicant's request to withdraw, the South Carolina Court of Appeals dismissed the appeal. State v. Henson, Ct. App. Order filed June 12, 2012. The Remittitur was returned on September 14, 2012.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

- a. Ineffective assistance of counsel, in that;
 - i. Counsel failed to properly prepare and investigate the case,
 - ii. Counsel failed to properly present an adequate defense based on the facts and circumstances of the case,
 - iii. Counsel failed to properly conduct discovery,
 - iv. Counsel failed to properly subpoena and call witnesses to present evidence in the case,
 - v. Counsel failed to raise proper objections during the trial to present and preserve evidentiary issues,
 - vi. Counsel failed to move for a Jackson v. Denno hearing and failed to object to the testimony of witnesses concerning statements allegedly made by Applicant,
 - vii. Counsel failed to properly and effectively cross-examine the State's witnesses,
 - viii. Counsel failed to properly raise, argue, and preserve record as to the issue of the jury seeing Applicant in shackles during trial,
 - ix. Counsel failed to make a proffer of evidence when warranted to properly present and preserve issues for appeal,
 - x. Counsel failed to properly advise Applicant as to law regarding a proffer,

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M. HOFFER-CLARK

- xi. Counsel failed to consider how the introduction of evidence would cause the loss of last argument in the case,
- xii. Counsel failed to communicate and discuss all plea offers with Applicant,
- xiii. Counsel failed to properly discuss the case and advise the Applicant on the applicable law and procedure;
- b. Brady violation, in that;
 - i. State failed to produce discovery including but not limited to the dash cam video or any relevant recordings of the stop and arrest of Applicant.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Evidence Adduced at Trial

On November 8, 2010, the victim, Leslie Ofori, was taking a shower when she felt vibrations in the floor, which indicated that someone was walking around downstairs in her home. (Tr. Vol. I at 98). At first she thought it was her husband returning early from work. While she was getting dressed, she called out to him and did not hear a response. She then heard footsteps again and the chimes of the alarm system, indicating a door had been opened. (Tr. Vol. I at 99). She heard a motor crank, then looked out the window, and saw someone on a moped speeding out of her driveway. (Tr. Vol. I at 99).

A few moments before the events involving Mrs. Ofori, officers had seen Applicant in front of a restaurant. (Tr. Vol. I at 132). Applicant approached Deputy Jason Wilson, but then Applicant stated he did not know them and that he thought they were someone else. (Tr. Vol. I at 132-33). Wilson asked Applicant's name, but Applicant would not provide his last name. (Tr.

Vol. I at 133). He then got on his moped and drove off. (Tr. Vol. I at 133). Wilson went back inside, and he and the other officers were able to identify him as Applicant. They determined that his driver's license was suspended and that he did not have a moped license. (Tr. Vol. I at 133).

Later that afternoon, while on patrol with Deputy Brent Brown near Bennetts Bridge Road, Deputy Wilson looked in his rearview mirror and observed Applicant driving the same moped and wearing the same clothing. (Tr. Vol. I at 134; 165). He then turned around and tried to conduct a traffic stop on Applicant as Applicant was pulling into his driveway. (Tr. Vol. I at 134-35). Brown testified that they followed Applicant into his driveway and Applicant jumped off his moped and began throwing items under an adjacently parked car. (Tr. Vol. I at 165). Wilson testified he saw Applicant throw a camera. (Tr. Vol. I at 136).

Brown testified he saw him throw "what seemed to be a large object and then a couple small objects under the car, but [he] couldn't tell what they were." (Tr. Vol. I at 165). Deputy Nick Turner looked under the car where the camera was found and saw two credit cards right next to the moped. (Tr. Vol. I at 154). Brown testified he searched Applicant and recovered from his front pocket a folding pocketknife with a blade about three or four inches long. (Tr. Vol. I at 166).

After determining the credit cards belonged to her, the officers went to the victim's home. (Tr. Vol. I at 183). It was not until then that the victim realized things had been taken from her home. (Tr. Vol. I at 183). She identified the camera as belonging to her husband. (Tr. Vol. I at 179). Photographs of shoe prints on the floor in the victim's home were taken and introduced as evidence at trial. (Tr. Vol. I at 179-80). Deputy Kevin Murphy testified that Applicant was wearing size ten medium Timberland boots when he was arrested. (Tr. Vol. II at 15). A

photograph of the boots was also introduced into evidence. (Tr. Vol. II at 16). The victim testified her husband owned size 13 Timberland boots. (Tr. Vol. I at 130-31).

At trial, Counsel moved to suppress the introduction of the camera and credit cards, arguing they were the fruits of an illegal search and seizure. (Tr. Vol. I at 29). The Court denied the motion, finding the police were lawfully on the property of Applicant because of the traffic stop, the items they saw under the car were in plain view, and the viewing of those items would have indicated a possibility or potential for criminal activity requiring additional investigation. (Tr. Vol. I at 76). The Court also stated that, because Applicant tossed the items under a vehicle during a stop, the officers had the right, if nothing else, to look under the vehicle for officer safety. (Tr. Vol. I at 76). Counsel did not contemporaneously object to the officer's testimony that they found the camera and cards. (Tr. at 136).

B. Summary of Testimony

Applicant testified he hired Counsel six (6) months before trial. Applicant testified that one of his prior burglary convictions used at trial was obtained through an uncounseled plea. He received probation for that offense, but he was later incarcerated following revocation of his probationary sentence. Applicant testified his first burglary conviction resulted in imprisonment after his probation was revoked. Applicant testified a suppression hearing was held regarding the legality of the search and seizure pursuant to which the camera and credit cards were obtained. Applicant testified the suppression issue was not properly argued. He also testified that an actual knife was never presented as evidence. Applicant testified he would have taken the plea offer if he had known about the stipulation.

Applicant testified Counsel should not have called the officer back during the defense's case. Applicant testified that during trial Counsel was preoccupied, nervous, and did not ask

questions they had previously discussed. Applicant also testified Counsel asked the wrong witnesses about the wrong things. He stated it seemed Counsel was starting on a brand new thought process during trial.

Counsel testified he researched the issue of the search and seizure of the camera and credit cards, and he argued in a pretrial motion that the evidence should be suppressed; however, the judge denied his motion. Counsel testified officers saw Applicant driving a moped and pulled him over. The officers saw him throw things off of the moped and one of the things he threw was a camera from the Ofori house. Counsel testified the suppression issue was the focus of the defense, but that he did not contemporaneously object to the admission of the evidence that was the subject of the suppression hearing.

Counsel testified he drove by the victim's house to see how far it was from Applicant's house and how many different routes could be taken between the two; he also observed the makeup of the yard and the trees. Counsel testified he began representing Applicant approximately six (6) months before trial, and they likely met about ten or fifteen times for approximately fifteen or twenty minutes each time, sometimes longer. Counsel testified he would not have signed in under each client that he went to visit at the jail, so the jail logs would not reflect every visit he made to Applicant.

Counsel testified he did not recall any plea offers being made and that he was sure he approached the solicitor about any offers. When asked on-cross examination why he recalled Officer Wilson to testify during the defense's case, Counsel testified that he was caught off-guard by the victim's testimony that her wallet was found and returned to her by a third party; he said he would have discussed that with Applicant if he had known that in advance. Counsel admitted that he could have asked those questions on cross instead of recalling Officer Wilson.



Matthew Shealy testified he was appointed to represent Applicant on Nov 19, 2010, and that he received an offer on March 4, 2011, from Assistant Solicitor Poulos for a plea to Burglary second violent. Shealy relayed the offer to Applicant, reviewed the advantages and disadvantages of going to trial versus pleading guilty, and Applicant rejected the offer.

Assistant Solicitor Poulos testified she was approached many times about a plea offer and that Shealy asked her about a burglary second non-violent offer, but she was not willing to allow him to plead to that. She testified she had no knowledge that any of his prior burglary convictions were uncounseled. Poulos testified that if Counsel had not agreed to stipulate to the convictions she simply would have called the Clerk of Court to testify regarding the existence of the convictions.

C. Ineffective Assistance of Trial Counsel

Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. 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.

I. Failure to contemporaneously object to search and seizure

Applicant alleged Counsel was ineffective for failing to raise proper objections during the trial to present and preserve evidentiary issues. Specifically, Applicant asserts Counsel was deficient for failing to contemporaneously object to testimony concerning deputies looking under a car and locating the stolen camera and credit cards. This issue was argued pretrial, and the trial court found the plain view exception to control.

This Court finds Counsel was deficient for failing to object, thus rendering the issue unpreserved for appellate review. Nevertheless, this Court finds there is no reasonable probability that but for counsel's unprofessional error, the result of the proceeding would have been different. "Warrantless searches are *per se* unreasonable unless an exception to the warrant requirement is presented." State v. Bailey, 276 S.C. 32, 35, 274 S.E.2d 913, 915 (1981). The following exceptions to the warrant requirement have been recognized: "(1) search incident to a lawful arrest, (2) 'hot pursuit,' (3) stop and frisk, (4) automobile exception, (5) the 'plain view' doctrine, and (6) consent." Id. at 35-36, 274 S.E.2d at 915. South Carolina has "also recognized the doctrine of abandonment as an exception to the Fourth Amendment warrant requirement." State v. Dupree, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995).

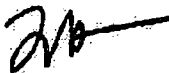
The search in this case clearly falls within the plain view or open fields exception. Under the specific facts of this case, Applicant was pulled over on his moped because the deputies knew he did not have a valid moped license. Applicant threw items off of the moped while the officers were initiating a traffic stop. They observed him throw something under an adjacently

parked car. Applicant's actions gave the police reasonable suspicion to search and determine what those items were. Additionally, Applicant had no reasonable expectation of privacy in the area searched. See State v. Dupree, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995) (holding where defendant threw bag containing cocaine on ground in front of officers constituted abandonment of the item such that he had no reasonable expectation of privacy in the bag). "[E]vidence abandoned by the defendant before he was seized by the police cannot be the basis for a violation of the Fourth Amendment's prohibition against unreasonable search and seizure." Fernandez v. State, 306 S.C. 264, 266, 411 S.E.2d 426, 428 (1991) (finding no error in admitting evidence where defendant dropped packages while fleeing running from police).

In addition, in Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see also State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). Accordingly, even if trial counsel had objected and the issue had been presented to the appellate courts, there is no reasonable probability Applicant would have prevailed on appeal.

2. Failure to retain final argument

Applicant asserts that Counsel was deficient for recalling Deputy Jason Wilson in Applicant's case-in-chief, causing him to lose last argument. Although this Court agrees that Counsel could have asked Deputy Wilson these questions on cross-examination during the State's case-in-chief, this Court finds that the loss of last argument did not so prejudice Applicant as to warrant relief. See Strickland v. Washington, 466 U.S. 668 (1984) (holding Applicant must



prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result."). This Court has reviewed both closing arguments and can find nothing that Assistant Solicitor Poulos argued that would have required Counsel to rebut. In short, Counsel's closing would likely have remained the same, and Applicant has not demonstrated that there is a reasonable probability that, but for the loss of last argument, the outcome would have been different.

3. Stipulation to prior burglary offenses

Applicant also alleges Counsel was deficient for stipulating to Applicant's purportedly uncounseled guilty pleas to a 1993 and 2001 burglary charge. Applicant argues that to allow these pleas to form a basis for a charge under section 16-11-311(A)(2)¹ constitutes "enhancement" which is prohibited under Nichols v. United States, 511 U.S. 738 (1994) and its progeny. Assuming arguendo that the prior pleas truly were uncounseled, the Court finds that the prior convictions were not used to *enhance* Applicant's crime. Instead, they constituted an element of the burglary first charge. Assistant Solicitor Poulos also testified that, had counsel not stipulated to their use, the State would have called a representative of the Clerk of Court's office to testify as to the existence of the prior convictions. Accordingly, Counsel was not deficient in stipulating to these convictions.

To the extent that Counsel could have objected to their use, the Court notes that a significant amount of evidence was presented that Applicant was armed with a knife at the time of the burglary. Therefore, even if the prior burglary convictions had not formed a basis for a

¹ Subsection 16-11-311(A) of the South Carolina Code of Laws provides:

(A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:

(1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:

(a) is armed with a deadly weapon or explosive; or . . .

(2) 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[.]

burglary first charge, Applicant suffered no prejudice because evidence that he was armed with a deadly weapon would have also supported the burglary first indictment and conviction.

4. Failure to communicate plea offers

Applicant alleged in his application that Counsel failed to communicate all plea offers. This Court finds Applicant produced no evidence of any plea offers that were not communicated to him. Matt Shealy testified he informed Applicant about the offer received from the state for burglary second violent. He testified he relayed the offer to Applicant, reviewed the advantages and disadvantages of pleading guilty or proceeding to trial, and Applicant rejected the offer. (See State's Exhibit 1). Solicitor Poulos testified she was approached many times about a plea offer and that Shealy asked her about burglary second non-violent, but she was unwilling to offer that. This Court finds Applicant failed to present any evidence of uncommunicated plea offers, and therefore, has failed to show either deficiency or prejudice. Accordingly, this allegation is without merit and is denied and dismissed.

5. Failure to investigate and prepare

Applicant raised the following allegations in his application: Counsel failed to (1) properly prepare and investigate the case, (2) properly present an adequate defense based on the facts and circumstances of the case, (3) properly conduct discovery, (4) properly subpoena and call witnesses to present evidence in the case, (5) properly and effectively cross-examine the State's witnesses, (6) properly advise Applicant as to law regarding a proffer, and (7) properly discuss the case and advise the Applicant on the applicable law and procedure.

This Court finds Applicant raised these issues in only a vague or cursory fashion in the evidentiary hearing and has, therefore, failed to satisfy his burden of proving deficiency or prejudice with respect to these allegations. Applicant has not satisfied his burden of proving that Counsel failed to conduct an appropriate investigation under the circumstances. "[C]ounsel has a

duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (citing Strickland, 466 U.S. at 691). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Further, Applicant made no showing of what additional investigation Counsel could have done or how any such additional investigation would have likely resulted in a different outcome at trial. See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (noting mere speculation and conjecture on the part of Respondent is insufficient to prove prejudice); Skeen v. State, 325 S.C. 210, 2014, 481 S.E.2d 747, 749 (1997) (finding Applicant not entitled to relief where no evidence presented to show how additional preparation would have had any possible effect on result of trial). Further, to show ineffective assistance for failing to call witnesses, Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Lastly, Applicant has made no showing Counsel failed to properly and effectively cross-examine the State's witnesses. Applicant pointed to no specific testimony in support of this allegation, nor did he show how any differing cross-examination would have affected the outcome of trial. See Strickland v. Washington, 466 U.S. 668, 689 (holding there is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "[applicant] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy."); Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133



(1997) (finding no prejudice where "one can only speculate whether a 'better' cross examination would have helped [applicant.]). Accordingly, this Court finds Applicant has not met his burden as to these allegations and therefore denies relief.

6. Brady Violation

Applicant's allegation in his application that the "State failed to produce discovery including but not limited to the dash cam video or any relevant recordings of the stop and arrest of Applicant" was abandoned. Applicant presented no evidence in support of this claim at the PCR hearing. Therefore, this allegation is dismissed.

7. Failure to move for Jackson v. Denno

Applicant's allegation that Counsel was ineffective for failing to "move for a Jackson v. Denno hearing and failed to object to the testimony of witnesses concerning statements allegedly made by Applicant" was abandoned. Applicant presented no evidence in support of this claim at the PCR hearing. Therefore, this allegation is dismissed.

8. Failure to preserve issue of jury seeing Applicant in shackles

Applicant's allegation that Counsel was ineffective for failing to "properly raise, argue, and preserve record as to the issue of the jury seeing Applicant in shackles during trial" was abandoned. Applicant presented no evidence in support of this claim at the PCR hearing. Therefore, this allegation is dismissed.

9. Failure to make a proffer

Applicant's allegation that Counsel was ineffective for failing to "make a proffer of evidence when warranted to properly present and preserve issues for appeal" was abandoned. Applicant presented no evidence in support of this claim at the PCR hearing. Therefore, this allegation is dismissed.

IV. CONCLUSION

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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

IT IS SO ORDERED this 17th day of May, 2017.

FRANK R. ADDY, JR.
Presiding Judge
Seventh Judicial Circuit

Greenwood, South Carolina

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2391
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

May 23, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Alfred Gayles
Applicant #242989

7TH JUDICIAL CIRCUIT

CASE # 2013 CP42 19360

VS
[Signature]
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the
In this action dated 5-17 2017 on

Order of Dismissal
5-23-17

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

[Signature]
[Signature]

5-23-17
(Date)

[Signature]
(Signature)

WITNESSES

Spartanburg County Sheriff's Office

[Signature]
Spartanburg County Sheriff's Office

ARREST WARRANT NUMBER

M123681-Amended

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED ACTION OF GRAND JURY

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

Foreperson of Grand Jury
Date: SEP 15 2011

VERDICT

Guilty

William R. [Signature]
Foreperson of Petit Jury
Date: Oct. 11, 2011

DOCKET NO. **11-GS-42-0351**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 19 2011

TERM

**THE STATE
vs.**

Alfred Henson

Indictment for

**BURGLARY, FIRST DEGREE
(Dwelling)**

SC Code: 16-11-0311
CDR Code: 0079
Class: FEL/EXM (V)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

SEP 15 2011

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE**(DWELLING)**

That the defendant, Alfred Henson, did in Spartanburg County on or about November 8, 2010, willfully and unlawfully enter a dwelling belonging to Lesley Ofori located at Byars Street, Greer, South Carolina without consent and with intent to commit a crime therein, and either in effecting entry or while in the dwelling or in immediate flight, he ^{or another} or another participant in the crime:

- (1) was armed with a deadly weapon, and/or
 - (2) caused physical injury to any person who was not a participant in the crime, and/or
 - (3) used or threatened the use of a dangerous instrument, and/or
 - (4) displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm, and/or
 - (5) entered the dwelling during the nighttime, and/or
 - (6) committed the crime while possessing a prior record of two or more convictions for burglary or housebreaking or a combination of both,
- all in violation of Section 16-11-311 of The 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.


 ASSISTANT SOLICITOR

WITNESSESS

SCSO

[Signature]

1. SENTENCE MADE ☒

2. REPORT ENDED ☒

3. CARD PULLED ☒

4. INDEXED ☒

ARREST WARRANT NUMBER ☒

6. CHECKED SIGNATURE ☒

M123682

7. ASSESSMENT AND FINE CARD MADE ☒

8. TRAFFIC VIOLATION COPY ☒

ACTION OF GRAND JURY

TWO BILL

[Signature]

Foreperson of Grand Jury

Date:

VERDICT

Guilty

[Signature]

Foreperson of Petit Jury

Date:

Oct. 11, 2011

DOCKET NO

11-GS-42-0352

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor (Acting)

Computer

COURT OF GENERAL SESSIONS

NOV 2 2011

TERM

Computer

THE STATE

VS.

Alfred Henson

Indictment for

GRAND LARCENY

SC Code: 16-13-30 (B) (1)

CDR Code: 3420

Class FEL-F

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB 28 AM 11:38
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

FEB 18 2011

At a Court of General Sessions, convened on _____, the
 Grand Jurors of Spartanburg County present upon their oath:

GRAND LARCENY

That Alfred Henson, did in Spartanburg County on or about November 8, 2010, feloniously take and carry away the goods of Derrick and Lesley Ofori, valued at more than Two Thousand Dollars, but less than Ten Thousand Dollars, described as follows: a Cannon digital camera and/or credit cards, with the intent to deprive the owner permanently of such property, all in violation of Section 16-13-30 (B) (1) and Section 16-1-57, *THE 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.


 ASSISTANT SOLICITOR