

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2012-209540
Circuit Court Case No. 2010-CP-42-5670

JEROME CURTIS BUCKSON, 319419,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

**APPENDIX
VOLUME 2 OF 2**

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further confirmed that Tiffany called down to appellant, asking him to come back later because he was going to cause an argument and wake the children. (R. p. 139, lines 13-17).

Watson, a former police officer, admitted that he had intended to retrieve his gun from his home before he returned to Tiffany's apartment; however, he testified that he did not go by his home or pick up his gun, a .38 revolver. (R. p. 142, lines 18-21; p. 150, lines 15-23). Watson testified that he did not pick up his gun because he did not want his girlfriend, who was six months pregnant at the time, to catch him coming in and then leaving. (R. p. 142). Watson testified that he did not have his gun, but that appellant had a gun and he fired the shots as Watson pushed past him, running out the door. (R. p. 140, lines 5-13). Watson admitted that after the shooting he drove away in his grey Lincoln and stayed out-of-sight for thirty-six hours without ever calling 9-1-1. (R. pp. 140-143). Results from SLED indicated that the bullet fragments recovered were roughly consistent with a .38 caliber weapon. (R. p. 226; 236). However, the weapon used was never found. Watson was charged with the murder of Tiffany Foggie; however, the charges were dismissed. The jury found appellant not guilty of the murder. (R. p. 457).

The State presented the testimony of Tiffany's mother, Taffie Williams, and cousin, Charlene Ellis. Both testified that appellant was not living with Tiffany, that nothing in the apartment belonged to appellant, and that Tiffany had broken up with appellant. Taffie and Charlene were at the apartment Sunday afternoon. Charlene played cards with Tiffany, Sharnarcus Watson, and Elliott. Tiffany's mother testified that she had a key to the apartment but that appellant did not. (R. pp. 85-86). She testified that Tiffany had changed the locks and that she got her key a couple of weeks before the shooting. (R. p. 86, lines 21-25). Taffie Williams testified that appellant came by the apartment that Sunday evening.

She testified that Charlene was at the door when appellant asked to come in and that Tiffany told Charlene to let appellant in, indicating, "I'm not afraid." (R. p. 90, lines 3-4). She testified that appellant came in and went straight upstairs without speaking. Taffie testified that after two or three minutes, appellant came back downstairs and went out the back door. (R. p. 90, 3-11). However, on cross-examination, she testified that she could not remember if Tiffany went upstairs with appellant as she had indicated in her police statement. (R. pp. 106-107). Tiffany's mother asserted that her daughter was not dating or living with anyone other than her little boys. However, she reluctantly admitted that Tiffany had been dating appellant but added that they had been apart "a week or so" at the time of Tiffany's death. (R. p. 101, lines 10-24). She testified that appellant was not on the lease and that he had no belongings in the apartment. (R. pp. 93-94). She testified that she gave the furniture in the apartment to Tiffany or that she was with her when she purchased the furniture. (R. pp. 96-100). Taffie Williams further testified that Sharmarcus Watson was Tiffany's new friend but that he was not staying with her that night. Charlene Ellis testified that she set Sharmarcus and Tiffany up on a date and that she gave him Tiffany's phone number. She had stated that after appellant came by the house on Sunday, evening "I told [Tiffany] to tell him to leave his stuff outside." (R. p. 120, line 8-p. 121, line 19).

Where the State presented no evidence tending to prove that appellant intended to commit any crime upon entering the apartment where he had been and was living on January 29, 2006, appellant was entitled to a directed verdict. The trial judge erred in refusing to grant a directed verdict on the charge of first degree burglary.

- II. The trial judge erred and abused his discretion in refusing to grant a mistrial upon the prosecution's eliciting hearsay testimony despite the judge's sustaining the defense objection to that testimony and despite the judge's explicit instructions not to do so.

In 2005, Jimmy Ray Carroll was a maintenance man at the Bradford Grove Apartments. He testified that he changed the front and back door locks on [REDACTED] in mid-December of 2005. (R. p. 124). Carroll testified that he changed the locks because he got a work order to change them. (R. p. 123). He testified that the apartment flood was before the locks were changed. He testified that Tiffany was in the apartment when he was changing the locks. The assistant solicitor asked, "What was the reason given for changing the locks?" Carroll responded, indicating that Tiffany told him that she was having some problems. (R. p. 124, lines 1-6). At this point a bench conference was held off the record. On redirect, the assistant solicitor asked Carroll if the locks on 5-A were changed because the rugs were changed "or whatever was the reason why she changed the locks?" (R. p. 127, lines 4-5). Carroll responded, "No, sir, it wasn't. She was having a problem with her boyfriend is what she told me." (R. p. 127, lines 6-7).

Upon defense counsel's objecting, the jury was excused. Defense counsel indicated, "Your Honor, we approached and had a bench conference on the exact testimony. Your Honor gave us a ruling that it wouldn't be admissible. The solicitor has just got up and elicited the same testimony again. The answer was responsive. They just went around it. They just, you know ignored it. It's highly prejudicial. It's - - there's no way to erase it from the minds. It was deliberately done. I move for a mistrial." (R. p. 127, lines 15-23).

Judge Cole confirmed counsel's recall of the bench conference. He indicated to the solicitor, "We addressed that issue here at the bench, and I specifically said that - - well, not

only I sustained the objection at the time that a question was asked and I specifically instructed y'all that that was not to be permitted, it was not admissible, it was not relevant to anything and it should not be asked. I don't know what else I have to do in order to sustain an objection and preclude something from being asked." (R. p. 129). However, the judge denied the defense motion for mistrial, indicating, despite defense counsel's argument that there was no way to erase it from the minds of the jury, that he would instruct the jury not to consider the response. (R. p. 128).

"The rule against hearsay prohibits the admission of evidence of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies." Dawkins v. State, 346 S.C. 151, 156, 551 S.E.2d 260, 262 (2001)(citing Jolly v. State, 314 S.C. 17, 20, 443 S.E.2d 566, 568 (1994)). As the trial judge had ruled, Carroll's testimony indicating that Tiffany told him that she was having the locks changed due to problems with her boyfriend was plainly inadmissible hearsay. The judge had correctly sustained the defense objection to this testimony and warned that such testimony was not to be permitted. However, the trial judge erred and abused his discretion in refusing to grant the requested mistrial upon his ruling being ignored.

The granting of a mistrial for improper conduct of the prosecutor is largely discretionary with the trial court. State v. Bell, 263 S.C. 239, 209 S.E.2d 890 (1974); State v. Arnold, 266 S.C. 153, 221 S.E.2d 867 (1976). Here, the prosecution deliberately elicited the very hearsay statement the trial judge had ruled he would not permit. The prosecution was rewarded for this conduct by the burglary conviction which quite likely would not have resulted but for the introduction of inadmissible hearsay purporting to establish that Tiffany changed the locks in response to problems with appellant.

The judge instructed the jury not to consider Carroll's last response:

But I have ruled it's not admissible because there's no way to test the reliability of it. So you are not to consider the last response provided by this witness to the last question. You must erase it from your minds. You cannot consider it in any fashion whatsoever in your deliberation or in your determination as to the verdict in this case. So you are simply to ignore it, forget about it, put it aside, put it out of your mind. Do not consider it in any fashion whatsoever.

(R. p. 130). Appellant does not doubt that the trial judge attempted mightily to cure the damage done by the prosecution's introduction of this inadmissible testimony; however, as defense counsel argued, it was not possible for this particular damage to be cured by instruction. This is a classic case of a bell that could not be unrung despite the trial judge's efforts.

An instruction to disregard incompetent evidence or the withdrawal of such evidence usually is deemed to have cured the error in its admission unless on the facts of the particular case it is probable that notwithstanding such instruction or withdrawal the accused was prejudiced. State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1959); 24 C.J.S. Criminal Law s 1444a (1961). While a mistrial should not be ordered in every case where incompetent evidence is received and later stricken out, State v. Singleton, 167 S.C. 543, 166 S.E. 725 (1932), a mistrial was a necessity in this particular case. As defense counsel argued, it was not possible for the trial judge to cure this error through instruction.

The Supreme Court "favors the exercise of a wise discretion of the circuit judge in determining the merits of [mistrial motions] in each individual case and factors such as the character of the testimony, the circumstances under which offered, the nature of the

case, other testimony in the case, and perhaps other matters, should be considered.” State v. Craig, 267 S.C. 262, 269, 227 S.E.2d 306, 310 (S.C. 1976). Here, the circumstances under which the evidence was offered were that it was deliberately elicited in violation of the trial judge’s sustaining the defense objection. The violation took place and the mistrial motion was made in the middle of day one of a three day trial; at that point, only four witnesses had taken the stand. The nature of this case was that it presented an extremely close question due to the overall weakness of the State’s case in support of the burglary charge.

A motion for mistrial is an extreme measure and will only be granted if the improper evidence undermined due process by excessive prejudice. State v. Huggins, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997). This is such a case. Appellant was plainly unfairly prejudiced by the introduction of this hearsay statement before the jury such that his rights to due process and fairness were infringed upon. The statement attributed to Tiffany served to corroborate the State’s theory and to damage the defense argument. The critical question before the jury was whether appellant regularly resided in the apartment or whether he entered the apartment without consent and with the intent to commit a crime therein. Therefore, as the trial judge had determined when he sustained the defense objection, the statement attributed to Tiffany was unfairly and highly prejudicial to the defense. Under these circumstances, the motion for a mistrial should have been granted. See State v. Hartfield, 272 S.C. 407, 409, 252 S.E.2d 139, 140 (S.C., 1979).

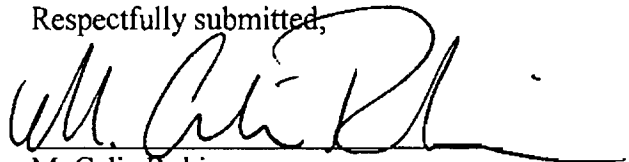
The trial judge wondered what more he could have done to prevent the prosecution from introducing this testimony, having sustained the defense objection and indicated that that testimony would not be permitted. In the interest of fairness to the defendant and

grant the requested mistrial. The trial judge's refusal of a mistrial in the face of this damaging hearsay testimony entered in direct violation of the judge's ruling amounted to an abuse of discretion requiring that a new trial be granted.

CONCLUSION

For all the forgoing reasons, appellant's first degree burglary conviction should be reversed and a new trial ordered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT.

This 26th day of January, 2009.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

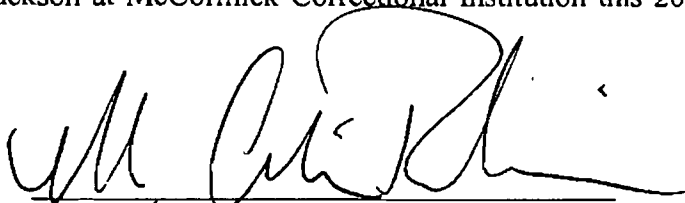
V.

JEROME CURTIS BUCKSON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at PO Box 11549, Columbia, SC 29211 and Jerome Curtis Buckson at McCormick Correctional Institution this 26th day of January, 2009.



M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

Respondent,

vs.

JEROME CURTIS BUCKSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF AUTHORITIES**Cases:**

State v. Craig, 267 S.C. 262, 227 S.E.2d 306 (1976) 5, 6

State v. Douglas, 359 S.C. 187, 597 S.E.2d 1 (Ct. App. 2004) 4

Other Authorities:

S. C. Code Ann. § 16-11-311 (Rev. 2003) 3

STATEMENT OF ISSUES ON APPEAL

- 1. Should the court have granted a directed verdict on first degree burglary?**
- 2. The defendant says that the prosecution elicited damaging hearsay testimony over objection and in violation of explicit instructions. Was the denial of a motion for mistrial an abuse of discretion?**

ARGUMENT

I.

The court correctly denied the motion for a directed verdict on burglary.

The report of a shooting alerted police to the early morning, nighttime scene. Police found the defendant in the street, apparently in a highly excited state. He feigned a gunshot wound, reported coming home and seeing someone else in the bedroom, and expressed disbelief that “she” had been familiar with another man. The defendant claimed the gunfire was at “his” apartment, but it was the victim’s apartment. (R. pp. 56-66; pp. 177-180). The defendant said he went in through a window but claimed to have a key. When the police asked him to produce a key, he could not. (R. p. 59).

The defendant and the victim had dated; they separated a week or two before her death. (R. p. 101; p. 111, lines 15-16). At the time of her death, the victim lived with her children. She was not living with the defendant. (R. p. 101). The last evening of the victim’s life, her mother visited and noticed an open kitchen window. She closed, but did not lock, the window. This was [about two to six] weeks after the locks were changed. (R. pp. 85-86; pp. 122-124). The victim began dating Sharmarcus. After an evening [Sunday] of cards with friends and the victim, Sharmarcus returned to the victim’s apartment. Later, the victim’s cell phone awakened him. The victim noted the defendant was calling and attempted to ignore him, but he began beating on her front and back doors. The victim implored the defendant to leave for the sake of her sons. Sharmarcus heard the defendant coming into the house and running up the steps to the bedroom. The victim screamed for mercy. The handgun armed defendant overpowered the victim and pushed through the bedroom door. Sharmarcus fled, heard two shots, and thought that

the defendant was shooting at him. (R. pp. 132-147; pp. 158-161). Police found the mortally wounded victim in her bedroom. She died shortly afterward that Monday morning, January 30, 2006, from the single gunshot to her left forehead. (R. pp. 56-70; pp. 91-93; pp. 259-262).

About 3:00 AM, the defendant telephoned the victim's mother and reported breaking into the victim's apartment. He claimed a man there shot him. (R. pp. 89-91).

After the close of the state's case the defendant moved for a directed verdict on burglary on the ground that there was no evidence the entry was without permission and no evidence the entry was illegal. The defendant thought the only evidence was that the victim was concerned about waking the children. Also, the defendant noted the want of evidence that he didn't live at the apartment and the want of evidence that the defendant entered the apartment with the intent to commit a crime. The court found there was direct and substantial circumstantial evidence establishing burglary - entering [a dwelling] without consent and with the intent to commit a crime therein and an additional factor to establish burglary in the first degree. (R. pp. 264-266). There was no conceivable error. Burglary in the first degree is proscribed by S. C. Code Ann. § 16-11-311 (Rev. 2003). There is direct or substantial circumstantial evidence that the defendant entered the dwelling without consent and intended to commit a crime [e.g., assault, battery, murder] in the dwelling and committed one of several possible additional factors: while in the dwelling, he was armed with a deadly weapon; or, while in the dwelling, he caused physical injury to a person not a participant in the crime; or, while in the dwelling, he used a dangerous instrument; or, while in the dwelling, he displayed a pistol or other firearm or what appeared to be a pistol or other firearm; or the entering occurred in the

nighttime. On appeal from the denial of a motion for a directed verdict, the appellate court is concerned with the existence of evidence, not the weight of the evidence, and can only reverse the trial judge if the record contains no evidence to support the trial judge's ruling. State v. Douglas, 359 S.C. 187, 597 S.E.2d 1 (Ct. App. 2004). The motion was correctly denied.

II.

The court soundly denied the motion for mistrial.

A maintenance man changed the door locks on the victim's apartment about mid-December 2005. On cross examination the maintenance man said that carpet cleaners were in the apartment after it had flooded. Then, the assistant solicitor established that lock changing was not a consequence of carpet work and asked, "[W]hatever was the reason why she changed the locks?" Defense counsel objected on the ground that the answer [a problem with her boyfriend] disregarded an earlier ruling. The court marked frustration with the failure to follow its ruling, denied the motion for mistrial, and gave a curative instruction. The curative instruction directed the jury not to consider the witness' response and ably explained the reason [in sum, the person who made the statement was not in court, and the reliability of the statement could not be tested]. Defense counsel neither objected to the curative instruction nor requested an additional instruction. There was no further examination of the witness. (R. p. 93; p. 122 - p. 131, line 5).

The court's thorough instruction directed the jury to not consider the response in any fashion whatsoever, to erase it, to ignore it, to forget it, to put it aside, and to put it out of mind. Additionally, the court effectively explained the reason for the instruction. The court's complete instruction and the want of any request for further instruction demonstrate a sound exercise of discretion in denying the motion for mistrial. "An instruction to disregard incompetent evidence . . . usually is deemed to have cured the error in its admission. . . . A mistrial should not be ordered in every case where incompetent evidence is received and later stricken out." State v. Craig, 267 S.C. 262, 227 S.E.2d 306 (1976). The granting or refusal of a motion for a mistrial rests in the sound

discretion of the trial judge who is best able to determine the merits of the motion within the context of the trial. Id.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 29, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

Respondent,

vs.

JEROME CURTIS BUCKSON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(including social security numbers, names of minor children, financial account numbers, and home addresses).

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ATTORNEYS FOR RESPONDENT

October 29, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

Respondent,

vs.

JEROME CURTIS BUCKSON,

Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, M. Celia Robinson, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

I further certify that all parties required by Rule to be served have been served.

This 29th day of October, 2008.

Harold M. Coombs, Jr.
HAROLD M. COOMBS, JR.

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ATTORNEY FOR RESPONDENT

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Jerome Curtis Buckson,

Appellant.

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2010-UP-282
Submitted May 3, 2010 – Filed May 20, 2010

AFFIRMED

Appellate Defender M. Celia Robinson, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
and Senior Assistant Attorney General Harold M.

Coombs, Jr., all of Columbia; and Solicitor Harold W. Gowdy, III, of Spartanburg, for Respondent.

PER CURIAM: Jerome Curtis Buckson appeals his conviction for first-degree burglary, arguing the trial court: (1) erred in denying his motion for a directed verdict, and (2) abused its discretion in denying his motion for a mistrial when hearsay previously ruled inadmissible was admitted into evidence. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the trial court erred in denying his motion for a directed verdict: State v. Crawford, 362 S.C. 627, 633, 608 S.E.2d 886, 889 (Ct. App. 2005) ("On appeal from the denial of a directed verdict in a criminal case, an appellate court must view the evidence in the light most favorable to the State. When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this [c]ourt must find the case was properly submitted to the jury.") (internal citations omitted).

2. As to whether the trial court abused its discretion in denying his motion for a mistrial when hearsay previously ruled inadmissible was admitted into evidence: State v. White, 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006) ("Because a trial court's curative instruction is considered to cure any error regarding improper testimony, a party must contemporaneously object to a curative instruction as insufficient or move for a mistrial to preserve an issue for review.") (quotations and citation omitted).

AFFIRMED.

HUFF, SHORT, and WILLIAMS, JJ., concur.

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

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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ATTORNEY GENERALS
OFFICE

THE STATE,

RESPONDENT,

V.

JEROME CURTIS BUCKSON,

APPELLANT

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

Opinion No. 2010-UP-282

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Jerome Curtis Buckson, petitioner, seeks rehearing of the opinion of this Court, State v. Buckson, Op. No. 2010-UP-282 (Ct. App. filed May 20, 2010). Petitioner respectfully submits that the Court may have misapprehended or overlooked his arguments that the trial judge erred reversibly in denying the motion for directed verdict and that the judge further erred and abused his discretion in refusing the defense motion for mistrial in the face of extremely damaging hearsay testimony which was presented before the jury in direct violation of the judge's prior ruling.

I. The trial judge erred in refusing the defense motion for a directed verdict of not guilty on the charge of first degree burglary.

The Court's Opinion indicates that petitioner's conviction was affirmed pursuant to Rule 220(b)(1) and under the authority of State v. Crawford, 362 S.C. 627, 608 S.E.2d 886 (Ct. App. 2005). The Opinion indicates, "If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this [c]ourt must find the case was properly submitted to the jury." Petitioner would ask the Court to reconsider this conclusion in light of his argument that, in this case, the State presented no evidence even tending to prove that appellant entered the apartment he shared with Tiffany Foggie with any intent to commit a crime within.

Petitioner requests that the Court reconsider its holding in light of his argument that a directed verdict motion should be granted when the evidence merely raises a suspicion of the guilt of the accused. State v. Hernandez, 382 S.C. 620, 625, 677 S.E.2d 603, 605 - 606 (2009) State v. D'Antonio, 376 S.C. 594, 658 S.E.2d 337 (Ct. App. 2008). In this case, if anything, the State's evidence raised nothing more than a mere suspicion that appellant entered the apartment he shared with Tiffany Foggie with criminal intent. Petitioner would ask the Court to reconsider its decision in light of the evidence presented which established beyond any serious challenge that the apartment he shared with Tiffany was petitioner's home where he regularly slept.

Petitioner requests the Court to reconsider its holding where the evidence failed to do more than raise a suspicion that petitioner entered his apartment with criminal intent where the evidence showed that petitioner lived in that apartment with Tiffany Foggie and her two children on a regular basis at the time of the incident so that he would have had no criminal intent in entering his own home. Petitioner requests that the Court reconsider its holding in light of his argument that, where the State presented no evidence tending to prove that appellant intended to

commit any crime upon entering the apartment where he had been and was living on January 29, 2006, appellant was entitled to a directed verdict on the charge of first degree burglary.

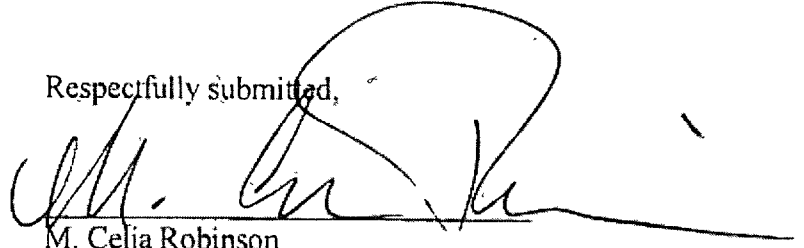
- II. The trial judge erred and abused his discretion in refusing to grant a mistrial upon the prosecution's eliciting hearsay testimony despite the judge's sustaining the defense objection to that testimony and despite the judge's explicit instructions not to do so.

The Opinion indicates that petitioner's question as to whether the trial judge abused his discretion in denying a motion for mistrial when hearsay which had previously been explicitly ruled inadmissible was nonetheless submitted in evidence by the State is answered by the decision in State v. White, 371 S.C. 439, 639 S.E.2d 160 (Ct. App. 2006). The quotation from White cited in the Opinion indicates, "Because a trial court's curative instruction is considered to cure any error regarding improper testimony, a party must contemporaneously object to a curative instruction as insufficient or move for a mistrial to preserve an issue for review." Petitioner would ask the Court to reconsider its holding in light of the record which shows that trial counsel for petitioner did both; counsel argued that the error could not be cured and he moved for a mistrial.

Petitioner would ask that the Court reconsider its holding where the record shows that defense counsel objected to the State's submission of the very testimony the trial judge had just ruled inadmissible. Defense counsel argued that no curative instruction *could* cure the prejudice to the accused from the State's insistent presentation of inadmissible hearsay which went to the heart of the defense. Defense counsel argued, "Your Honor gave us a ruling that it wouldn't be admissible. The solicitor has just got up and elicited the same testimony again. The answer was, was responsive. They just went around it. They just, you know, ignored it. It's highly prejudicial. It's - - there's no way to erase it from the minds. It was deliberately done. I move for a mistrial." (App p 147, lines 13-25).

Under these circumstances, petitioner asks the Court to reconsider its holding in order to find instead that the trial judge erred and abused his discretion in refusing the motion for mistrial in the face of extremely damaging hearsay testimony which was presented before the jury in direct violation of the judge's prior ruling

Respectfully submitted,



M. Celia Robinson
Appellate Defender

This 4th day of June, 2010

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

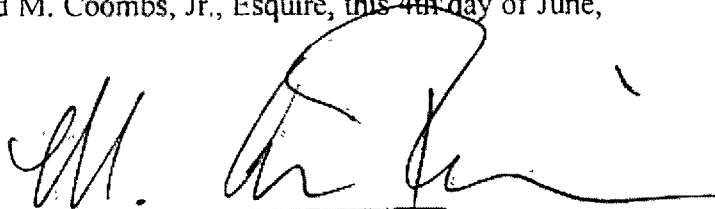
v

JEROME CURTIS BUCKSON,

APPELLANT

CERTIFICATE OF SERVICE

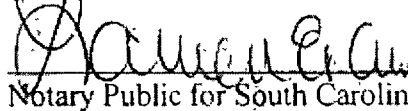
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Harold M. Coombs, Jr., Esquire, this 4th day of June, 2010.



M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 4th day
of June, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014

The South Carolina Court of Appeals

The State,

Respondent,

v.

Jerome Curtis Buckson,

Appellant.

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2006-GS-07-00845

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

Thomas E. Huff J.
Paul G. Short, Jr. J.
H. B. Wier J.

Columbia, South Carolina
June 24, 2010

530

6/17/2010

cc: Appellate Defender M. Celia Robinson
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Senior Asst. Atty General Harold M. Coombs, Jr.
Harold W. Gowdy, III, Esquire



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

531

OCT 6 2010

ATTORNEY GENERALS
OFFICE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

October 5, 2010

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: The State v. Jerome Curtis Buckson

Dear Mr. Shearouse:

The petition for writ of certiorari and accompanying appendix in this case are due to be served and filed with the Court September 24, 2010. Mr. Buckson has decided to drop his appeal, as evidenced by the enclosed affidavit. I have reviewed with him the consequences of dropping the appeal and am in agreement with his decision. Because he has been informed of the advantages and disadvantages of pursuing this appeal, I believe he has made his decision knowingly and voluntarily.

I respectfully request that an order be issued dismissing this appeal. By copy of this letter, I am informing Harold Coombs, Jr. of the Attorney General's Office of my client's decision.

Thank you for your assistance in this matter.

Sincerely,


M. Celia Robinson
Appellate Defender

MCR (ec)

Enclosure

cc: Harold M. Coombs, Jr., Esquire
Court of Appeals

532

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

THE STATE,)

Respondent,)

v.)

JEROME CURTIS BUCKSON)

Appellant.)

IN THE SOUTH CAROLINA COURT OF APPEALS

AFFIDAVIT

PERSONALLY appeared before me, Jerome Curtis Buckson, who being duly sworn, deposes and says:

1. I am the appellant in the above captioned case.
2. I understand that I am entitled to an appeal of my conviction, and that, because I am indigent, I am entitled to the assistance of an attorney from the South Carolina Office of Appellate Defense. I have been informed that if I drop my direct appeal that I forever waive those issues that could be raised.
3. In light of the risks which have been explained to me, it is my desire that the South Carolina Office of Appellate Defense drop the appeal formerly filed on my behalf.
4. I have made this decision on my own, with a full understanding of all the possible consequences of this action.
5. I do not wish to appeal.

SWORN TO before me this 29
day of Sept, 2010.

Joyce L Young (L.S.)
Notary Public for South Carolina
My Commission Expires: 8-28-2011

Jerome Buckson
Jerome Curtis Buckson

The Supreme Court of South Carolina⁵³³

The State,

Respondent

RECEIVED

v.

OCT 7 2010 #

Jerome Curtis Buckson,

Petitioner. ATTORNEY GENERALS
OFFICE

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2006-GS-07-00845

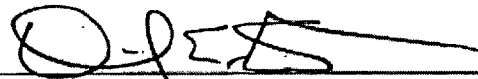
ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. It appears that Petitioner, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw the appeal and moves the Court for an Order dismissing the appeal.

IT IS ORDERED that the above captioned appeal is dismissed.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

October 6, 2010

cc: Appellate Defender M. Celia Robinson
Senior Assistant Attorney General Harold M. Coombs, Jr.
The Honorable Tanya Gee

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Jerome Curtis Buckson, 319845,

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

(Please Print)

Submitted By: Tricia A. Blanchette

Address:

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP-42-5670

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail: blanchettclaw@gmail.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Tricia A. Blanchette

Date:

10/21/10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

750

FORM 5

535

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Jerome Curtis Buckson,
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2010-CP-42-5670

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 Spartanburg County Court of
General Sessions, 180 Magnolia Street, Spartanburg, SC 29306

3. Name(s) of co-defendant(s) (if any) _____

4. The indictment number or numbers (if known) upon which and the offenses for which
sentence was imposed:

(a) 2006-GS-07-0845: Burglary, First Degree

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 22 AM 9:50
M. HOPE E. AUCLEY

536

- (a) February 2, 2007: 20 years
- (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. South Carolina Court of Appeals
- ii. South Carolina Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed.
- ii. Dismissed.
- iii. _____
- (c) the date of each such result:
- i. May 20, 2010
- ii. October 6, 2010
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Op. No. 2010-UP-282
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____

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CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 22 AM 9:50
M. HOPE BLANCHETT

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) Ineffective Assistance of Appellate Counsel.
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to prepare and investigate
 - (b) Failure to interview and call witnesses
 - (c) Failure to present a viable defense.
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. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof
 - i. _____

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 CLERK OF COURT
 SPARTANBURG COUNTY
 2010 OCT 22 AM 9:50
 H. KUPCZAK, CLERK

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?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

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) Post Conviction Relief is the proper forum.

(b) _____

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CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 22 AM 9:50
M. HOPE CLAYTON

539

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? Yes.(c) your sentencing? Yes.(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes.(e) preparation, presentation or consideration of any petitions, motions or applications
with respect to this conviction, which you filed? 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. Richard Warder, PO Box 26133, Greenville, SC 26133ii. M. Celia Robinson, Office of Appellate Defense, 1330 Lady Street, Suite 400,Columbia, SC 29201

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial.ii. Direct Appeal.

iii. _____

19. State clearly the relief you seek in filing this application:

New trial.

20. Are you now under sentence from any other court that you have not challenged?

No.FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 22 AM 9:50
M. HOFFMAN

540

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, Jerome Curtis Buckson, 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.

Jerome Buckson

SWORN to and subscribed before me this 18
day of October, 2010.

J. C. Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 22 AM 9:50
M. HOPE OLIVER

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address: **541**
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

October 21, 2010

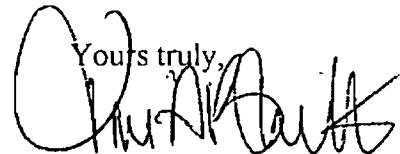
Spartanburg County Clerk of Court
ATT: Common Pleas
PO Box 3483
Spartanburg, SC 29304

RE: Jerome Buckson v State

Dear Clerk:

For filing, please find an original and one copy of an Application for Post Conviction Relief. Upon filing, please return the copy to my office in the enclosed pre-paid envelope

For your records, I have been retained to represent Mr. Buckson on this Application. Please feel free to contact me if you need any additional information.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: Jerome Buckson (without enclosures)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 22 AM 9:19
M. HOPE BLANCHETTE



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Jerome Curtis Buckson, #319845,	)	2010-CP-42-5670
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on October 22, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the February 2006 term of General Sessions for burglary – 1st degree (06-GS-42-0845). Mr. Richard H. Warder, Esquire, represented the Applicant on the charge. On February 2, 2007, the Applicant was convicted of this charge by a jury. The Honorable J. Derham Cole sentenced the Applicant to confinement for twenty years.

A timely Notice of Appeal was filed and an Anders brief was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Buckson, Op. No. 2010-UP-282 (filed May 20, 2010). A Petition for Rehearing was filed and denied June 17, 2010. Applicant filed a Petition for Writ of Certiorari to the South Carolina Supreme Court, but then, by affidavit and letter, voluntarily withdrew his appeal. The Petition was dismissed and the Remittitur returned on October 6, 2010.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - i. Counsel failed prepare and investigate,
 - ii. Counsel failed to interview and call witnesses,
 - iii. Counsel failed to present a viable defense; and
2. Ineffective assistance of appellate counsel.

For the purpose of this Return, the Respondent incorporates the trial transcript, the Clerk of Court records, Applicant's appellate records, and the South Carolina Department of Corrections' records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. 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, 104 S. Ct. 2052. The Applicant must overcome this

presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue

presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel and appellate counsel were ineffective.

Respectfully submitted,

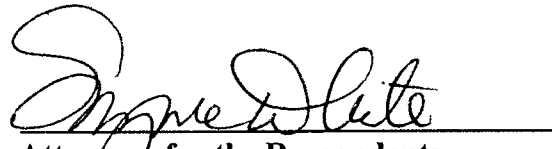
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:


Attorneys for the Respondents
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

May 3, 2011

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Jerome Curtis Buckson,

)
)

2010-CP-42-5670

Applicant,

)
)

v.

)
)

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

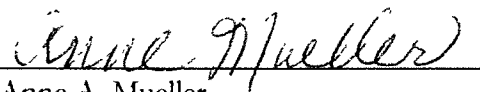
)
)

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:

Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette, LLC
P.O. Box 12725
Columbia, South Carolina 29211


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 3rd day of May, 2011.

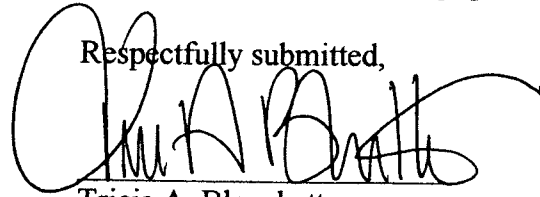
STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
Jerome Curtis Buckson, 319845,	)	
	)	2010-CP-42-5670
v.	)	
	)	AMENDMENT TO APPLICATION
State of South Carolina,	)	FOR POST CONVICTION RELIEF
Respondent.	)	
	)	

The Applicant, by and through his Attorney, Tricia A. Blanchette, would amend his Application for Post Conviction Relief filed on October 22, 2010, by adding the following specific allegations to his original allegation of ineffective assistance of trial and appellate counsel for failure to prepare and investigate, failure to interview and call witnesses and failure to present a viable defense:

1. Ineffective assistance of trial counsel for failure to prepare and investigate by obtaining all necessary records and evidence to establish that the apartment at issue was Applicant's dwelling and/or residence and his lack of intent to crime therein.
2. Ineffective assistance of trial counsel for failing to call witnesses to establish that the apartment at issue was Applicant's dwelling and/or residence and his lack of intent to crime therein.
3. Ineffective assistance of trial counsel for failure to prepare and utilize witnesses called at trial to establish that the apartment at issue was Applicant's dwelling and/or residence and his lack of intent to crime therein.
4. Ineffective assistance of trial counsel for failure to effectively argue on directed verdict that the Applicant had custody and control of and the right and expectation to be safe and secure in the dwelling burglarized. See State v. Singley, 392 S.C. 270, 709 S.E.2d 603 (2011).
5. Ineffective assistance of trial counsel for failure to object or request further jury instructions following the court's instructions in response to the jury's questions regarding the elements of burglary. Transcript pp. 468-474.

6. Ineffective assistance of trial counsel for failure to address the matter stricken through by the jury on the burglary indictment. Transcript p. 479.

Respectfully submitted,



Tricia A. Blanchette
Attorney for the Applicant
Post Office Box 12725
Columbia, South Carolina 29211

September 8, 2011
Columbia, SC

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Jerome Curtis Buckson, 319845,)
v.)
State of South Carolina,)
Respondent.)

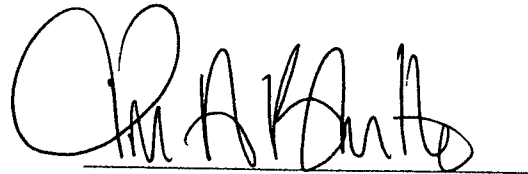
IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-5670

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that I placed in the mail this 8th day of September 2011, a copy of an Amendment to Application for PCR, to Suzanne H. White of the Attorney General's Office, at:

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September 8, 2011

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF SPARTANBURG)

COURT OF COMMON PLEAS NONJURY

3
4 JEROME CURTIS BUCKSON,)

5 APPLICANT,)

6 vs.)

7 STATE OF SOUTH CAROLINA,)

8 RESPONDENT.)

TRANSCRIPT

OF

RECORD

2010-CP-42-05670

9
10 September 23rd, 2011
Spartanburg, South Carolina

11 B E F O R E:

12 THE HONORABLE J. MARK HAYES, III, Judge.

13
14 A P P E A R A N C E S:

15 TRICIA A. BLANCHETTE
16 ESQ.

Attorney for the Applicant

17
18 SUZANNE WHITE
19 Assistant Attorney General
Attorney for the State

20 PAMELA FAUCETTE
21 Circuit Court Reporter

22
23 Transcribed by Pamela E. Green, Circuit Court Reporter
24
25

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P R O C E E D I N G S

1
2
3 MS. WHITE: Your Honor, if we may approach, and then if
4 you -- we have witnesses and victims that we would like to
5 come into the courtroom.

6 THE COURT: Okay.

7 MS. WHITE: And, Your Honor, may we approach?

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

9 MS. WHITE: Your Honor, this is the case of Jerome
10 Buckson versus the State of South Carolina. It's Case
11 Number 2010-CP-42-5670. He's represented today by Ms.
12 Tricia Blanchette.

13 Mr. Buckson was indicted in February of 2006 for
14 charges of murder and burglary first degree, proceeded to
15 trial represented by Mr. Richard Warder. On February 2nd,
16 2007, he was acquitted of the charge of murder, but was
17 convicted of the charge of burglary first degree. The
18 Honorable Derham Cole sentenced the applicant to confinement
19 for 20 years on that charge. A notice of appeal was filed
20 and an Anders brief was filed on his behalf and his
21 conviction and sentence was affirmed.

22 Petition for rehearing was filed and denied. A
23 petition for writ of cert was filed with the South Carolina
24 Supreme Court, and then applicant, by affidavit, voluntarily
25 withdrew that and filed this petition for, excuse me, an

1 application for post-conviction relief October 22nd, 2010.

2 He's alleged various claims of ineffective assistance
3 of counsel in regards to failing to prepare and investigate,
4 failing to interview and call witnesses, and failing to
5 prepare a vital defense. The applicant has also filed a
6 amended application alleging ineffective assistance of
7 counsel claims for failure to more specifically prepare and
8 investigate, interview and call witnesses in regards to
9 establishing that the apartment at issue was his dwelling or
10 residence, and the lack of intent to commit a crime therein,
11 and an---

12 THE COURT: A crime of what?

13 MS. WHITE: I'm sorry.

14 THE COURT: A crime of what?

15 MS. WHITE: Therein in the apartment. And ineffective
16 assistance of counsel for failure to argue on directed
17 verdict that he had custody and control of and the right and
18 expectation to be safe and secure in the dwelling,
19 ineffective assistance of counsel for failure to object or
20 request further jury instructions when the court offered
21 supplementary instructions in response to a jury question
22 regarding the elements of burglary, and failure for counsel
23 to address the matter of an issue of some initial stricken
24 through by the jury on the burglary I believe that was on
25 the guilty or on the actual verdict form, and I think that's

1 all the allegations at this time.

2 I'll turn it over to Ms. Blanchette.

3 MS. BLANCHETTE: Thank you, Your Honor.

4 Unless the Court has any questions for me I'm ready to
5 proceed.

6 THE COURT: I'm ready.

7 MS. WHITE: Oh, yes, I'm sorry, Your Honor. We were
8 gonna put a couple of matters on the record. I'm sorry.

9 we did want to place on the record the fact that Your
10 Honor did hear Mr. Buckson's original bond hearing I believe
11 before his original trial. Apparently there was at issue
12 during that trial a letter that was sent by a witness at
13 trial who will apparently be a witness today at the PCR as
14 well. The letter was never introduced at trial, and I do
15 not believe that the, the contents of the letter were ever
16 actually really discussed at the trial. The contents dealt
17 primarily with the murder charge, which was obviously and is
18 not gonna be an issue at the PCR.

19 I believe that counsel, the attorney, myself, and
20 applicant and counsel for the applicant are aware of that
21 and are consenting to allowing Your Honor to proceed with
22 the hearing today.

23 MS. BLANCHETTE: That is correct, Your Honor.

24 THE COURT: All right. And that -- Mr. Buckson, do you
25 agree with that, that as well?

1 APPLICANT: Yes, sir.

2 THE COURT: And, Mr. Warder, you're fine with that?

3 MR. WARDER: Yes, sir.

4 THE COURT: All right. You may proceed.

5 MS. BLANCHETTE: Your Honor, I would call Jerome
6 Buckson to the stand.

7 THE COURT: Sir, just come right up here and place your
8 left-hand on the Bible and raise your right-hand as best you
9 can.

10 JEROME BUCKSON, being first duly sworn
11 testified as follows:

12 THE COURT: Thank you, sir.

13 Just have a seat in that chair and pull the chair up to
14 the microphone if you would.

15 DIRECT EXAMINATION

16 BY MS. BLANCHETTE:

17 Q Could you please state your name once -- I'm sorry.

18 Could you please state your name for the record?

19 A Jerome Curtis Buckson.

20 Q And, Mr. Buckson, did you file a PCR application that's
21 docketed at 2010-CP-42-5670?

22 A Yes, ma'am.

23 Q Okay. Now, let's talk about the incident that's at the
24 basis for that application.

25 Do you recall the date at which that incident occurred?

1 A Yes, ma'am.

2 Q And when was that?

3 A The date -- I'm sorry. January 30th, 2006.

4 Q Okay. And approximately at what time on January 30th
5 of 2006 did this all take place?

6 A Around two o'clock.

7 Q Okay. And do you remember where it took place?

8 A At [REDACTED]

9 Q Okay. And what -- did you live at that place or what,
10 what was Bradford Grove Apartments?

11 A Yes, I stayed there with Tiffany Foggie.

12 Q Okay. And could you---

13 COURT REPORTER: I'm sorry.

14 MS. BLANCHETTE: I'm sorry.

15 THE COURT: Sir, I'm having problems hearing you.

16 Could you slide up to the microphone a little bit more?
17 (Witness complies.)

18 THE COURT: Thank you.

19 MS. BLANCHETTE: Can I bend it up?

20 And let me reask you that question.

21 who did you stay at Bradford Grove Apartments with?

22 A Tiffany Foggie.

23 Q Okay. And could you just explain who Ms. Foggie is?

24 A At the time she was my girlfriend. We lived together.

25 Q Okay. And was she the victim in this case?

1 A Yes, she was.

2 Q And as a result of this incident, she is now deceased,
3 is that correct?

4 A Yes, ma'am.

5 Q who else lived in the apartment?

6 A Desmond, Shanette [REDACTED]

7 Q And who were those two individuals?

8 A They were her children.

9 Q Okay. Now, on the preceding evening, January 29th,
10 2006, had you been to the apartment at all?

11 A Yes.

12 Q Okay. And when were you there on January 29th?

13 A I was twice. I was there earlier that day and also
14 came home around nine o'clock.

15 Q Okay. And, again, what time did this incident occur on
16 January 30th, 2006, approximately?

17 A 2:00AM.

18 Q Okay. Now, that night, were there other individuals in
19 the apartment when you were not there?

20 A Yes, there was.

21 Q Okay. And who were those individuals?

22 A My understanding, Marcus Watson, Elliott Cannady, and
23 Charlene.

24 Q And did you go to trial on this charge?

25 A Yes, I did.

1 Q And when did you go to trial?

2 Do you recall?

3 A 2007, on the same day.

4 Q And that trial on February 2nd, 2007, do you remember
5 who the judge was?

6 A Cole.

7 Q And who represented you?

8 A Richard Warder.

9 Q You went to trial on Indictment 2006-GS-30-0845 for
10 burglary in the first degree, is that correct?

11 A Yes, ma'am.

12 Q And you also went to trial on 2006-GS-30-0846 for
13 murder, is that correct?

14 A Yes, ma'am.

15 Q What was the jury's verdict on the burglary charge?

16 A Guilty.

17 Q And what sentence did you receive?

18 A Twenty years.

19 Q And what was the jury's verdict on the murder charge?

20 A Innocent.

21 Q And we are here today on your application.

22 You're only making allegations regarding the burglary
23 charge, is that correct?

24 A Yes, ma'am.

25 Q Now, Mr. Buckson, we talked about the fact that you

1 filed this application which stems out of this incident that
2 occurred on January 30th, 2006, at Bradford Grove
3 Apartments.

4 what is it that you're asking the Court to give you on
5 your burglary conviction?

6 A I'm asking to overturn it.

7 Q And are you asking the Court for a new trial on that
8 charge?

9 A Yes, I am.

10 Q Now, Mr. Buckson, we met a number of times and you
11 understand there's risks associated with that?

12 By asking this Court for a new trial, if that is
13 granted, you'd be placed back in the position you were after
14 you were indicted with no guarantee of less time.

15 Knowing that, do you still want to go forward today?

16 A Yes, I do.

17 MS. BLANCHETTE: Your Honor, at this time I'd ask if I
18 could recall my client at a later point and call the
19 witnesses, the other witnesses at this time.

20 MS. WHITE: That's with no objection, Your Honor.

21 THE COURT: Without objection.

22 Do you wish to cross-examine him on any of those
23 issues?

24 MS. WHITE: No, Your Honor.

25 THE COURT: Thank you, sir. You may step down.

1 MS. BLANCHETTE: Your Honor, I would call Shirley Hall
2 to the stand.

3 THE COURT: Ms. Hall, please come up here to the Bible
4 and place your left-hand on the Bible and raise your
5 right-hand, and let me swear you in.

6 SHIRLEY HALL, being first duly sworn,
7 testified as follows:

8 THE COURT: Thank you, ma'am. Just have a seat in the
9 chair and pull the chair up to the microphone.

10 DIRECT EXAMINATION

11 BY MS. BLANCHETTE:

12 Q Could you please state your name for the record?

13 A Shirley Hall.

14 Q And, Ms. Hall, where do you currently live?

15 A [REDACTED] Bradford Grove Apartments.

16 Q Okay. And, Ms. Hall, did you live there back in
17 January of 2006?

18 A Yes.

19 Q Ms. Hall, do you remember writing some information down
20 for Mr. Buckson to give to his attorney?

21 A Yes.

22 MS. BLANCHETTE: Your Honor, may I approach the
23 witness?

24 THE COURT: (Nods affirmatively.)

25 Q Ms. Hall, could you identify or explain what that

1 appears to be for the record?

2 A That was just me saying that I was a neighbor that
3 lived in the neighborhood when, living there, when she was
4 living there a year, and up until that happened. I'm still
5 there in that same area.

6 Q Okay. And is this -- Your Honor, at this time I move
7 this in as Applicant's No. 1.

8 MS. WHITE: No objection, Your Honor.

9 THE COURT: Without objection. Be Applicant's 1.

10 (WHEREUPON, the document was marked as Applicant's
11 Exhibit No. 1 and received into evidence at this time.)

12 MS. BLANCHETTE: Your Honor, would you appreciate a
13 copy?

14 THE COURT: (Nods affirmatively.)

15 Q And, Ms. Hall, I just have a couple questions for you
16 about this.

17 Did you write this when Mr. Buckson was getting ready
18 to go to trial?

19 A Yes, ma'am.

20 Q Okay. And this was information that you were willing
21 to give to his defense attorney, is that correct?

22 A Yes.

23 Q Okay. And, Ms. Hall, here you said that you knew that
24 Jerome, that you saw Jerome Buckson living there.

25 Did you, in fact, remember seeing Jerome Buckson living

1 there at that time?

2 A I recall him over there, yes.

3 Q Okay. And do you remember Mr. Buckson's defense
4 attorney or an investigator ever coming to talk with you?

5 A No, ma'am.

6 Q Okay. And if they would of wanted to talk to you,
7 would you of been willing to speak with them?

8 A Yes.

9 Q Okay. And if they would of subpoenaed you to trial to
10 talk about living in that apartment complex and seeing Mr.
11 Buckson there, would you have been willing to come to trial?

12 A Yes.

13 Q Okay. And you are here today under subpoena, is that
14 correct?

15 A Yes.

16 MS. BLANCHETTE: Your Honor, if I could just beg the
17 Court's indulgence one moment.

18 (Pause.)

19 MS. BLANCHETTE: Your Honor, I have no further
20 questions of this witness.

21 MS. WHITE: Just briefly, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. WHITE:

24 Q Ms. Hall, you've testified that you saw him over there
25 a good bit, is that right?

1 A Yes.

2 Q And you -- is it that you would see him come and go
3 from the apartment?

4 A Yes, I would see him, him leave. Other than I, I don't
5 know what, you know, what went on over there because I'm
6 like two doors from them and there's a partition in-between
7 us. And, so, I couldn't see, you know, in and out.

8 Q Okay. And do you have any knowledge as to whether or
9 not he had a key to the apartment?

10 A No.

11 Q Okay. Do you have -- did you have any knowledge at
12 that point as to whether or not, in the week or two up until
13 the murder or the, the incident and the burglary, as to
14 whether or not they had broken up at that point?

15 A No, I did not know that.

16 MS. WHITE: Okay. I think that's all the questions I
17 have at this time, Your Honor.

18 THE COURT: Redirect?

19 MS. BLANCHETTE: Yes, just briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. BLANCHETTE:

22 Q Ms. Hall, if I can show you what we've marked as
23 Applicant's No. 1.

24 If you could just start reading where it says I saw him
25 and just read through that line for me.

1 A I saw him living with Tiffany for about a year and up
2 until the shooting.

3 Q Okay. So there you actually say you saw him living
4 with her, is that right?

5 A That's all I know. I been seeing him live there.

6 Q Okay.

7 MS. BLANCHETTE: Your Honor, I have no further
8 questions.

9 THE COURT: All right. Thank you, ma'am. You may step
10 down. You may step down.

11 MS. BLANCHETTE: And, Your Honor, she is under subpoena
12 here today. I just ask that she be released from that
13 unless the State has any other objections.

14 MS. WHITE: No objections, Your Honor.

15 THE COURT: Ma'am, thank you for coming. You're free
16 to go.

17 WITNESS: Thank you.

18 MS. BLANCHETTE: Your Honor, I would call Elliott
19 Cannady to the stand.

20 THE COURT: Sir, just come right up here. Just come
21 right up here and place your left-hand on the Bible and
22 raise your right-hand.

23 ELLIOTT CANNADY, being first duly
24 sworn, testified as follows:

25 THE COURT: Just have a seat in the chair and pull the

1 chair up to the microphone.

2 DIRECT EXAMINATION

3 BY MS. BLANCHETTE:

4 Q Could you please state your name for the record?

5 A Elliott James Cannady.

6 Q And, Mr. Cannady, where do you currently reside?

7 A Union, South Carolina.

8 Q And you are here today under subpoena, is that correct?

9 A Yes.

10 Q Okay. I'd like to go back to January 29th, 2006, in
11 the evening and ask you some questions.

12 Were at the apartment of Tiffany Foggie that evening?

13 A Yes.

14 Q And who were you there with?

15 A Charlene.

16 Q And was anybody else present in the apartment besides
17 Charlene and Tiffany?

18 A Yes.

19 Q Who else was present?

20 A Mark was.

21 Q Okay. And how is it that you know Mr. Watson?

22 A We worked together.

23 Q Okay. And how is it that you knew Charlene that you
24 referred to?

25 A We also worked together.

1 Q And how was it that you knew Tiffany Foggie?

2 A Through association with her family.

3 Q Okay. And was that your first time at the apartment or
4 had you been there previously?

5 A I had been there previously.

6 Q Do you know approximately how many times you'd been to
7 Ms. Foggie's apartment?

8 A Maybe twice.

9 Q Okay.

10 A Maybe twice.

11 Q Now, on those prior occasions, did you ever see any
12 men's clothing or items in the apartment?

13 A Yes.

14 Q All right. And where did you see those items?

15 A Upstairs.

16 Q Okay. And was that in the bedroom area?

17 A Yes.

18 Q Okay. Now, let's go back to the evening of
19 January 29th, 2006.

20 What were you-all doing in the apartment that night
21 just generally?

22 A Playing cards, looking at -- it's a game. I think it
23 was -- I'm gonna say it's football or a basketball game. We
24 were watching a game and playing spades.

25 Q Now, regarding Ms. Foggie, did you know whether or not

1 she had a boyfriend at that time?

2 A I think, I think she admitted she had a friend, and --
3 but that's, that's, you know, what I mean. I think, to my
4 knowledge, yes, she had a friend, yes.

5 Q Okay. And did you see men's items in the apartment
6 that night?

7 A Yes, ma'am.

8 Q Okay. And did she acted all nervous or make any
9 comments about being worried about her friend or boyfriend
10 coming home that night?

11 A Yes.

12 Q Okay. Could you explain that?

13 A Well, she asked -- she was a little like she was
14 afraid, a little upset whenever there was a couple of knocks
15 at the door. She like -- she was kind of jittery, afraid.
16 why I don't know. But she was afraid.

17 Q Okay. And did it appear to you that a man had been
18 living in the apartment?

19 A I'd say yes.

20 Q Do you remember her saying anything about her boyfriend
21 or friend not coming home that night, that she didn't expect
22 him home that night?

23 A I, I think I remember her saying no one was coming.

24 Q Okay. Now, you were there with your friend, Mark
25 Watson, is that correct?

1 A Yes.

2 Q And did you leave with Mr. Watson or how did your
3 evening end that night?

4 A I left. He took me home.

5 Q Okay. And did you know what he planned to do after he
6 took you home?

7 A He said -- when he took me home, before I got out the
8 car, he said he was going back.

9 Q Okay. Did he give you anymore details about why he was
10 going back or concerns he had about going back?

11 MS. WHITE: Your Honor, I'm gonna object to hearsay.

12 THE COURT: All right. You want to ask the question
13 again?

14 MS. BLANCHETTE: Yes, Your Honor. I'll, I'll rephrase
15 the question.

16 Q Did you have any understanding, based upon your
17 firsthand knowledge, about any concerns he had about going
18 back to the apartment?

19 A He, he did have some concerns.

20 Q And at trial if he testified that he told you he was
21 gonna bring a gun back with him, do you recall him stating
22 that?

23 A Yes.

24 Q And do you know any reasoning, from your firsthand
25 knowledge, as to why he would bring a gun back with him to

1 the apartment?

2 A I will tell you that if he's afraid it would be for
3 protection.

4 Q And any idea who he's planning to protect himself
5 against?

6 A No, he never called any name specifically. He never
7 called any name, but he, he did say he was taking a gun, but
8 he never called any name as far as from who was he trying to
9 protect himself from.

10 Q Now, at the time of Mr. Buckson's trial, where were you
11 located?

12 A I was in, in the county jail.

13 Q Okay. And when you were in the county, did anybody
14 ever come speak with you about this case?

15 A Well, I was pulled out of my cell once by the
16 prosecutor, by the, the solicitor, and they asked me some
17 questions.

18 Q Okay. Did you anticipate that you would be a witness
19 in the case since you were present in the apartment that
20 night?

21 A Yeah, it made sense. I thought I would.

22 Q And on Page 19 of the transcript, you were actually
23 listed as a potential witness, and it was your understanding
24 you were possibly gonna testify in this case, is that
25 correct?

1 A Yes.

2 Q Do you have any understanding as to why you were not
3 called or what is your thoughts as to why you were not
4 called as a witness in this case since you were there that
5 night?

6 A Well, like I say, I'm, I'm, I'm not a lawyer. Okay.
7 But I wasn't called and I, I figure I wasn't called because
8 they, maybe they didn't, what I had to say cause, you know,
9 maybe it didn't, didn't need to be heard in court or it
10 wasn't relevant.

11 Q Did you think that the information you had actually
12 might be helpful to Mr. Buckson's defense?

13 A Well, if, if they asked the same questions that you're
14 asking now I would assume so.

15 Q Were you ever approached or do you recall being
16 approached by his defense attorney or his defense attorney's
17 investigator?

18 A No.

19 Q If the defense attorney or his investigator would of
20 asked to speak with you, would you of been willing to talk
21 with them about that night and the details you knew?

22 A Yes.

23 Q If you would of been subpoenaed to court by the
24 defense, would you have been willing to testify for the
25 defense?

1 A Yes.

2 Q Mr. Cannady, is there anything else regarding that
3 evening that I failed to ask you about or a detail that you
4 would like to share with the Court?

5 A No.

6 MS. BLANCHETTE: Your Honor, if I could just beg the
7 Court's indulgence one moment.

8 (Pause.)

9 Q Mr. Cannady, did anybody else approach you or
10 communicate with you besides the solicitor when you were in
11 the county jail?

12 A Yes.

13 Q Did you have any contact with Ms. Foggie's family?

14 A Any contact, no.

15 Q Okay. Did they provide you or did you have any
16 communication with them?

17 Did they provide you any type of financial support,
18 anything to that extent?

19 A No, ma'am.

20 Q When you met with the solicitor, was anybody else
21 present at that meeting?

22 A Yes.

23 Q And who else was present at that meeting?

24 A The family.

25 MS. BLANCHETTE: Okay. Your Honor, I have no further

1 questions.

2 CROSS-EXAMINATION

3 BY MS. WHITE:

4 Q Mr. Cannady, you testified that, first of all, that you
5 were at the apartment with Charlene, the victim, and Mr.
6 Watson, is that right?

7 A Yes.

8 Q And that you knew Mr. Watson and Charlene because you
9 worked with them?

10 A Yes.

11 Q Were you not dating Charlene at the time?

12 A Yes.

13 Q Okay. And you testified that you had, you were there
14 in the apartment that night and you had been at the
15 apartment perhaps twice before?

16 A Yes.

17 Q And before that night, the 29th, about what time
18 period had you been at that apartment twice before?

19 Within what time period, within a week prior to that
20 night?

21 A It was probably longer than that.

22 Q Within two weeks?

23 A I would say maybe a month.

24 Q So, within a month you had been at that apartment twice
25 before?

1 A Uh-huh. (Affirmative).

2 Q So, within a month you'd been there three times?

3 A Yeah.

4 Q Okay. And, so, within a month you've been at the
5 apartment three times, you indicated you saw some things
6 that you thought indicated a man lived there?

7 A Yes, a man.

8 Q A man?

9 A Yeah.

10 Q Now, did you go upstairs when you were at the apartment
11 those three times?

12 A Not all three times.

13 Q But you did at least one time?

14 A Yeah, at least twice.

15 Q Okay. And this last time, had you gone upstairs this,
16 on the 29th?

17 A I think I may of used the bathroom. I can't recollect
18 if I did that. I think I -- if I did it was to use the
19 bathroom.

20 Q Just to use the bathroom.

21 Okay. So, you were downstairs the majority of the
22 time, but you might of gone upstairs to use the bathroom?

23 A Yes.

24 Q When you were downstairs, the living room kitchen area?

25 A Uh-huh. (Affirmative).

1 Q Any bedrooms downstairs?

2 A Not that I could see.

3 Q So, any of the items that indicated a man lived there
4 were downstairs?

5 A No, I didn't see any downstairs.

6 Q Okay. And at that point that was the 29th, right?

7 A Yes, I would think so.

8 Q Okay. The other two times you had been there had been
9 potentially two weeks before?

10 A Yeah. Weeks, yeah.

11 Q Okay. And you indicated that at that time the victim
12 had not told you or said anything about actually having a
13 boyfriend, but indicated she might of had, as you put it, a
14 friend?

15 A Uh-huh. (Affirmative).

16 Q Okay. You also indicated she acted kind of afraid and
17 jittery when somebody knocked at the door.

18 Had you ever met Mr. Buckson before?

19 A No.

20 Q Did you ever see Mr. Buckson that evening?

21 A No.

22 Q So, he never came to the apartment while you were there
23 that night?

24 A Not while I was there.

25 Q Okay. Did you ever hear her speak his name while you

1 were there that night?

2 A I think -- not as far as his whole name. She might of
3 said J, but as far as his name, no.

4 Q So, she never referred to J as her friend or boyfriend
5 that night?

6 A Not that I could remember. You know, like I, like I
7 said, I heard her say J --

8 Q Okay.

9 A -- you know.

10 Q But you can't remember if that was, how that was
11 referred to and what way she was referring to J?

12 A I don't remember her -- you know, just that I don't
13 remember her referring to him like that.

14 Q Okay. And you said that no one came to talk to you
15 from the defense, and at the time the information you had
16 focused more on Mr. Watson and taking the gun back at that
17 point, which kind of right now seems to focus a little more
18 on the issue of the murder charge, is that right?

19 A Yes.

20 Q Okay. So, you really didn't have much to offer in the
21 way of whether or not you knew if J or Mr. Buckson lived
22 there at the 29th?

23 A No, no question -- to my recollection, no question like
24 that was ever asked.

25 Q Okay. And you didn't know and still don't know whether

1 or not Mr. Buckson had a key to that apartment on the
2 29th or whether or not he lived there on the 29th.

3 A Like I said, I -- honestly I don't. I don't know if he
4 had a key. I don't -- all I know is there were men's
5 clothing that's -- you said -- I mean I don't know who, but
6 it was men's clothing, shoes and clothing.

7 Q Downstairs in the living room?

8 A No, not downstairs in the living room, no.

9 Q In the bathroom you went to on the 29th?

10 A Not, not in the bathroom. Not that I -- not that I'm
11 just probing looking like that, but not in the bathroom.

12 Q You saw men's clothing there on the 29th or are you
13 referring to men's clothing you saw on previous---

14 A Okay.

15 Q ---previously?

16 A Not on the 29th, no.

17 Q Okay.

18 A Okay.

19 Q Thank you. That's all I have, Your Honor.

20 MS. BLANCHETTE: Just briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. BLANCHETTE:

23 Q When you were in the apartment on January 29th, did
24 it appear to you that a man was living there?

25 A As far as from what I could see, where I was at, no,

1 not from where I was sitting. Like I sit in the living
2 room, like I say, and I think I went to the bathroom one
3 time to the bathroom, and the rest of the time was in the
4 living room playing cards and looking at a game.

5 Q From the actions of Ms. Foggie and Mr. Watson that
6 evening and your firsthand knowledge, was it your
7 understanding that a man was living there and could return
8 home that night?

9 A From the actions, yes. From the actions.

10 Q And, so, you saw firsthand and evidence and knowledge
11 of the fact that it appeared from their actions and conduct
12 that they were concerned about that man, whether it be a
13 friend or boyfriend returning to the apartment---

14 A Right.

15 Q ---that night?

16 A Well, that's, that's -- the actions that they were, you
17 know, that's how it was looking being as she was being
18 afraid cause she was afraid. I don't know why, you know,
19 but she was afraid.

20 Q When the person came to the door, do you remember who
21 that was?

22 A One was her mother and the other was a gentleman I --.

23 Q That's fine if you don't remember.

24 A I can't remember his name.

25 Q Before she knew who those people were at the door, did

1 she ask you to leave the apartment or try to hide you or
2 anything like that?

3 A No.

4 MS. BLANCHETTE: Okay. Your Honor, if I could just beg
5 the Court's indulgence one moment.

6 (Pause.)

7 MS. BLANCHETTE: I have no further questions.

8 THE COURT: Thank you, sir. You may step down.

9 MS. BLANCHETTE: Your Honor, Mr. Cannady is here under
10 subpoena and I just ask that he be released.

11 MS. WHITE: No objection, Your Honor.

12 THE COURT: Thank you, sir.

13 WITNESS: Thank you.

14 THE COURT: You may go. Thank you for coming.

15 MS. BLANCHETTE: If I could just beg the Court's
16 indulgence for one moment.

17 (Pause.)

18 MS. BLANCHETTE: Your Honor, I was just notified that a
19 witness is here that we were waiting on. So, I would call
20 him next.

21 Barry Adair.

22 THE COURT: Sir, just come right up here to the Bible
23 and place your left-hand on the Bible and raise your
24 right-hand and let me swear you in.

25 BARRY ADAIR, being first duly sworn,

1 testified as follows:

2 THE COURT: Thank you, sir. Just have a seat in the
3 red chair and pull the chair up to the microphone.

4 DIRECT EXAMINATION

5 BY MS. BLANCHETTE:

6 Q Could you please state your name for the record?

7 A Barry Trent Adair.

8 Q And, Mr. Adair, where do you currently reside?

9 A Boiling Springs, North Carolina.

10 Q Okay. And you are here today voluntarily?

11 You're not under subpoena, is that correct?

12 A That's correct.

13 Q Okay. And where are you employed?

14 A Helms Company.

15 Q And what type of business is that?

16 A It's a construction business.

17 Q And what is your role at that business?

18 A Superintendent.

19 Q And did you ever have the opportunity to know or work
20 with Jerome Buckson?

21 A Yes, sir. Yes, ma'am, he had worked about two weeks in
22 one summer.

23 Q Okay. And do you remember approximately when that was
24 that he worked with you?

25 A It was about, about six years ago. It was, it was in

1 the summertime. It was prior to the murder case that
2 happened cause I remember reading it in the newspaper. It
3 was that summertime.

4 Q Okay. And today we've been talking about Tiffany
5 Foggie, who's the victim in this case.

6 Did you ever have the opportunity to meet her and know
7 who she was?

8 A I did. She had dropped him off at work one --.

9 Q Okay. So, you saw them together?

10 A Yes.

11 Q Is that correct?

12 A That's correct.

13 Q And did you ever have the opportunity to pick
14 Mr. Buckson up at her apartment for work?

15 A That's correct, over there off East Main Street in
16 front of what is Lowe's and the Tractor Supply Store.

17 Q Okay. And was it your understanding that that's where
18 he was residing or living at the time?

19 A That's correct.

20 Q And were you ever contacted by his defense attorney
21 prior to trial or his investigator?

22 A No, ma'am.

23 Q If they would of contacted you, would you of been
24 willing to talk with him about your experience working with
25 Mr. Buckson and picking him up for work?

1 A Absolutely.

2 Q Were you contacted about testifying at trial?

3 A No, ma'am.

4 Q If you would have been contacted and asked to testify
5 at trial, would you have been willing to do so?

6 A Yes.

7 MS. BLANCHETTE: Your Honor, if I could just beg the
8 Court's indulgence.

9 (Pause.)

10 MS. BLANCHETTE: I have no further questions.

11 MS. WHITE: Just briefly, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. WHITE:

14 Q Mr. Adair, you testified that he worked with you two
15 weeks during the summer.

16 Would this have been in 2005 perhaps?

17 A Yes, ma'am, my memory -- it's, it's just hard for me to
18 remember exactly the dates and times of it. I just
19 remember -- I remember reading about the murder trial and it
20 was prior to that---

21 Q All right.

22 A ---and I remember it being hot. So, it was in the
23 summertime when, when it took place.

24 Q Okay. And this happened in January of '06.

25 So, it would of been sometime maybe June or July,

1 sometime within---

2 A Or August, yes, ma'am.

3 Q Okay. Sometime in '05 prior to that?

4 A That's correct.

5 Q Okay. Thank you.

6 No further questions, Your Honor.

7 MS. BLANCHETTE: I have nothing further, Your Honor.

8 THE COURT: Thank you, sir. You may step done.

9 WITNESS: All right. Thank you.

10 MS. BLANCHETTE: Your Honor, I would call Antwan Martin
11 to the stand.

12 THE COURT: Sir, just come up here and place your
13 left-hand on the Bible and raise your right-hand.

14 ANTWAN MARTIN, being first duly sworn,
15 testified as follows:

16 THE COURT: Thank you, sir. Please have a seat in the
17 red chair and pull the chair up to the microphone.

18 DIRECT EXAMINATION

19 BY MS. BLANCHETTE:

20 Q Could you please state your name for the record?

21 A Julian Antwan Martin.

22 Q Okay. And where do you currently reside?

23 A I currently reside in Greer, South Carolina.

24 Q And you are here today under subpoena, is that correct?

25 A That's correct.

1 Q Okay. You can just speak up to the best of your
2 ability. My voice is a little booming. Yours seems to be
3 too.

4 Okay. Now, how is it that you know Jerome Buckson?

5 A We been friends for years. Since about eighth grade.

6 Q Okay. And you're -- I'm sure you're aware of the fact
7 that Mr. Buckson was indicted and was tried on murder and
8 burglary charges, is that correct?

9 A That's correct.

10 Q Prior to his trial, did his defense attorney or
11 investigator ever contact you?

12 A No.

13 Q Would you have been willing to speak with them if they
14 did?

15 A Yes.

16 Q Were you called as a witness at Mr. Buckson's trial?

17 A No, I was not.

18 Q Were you present at Mr. Buckson's trial?

19 A Yes, I was.

20 Q Would you have been willing to testify at Mr. Buckson's
21 trial?

22 A That's correct.

23 Q Okay. Now, I'm gonna ask you about some events that
24 were testified to at trial and that usually came out at
25 trial.

1 They discussed the fact that the apartment where M.
2 Foggie lived had been flooded and Jerome and his mother
3 testified that they had stayed with Jerome's mother when
4 that apartment had flooded.

5 Did you have any firsthand knowledge about that
6 situation?

7 A I was aware of that, yes.

8 Q And what did you know about that, Mr. Martin?

9 A Exactly what you stated. The apartment had flooded and
10 they stayed for a couple days, a week or so with Jerome's
11 mother.

12 Q And did that happen pretty close in time to the murder
13 and burglary we're here about today?

14 A It was very close, yeah.

15 Q And would your recollection of all that been much
16 better back in 2006?

17 A Yes.

18 Q Now, do you know anything about what happened with the
19 locks after the apartment flooded?

20 A I think the apartment had been broken into or something
21 and the locks had been changed.

22 Q And did you know that at -- do you know, at the time
23 that this happened, January 29th, did Mr. Buckson have a
24 key that worked to the locks or what was the situation with
25 that?

1 A I'm not exactly sure about that situation.

2 Q Okay. Do you know how many times you'd been by that
3 apartment?

4 A Maybe twice.

5 Q And was it convenient for you to go by that apartment
6 or was there a reason you weren't there more?

7 A Yeah, schedule.

8 Q And is that your work schedule?

9 A Work and family schedule.

10 Q Okay. And was it your understanding that on
11 January 29th, 2006, that Mr. Buckson resided or lived at
12 that apartment with Ms. Foggie?

13 A That was my understanding, yes.

14 Q And were you, in fact, with him on January 29th,
15 2006?

16 A Yes, I was.

17 Q What were you-all doing that day?

18 A We was helping me move my son and his mother.

19 Q And when you were together that day, did he ever
20 mention to you that him and Ms. Foggie had had a horrible
21 argument or he'd been kicked out or he was staying with his
22 mother because of it?

23 A No, ma'am.

24 Q Did everything appear to you as if they were still
25 dating and living together on January 29th, 2006, when you

1 were with Mr. Buckson?

2 A That's correct.

3 Q Now, you said that he was helping you move, is that
4 correct?

5 A Yes.

6 Q Did you use his vehicle or did you use another vehicle
7 that day?

8 A We used another vehicle. He actually met me at my
9 brother's house and we used my brother's truck. So, we got
10 in the truck together and proceeded to go move them.

11 Q And did you eventually bring Mr. Buckson back to his
12 vehicle?

13 A I did.

14 Q Okay. And when you returned to his vehicle, was there
15 an issue you remember regarding his cell phone?

16 A Yes, he had numerous amounts of calls.

17 Q Okay. And do you know whose those phone calls were
18 from?

19 A Tiffany.

20 Q And was it your understanding that she was trying to
21 track him down?

22 A Yes.

23 Q Okay. And, so, did everything appear to you that day
24 as if they were in a normal dating relationship?

25 A Perfectly normal.

1 MS. BLANCHETTE: Okay. Your Honor, if I could just beg
2 the Court's indulgence one moment.

3 (Pause.)

4 Q Mr. Martin, just to help make a better record, how was
5 it that you knew that those phone calls were from Ms.
6 Foggie?

7 A He told me they were. We was -- I was kind of joking
8 with him about it like you better go or whatnot.

9 Q Okay. So, it appeared to you that kind of he was being
10 tracked down by his girlfriend and he needed to get home?

11 A Yes.

12 Q Okay. And where was his home as far as you knew on
13 January 29th, 2006?

14 A It was Bradford Apartments.

15 Q Okay. And did you know if he was staying with his
16 mother at that time because he had a fight with Ms. Foggie?

17 A No, ma'am.

18 MS. BLANCHETTE: Your Honor, I have no further
19 questions.

20 MS. WHITE: Just briefly, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. WHITE:

23 Q You've testified that you've known him since the eighth
24 grade?

25 A Yes, ma'am.

1 Q Okay. But at this point you said you didn't know if he
2 had a key to his own apartment or anything?

3 A Like I said, we was -- the key situation honestly I'm
4 not aware of.

5 Q Okay. And you felt that they lived together, but did
6 you -- were you aware of him calling Ms. Foggie numerous
7 times that same evening?

8 A No, he was with me from probably 3:00 till shortly
9 after 8:00. He left his phone in his car.

10 Q Okay.

11 A He didn't have his phone.

12 Q Okay. And you didn't see his phone, the phone calls,
13 he told you that the phone calls were from Ms. Foggie?

14 A Yes, ma'am.

15 Q Okay. And when you said you'd been over to the
16 apartment twice maybe, in what time frame was that related
17 to that was on the 29th that y'all were moving, had that
18 been months before?

19 A I do not recall that.

20 Q You don't recall the last time maybe you'd been over
21 there?

22 A No.

23 Q Okay. So, it hadn't been recently in that time frame?
24 It hadn't been like the week before?

25 A No, not the week before.

1 Q Okay.

2 All right. That's all I have, Your Honor.

3 MS. BLANCHETTE: Your Honor, I have nothing on
4 redirect.

5 THE COURT: Thank you, sir. You may step down.

6 MS. BLANCHETTE: And Mr. Martin is here under subpoena.
7 I just asked that he be released if he needs to go to work.

8 MS. WHITE: No objection, Your Honor.

9 THE COURT: Thank you, Mr. Martin. You may. Thank you
10 for coming. You're free to go.

11 MS. BLANCHETTE: Your Honor, I would call Chad Tate to
12 the stand.

13 THE COURT: Mr. Tate, come around here. Place your
14 left-hand on the Bible and raise your right-hand and let me
15 swear you in.

16 CHAD TATE, being first duly sworn,
17 testified as follows:

18 THE COURT: All right. You may have a seat in the
19 chair.

20 DIRECT EXAMINATION

21 BY MS. BLANCHETTE:

22 Q Could you please state your name for the record?

23 A Chad Anthony Tate, Senior.

24 Q And, Mr. Tate, where do you currently reside?

25 A In Gaffney, South Carolina.

1 Q And how is it that you knew Tiffany Foggie?

2 A She was -- she's my baby mama. Two. I got two kids by
3 her. Desmond and Chad, [REDACTED]

4 Q Okay. And do you know approximately how long you were
5 with Ms. Foggie?

6 A From '96 to 2001.

7 Q And had you previously lived with Ms. Foggie?

8 A Yes, ma'am.

9 Q And where did you live with her at?

10 A We left -- we one time we stayed on Howard Street off

11 [REDACTED]

12 Q And did you stay in any other apartment with her?

13 A Bradford Grove.

14 Q And is that the apartment we been talking about today?

15 A No, ma'am.

16 Q Okay. Was it a different apartment at that complex?

17 A Yes, ma'am.

18 Q Now, at both of those apartments, were you on the
19 lease?

20 A No, ma'am.

21 Q And was there a specific reason you were not on the
22 lease?

23 A Section 8.

24 Q And why wouldn't you be on the lease if it was Section
25 8?

1 A Because Section 8 I don't think nobody but her kid
2 could be on the lease.

3 Q Now, did you maintain a good relationship with Ms.
4 Foggie even after you no longer lived with her?

5 A We had a pretty fair relationship.

6 Q Okay. And you-all had two kids together, is that
7 correct?

8 A Yes, ma'am.

9 Q And did those kids actually reside with her in the
10 apartment in Bradford Grove that we're talking about here
11 today?

12 A Yes, ma'am.

13 Q Now, Mr. Tate, prior to trial did you talk with Mr.
14 Buckson's defense attorney or his investigator?

15 A Yes, ma'am.

16 Q Okay. And you were actually called as a witness at
17 trial, is that correct?

18 A Yes, ma'am.

19 Q Did they meet with you and prepare you to testify at
20 trial?

21 A No, ma'am.

22 Q Were -- what was your understanding as to why you were
23 being called as a witness at trial?

24 A My understanding was to state Jerome, Jerome lived
25 there at the apartment.

1 Q Okay. And you were asked a number of confusing
2 questions about whether they had a cell phone or a landline,
3 who bought the furniture, where did they buy it.

4 Did you know that you were gonna be asked all those
5 detailed questions about the contents of that apartment?

6 A It was, it was told, you know, when I came to trial
7 that day, it was told to me, you know, by both of the
8 solicitor -- not solicitor. But Mr. Warders and Barnette,
9 they was asking me questions about one of the rooms out in
10 the courtroom.

11 Q Okay. But you were just prepared to testify that you,
12 in fact, knew he lived there with Tiffany and your boys, is
13 that correct?

14 A Yes, ma'am.

15 Q Okay. Now, you testified that you had called everyday
16 and the defendant would always answer, is that correct?

17 A Yes, ma'am.

18 Q And you also testified that the defendant had
19 permission to pick up your kids at both day care and school,
20 is that correct?

21 A Yes, ma'am.

22 Q Okay. And did you, in fact, know that, similar to
23 yourself, Mr. Buckson wasn't on the lease at that apartment?

24 A Yes, ma'am.

25 Q Did you know whether or not he helped pay the bills of

1 that apartment?

2 A Yes, ma'am.

3 Q Okay. How did you know that, Mr. Tate?

4 A Off -- from time to time, you know, like I would talk
5 to Tif, and I would tell Tif, you know, as far as me, my
6 kids, you know, my kids be cutting up in school, and he
7 would try to, you know, he would be part of trying to
8 discipline them, and me and Tif had a talk and I would tell
9 Tif if, if he paying bills at that apartment, I would prefer
10 him disciplining my kid.

11 Q Now, you had said at trial that he was there when you
12 would call, but was he also there when you would come see
13 your boys?

14 A Yes, ma'am.

15 Q Okay. You've heard talk today about the key situation,
16 and at trial there's a lot of focus on the fact that the,
17 Mr. Buckson didn't have a key to the apartment.

18 Did you know anything about that?

19 A Only thing I know about, only thing I knew about that
20 key situation that when I would go over there the front door
21 was kind of -- the lock on the front door was kind of loose,
22 and I knew sooner, sooner or later she was gonna have that,
23 the door, the lock on the door changed cause she said, I
24 think prior to Jerome, a guy, a guy she was dating was
25 trying to break in her apartment.

1 Q So, did you have any firsthand knowledge as to whether
2 or not Mr. Buckson had a key or he'd given his key to anyone
3 else?

4 A No, ma'am.

5 Q Now, you were present at trial, is that correct?

6 A Yes, ma'am.

7 Q And you heard great detail about the situation that
8 occurred in the early morning hours of January 30th, 2006,
9 is that correct?

10 A Yes, ma'am.

11 Q Had a similar situation ever happened with you and Ms.
12 Foggie?

13 A Yes, ma'am.

14 Q Could you please explain that?

15 A On December 29th, 2001, I was staying with Tif at
16 Oakview Apartment.

17 MS. WHITE: Your Honor, I---

18 A Apartment 106.

19 MS. WHITE: Your Honor, I would object---

20 THE COURT: Excuse me, sir.

21 MS. WHITE: ---to relevance in this matter. If --
22 we're here on issues of ineffective assistance of counsel
23 regarding the issue of the burglary indictment. I don't
24 believe that any issue of Mr. Tate's previous relationship
25 with the victim in this case and anything that happened with

1 him is relevant to this matter.

2 MS. BLANCHETTE: Your Honor, Mr. Tate was called as a,
3 on the stand and one of our allegations is failure to
4 utilize the defense witnesses that were called. So, I'm
5 attempting to go into other questions that I indeed would
6 say are relevant that Mr. Warder should of asked Mr. Tate to
7 show ineffective assistance of counsel in that regard.

8 THE COURT: All right. I'm gonna let her proceed. Not
9 that I would give it much weight, but I'm gonna let her
10 proceed.

11 MS. WHITE: Okay. Thank you, Your Honor.

12 Q Continue.

13 A On December 29th, 2001, I was -- I worked two jobs.
14 I was working at Robert Allen and UPS at the time. I got, I
15 got off, but I got off that evening. I went home and I
16 didn't, I didn't see Tif. You know, Tif, Tiffany wasn't
17 there. So, my thing was I, you know, I was -- I just left
18 and went out with the boys that night.

19 On -- when I came, when I got back home, when I was
20 coming back home, I notice her mother, her mom's car, in
21 which she drove a silver Escort at the time, was there. Me
22 and Tif, me and Tif had a Corolla, a white Corolla and a
23 blue jeep. I was, I was driving the blue jeep, and I
24 went -- when I went into the apartment, and I went into the,
25 the apartment, Tif was sitting in there on the couch. She

1 was like what you doing home so early. I was like, man, I
2 got a headache, I been had a headache all day and plus, you
3 know, I was tired.

4 So, I -- when I got there, I asked her -- well, I asked
5 her, I said the boys upstairs. She, she didn't even -- she
6 didn't give me an answer. So, I proceeded to go upstairs,
7 and when I went up the stairs I noticed my boys bedroom door
8 shut slightly pushed up. And, so, I went in, I went into me
9 and Tiffany's bedroom. On the way out of the bedroom, I was
10 like, well, you know, I'm gonna go, I'm gonna go in here and
11 see if my boys in the bedroom.

12 So, when I pushed the door open, it was a guy -- it was
13 another, it was another figure in there. It was, it was
14 somebody in there with a face mask and I saw a gun beside
15 his, on his side, and I was like Tif, do you know this
16 person up here. And, so, that's when she ran, she ran
17 upstairs, and she like jumped in-between me and him.

18 Q So, you had encountered a very similar factual
19 situation yourself while living with Ms. Foggie, is that
20 correct?

21 A Yes, ma'am.

22 Q Now, do your boys currently live with you or where are
23 your boys?

24 A Oh, they stay with me.

25 Q Okay. And you gave our investigator the opportunity to

1 speak with your boys, is that correct?

2 A Yes, ma'am.

3 Q Okay. And they're both in school, is that correct?

4 A Yes, ma'am.

5 Q And they're not gonna be here with us today, is that
6 correct?

7 A No, ma'am.

8 Q Now, what was your understanding from your boys as to
9 whether or not Mr. Buckson lived there?

10 A My understanding from my boys is that they, they
11 would -- they talked about him all the time cause, you know,
12 me being a concerned daddy I would want to know what kind of
13 man my boys was living with. They said he was nice and, you
14 know, they played games with him and all that. It -- he was
15 there.

16 Q And what is your sons' thoughts or concerns about
17 Mr. Buckson now?

18 MS. WHITE: Your Honor, I would object to that. I
19 don't think he can testify as to what his sons' thoughts and
20 concerns are.

21 THE COURT: I'll sustain the objection.

22 MS. BLANCHETTE: Thank you, Your Honor.

23 Q Just going back to I'd ask you about the key, but I
24 forgot to ask you, do you know if they would leave a back
25 window open or if they kind of left another way to get

1 access to the apartment or did they always use keys and
2 enter through the front door of that apartment?

3 A I don't, I don't too much know about the key situation.
4 All I know is before he would -- before he start staying
5 there, and when I, when I would want to go over there and
6 get something she would leave the door opened for me.

7 MS. BLANCHETTE: Your Honor, if I could just beg the
8 Court's indulgence one moment.

9 (Pause.)

10 MS. BLANCHETTE: Your Honor, I have no further
11 questions of this witness.

12 MS. WHITE: Thank you, Your Honor, briefly.

13 CROSS-EXAMINATION

14 BY MS. WHITE:

15 Q Mr. Tate, you testified a little bit about confusing
16 questions about the telephone.

17 Isn't it true that you had testified that you called
18 them on both a landline and a cell phone sometimes---

19 A Yes, ma'am.

20 Q ---in your questions?

21 So, when the State began asking questions, they were
22 cross-examining you and attempting to show that at one point
23 the victim didn't even have a landline, is that right?

24 A Yes.

25 Q Okay. So, they were attempting to essentially attack

1 your, your question, your answers and show maybe that you
2 were incorrect in what you were testifying?

3 Do you think that's what they were trying to do when
4 they began asking---

5 A That's, that's---

6 MS. BLANCHETTE: Your Honor, I would object. I don't
7 know that that's his knowledge as to what the solicitor was
8 attempting to do at that point.

9 THE COURT: All right. I'll sustain that objection.

10 MS. WHITE: Okay. I'll, I'll rephrase or ask another,
11 another type question.

12 Q In regards to questions and being prepared by counsel,
13 you had talked with Mr. Warder's investigator, is that
14 correct?

15 A I talked -- I didn't talk to him. He was asking -- he
16 was wanting to talk to my boys.

17 Q Okay.

18 A But they wouldn't, they wouldn't answer his question.

19 Q And Mr. Warder -- so, you never spoke to the defense
20 attorneys investigator?

21 A I, I -- he came, he came out to my house, which I
22 stayed on [REDACTED] at the time---

23 Q Okay.

24 A ---and attempted to talk to my kids. But my kids, I
25 wouldn't -- they wouldn't talk to him.

1 Q All right. So, he tried to talk to your kids, and you
2 never spoke with him?

3 A No, I didn't.

4 Q And how did you become involved in the case then?
5 You just received a subpoena from the defense?

6 A Uh-huh. (Affirmative).

7 Q And you said you -- the only time you talked with the
8 defense attorney, Mr. Warder---

9 A Was that particular---

10 Q ---was that day of the trial?

11 A Yeah, right before I came up on the stand.

12 Q Okay. And did you meet with him like in a holding
13 room?

14 A In the holding room out there.

15 Q Okay. And you've testified as to this similar
16 situation in finding this masked man with this gun.

17 You had come home that night to the apartment that you
18 said you were living in with Ms. -- had you entered in
19 through a window that night?

20 A No, ma'am.

21 Q You had entered through a door?

22 A Yes, ma'am.

23 Q Did you have a key to the apartment?

24 A Yes, ma'am.

25 Q Okay. So, the facts are a little different in that

1 situation, aren't they?

2 A (Witness nods affirmatively.)

3 Q Okay. And, again, you didn't know on the 29th or
4 30th if Mr. Buckson had a key to the apartment that night?

5 A No. No, ma'am.

6 Q Okay. But you are aware that he entered through the
7 window?

8 A Out -- that's, that's what I was made aware of.

9 MS. WHITE: Okay. That's all I have, Your Honor.

10 MS. BLANCHETTE: Very briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. BLANCHETTE:

13 Q Upon review of your testimony or just having feelings
14 when you were getting off the stand at trial, did you feel
15 that you were properly utilized or that you had more to
16 offer as a defense witness?

17 A I felt, I felt like I had more to offer.

18 Q Okay. And was it your feeling that there were
19 additional questions Mr. Warder should of asked you on
20 behalf of Mr. Buckson?

21 A Yes, ma'am.

22 Q Okay. And you, in fact, knew that the residence at
23 Bradford Grove was where Mr. Buckson was living, is that
24 correct?

25 A Yes, ma'am.

1 Q And do you feel that that was properly conveyed through
2 your testimony?

3 A (Witness nods negatively.)

4 Q I'm sorry. If you could just give a verbal response.

5 A No, ma'am.

6 Q Thank you.

7 I have no further questions.

8 THE COURT: Thank you, sir. You may step down.

9 MS. BLANCHETTE: Your Honor, I would call Lloyd
10 Williams to the stand.

11 THE COURT: All right. Let's do this.

12 Mr. Williams, if you will, just wait a moment. We're
13 gonna need to take just a short recess. We'll come right
14 back.

15 MS. BLANCHETTE: Thank you, Your Honor.

16 (WHEREUPON, a short recess was taken at this time.)

17 THE COURT: Sir, come on around. Sir, come on up.
18 Just place your left-hand on the Bible and raise your
19 right-hand.

20 LLOYD WILLIAMS, being first duly
21 sworn, testified as follows:

22 THE COURT: Thank you, sir. Just have a seat in the
23 chair and pull the chair up to the microphone please.

24 DIRECT EXAMINATION

25 BY MS. BLANCHETTE:

1 Q Could you please state your name for the record?

2 A Yeah, Lloyd Williams.

3 Q And, Mr. Williams, where do you currently reside?

4 A Gaffney, South Carolina.

5 Q And were you a witness at trial?

6 A Yes.

7 Q You were listed as a witness by the State on Page 20---

8 A Oh.

9 Q ---but were you called as a witness?

10 A Oh, no, I wasn't a witness. I was at the trial, but
11 not a witness.

12 Q Okay. Now, how is it that you knew Tiffany Foggie?

13 A Well, she was my stepdaughter. I was married to her
14 mother.

15 Q And when did you become her stepfather?

16 Around what age?

17 A She was four. Just turned four.

18 Q And at the time of this incident were you still married
19 to her mother?

20 A Yes.

21 Q Okay. How often did you see Ms. Foggie?

22 A Well, well, every week. No certain times, but at least
23 once a week.

24 Q Okay. And would you go by her apartment at Bradford
25 Grove that we been talking about today?

1 A Yes.

2 Q And was that where you go see her once a week or how
3 often were you there in the same month?

4 A Well, I can't say exactly how many times cause it was
5 pretty often. You know, like sometimes she would call me
6 and ask me to come over for dinner like when I be out on my
7 job in the truck. She would call me and ask me had I eaten
8 anything, and she would be home. She'd say I'm cooking
9 dinner, you come by and have dinner, dinner with me and my
10 boys, and I would go by then. Sometime on the weekend.
11 Just no certain times.

12 Q Now, on -- were you familiar with Chad Tate, her
13 previous boyfriend and the son or the father of her sons?

14 A Yeah.

15 Q Okay. And did you know that when she lived with Chad
16 Tate that he would, he wasn't listed on the lease?

17 A No, I didn't know that.

18 Q Okay. And did you know that she was living with
19 Mr. Buckson?

20 A Well, I knew he was there. Most times I go there he
21 would be there, but I couldn't say he was living there
22 because he be there when I leave and I wouldn't never know
23 if he left after I left or whatever.

24 Q Did you ever talk with your stepdaughter about whether
25 or not he was helping pay bills and contributing to the

1 rent?

2 A Well, I, I talked to her about it once because I had
3 talked to her -- I told her not to let another guy move in
4 that wasn't -- you know, we talked about like that because
5 she had other problems before. I said so, next time you get
6 a guy, you know, you get your place and you let him -- he
7 come and visit you and then you let him go home to his own
8 place, and after a while, after I got to know him, I asked
9 her was she in love with him, and she didn't answer it. She
10 just said well, he helps, he helps me pay bills sometimes.

11 Q Okay. And what did you refer to Mr. Buckson as?

12 Did you have a nickname for him?

13 A Well, Tiffany introduced him to me as J.

14 Q Okay.

15 A So, I called him J.

16 Q And were you over at the house sometimes when he would
17 be asleep and she'd let you know he was upstairs sleeping?

18 A Well, one time one of the days she called me to come
19 have dinner with her and the boys, and I said where is J,
20 and she say he went upstairs to get some sleep because he
21 had to work third shift.

22 Q And would he typically be at the apartment when you
23 would see Tiffany and the boys?

24 A Most of the time.

25 Q So, he would also be at the apartment?

1 A Yes.

2 Q Is that correct?

3 A Most of the time, yeah.

4 Q Now, when you would try to get in touch with your
5 daughter, would you ever speak with Mr. Buckson?

6 A Yeah, sometimes he would be there and she wouldn't.

7 Like once I saw J, he's, he just drove up with the boys and
8 he told me Tiffany was at work, but he had the boys, and he
9 put one of them in the window so he would unlock the door so
10 they could go in.

11 Q So, you were familiar with them using the window as an
12 access point to the house?

13 A Well, that was during that, that one day because they'd
14 been there for a while and something had happened where they
15 didn't have keys to the doors anymore, and he said he didn't
16 have his key yet.

17 Q Okay. And you mentioned he was coming home with the
18 boys and Tiffany wasn't with him.

19 Did you know if he had permission to pick the boys up
20 at school or day care?

21 A Well, I just assume he did.

22 Q Now, did you know about the situation where they had
23 the locks changed and the reason why Mr. Buckson didn't have
24 a key at that time or at the time of this incident?

25 A No, all I know is Tiffany said -- well, he told me they

1 hadn't got the keys yet. I think Tiffany had one, but he
2 didn't have his yet.

3 Q Okay. Do you know if he did, in fact, have one and had
4 given it to someone else?

5 A I don't know.

6 MS. BLANCHETTE: Your Honor, I have a statement here
7 that was given by Mr. Williams to our investigator in this
8 case. I just ask if I could approach him with this
9 statement to refresh his memory.

10 THE COURT: (Nods affirmatively.)

11 Q Mr. Williams, if you could just read through this
12 paragraph here to yourself that starts with regards to J
13 have, having a key. Just read through that to yourself.

14 A (Witness complies.)

15 Oh, you mean about the window?

16 Q No, if you could just read through and then I'll ask
17 you a question.

18 A It would -- it was common knowledge that Tiffany and I
19 would keep the kitchen window in the apartment, which was
20 the backside of the apartment, unlocked so that they could
21 each get in to unlock the back-door. They used sometime one
22 of the children to climb through the window to get inside to
23 unlock the door, yeah.

24 Q Okay. And do you see in that paragraph there where you
25 say that you knew that he'd given his key to someone else?

1 Does that help refresh your memory?

2 A Oh, that's what I told me that day. I didn't know that
3 myself, you know.

4 Q Okay. And what was your understanding as to who he had
5 given his key to?

6 A He said Tiffany. He give it to Tiffany's mother.

7 Q Okay.

8 A Yeah.

9 Q Thank you.

10 So, he explained to you why he did not have a key?

11 A Yeah, I was wondering why he was putting the kid
12 through the window. That's -- I remember now. He said he
13 had to give Tiffany's mother the key and he didn't have his
14 key yet.

15 Q Now, did you know about the situation where their sewer
16 had backed up at the apartment?

17 A No, I heard about it, but that's all.

18 Q Okay. And when that happened, do you know if they
19 stayed with Mr. Buckson's mother?

20 A No, by the time I heard about it it was all over with I
21 guess.

22 Q Did you see your stepdaughter on January 29th, 2006?

23 A Yeah, I was the one that the young man was talking
24 about. I don't remember his name. I went over because I
25 had bought Tiffany a car and she had her mother's car. So,

1 I called her and asked her to bring her mother's car home
2 and she could drive her car back. But she couldn't come and
3 get it because she said Charlene was on their way over, they
4 were gonna play cards. She didn't want to leave and not be
5 there when they got there. So, I decided to take the car to
6 her.

7 Q And what happened?

8 I mean just to the best of your memory, since this has
9 been some time, what happened once you arrived there?

10 A Well, when I got there nobody came to the door, and I
11 was about to leave, and I saw Little Chad and Des upstairs
12 in the window. So, I called on my cell phone and told her
13 it was me, and then she opened the door. And I asked her
14 what was the problem, you know. She said well, she didn't
15 want to come to the door because she thought it was J.

16 Q And once you got in, did you notice the people that
17 were in there?

18 A Yeah, Charlene and this Marcus guy and the young man
19 that was here earlier. I don't, I don't remember his name.
20 They were in there playing cards or watching TV or whatever.
21 But anyway, I gave Tif -- I took Tiffany outside and showed
22 her how the car operated and we rode around the premises and
23 then I left. I didn't go back inside.

24 Q And did you ask her any questions about what those
25 people were doing there or ask what they were doing?

1 Did you make any comments?

2 A Well, she had already told me they were, Charlene and
3 them were coming over, and when I got in there, you know,
4 she says -- she introduced me to them. I said oh, y'all
5 over here creeping. I was joking with her, you know, and
6 laughed about that, and went outside and showed her the car
7 and then I left.

8 Q And what would you mean by you all up in here creeping?--

9 A Well, she had -- you know, they, they had guys over,
10 two girls and two guys. That's three.

11 Q And would that be creeping because you knew that
12 Mr. Buckson wasn't home at the time and it was something
13 that she was doing behind his back?

14 A Well, not directly in that order. Well, see one of my
15 nieces -- well, my other niece, I knew she had somebody
16 else. So, they me -- at my stepbrother's house, and he
17 wasn't over there.

18 Q And at that time was it your understanding that
19 Mr. Buckson was living in that apartment on January 29th,
20 2006?

21 A Well, I understood they would be there or not. I can't
22 really say that he was living there because I don't, I just
23 don't know if he was really living there, but I know he was
24 there a lot.

25 Q Okay. And did you see his items, his clothing items

1 there?

2 A No, I didn't never see anybody's clothing there.

3 Q Okay. But you'd see him there with your daughter and
4 her sons, and he'd also be there with her sons when she was
5 not there, is that correct?

6 A Yeah, sometimes.

7 Q Was it your understanding that they were still dating
8 on the night of January 29th, 2006?

9 A Well, as far as I knew they were.

10 Q And did you talk to your daughter often enough that you
11 would know if they were not dating?

12 A Yes, I would.

13 Q Now, how was it that you found about, found out about
14 what happened that night?

15 A Well, I found out the next day. I was up in Durham,
16 North Carolina driving and my sister called me and asked me
17 what happened to Tiffany, and I asked her what did she mean
18 what happened to Tiffany cause I hadn't heard anything about
19 it. She say she had heard on the news that a Tiffany Foggie
20 had gotten killed.

21 So then I had to stop the truck and call over to my
22 mother-in-law's house and asked them, but when somebody
23 answered the phone I could hear everybody crying in the
24 house. But up until that point I hadn't heard about that.

25 Q And you said you were at the trial and you recall being

1 listed as a potential witness for the State?

2 A Well, my wife told me that they might call me after
3 lunch.

4 Q Okay. And were you ever called as a witness?

5 A No.

6 Q Did you have concerns that you weren't called as a
7 witness?

8 A Yes.

9 Q And you had been there on January 29th, 2006, is that
10 correct?

11 A Yeah.

12 Q Did Mr. Buckson's defense attorney or his investigator
13 even approach you about what you knew and ask you questions?

14 A No, they didn't talk to me at all. They didn't know
15 where I was. When they did find out who I was they didn't
16 talk to me.

17 Q Would you have been willing to talk with them?

18 A I sure would have.

19 Q Would you of been willing to be called as a witness for
20 the defense?

21 A Yes.

22 Q And why is it that you would of been willing to testify
23 with the defense?

24 A Because the way I was looking at it I was wanting -- I
25 was concerned about who killed my daughter, and I could not

1 understand how they could sentence a man who went through a
2 window and let a man who came out the door go free. That's
3 what bothers me most of all about this. I could not
4 understand that. I mean he shouldn't have been over there
5 with the gun in the first place.

6 Q And was it your understanding that Mr. Buckson was just
7 merely going home that night?

8 A Well, see I don't know how or what time they were --
9 well, all I know he, is he be over there most of the time,
10 and I don't know what times they had or meeting or going or
11 whatever like that. I just know that when they would be
12 there they were there. But then if he was not there, and he
13 decided to go there, well, I knew that he always went there,
14 you know. I don't know anything else about how, how they
15 arrangements were.

16 But this guy would of been there with a gun and killed
17 my daughter. Nobody did nothing about that. Nobody cares
18 about that. They only concerned about a man going through a
19 window and they don't care about what happened to my
20 daughter. The man that killed my daughter walking around
21 free.

22 Q And, Mr. Williams, I know this is a difficult case for
23 you. So, I appreciate your sentiments, but if I could just
24 approach you with your statement one more time.

25 A Oh, okay.

1 Q I'd like to show you what's Paragraph 3 here, and this
2 time just read that to yourself, this paragraph. Just read
3 it to yourself and then I'll ask you a question.

4 A Okay.

5 (Witness complies.)

6 Q Reading that statement, does that help refresh your
7 memory as to whether or not you knew he was living there?

8 Did you, in fact, believe he was living there?

9 A Yeah, I kind of -- I believed that, but that was in the
10 early stages, and when I go over there and she would tell me
11 he's upstairs asleep or something like that. So, I make the
12 assumption that he was living there.

13 Q And you had discussions about the fact that if he lived
14 there he needed to be helping her out with the rent and
15 things like that, is that correct?

16 A Right.

17 MS. BLANCHETTE: Okay. Your Honor, if I could just beg
18 the Court's indulgence one moment.

19 (Pause.)

20 MS. BLANCHETTE: Your Honor, I have no further
21 questions.

22 CROSS-EXAMINATION

23 BY MS. WHITE:

24 Q Mr. Williams, you testified that you didn't know
25 originally if Chad, when he lived or when he was with your

1 daughter, was on the lease.

2 Did you ever know if Mr. Buckson was on the lease or
3 anything on the apartment with your daughter?

4 A No, I didn't know any kind of way about any kind of
5 arrangements.

6 Q Okay. In regards to seeing the defendant or the, the
7 applicant in this matter with the kids, you said that you
8 would see him at the house, but he would leave and you
9 didn't know if he was gonna leave or stay there, is that
10 right?

11 A I don't know if he was staying all night.

12 Q Okay. Now, tell me about -- you said you were there
13 one time when you saw him put one of the sons through the
14 window to go ahead and open the door.

15 A Yeah.

16 Q And at that point you said that Mr. Buckson explained
17 to you that he had to do that because he didn't have his
18 key, he had to give it to your, your stepdaughter's mother.

19 In what time frame was that before this incident
20 occurred?

21 A I don't remember the date like that.

22 Q Was it -- I mean was this something that was a year
23 before that?

24 Was it a month before that or was it a week before the
25 incident occurred?

1 Any idea?

2 A No, all I know is it was during school time because we
3 had picked the children up from somewhere.

4 Q Okay. But this wasn't something that happened within a
5 couple of days before?

6 A Oh, no.

7 Q Okay. So, this wasn't a direct within a few, you know,
8 a direct relation to the incident?

9 A It had to be some time after whenever it was. They had
10 the locks changed on the door, and I don't know when that
11 was.

12 Q Okay. And in regards to -- was -- to your
13 understanding, had they ever had the locks changed on the
14 doors before the one time that they had to do it after the
15 carpet had to be changed because of the flooding?

16 A Not as I know of.

17 Q Okay. When you saw that the victim had Charlene and
18 Mark and Elliott over to the house, did that not indicate to
19 you maybe that, that she and Mr. Buckson weren't dating
20 anymore?

21 A I don't know. I mean I just don't know.

22 Q Okay. And you said that when you went over there that
23 evening you had not seen any clothing items or anything that
24 indicated a man lived there?

25 A No, but all the clothes would be upstairs. The bedroom

1 was upstairs. I had been upstairs, but not into her bedroom
2 if there's any -- I had been in the kid's room.

3 Q Okay.

4 A No men's clothes in the kids room.

5 Q So, when you went and visited her, predominantly you
6 either stayed downstairs or went upstairs to the kid's'
7 rooms?

8 A Yeah, most of time the bedrooms upstairs.

9 Q Okay.

10 A Between the two bedrooms.

11 Q All right. So, you would not have occasion to know if
12 there were men's clothes in a closet or in drawers or
13 anything?

14 A No, I never looked in her closets nor her drawers.

15 Q Okay. So, the only -- you, you really had no knowledge
16 if he lived there unless someone had specifically told you
17 that, is that right?

18 A Right, I just know he would be there most of the time
19 when I would go over there, but that's normal.

20 Q Okay.

21 A But I couldn't tell you when he would leave or if he
22 was actually staying all night. I don't know that.

23 Q All right. Thank you, Mr. Williams. That's all I
24 have.

25 MS. BLANCHETTE: Very briefly, Your Honor.

1 REDIRECT EXAMINATION

2 BY MS. BLANCHETTE:

3 Q Did you have the occasion to go or see Mr. Buckson and
4 your daughter at his mother's house?

5 A We went to a birthday party at her mother's, at his
6 mother's house.

7 Q Okay. And who was that birthday party for?

8 A I think it was for -- was it for his mother or Tif?
9 I'm not sure. I know we went to a birthday party.

10 Q And when you were at that party at his mother's house,
11 did -- was it your understanding that he lived with his
12 mother or he lived with your daughter?

13 A It was my -- well, every time I would see him it would
14 be at Tiffany's house, and we went to his mother's house.
15 He was at his mother's house at, for the party.

16 Q Okay. And do you know he left with your daughter that
17 night and went back to her apartment?

18 A Well, I was driving my car. So, when we left the party
19 I went one way and he and Tiffany were together. So, I
20 assumed that at least he took her home, but I can't say he
21 stayed.

22 Q Okay. But was it apparent to you when you were at his
23 mother's house that that's where he lived?

24 A No.

25 Q Okay. I have no further questions.

1 THE COURT: Thank you, sir. You may step down.

2 MS. BLANCHETTE: Your Honor, my next witness, I would
3 recall Mr. Buckson. He's gonna be a lengthy witness. I
4 just want to make sure the Court wanted me to go forward.

5 THE COURT: Everybody ready?

6 MS. WHITE: I think so, Your Honor.

7 THE COURT: All right. Sir, just need to remind you
8 that you remain under oath.

9 Do you understand that?

10 WITNESS: Yes, sir.

11 THE COURT: Thank you, sir.

12 JEROME BUCKSON, having been previously
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. BLANCHETTE:

16 Q All right. Mr. Buckson, I'm gonna pick up where we
17 left off.

18 I was asking you about the PCR and that you want to
19 proceed, and you still want to proceed in this matter, is
20 that correct?

21 A Yes, ma'am, I do.

22 Q Okay. And the State briefly mentioned that, after your
23 trial, you had a direct appeal, is that correct?

24 A Yes, ma'am.

25 Q And what agency handled that appeal for you?

- 1 A Appellate of South Carolina.
- 2 Q Okay. Appellate Defense?
- 3 A Yes.
- 4 Q Is that correct?
- 5 A Yes, ma'am.
- 6 Q And they filed a merits brief on your behalf, is that
- 7 correct?
- 8 A Yes, ma'am.
- 9 Q And that was denied by the South Carolina Court of
- 10 Appeals?
- 11 A Yes, ma'am.
- 12 Q And after that did your attorney petition the South
- 13 Carolina Supreme Court?
- 14 A Yes, she did.
- 15 Q Okay. And I believe the State put on the record at the
- 16 very beginning that that was withdrawn.
- 17 would you like to just explain that briefly for the
- 18 Court?
- 19 A I withdrew it because I felt like I would have more
- 20 merits on the PCR than I would have on the, the appeal, the
- 21 reconsideration.
- 22 Q And you discussed that decision with your appellate
- 23 defender before, before deciding to withdraw, is that
- 24 correct?
- 25 A Yes, ma'am.

1 Q All right. Now, Mr. Buckson, did you testify at your
2 trial in front of Judge Cole?

3 A Yes, ma'am, I did.

4 Q And do you today affirm that testimony that you gave at
5 your trial?

6 A Yes, I do.

7 Q Okay. And I'm not gonna go over that in great detail
8 with you. I just may refer to it from time to time.

9 But there's additional matters that you'd like to
10 address today, is that correct?

11 A Yes, it is.

12 Q Okay. Now, specifically I call a number of witnesses
13 today and are you alleging that your attorney should of
14 called those witnesses or utilized the ones he called more
15 effectively at your trial?

16 A Yes, I do.

17 Q Okay. Can you remember back to when you were arrested,
18 Mr. Buckson?

19 A Yes, ma'am.

20 Q When was that?

21 A 2007. I'm sorry. 2006.

22 Q And were you actually arrested when this all occurred?

23 A Initially I wasn't, but a day later I guess I was.

24 Q And when you were arrested, did you make bond or did
25 you stay in the county facility?

- 1 A I stayed in the county.
- 2 Q Did you retain an attorney or was one appointed to
3 represent you?
- 4 A I retained one.
- 5 Q And who did you retain initially?
- 6 A Fletcher Smith.
- 7 Q And did Mr. Smith stay on your case very long?
- 8 A No, he didn't.
- 9 Q What happened with Mr. Smith?
- 10 A I just felt like he wasn't doing his job. He didn't
11 come and see me but one time. It wasn't going right. I
12 didn't feel right with him.
- 13 Q And what happened then?
- 14 Did you relieve Mr. Smith and hire a new attorney or
15 what happened, Mr. Buckson?
- 16 A We relieved and hired Mr. Warders.
- 17 Q And after you hired Mr. Warder -- and that is Richard
18 Warder, is that correct?
- 19 A Yes, ma'am.
- 20 Q Okay. Did you-all attend a preliminary hearing in your
21 case?
- 22 A No, we didn't. I was, I was brought in, but I didn't
23 get to see one.
- 24 Q And you said you were brought in.
- 25 You were brought in where?

1 A The holding cell.

2 Q And once you were in the holding cell you never went to
3 the hearing?

4 A No, I didn't.

5 Q Did Mr. Warder come and explain that to you?

6 A He just told me it wasn't necessary. They can do it
7 without me.

8 Q Did you have an opportunity to meet with Mr. Warder and
9 prepare for trial while you were in the county?

10 A Yes, I did.

11 Q Do you know approximately how many times you guys met?

12 A Around seven or eight.

13 Q Mr. Buckson, when I use the word discovery, do you
14 understand what I mean?

15 A Yes, ma'am.

16 Q Did Mr. Warder provide you the discovery from the
17 Solicitor's Office?

18 A Yes, he did.

19 Q Did you-all go over that or how did you work through
20 that discovery?

21 A Initially he gave it to me. He hit a couple of key
22 points, and then later on, toward the, the trial date, we
23 started going over it and discussing it with them.

24 Q Did you have any concerns about the copies of those
25 documents that you were given?

1 A Yes, the copies I couldn't hardly see, and it was like
2 xeroxed and blurry, blurry. Half of them I couldn't tell
3 what they were.

4 Q And as a result, you requested that Mr. Warder give you
5 full access to your file, isn't that correct?

6 A Yes, ma'am.

7 Q Now, we are here today just about the burglary charge.

8 A Yes.

9 Q So, my questions are gonna be pertaining to the
10 burglary charge.

11 Did you and Mr. Warder have extensive conversations
12 about the burglary charge?

13 A We didn't. It was concerning the murder because he
14 felt like if we get rid of the murder the burglary would
15 also go.

16 Q And why did he not or what was your understanding as to
17 why the burglary was not your primary problem?

18 A He said that it was the intent, effect of the burglary,
19 and basically just telling me if we got rid of the murder,
20 the matters in the intent of the crime would possibly go
21 away.

22 Q And did he ever talk with you about whether or not you
23 could burglarize your own home?

24 A Yeah, he told me that's impossible when I lived there.
25 If I was living in the home, you can't burglarize it.

1 Q So, it was very important to establish that you were
2 living at the residence and did not have the intent to
3 commit a crime at that residence, is that correct?

4 A Yes, ma'am.

5 Q Did you recall any kind of change on and added to
6 towards the burglary charges as the trial approached?

7 A Toward the trial, like the month before, it was more or
8 less, you know, you may receive some time for the burglary,
9 but as long as you get rid of the murder it should be okay.

10 Q Did you get offered any pleas in this case?

11 A Initially I was offered seven years by the detective
12 agency for, I forgot the name of it, but it was like commit
13 a crime and, you know, during -- after that I was offered 15
14 years up until my trial date, like the day before my trial
15 date.

16 Q Did you take a plea?

17 A No.

18 Q Why didn't you take a plea?

19 A Because I'm not guilty.

20 Q Did you ever meet with -- well, let me ask you this.
21 I'm sorry. I'll rephrase that.

22 Did Mr. Warder utilize an investigator in the case?

23 A Yes, he did.

24 Q Did you meet with that investigator?

25 A Yes, I did, once or twice.

1 Q Did you ever see reports generated by that investigator
2 and know specifically witnesses that he or she spoke with?

3 A Not through their investigator, no.

4 Q Do you know if your attorney or his investigator spoke
5 with any witnesses in your case?

6 A Yes, he spoke with Elliott Cannady and, upon the trial,
7 he spoke with Chad Tate and my mother and my aunt.

8 Q Did you ask your attorney to speak to other people?

9 A I asked him to speak to everyone that took the stand
10 today with the exception of Barry.

11 Q And if your attorney needed contact information or for
12 your mother's assistance or anything in that regard, could
13 you have helped him in locating these witnesses?

14 A Yes, I could.

15 Q Okay. Now, let's go briefly through each of the
16 witnesses that testified today.

17 Your Honor, may I approach?

18 THE COURT: (Nods affirmatively.)

19 Q I'm showing you what's been marked as Applicant's No.

20 1. I'm sorry.

21 Do you recognize this, Mr. Buckson?

22 A Yes, ma'am.

23 Q Okay. And what is it?

24 A It's a letter from Shirley Hall, which is the neighbor.
25 She lived two doors away from us and she's basically telling

1 him that she wanted to testify about the shooting and that I
2 lived there at the apartment.

3 Q Okay. And did you provide that information to
4 Mr. Warder?

5 A Yes, it was provided to her earlier.

6 Q And I, in fact, gave you a copy of it that I obtained
7 from his file, is that correct?

8 A Yes, ma'am, you did.

9 Q Do you know if he ever spoke with Ms. Hall?

10 A No.

11 Q And why was she a witness that you wanted him to
12 interview and potentially call at trial?

13 A She lived next door to us. She seen me everyday. She
14 didn't work. She -- basically I think she's on the
15 disability. She seen me come. She seen me leave. She seen
16 me with the children. She actually knocked on my door and
17 let me know these kids are outside playing in the road and
18 wake me up, you know, and get the kids.

19 Q And all of these witnesses, I mean just common sense
20 says their memory would of been better back in 2006, is that
21 correct?

22 A Yes. Yes.

23 Q Now, Barry Adair, you said you didn't tell him about
24 him, but why is it that you thought that he would be a
25 pertinent witness, witness?

1 A He spoke to my mom and let her know that, you know,
2 that he wanted to talk, he wanted to tell that I stayed,
3 stayed there. Initially I didn't know until my mom told me,
4 and she told me twice if I'm not mistaken.

5 Q Okay. Now, you said that you think your attorney
6 talked with Elliott Cannady, is that correct?

7 A Yes.

8 Q And at the beginning of your trial the State actually
9 listed him as a potential state witness?

10 A Yes, ma'am.

11 Q Okay. Did you want your attorney to, in fact, call
12 Mr. Elliott Cannady if the State did not?

13 A Yes, I did.

14 Q Do you recall having any discussions with him about
15 that when the State failed to call him?

16 A Me having discussions with Mr. Warders?

17 Q Yes.

18 A Yes, I did.

19 Q And what were those discussions?

20 A I was telling Mr. Warder that I felt like Elliott
21 wanted to come, come through and tell the truth, that he
22 would of been a key witness considering he was with the
23 person who committed the murder at the time -- well, before,
24 right before the murder. I felt that he was a biased
25 witness because I didn't know this person, as he stated up

1 here just now, and that he has no reason to basically make
2 statements for me. So, I felt like he would of been a good
3 witness to call.

4 Q And did you feel that because he was the other person
5 that was charged in this case, Mr. Watson's friend, he was
6 testifying on your behalf, the jury would give that a lot of
7 weight?

8 A Yes. Yes, I did.

9 Q Okay. Is there anything else regarding Mr. Elliott
10 Cannady that you would like to testify about today?

11 A No, no, that's it.

12 Q And, Mr. Buckson, if I'm going through these people too
13 quickly and you have something else to say, just let me
14 know, okay?

15 A All right.

16 Q Now, I called Antwan Martin to the stand, and he's your
17 friend, is that right?

18 A Yes, ma'am.

19 Q Okay. Did you tell Mr. Warder that he needed to speak
20 with Mr. Martin?

21 A Yes, I did.

22 Q Okay. And what did -- is it your understanding he was
23 ready, willing, and available to do that?

24 A Yes.

25 Q And he was, in fact, at your trial, is that correct?

1 A Yes, ma'am, he was.

2 Q Now, Antwan today testified about phone calls you
3 received that day, is that -- is that what you recall from
4 today?

5 A Yes, ma'am.

6 MS. BLANCHETTE: Okay. Your Honor, could I ask if I
7 could approach?

8 THE COURT: (Nods affirmatively.)

9 Q Mr. Buckson, I'm gonna hand you two documents. If you
10 could just identify what each document appears to be for the
11 record.

12 A My phone records and Tiffany's phone records.

13 Q Okay. So, there's two separate documents there. One
14 are your phone records and the other one appears to be Ms.
15 Foggie's phone records, is that correct?

16 A Yes, ma'am.

17 Q And was this part of the discovery in your case?

18 A Yes, it was.

19 MS. BLANCHETTE: Your Honor, at this time I'd move this
20 in as Applicant's 2 and 3.

21 MS. WHITE: Without objection, Your Honor.

22 THE COURT: Without objection.

23 (WHEREUPON, the phone records of Mr. Buckson were
24 marked as Applicant's Exhibit No. 2 and the phone records of
25 Ms. Foggie were marked as Applicant's Exhibit No. 3. Both

1 exhibits were received into evidence at this time.)

2 THE COURT: And we will mark -- Applicant's 2 will be
3 Mr. Buckson's and Applicant's 3 will be Ms. Foggie's. Okay.

4 Q Mr. Buckson, I'm providing you a copy of what's been
5 marked as Applicant's No. 2 and 3, and those are the phone
6 records you used, received as part of the discovery in your
7 case, is that correct?

8 A Yes, ma'am.

9 Q Okay. Now, Mr. Martin testified about the fact that
10 you'd been receiving phone calls from Tiffany that day.

11 Could you first explain your memory of what had
12 happened that day when you were helping Mr. Martin move?

13 A We had to leave the vehicle at his brother's house. We
14 drove to his girlfriend at the time house, mother of his
15 kids. I made the mistake of leaving my cell phone in the
16 vehicle at, at his brother's house. So, I wasn't able to
17 contact anyone.

18 During this time, you know, after we finished helping
19 her move, we came back, I seen I missed a couple of phone
20 calls, and I had like six or seven messages on my phone. I
21 didn't -- I initially didn't know, didn't know I left my
22 phone in the vehicle. When I checked my messages, Tiffany
23 was on the -- the phone records showed the calls that she
24 made to me. I felt like they could of been utilized in the
25 trial if they were spoken about, but in the proceedings they

1 only talked about me calling her.

2 As you can clearly see on the phone records, if you
3 knew the numbers, at which we know the numbers, you can see
4 that her number is the originating number in which she's
5 calling my phone, and my records, my originating number, I'm
6 calling her phone.

7 Q Now, Mr. Buckson, since I don't know the numbers and I
8 assume most of the people in the courtroom don't know the
9 numbers. Just, if you could, make some specific references
10 to those records for us.

11 A Tiffany number is [REDACTED]. My number is

12 [REDACTED]

13 Q And specifically tell us which records you're referring
14 to where it shows her calling you during that time frame?

15 A If you look at the originating calls you can see --.

16 Q And let me stop you there.

17 On which phone record?

18 A On Tiffany's.

19 Q Okay. Go ahead.

20 A You can see where she made the phone calls to me around
21 seven or eight times before the incident.

22 Q And are you alleging today that your attorney failed to
23 show her these records that were in discovery that she was,
24 in fact, calling you that day when people were alleging you
25 had been broken up?

1 A Yes, the prosecution made it seem like I was calling
2 her repeatedly, repeatedly, and she was never responding and
3 never corresponding with me. I felt like Mr. Warder should
4 of disputed that with these records that he had in this
5 motion.

6 Q And you admitted that you called her, and I will say a
7 ridiculous amount of times. It was, I believe, over 30
8 times.

9 But what you're saying your attorney failed to do is
10 show that she was, in fact, calling you that day too?

11 A Yes, after -- I knew I was kind of in trouble because I
12 didn't have my phone and she was wondering where I was at.
13 So, I initially, when I do get my phone, I have to start
14 calling her and I knew she was probably mad at me because I
15 hadn't called her and I haven't responded to her phone call.
16 Therefore, yes, I'm calling her repeatedly because no one
17 had answered the phone.

18 Q And Mr. Antwan Martin would have been a necessary
19 witness at your trial to further establish the fact that she
20 had been calling you that day, is that correct?

21 A Yes, ma'am.

22 Q Okay. Now, let's talk about Chad Tate. He also
23 testified here this morning.

24 A Yes, ma'am.

25 Q He was called as a witness at your trial, is that

1 correct?

2 A Yes, ma'am.

3 Q After you heard Chad Tate's testimony at your trial,
4 what was your kind of gut reaction, Mr. Buckson?

5 A I felt like he wasn't utilized as he stated. I mean
6 you asking him questions about furniture that had been at
7 the house a year prior to me ever moving in with Tiffany.
8 Instead of asking him how many times would I pick up the
9 boys, he would pick up the boys from me, where would we be
10 when we pick up the boys, you know, just basically simple
11 questions that were common knowledge, common knowledge to
12 ask.

13 Q And Mr. Roy Williams also testified today, and he was
14 initially listed as a witness for the State, is that
15 correct?

16 A Yes, ma'am.

17 Q And the State didn't utilize him, nor did your
18 attorney, correct?

19 A No, ma'am.

20 Q Did you want your attorney to talk to Mr. Williams?

21 A Yes, I did.

22 Q Okay. And why, why did you want him to talk to him?

23 A Because he -- for one reason, she, he's Tiffany's
24 stepfather. I mean I feel like that this man is a good
25 person that I know of, and he wouldn't lie just for the

1 simple fact of relationship to family. I felt like they,
2 the prosecution didn't call on him because he had something
3 else to say other than agreeing with whatever the
4 prosecution was going for. I felt like he, he could of been
5 utilized to better my trial, better my standards.

6 Q And the State did call her mother, Taffy Williams, is
7 that correct?

8 A Yes, ma'am.

9 Q And did you want your attorney to utilize Mr. Williams
10 to, in some ways, refute the testimony of Taffy Williams?

11 A Yes. Yes, I did.

12 Q And you felt that he could be possibly an impeachment
13 witness on the State's witness, is that correct?

14 A Yes, I did.

15 Q Is there anything else regarding Chad Tate or Lloyd
16 Williams that you would like to tell the Court?

17 A No, I don't.

18 Q Now, let's, let's talk about your trial.

19 At the beginning of the trial, Page 54 and 55, the
20 State indicates you gave three statements, a 9-1-1 call, an
21 interview with officers, and a written video statement.
22 Your defense attorney agreed that those were voluntarily
23 given.

24 Did you have any objection to those statements?

25 A No, I didn't.

1 Q And why is that, Mr. Buckson?

2 A Because they was free and open statements and because I
3 was telling the truth. I never lied to the State about
4 anything that happened.

5 Q Okay. And did your case get a lot of media attention?

6 A Yes, it did.

7 Q Just explain briefly what you mean by media attention.

8 A It was several newspaper, paper articles about the
9 Marcus Watson and Tiffany's death. This case had been going
10 on for a year. Considering that it had the trial on the day
11 the incident happened, it was, it was public knowledge of
12 what was going on to everyone.

13 Q And a lot of the headlines were about the fact that Mr.
14 Watson had previously been in law enforcement, is that
15 correct?

16 A Yes.

17 Q Okay. And do you think that played into the media
18 attention?

19 A Oh course, yes.

20 Q Now, you were the only one that went on trial though,
21 is that correct?

22 A Yes, ma'am.

23 Q Now, on Page 400 you-all take a break, a typical break,
24 and think you're gonna come back to Court the next day, is
25 that correct?

1 A Yes, ma'am.

2 Q But what, in fact, happened?

3 A It started snowing. The weather got bad.

4 Q Okay. And how many day break did you have from court?

5 A It was the weekend.

6 Q Okay. Was it the weekend plus an extra day?

7 A Yes.

8 Q Okay. Now, it's noted in your transcript that there
9 was no court because of snow, which is pretty rare here in
10 South Carolina, but when -- you-all resumed on Page 404.

11 In light of all this media attention, did Mr. Warder
12 ask that the jury be questioned about what they may have
13 seen over the long weekend?

14 A No, he didn't.

15 Q Okay. And did you have any concerns that they may have
16 seen all of this in the media when they had that extended
17 break?

18 A Yes, I did.

19 Q Okay. Did you also have a concern about the jury
20 seeing you at some point when you were in cuffs?

21 A Yes, at one point I was called, it was called a recess
22 and the jury was leaving out. I was suppose to be, be held
23 up by the officer, and wait on the jury to leave out. They
24 rushed me. A few of the jury members seen me in handcuffs,
25 and I felt like that's not a good look considering I'm, I'm

1 presumed innocent, and they wasn't suppose to see me in
2 handcuffs during this trial.

3 I, I basically screamed. I asked Mr. Warders, I asked
4 to speak to Mr. Warders. He came through and I told him the
5 jury members just seen me in handcuffs, that can't be good,
6 and he sat there for a minute and he was basically saying,
7 you know, I think we got a good chance of winning this,
8 let's, let's just not even worry about that.

9 Q All right. Now, let's talk about what we're primarily
10 here today about is whether or not you lived in that
11 apartment and had the intent to commit a crime, and whether
12 or not Mr. warder effectively presented that on your behalf.

13 Now, the issue of your residency at that apartment came
14 up throughout your trial, is that correct?

15 A Yes, ma'am.

16 Q And, specifically, if you could turn to Page 79 of
17 your, your transcript there.

18 A (Witness complies.)

19 Q You said 79.

20 Q 79. If you could look at Lines 11 through 13, and then
21 also the answer on Lines 15 through 18. So, you can look at
22 11 through 18.

23 There does Officer Satterfield, Officer Satterfield
24 indicate that you, in fact, told him it was your residence,
25 but that you had gone through the window?

1 A Yes.

2 Q Okay. And was that, in fact, true?

3 A Yes, it was.

4 Q Okay. Now, he says there that you told him you did
5 have a key.

6 Did you have a key at that time?

7 A Yes, I did.

8 Q Okay. Was your key working to the apartment at that
9 point?

10 A Yes, it was.

11 Q Okay. Why did you not use your key that evening?

12 A My key -- I gave my key to Taffy Williams.

13 Q Okay. So, you didn't have a key on you that night?

14 A No, I didn't have it on me, no.

15 Q Okay. I'm sorry. You might of been confused by my
16 question.

17 You didn't have a key to gain entry that night?

18 A No. No, ma'am.

19 Q Okay. And you explained at trial the reasoning was you
20 gave it to her mother?

21 A Yes, I did.

22 Q Okay. And what had happened right before you gave that
23 key to her mother?

24 A The week prior to the apartment had basically flooded
25 and we had to get new carpet in the apartment. We left the

1 apartment, stayed at my mom's house some of the time, and
2 some of the time Tiffany would go to her mother's house. At
3 that time period we had plumbers in and out of the
4 apartment, plumbers and maintenance men, and we didn't
5 really feel comfortable with having the same locks. So, we
6 asked them to change the locks also.

7 This is the reason the key incident happened. When
8 they changed the locks they only gave us one key. Tiffany
9 made copies at the Wal-Mart up the street with that key.
10 Tiffany gave the key, made two copies of the key. She gave
11 one key to Taffy. She gave one key to me. Taffy tried to
12 use her key. Her key wasn't working. Tiffany asked me to
13 let Taffy see the key, my key, which was working,
14 considering I go to work early, the earliest and I get off
15 the latest.

16 I work 12 hours. Tiffany work seven hours. She would
17 usually be home about four o'clock. I would be home about
18 5:30. This---

19 Q Okay. Okay. Now, I was gonna say -- and you testified
20 to that at trial, right?

21 A Yes, I did.

22 Q Okay. And Mrs. Williams testified otherwise at trial?

23 A Yes, she did.

24 Q Okay. And we stand by the record of what happened at
25 trial, is that correct?

1 A Yes, ma'am.

2 Q Okay. Now, Charlene Ellis also testified at trial, is
3 that correct?

4 A Yes. Yes, she did.

5 Q And she was present in the apartment that evening?

6 A Yes, she was.

7 Q Okay. Had you been in the apartment at all that
8 evening?

9 A Which, which incident?

10 which time?

11 Q On January 29th, 2006, had you gone back after
12 helping Antwan move?

13 A Yes, I went, I went back around 8:30, nine o'clock.

14 Q Okay. And then after that where did you go?

15 A I went back to my mom's house. She was asleep.

16 Q And why were you at your mom's house so late that
17 evening?

18 A She had called me, told me she was in the hospital,
19 told me that I needed to stop by, check on my little
20 brother, then she asked me, you know, they gonna keep her
21 longer. So, I may need to stay with him. I told her well,
22 I got to go back to the apartment because I don't have any
23 clothes here, I got to get my work clothes and stuff. She
24 was like okay.

25 I told her that, you know, Tiffany was gonna be mad

1 about this. She was like I know, but your brother's there
2 by hisself, he ain't nothing but ten years old. So, of
3 course, naturally, yeah, I'm gonna stay with my brother. I
4 mean considering that my job is basically closer to my mom's
5 house and it would, it would of been, you know, easier to
6 stay with my mom because my little brother basically school
7 was closer to my mom's house.

8 Q But your mom returned from the hospital that night?

9 A Yeah, she came home earlier than she expected. This is
10 the whole reason I went home. Like I said, if you look at
11 the phone records, Tiffany called me three times before and
12 she asked me was I coming home, and the first three times I
13 said no, I'm not, I'm not coming home right now. You know
14 what I'm saying, I'm not coming home tonight because I got
15 to stay with my little brother.

16 when I found out my mom was coming home, of course, I
17 changed my mind, and I'm like well, let me go home because
18 she already upset with me. So, I'm gonna go ahead and go to
19 the house.

20 Q Now, going back to Ms. Ellis, when she testified, on
21 Page 135, she testified on Page, Lines 1 through 7, and I'll
22 just summarize it unless there's an objection. She
23 testifies that everything in the apartment belonged to the
24 victim, is that correct?

25 A That's what she testified to.

1 Q Okay. And then let's look at Page 140, Lines 20
2 through 25, and then through Line 4 on the next page.

3 A Uh-huh. (Affirmative).

4 Q And your defense attorney actually asked her, on
5 cross-examination about her statement where she says she
6 told Tiffany to put all your stuff outside. So, there
7 was -- was there some confusion in her testimony -- she's
8 saying you had nothing there, but yet she's saying she told
9 Tiffany to put your belongings outside?

10 A Yes, I was wondering why he didn't even say anything
11 about that. I mean one statement she saying I didn't
12 have -- like he just said, I didn't have anything there and
13 then the other statement basically she gave the, gave the
14 statement right when this happened. So, I'm pretty sure she
15 would remember it like right when it happened, and the next
16 statement was my clothes is still basically in the
17 apartment. So, why you didn't put his stuff outside. She
18 was asking Tiffany why she didn't put my stuff outside.

19 Q So, you wanted Mr. Warder to go further with his
20 questioning in that regard?

21 A Yes. Yes, I did.

22 Q Now, Jimmy Carroll testified. He was a maintenance man
23 at Bradford, Bradford Grove.

24 Did you know he was gonna testify?

25 A No, I did not.

1 Q If you could turn just a couple pages to Page 144 and
2 there, on Lines 1 through 11, he explains about changing the
3 locks, and he indicates it's because she was having a
4 problem with her boyfriend and your attorney objected, which
5 was sustained, and then just a couple pages later, on Page
6 147, he essentially says the same thing again, and your
7 attorney objects and moves for a mistrial.

8 My first question is did you have any idea he was gonna
9 testify to that information?

10 A No, I didn't.

11 Q Okay. And was that information correct?

12 A No, it wasn't.

13 Q Okay. And did the judge grant a mistrial?

14 A No, he didn't.

15 Q Okay. Now, I'm gonna ask you about a couple people
16 here really briefly that came and testified about an address
17 you had given. On Page 182 Captain Jones from the county
18 detention center comes, and he testifies that, at the county
19 detention center, you gave 114 Cannon Circle as your
20 address.

21 The first question is what's located at 114 Cannon
22 Circle?

23 A That's my mom's house.

24 Q Okay. And why did you give that address?

25 A I mean I mainly used that address as a mailing address

1 because, permanent address. My mom been there for like 15
2 or 20 years.

3 Q And your mom came to your trial and testified to that
4 extent, is that correct?

5 A Yes, ma'am.

6 Q And she's here today, but there's no reason to recall
7 her to say that exact information?

8 A No, ma'am.

9 Q Okay. Susan Bagwell came from the Spartanburg Auditors
10 office. On Page 195 she said that you gave [REDACTED]
11 [REDACTED] as your address on a bill of sale for a vehicle.

12 A Yes, ma'am.

13 Q why did you give that address, Mr. Buckson?

14 A As I stated, that's my permanent address and that's my
15 mom's house.

16 Q Did you have any idea that Captain Jones and Susan
17 Bagwell were gonna come testify about those records?

18 A No. No, I didn't.

19 Q And finally, Elizabeth Starnes came from the DMV, and
20 on Page 245 she testified that the address on your driver's
21 license was [REDACTED].

22 The first question is did you know she was gonna come
23 testify?

24 A No.

25 Q The second question is why was that address on your

1 driver's license?

2 A Because the driver's license was issued to me in 2004.

3 Q All right. Mr. Buckson, I'm gonna ask you about two
4 additional State's witnesses. The first being Tasha Allen.
5 She was the assistant manager at the apartment complex at
6 the time.

7 On Page 200, if you've looked, beginning on Line 7, she
8 testifies that you weren't listed on the lease, and if she
9 knew you lived there you would be terminated.

10 why were you not listed on the lease?

11 A Because Tiffany was receiving government assistant
12 housing. So -- go ahead.

13 Q And she actually explained, on Page 204, that the rent
14 would of gone up if she would of known you were living
15 there, is that correct?

16 A Yes, the rent would of went up. It basically -- if I
17 would of been, if it was known I was living there, the -- we
18 would of lost the kids day care, which is \$150 a week for
19 the children. The rent would of doubled. This is the whole
20 reason that my name wasn't on the lease.

21 Q Now, were there additional questions you wanted your
22 attorney to ask Ms. Tasha Allen about her work at the
23 apartment complex and her knowledge of you?

24 A Yes.

25 Q What, what did you want him to ask her?

1 A I mean I wanted to ask him did she ever see anybody
2 come through the apartment complex because she really was in
3 the background. She had secretaries. She wasn't the person
4 who took delivery of the payments, and that's mainly what
5 people go to the rent office for is to make payments.

6 Q And did your attorney ever ask her how many leases she
7 terminates because other people are living there?

8 A No, she didn't. No, he didn't.

9 Q Did your attorney ask this maintenance man that came
10 and testified if he'd ever seen you or asked Ms. Tasha
11 Allen?

12 A No.

13 Q Is there anything else regarding Tasha Allen or the
14 maintenance man that you would like to tell the Court about?

15 A No.

16 Q Now, Edgar Guthro came and testified. He was the crime
17 scene technician at the scene.

18 He testified that he didn't see any men's stuff in the
19 closet or bathroom and that's Pages 218 and 224.

20 Your Honor, may I approach the witness?

21 THE COURT: Yes, ma'am.

22 Q Mr. Buckson, can you identify what this appears to be
23 for the record?

24 A That's the picture of a toothbrush that's in the
25 bedroom with clothing on the floor, by the floor.

1 Q And was this picture ever actually used at your trial?

2 A Yes, it was.

3 MS. BLANCHETTE: Your Honor, at this time I'd move the
4 picture in as Applicant's No. 4.

5 MS. WHITE: No objection, Your Honor.

6 THE COURT: Without objection it will be Applicant's 4.

7 (WHEREUPON, the photograph was marked as Applicant's
8 Exhibit No. 4 and received into evidence at this time.)

9 Q And then I'll leave you with this one and ask you to
10 identify another picture.

11 Can you identify what that appears to be for the
12 record?

13 A It's a picture of my jacket in my vehicle and my
14 construction helmet.

15 Q And do you recall if this was used at your trial?

16 A Yes, I think it was, yes.

17 MS. BLANCHETTE: Okay. Your Honor, at this time I move
18 this in as Applicant's No. 5.

19 MS. WHITE: With no objection, Your Honor.

20 THE COURT: Without objection.

21 (WHEREUPON, the photograph was marked as Applicant's
22 Exhibit No. 5 and received into evidence at this time.)

23 Q Now, if I recall from the transcript, these pictures,
24 the record's from your testimony, but is there more that
25 you'd like to explain regarding these pictures today?

1 A Yeah, the clothing line is Ecko Unlimited. I wear Ecko
2 a lot. I have a lot of items which says Ecko on them. They
3 were saying -- I think Taffy stated that I had no clothing
4 and a couple other people stated I had no clothing.

5 It's, it's amazing how they inadvertently took pictures
6 of my clothing taking pictures of the blood stain.
7 Coincidentally you have a shirt on the futon. You also have
8 another shirt, another shirt, which is black, the same color
9 of the futon. You have two articles of clothing just
10 sitting about laying there. Tiffany washed clothes earlier
11 that day at Taffy's house. Most of the stuff dried and had
12 been folded up.

13 You would not really see any clothes out and about
14 because, you know what I'm saying, we're not just sloppy,
15 you know with it. We put everything up. If they would of
16 opened drawers, they would of found underwear in the, in the
17 dresser drawers. If they would of -- they took pictures of
18 the, the closet. But they had articles hanging in the
19 closet. You can't tell what kind of clothes from a picture
20 of articles hanging in the closet unless you actually took
21 the clothes out.

22 Q And these pictures are taken immediately by the crime
23 scene technician, is that correct?

24 A These, these pictures was taken the day of.

25 Q I'm gonna, I'm gonna show you some additional pictures,

1 Mr. Buckson.

2 Could you identify what this appears to be for the
3 record?

4 A That's a book with a couple of records, bill statements
5 inside the bedroom.

6 MS. BLANCHETTE: Your Honor, at this time I'd move this
7 in as Applicant's No. 6.

8 A Matter of fact, that's, that's my book.

9 MS. WHITE: No objection, Your Honor.

10 THE COURT: Without objection.

11 (WHEREUPON, the records were marked as Applicant's
12 Exhibit No. 6 and received into evidence at this time.)

13 Q Mr. Buckson, regarding the picture, was it introduced
14 at trial during your testimony.

15 A Yes, it was.

16 Q Do you recall specifically it being introduced?

17 A No, it -- the picture wasn't, but I remember seeing it
18 on a piece of paper saying item.

19 Q Okay.

20 A I didn't see it.

21 Q Did you testify about that picture?

22 A Yes, I did.

23 Q And you would refer to the transcript if your memory's
24 incorrect?

25 A Yes, ma'am.

1 Q Okay. Now, regarding that picture, what, what's in it?
2 what does that -- what is it to you?

3 A It's a couple of bill statements, a couple of receipts
4 from me purchasing clothing. I think I had school records
5 plus employee information from my job.

6 Q Okay. And in the police reports they actually indicate
7 that they found your documents there in the bedroom, is that
8 correct?

9 A Yes, ma'am.

10 Q And that picture represents your documents that were
11 found in Ms. Foggie's bedroom?

12 A Yes, ma'am.

13 Q Okay. Do you feel that your attorney properly
14 addressed that issue and made that clear to the jury during
15 trial?

16 A No, I don't. I don't -- I mean, if anything, you
17 should of utilized what they found, the documentation that
18 they found. You should of addressed it more. You should of
19 also addressed the issue that a lot of my clothing and
20 everything, other documents, were taken away from this
21 apartment. It's allowed to be taken away by Taffy the next
22 day before the investigation was even over with.

23 Q And you both testified to about the apartment being
24 cleaned out, is that correct, in your different version with
25 those, those events?

1 A Yes, ma'am.

2 Q Okay. I'm gonna show you one more item.

3 If you could identify that for the record please.

4 A That's a key.

5 Q Just what does it appear to be?

6 A It's a key.

7 Q And was this referred to by Edgar Guthro at your trial?

8 A The key that was on the ledge of the window.

9 MS. BLANCHETTE: Okay. Your Honor, at this time I move
10 this in as Applicant's No. 7.

11 MS. WHITE: No objection, Your Honor.

12 THE COURT: Without objection.

13 (WHEREUPON, the photograph was marked as Applicant's
14 Exhibit No. 7 and received into evidence at this time.)

15 Q And there is -- the State's witnesses talk about this
16 key that was found on the ledge that didn't work.

17 Could you just explain what that key is?

18 A That's the key Taffy left when her key wasn't working.
19 It's actually a stain right beside the key that had been
20 sitting there for like three or four days.

21 Q Is there anything else regarding those pictures that
22 you would like to tell the Court, the pictures that I've
23 handed you?

24 A I mean I just feel like there's evidence that could of
25 been utilized by my lawyer that could of been substantial to

1 my case. If you would of brought this evidence up, I feel
2 like it, it, the case could of been a different outcome.

3 Q Now, your attorney did make a directed verdict motion
4 and that's on Page 284, and he argued that you lacked the,
5 the intent to commit a crime.

6 Now, if you could look at Page 284 for me, Mr. Buckson.

7 A (Witness complies.)

8 Q Do you see where the judge asked him, told him on Lines
9 21 through 22 if he has any other grounds such as the lack
10 of consent?

11 A Yes.

12 Q And then he does give a very brief, about three line
13 argument, about the lack of consent, is that correct?

14 A Yes.

15 Q Do you feel that that portion of the statute or what
16 the State had to prove was effectively argued by your
17 attorney?

18 A No, I mean that right there pretty much sums up how he
19 felt about the burglary. He felt like it was basically just
20 a small crime. I mean he felt like if you got rid of the,
21 the murder, the burglary would go, and that, that kind of
22 summed up what kind of case this was.

23 Q Now, let's, let's talk about the defense that was put
24 up because Mr. Warder did put up a defense on your behalf,
25 is that correct?

1 A Yes, ma'am.

2 Q And he called Chad Tate, is that correct?

3 A Yes, ma'am.

4 Q And we went through already the questions that you
5 wanted him to ask him, but is there anything else regarding
6 the utilization of Chad Tate that you would like to tell the
7 Court?

8 A I mean why do you ask -- I just want to know why he
9 didn't ask the, the incident questions. Not questions about
10 who the couch belonged to, who purchased the refrigerator.
11 I mean ask questions about, you know like I said, who, who,
12 who he picked the children up from, who did he see there
13 everyday.

14 Chad wouldn't know, as far as this phone thing, he
15 wouldn't know that we didn't have the house phone there. He
16 didn't know that a week prior, I mean I'm sorry, a month
17 prior to that the house phone got turned off. He didn't
18 know that, but he knew he could get in contact with us one
19 number or the other.

20 Q Okay. And, Mr. Buckson, just to kind of be frank, were
21 you just going home that night?

22 A Yes, I was.

23 Q Okay. And that was your intent for being at that
24 apartment, is that correct?

25 A Yes, ma'am.

1 Q And do you feel that your attorney should have worked
2 to establish that through the argument and witnesses that he
3 did, in fact, call?

4 A Yes, I do.

5 Q And, furthermore, through the evidence that was
6 available in the discovery?

7 A Yes.

8 Q Now, he called your mother and what's your mother's
9 name?

10 A Teresa Buckson.

11 Q And she testified about the fact that you send
12 everything to her address, that you and Tiffany had stayed
13 with her because of the sewer backup, and that you, why you
14 were at her house that night.

15 was there anything else you wanted her, him to ask your
16 mother that you'd like me to ask her today?

17 A No, I think my mom did a good job and my aunt.

18 Q And your aunt also testified about going by the
19 apartment on a regular basis and always seeing you and
20 Tiffany there, is that correct?

21 A Yes, ma'am.

22 Q But those were the only witnesses, besides yourself,
23 that were called on your behalf?

24 A Yes.

25 Q Now, we're just here today about the burglary charge.

1 Is there anything regarding the State's witness, Mr.
2 Watson, that was also charged in this case, that you'd like
3 to point out to the Court just on the basis of the burglary
4 charge?

5 A I mean I feel like the State -- it's up to the State to
6 handle that situation with Mr. Watson. As far as the
7 burglary, no, there's nothing else I need to say about it.

8 Q Okay. But he did admit, during his testimony,
9 specifically on, on Page 162, just as Mr. Cannady said
10 today, that he told Mr. Cannady he was bringing his .38 back
11 to the house?

12 A Yes, I mean it's obvious that he brought the weapon.
13 It's no coincidence that the same kind of weapon was used to
14 kill Tiffany and Mr. Elliott seen the weapon prior to the
15 crime was ever committed.

16 Q And that would substantiate Mr. Cannady's testimony
17 today, is that correct?

18 A Yes.

19 Q Okay. Let's move on to your testimony.

20 When you took the stand, what did you feel your
21 obligation was?

22 What did you feel you had to do, Mr. Buckson?

23 A I felt like I was obligated to defend myself with the,
24 the murder and the burglary. I mean both of them carried
25 life sentences. So, they was equally harmful to me as the

1 one as the other.

2 Q And you considered both of them to be very important?

3 A Yes.

4 Q Is that correct?

5 A Yes.

6 Q Speaking of that, cause you just mentioned sentences,
7 did you and Mr. Warder go over the statute and did he read
8 to you the elements for burglary and explain to you what the
9 State had to prove?

10 A He read the elements of burglary. He didn't explain to
11 me what the State had to prove. As far as the statutes, I
12 have no clue what that was at the time.

13 Q Okay. And did you understand the legal principle that
14 burglary's a crime against possession and habitation, not a
15 crime against ownership, so, it didn't matter whether or not
16 you were on the lease?

17 A No, I didn't.

18 Q Okay. Now, I'm just gonna briefly go over your
19 testimony.

20 If the Court would like I can use citations for all
21 this or would you like me just to summarize?

22 THE COURT: Citation would be great.

23 Q Okay. Now, on Page 311, if you look at Lines 22
24 through 25, do you recall testifying that you started dating
25 Tiffany sometime around January 2004?

1 A Yes, ma'am.

2 Q And you explained that you moved in about one month
3 later, is that correct?

4 A Yes, ma'am.

5 Q And that would be on Page 312 where you explained you
6 moved in one page, one month later.

7 Now, if you could, look at Page 312, Lines 9 through
8 23.

9 Do you explain there that you kept some weightlifting
10 equipment and clothes, but they were in the hallway under
11 the stairway?

12 A Yes, ma'am.

13 Q I'm sorry. They were in the closet in the hallway
14 under the stairway?

15 A Yes, ma'am.

16 Q Okay. You can turn to Page 316.

17 On Lines 21 through 25 you explained the situation with
18 having multiple workers in the apartments. So, that's the
19 reason why you got the locks changed, is that correct?

20 A Yes, ma'am.

21 Q Okay. And please let me know if I'm going too quick.

22 A All right.

23 Q Have you---

24 A I know, I know pretty much already this file up and
25 down. So --.

1 Q Okay. If you could turn just to the next page, 317,
2 and look at Lines 18 through 23.

3 Do you explain there, you say you distributed your key
4 to her mom about three days before this all happened?

5 A Yes.

6 Q And if you could turn to Page 324.

7 A (Witness complies.)

8 Q On Page 324 did you attempt to explain what you did
9 today about the victim having called you that day?

10 A Yes.

11 Q But did you have phone records to help establish that?

12 A Yes, we didn't -- I didn't have adequate phone records.
13 It was only of that date.

14 Q But on Page 324, are you referring to specific phone
15 records and calls when you're trying to explain what
16 happened?

17 A Yes.

18 Q Okay. If you could look at Page 324.

19 Do you see where you're actually referring to the phone
20 records or are you just talking generally?

21 A In general, yes, I, I remember myself, yes.

22 Q And you also could of had Mr. Antwan Martin there to
23 testify about her calling you that day?

24 A Yes, ma'am.

25 Q Okay. If you could look at Page 325.

1 On Lines 14 through 21, do you explain how Mr. Williams
2 explained about how you guys would sometimes put the kids
3 through the window to open the door?

4 A Yes, it's mainly when they, they were really volunteer
5 their self. Like if we park around to the front of the
6 apartment, they'll hurry around to the back and go in the
7 window their self, and it was basically common knowledge
8 that the window always remain unlocked.

9 Q If you could look at the next page, 326.

10 On Lines 18 through 25 do you explain about giving
11 Tiffany money to help pay the bills?

12 A Yes, ma'am.

13 Q If you could turn to Page 347 through 348. There you
14 talk about a toothbrush, a picture of a toothbrush.

15 What were you trying to explain in your testimony there
16 when you identified the toothbrush?

17 A It was saying -- the prosecution basically was saying
18 it's only one toothbrush. So, there was only one person
19 that lived there. That was Tiffany. But he didn't look at
20 the pictures early enough, and I don't think Mr. Warders did
21 either because I had to motion Mr. Warders. I had to ask
22 Mr. Warders do you see this toothbrush that's sitting on the
23 bannister going into the bathroom, and at that time Mr.
24 Warders took advantage of that situation because he was like
25 Your Honor -- I mean basically he started telling them about

1 the other toothbrush that's in, in the, that was upstairs in
2 the apartments.

3 MS. BLANCHETTE: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes, ma'am.

6 Q Could you identify what that appears to be too for the
7 record?

8 A This is the bathroom.

9 Q Okay. And is that a picture of the bathroom with a
10 toothbrush that you were just talking about?

11 A Yes, ma'am.

12 MS. BLANCHETTE: Your Honor, at this time I move this
13 in as Applicant's No. 7.

14 MS. WHITE: No objection.

15 MS. BLANCHETTE: Eight. I'm sorry.

16 MS. WHITE: No objection, Your Honor.

17 THE COURT: Without objection.

18 (WHEREUPON, the photograph was marked as Applicant's
19 Exhibit No. 8 and received into evidence at this time.)

20 Q Is there anything else -- I'm sorry.

21 Is there anything else regarding this picture that
22 you'd like to tell the Court today?

23 A About the toothbrush, I feel like it should of been
24 questioned why DNA samples wasn't taken from this
25 toothbrush. I mean considering it was mine and I know for a

1 fact that Tiffany's toothbrush was sitting on the bannister
2 because mine was gray and blue. Hers was purple and white.

3 I'm just wondering why wasn't, why the question wasn't
4 asked why, what, why, what's, what's going on with the
5 evidence, why, why is lack of evidence because the lack of
6 evidence was proving me guilty. If we would of had more
7 evidence, they, they would of substantial, did a substantial
8 investigation, then I feel like I would be home today, and
9 that's my whole thing about Mr. Warders didn't ask these
10 questions.

11 Q You've already explained about being there that night,
12 and why you'd been there that night and why you were
13 returning.

14 Is there anything else you'd like to explain in that
15 regard, Mr. Buckson?

16 A I felt like it's a lot of people know what was going on
17 with the situation. I mean it's a lot of people who was
18 willing to talk to this day. I mean -- but it's just that
19 when people get in front of, you know, a lot of people, they
20 get worried. They, they, they don't want to hurt people's
21 feelings. They don't want to hurt the victim's families
22 feelings, but the truth is the truth. I mean you got to be
23 honest about the situation. If you know what happened and
24 you know what's going on, tell the truth. That's all you
25 got to do.

1 Q And, Mr. Buckson, is that why you took the stand at
2 your trial?

3 A Yes, ma'am.

4 Q And is that why you took the stand here today?

5 A Yes, ma'am.

6 Q Okay. Is there anything else regarding your testimony
7 or your role at your trial and work Mr. Warder that I, that
8 you'd like to tell the Court about that I failed to ask you
9 about today?

10 A I feel like you got five witnesses that you could of
11 utilized, that you could of brought in here, and I feel like
12 at the time I was on the stand by myself, which I was, which
13 I'm here now. But now is witnesses that are willing to tell
14 the truth like they was willing to tell the truth then. You
15 didn't call near one of them. You didn't attempt to even
16 reach most of them, and I just want to know -- I mean I, I
17 think he need to know why.

18 Q And, Mr. Buckson, you understand we're not here today
19 to quiz Mr. Warder and ask him specific questions, but you
20 are just here today to ask the Court for a new trial where a
21 jury would have the opportunity to hear this information, is
22 that correct?

23 A Yes, ma'am.

24 Q Okay. Now, let me ask you, in his closing argument,
25 Mr. Warder did argue, on Page 411, that you can't burglarize

1 your own home, and he gave a short argument on the fact that
2 you lived there, that you were a resident there, that you
3 can't burglarize your own home, but are you alleging today
4 there's more that he should of done to establish that for
5 the jury?

6 A I think he should of called those witnesses so they
7 could basically tell you that I lived there and they had
8 more proof than anything. My, my case was -- the burglary
9 was convicted -- I was convicted of burglary because of
10 people's testimony, statements, whatever the case may be. I
11 felt like that the witnesses that should of been called were
12 called then I wouldn't have 20 years.

13 Q And the judge gave a burglary first instruction.
14 Did he ever -- did he give any lesser included
15 instructions or did your attorney ask for any other
16 instructions?

17 A No, I didn't find out about second degree or third
18 degree burglary until after I got my time.

19 Q Now, if you could turn to Page 468 of your transcript
20 at the very end here.

21 A (Witness complies.)

22 Q The Court summarizes the fact that the jury's asked to
23 hear the 9-1-1 tapes, wants the definition of malice, and
24 would like the burglary charge again.

25 Now, if you could turn over to Page 472 to 473. The

1 judge begins complying with those requests.

2 Your Honor, if I may, may I read a portion of this into
3 the record and then ask him a question about it?

4 THE COURT: Yes, ma'am.

5 MS. BLANCHETTE: Okay.

6 Beginning on Line 5 of 472, it reads "and the last
7 question I'm not certain. I think I understand it, but it
8 says are the elements and-or-or. Anytime a person is
9 accused of a crime and there are certain elements necessary
10 to make up that crime, it's always necessary that each and
11 every element of that crime be established beyond a
12 reasonable doubt. It's not sufficient that one or more of
13 those elements are present. All elements must be proven
14 beyond a reasonable doubt before a person can be found
15 guilty of the crime that is alleged against them."

16 "Now, the only exception to the and-or-or circumstance
17 in this particular case would be with regard to the crime of
18 burglary when I instructed you on what must exist in order
19 for it to be a burglary in the first degree. The fourth
20 element allows one or a number of things to be established.
21 All of those things do not have to be established, but at
22 least one must be established before the fourth element
23 would be proven, and that's one of the elements of burglary
24 in the first degree."

25 "So, again, to illustrate that, burglary in the first

1 degree is the entering of a dwelling without consent and
2 with the intent to commit a crime therein. That's burglary.
3 Burglary in the first degree requires an additional fact be
4 proven and that additional fact would be one or more of the
5 following, and those facts would be either that the
6 defendant was armed with a deadly weapon or he caused
7 physical injury to the person of another, or he used or
8 threatened the use of a dangerous instrument, or he
9 displayed what appeared to be a firearm, firearm, or the
10 burglary occurred in the nighttime."

11 "So, the fourth element to be established, the State
12 doesn't have to prove each of those. Although the evidence
13 may establish all, the State is only required to prove one
14 of those additional facts to satisfy the fourth element of
15 burglary in first degree."

16 "Is that understood."

17 Mr. Buckson, my question is did you understand what the
18 judge was saying?

19 A No.

20 Q Was that confusing to you?

21 A Yes, because he switched from what he was saying
22 initially there.

23 Q And just in your experience being in the courtroom
24 today that day, did you feel like it was confusing to the
25 jury?

1 A It was obviously confusing to them because they had to
2 ask him the question again.

3 Q And did you understand the whole language he gave about
4 an and-or-or element?

5 A I didn't then, before now.

6 Q Okay. And are you alleging today that after the judge
7 gave his further instruction to the jury that your attorney
8 should of asked for some clarification in this regard?

9 A Yes, ma'am.

10 Q Okay. The, the jury also asked for and was given the
11 replay of your testimony and Mr. Watson's testimony, is that
12 correct?

13 A Yes, ma'am.

14 Q Now, after all those questions, questions and
15 deliberations they came out with a verdict in your case?

16 A Yes, ma'am.

17 Q If you could turn to Page 479.

18 A (Witness complies.)

19 Q On Lines 1 through 15 there's an inquiry made on the
20 record about the fact that, that it, specifically Lines 4
21 through 7, there's been something that has been stricken
22 through from the burglary indictment, but it has the
23 initials of the foreperson.

24 Did you ask Mr. Warder about that?

25 A Yes, I did.

1 Q Okay. What was your conversation in that regard?

2 A I asked him what was going on with the stricken out. I
3 didn't know it was the jury member didn't feel like I was
4 guilty of both crimes or what was going on basically.

5 Q Okay. Did you ever get an explanation?

6 A No, I didn't.

7 Q Did Mr. Warder ask for an explanation?

8 A Yes, I think he addressed that issue.

9 Q Okay. Do you see -- have -- if you could look at Page
10 479, Line 24, what actually was Mr. Warder's response when
11 he was asked if he had any other matters?

12 A You said what line?

13 Q Line 24.

14 A He said none from the defendant, Your Honor.

15 Q Okay. And that's after that issue had been brought up,
16 is that correct?

17 A Yes, ma'am.

18 Q Okay. Now, on appeal Ms. Celia Robertson raised your
19 attorney's directed verdict argument, is that correct?

20 A Yes, ma'am.

21 Q But she primarily focused on the issue of intent to
22 commit a crime, which is what your attorney had focused on
23 in his directed verdict argument, is that correct?

24 A Yes, ma'am.

25 Q Okay. And are you -- you allege in your original

1 application that your appellate attorney was ineffective,
2 but, on review, do you have any specific allegations
3 regarding her being ineffective?

4 A I, I later found out that if -- she was sick. When,
5 when it came down, I wasn't even informed by her, you know,
6 that they had denied my appeal. My mom had to tell me in
7 which she found out by going on the Internet. The woman
8 didn't even know what was going on with my case.

9 Q And that, that concerned you, is that correct?

10 A Yes, I felt like---

11 Q Okay. And that was the reason for the ineffective
12 claim?

13 A Yes, ma'am.

14 Q Okay. Mr. Buckson, I do not know how many times we've
15 met. It's been too many to probably count at this point.
16 We've met twice in the last two weeks, and I've attempted to
17 go over everything with you.

18 Is there anything else you would like to tell the
19 Court, in support of your PCR application, or any other
20 items that I have failed to introduce on your behalf?

21 A Well, like I pretty much, you know, said everything
22 that needed to be said as far as the PCR is concerned with
23 Mr. Warders. I just hope that, you know, that he'll see
24 these witnesses who took the stand and then you realize they
25 could of been utilized, and they played a great deal in my,

1 in my case, in which they were not called in which I
2 informed Mr. Warders at least three of the witnesses to be
3 called, and he basically down played it, and like if we need
4 them we'll call them.

5 And not only that, I asked, while we was in the
6 courtroom, could he call a few of these witnesses, and he
7 told me, once again, no, we don't need to go that way
8 because, you know, some of these witnesses are such bad they
9 could be playing the role on, you know, as far as on the
10 family's or the prosecution's side, and once we get them on
11 the stand they switch up on us, and I told him well, I feel
12 like they wouldn't, you know, I knew a couple of them. I
13 knew Lloyd and I knew Chad, and I felt like they wouldn't,
14 they wouldn't do that. If they needed to say something they
15 would of said it, you understand.

16 Q And, Mr. Buckson, you were on trial essentially for
17 your life, and today, by asking the Court to set this aside,
18 you could be facing substantial time again, but you wanted
19 those witness called no matter what the risk, is that
20 correct?

21 A Yes, ma'am.

22 Q Okay. And you have focused on the witness issue here
23 in these last couple moments, but you're presenting all the
24 issues that are supported by your testimony and your
25 amendments, is that correct?

1 A Yes. Yes, it is, including the, the items that was
2 seen, you know, the property that was in the home, yes.

3 MS. BLANCHETTE: Your Honor, at this time I have no
4 further questions.

5 MS. WHITE: Your Honor, thank you.

6 CROSS-EXAMINATION

7 BY MS. WHITE:

8 Q Mr. Buckson, I'm gonna try to go in the same order as
9 Ms. Blanchette went with you to kind of keep it, go back
10 through the same type questions.

11 In regards to meeting with your attorney, obviously you
12 felt like y'all did have a chance to meet several times, you
13 said seven or eight times at least, to prepare for trial?

14 A We met times before that, you know, before the hearing
15 and then we got to the trial, yes, ma'am.

16 Q Okay. And you talked with Mr. Warder and you felt like
17 you had the opportunity to share with him everything about
18 the case in regards to your defense, and information about
19 your life with the victim or your life, I guess, that you
20 thought would help him in preparing for your defense?

21 A Yes, ma'am.

22 Q Okay. Now, focusing on the murder, you testified that,
23 that he had told you or that you felt he was mainly focusing
24 on the murder and the thought that if you got rid of that,
25 then the intent to commit the crime therein would kind of

1 drop away the burglary, is that correct?

2 A Yes, ma'am.

3 Q And he also testified -- you also testified that said,
4 talked with you a little bit about the fact that you can't
5 essentially burglarize your own home, the home that you're
6 living in, is that right?

7 A Yes.

8 Q Okay. He did call several witnesses on your behalf,
9 didn't he?

10 A Yes, ma'am.

11 Q All right. And he called your mother and your aunt,
12 correct?

13 A Yes, ma'am.

14 Q All right. And he did call Mr. Tate as well, is that
15 correct?

16 A Yes, ma'am.

17 Q Okay. And Mr. Tate did testify, in fact, about coming
18 and actually picking the kids up and, and seeing you at the
19 home numerous times even without the victim at the home, is
20 that right?

21 A Yes, ma'am.

22 Q Okay. And he testified about calling and talking to
23 you and, and knowing that you were at the home with the
24 children, is that right?

25 A Yes, ma'am.

1 Q So, he didn't -- your attorney did not just elicit
2 testimony from him about the furniture --

3 A No.

4 Q -- or the telephone?

5 A No, but he, he didn't go in depth with it.

6 Q Okay.

7 A I mean he---

8 Q So, he brought up a few questions, but you felt that he
9 should do it in more detail?

10 A Yes, ma'am.

11 Q Okay. In regards to the, the statements, there's no
12 question -- you said you agreed these were voluntary
13 statements, and, in fact, you and Mr. Warder went before the
14 Court and, and the Court asked you to make sure that you had
15 no concerns over having your statements perceived as
16 voluntary and freely given, is that right?

17 A Yes, ma'am.

18 Q Okay. Now, do you recall -- Mr. Warder did make
19 several pretrial motions on your behalf, is that right?

20 A Yes, ma'am.

21 Q Okay. And it was motions having to do with excluding,
22 or, or let me rephrase that, I guess the State had made some
23 pretrial motions trying to exclude any reference to third
24 party guilt. Specifically they wanted to try to prevent
25 y'all from talking specifically about Mr. Watson.

1 Is that correct?

2 A It was as if they didn't even want to mention Mr.
3 Watson having any involvement in it.

4 Q And, so, they were trying to keep y'all from being able
5 to do that, is that right?

6 A Yes.

7 Q Okay. And, and this referencing what happened
8 pretrial, he was able to, to address that issue on pretrial
9 and, and essentially the Court kind of ruled in y'all's
10 favor and said, depending on what is brought up, you know,
11 I'm gonna let y'all proceed with it and we'll address each
12 thing as it comes up, is that right, and that might be a
13 little unclear probably?

14 A Yeah, I don't understand your question.

15 Q Okay. And I'll let the Court review the record that --
16 there were about three pretrial motions that your attorney
17 argued against the State on your behalf?

18 A I was never there. That's, that's the problem. The
19 preliminary hearings or anything, I wasn't there.

20 Q Okay. And I'm not, not preliminary hearings. These
21 were the, the motions made right before the trial started.

22 A Okay.

23 Q Okay. In regards to the jury seeing you in your
24 handcuffs, you said that you did talk with Mr. Warder about
25 it?

1 A I screamed at Mr. Warders. When I -- as soon as I
2 walked out of the courtroom, I think it was the one next
3 door, they seen me come out in the handcuffs, and the little
4 Asian lady looked at me strange, and I say I want my lawyer,
5 they not suppose to see me in handcuffs, and he came and
6 spoke to me, and he basically coaxed me like calm down, it's
7 gonna be all right, I think I got this, I think we gonna go
8 ahead and proceed no matter if they did see me.

9 Q And did he tell you that really the only remedy kind of
10 would of been to file a motion for mistrial at that point?

11 A No, he didn't tell me originally. He just basically
12 was like go ahead and we'll go through with it. I knew, I
13 knew it would of been a motion for a mistrial. That's the
14 whole purpose I screamed. I mean yeah, if you see me in
15 handcuffs and I'm suppose to be presumed innocent, yeah,
16 let's get a mistrial so we can get new jury members.

17 Q Okay. But you said that Mr. Warder said to you that he
18 thought that things were going well at this point, didn't
19 he?

20 A He was my lawyer, yes, he did.

21 Q Right.

22 So, he thought that things were going well for you and
23 he didn't want to get a new jury was essentially what he's
24 telling you?

25 A Yeah, he didn't want to get a new jury.

1 Q Right.

2 Because he thought that, that things were going well
3 for you in the trial, is that right?

4 A If I -- basically if I notified him about somebody
5 seeing me with handcuffs on, that means I'm telling him for
6 a reason because if the jury members were judging my life,
7 see me in handcuffs, it obviously looks as if I'm already
8 convicted.

9 Q And, and just -- I'm trying to get a question here.

10 He thought that the trial was going well for you and,
11 therefore, he did not want to ask for a mistrial.

12 Is that your understanding?

13 A Yeah, he thought. That's---

14 Q Okay.

15 A ---what I just said. He thought -- yes.

16 Q Okay. And he is the one that's got the law degree and
17 has 25, 30 years of experience, is that correct?

18 A He's not the one whose life is on the line facing
19 lethal injection or whatever the case may be.

20 Q Mr. Buckson, is he the one with over 30 years of legal
21 experience?

22 A He's a lawyer, yes, ma'am.

23 Q Thank you.

24 Now, when you went -- and we talked I think about one
25 of the investigators that talked with you. The one that you

1 explained to about going through the window and explained to
2 him -- I think it was Investigator Satterfield. It's Page
3 79 if you want to look at it. You explained to him that,
4 that you didn't have a key, but that you had given it to
5 him.

6 You also -- the investigator stated, on Line 21 and 29,
7 that you said she must have changed the locks.

8 Do you recall that?

9 A Yes, I recall him saying that.

10 Q Okay.

11 A I didn't say it. I recall him saying it in the trial,
12 but I didn't say it.

13 Q Okay. So, you disagreed that, that you did not tell
14 the investigator that Tiffany must of changed the locks?

15 A No, I -- yeah, I disagree, I disagree---

16 Q Okay.

17 A ---me saying that.

18 Q Okay. In regards to Charlene's testimony, you
19 testified that you had been over there earlier that night
20 and you were saying that, that she made the comment that,
21 that she had told Tiffany to put your things outside, and
22 you know that -- when she was saying put the things outside,
23 to not let you in, indicating that, obviously supporting the
24 thing, the idea that you didn't have a key, but also
25 supporting the idea that, that she didn't want you in the

1 house.

2 A Okay. The reason why we said that because initially
3 she said to put my things outside. Then later on she said
4 my things never was in the apartment to begin with. So, my
5 thing was how can she change her statement while she's on
6 the stand from what she said and I mean yeah. So, yes.

7 Q And my question is why didn't Tiffany want to let you
8 in the house that night to begin with if, if you were living
9 there and y'all were still dating?

10 A That's the whole thing. That's, that's what I'm
11 saying. Why would she -- why wouldn't she?

12 That, that was not agreed upon with me. That's what
13 Charlene said.

14 So, why wouldn't she let me in?

15 And then if she didn't want me to come in, why did she
16 let me in to begin with?

17 Why did I -- why, why was I, I able to come in the
18 house and change clothes and leave and then---

19 Q Okay.

20 A ---why did I receive phone calls after that telling me,
21 asking me when I was coming back home?

22 Q In regards to knowing who was gonna testify I guess on
23 behalf of the State, you testified that you didn't know
24 about the maintenance man or the, the folks I think from
25 like DMV and different things like that.

1 Did you have a chance at all -- did y'all -- the state
2 I think maybe had three pages of people listed as potential
3 witnesses.

4 Did you have a chance at all to look at that with
5 Mr. Warder?

6 A Mr. Warders, to my knowledge, he didn't know some of
7 the witnesses that were being called.

8 Q Okay. And do you know even when y'all got that list?
9 Did you get it maybe the day of trial or---

10 A Yeah, we got it -- yes, ma'am, we got it the day of
11 trial.

12 Q Okay. So, you didn't even -- Mr. Warder didn't even
13 receive that notice until the date of trial?

14 A He received some of the witnesses, but he didn't
15 receive all of them.

16 Q Okay. So, a list of names which some of them didn't
17 even have maybe where they worked beside it?

18 A Oh, I didn't, I didn't see the list. I just---

19 Q Okay.

20 A ---went by -- like every witness that came up,
21 basically he would tell me who this person was. That was
22 the type of notification I got.

23 Q Okay. So, you found out just as they were walking up
24 to the stand and --?

25 A But I presume that him and the prosecution had talked

1 about who was coming to -- that's basically, basic knowledge
2 that the prosecution and the lawyer gonna talk about who was
3 fixing to take the stand.

4 Q Okay. And if you find out different, would you be
5 surprised if sometimes defense attorneys don't even find out
6 till maybe almost the day of trial who the State's gonna put
7 up as a witness?

8 A But I mean he knows, he knows the day of trial. So, he
9 has ample time to tell me the day of trial before the trial
10 start. Not while I'm sitting right beside him.

11 MS. WHITE: Okay. One moment please, Your Honor.

12 (Pause.)

13 Q In regards to the photos that we've seen today, now,
14 all the photos that we've put into evidence today that your
15 counsel has put in were placed into evidence at the trial,
16 is that right?

17 The picture of the clothing on the futon?

18 A Yes, ma'am.

19 Q And, in fact, that was introduced at trial and was
20 mentioned during the questioning and also in closing, right?

21 A Yes, ma'am, to my knowledge.

22 Q Okay. And, and your attorney actually pointed out that
23 that brand of clothing was something that you wore,
24 connected it to the clothing or some, something that was in
25 your car as well?

1 A The pictures that we utilized he basically utilized
2 because he seen one shirt and I had to point out the fact
3 that it was my shirt to him when I was in trial. I had to
4 let him know this is, these are my clothing items.

5 Q Right.

6 which he wouldn't have known had you not told him
7 anyway, correct?

8 A Yes, ma'am. Yes, ma'am.

9 Q Okay. So, so, you pointed out this is my shirt on a
10 futon, matches with some clothing, clothing in my car?

11 A I mean it wasn't just the point that it matched. It
12 was the point that it's men's clothing---

13 Q Okay.

14 A ---on the futon, yes.

15 Q Okay. And, and he raised that point at trial and in
16 his closing argument, did he not?

17 A Yes, ma'am.

18 Q Okay. The picture of the papers on the bed, now those
19 were -- those were discovered -- they weren't laying on the
20 bed when they were originally discovered, right?

21 A No, they were in the bedroom.

22 Q Okay. So, they were placed on the bed later, is that
23 correct?

24 A Yes.

25 Q Okay. And the picture of the, the toothbrush, that was

1 pointed out at trial, is that right?

2 A Yeah, my, my thing was why these pictures like of the
3 stuff that was in the file, why wasn't they photocopied?

4 why wasn't they basically laid out?

5 why is it just a photo of a picture there that belonged
6 to Mr. Buckson I mean with paperwork in it?

7 why, why this stuff wasn't laid out?

8 Q And none of those documents had any kind of indication
9 of an address of living at that apartment, did they?

10 A I don't know what the documents basically said. As far
11 as like the receipts and some, I'm pretty sure what the
12 receipts did.

13 Q And you've testified that you did get most of your mail
14 at your mother's address in wellford, is that correct?

15 A Yes, ma'am.

16 Q Because of the permanent address?

17 A Yes, ma'am.

18 Q So, most likely any of the mail you had received or any
19 of the documents that were there for any---

20 A That's what I'm saying. If it was there at the
21 apartment, then more than likely I didn't bring it from the
22 apartment to my mother's house. Also we should of had a
23 chance to look at the documents. That way we could of
24 determined if they had a mailing address on them. To this
25 day we still don't know where the document's at right now.

1 Q Okay.

2 A We just have a picture of them.

3 Q But your testimony is you might of had employee
4 statements or bills that you received at the house?

5 A Yeah.

6 Q At Bradford Grove?

7 A I mean as far as like bills like for the apartment,
8 like utility bills, like I said, I didn't have any utilities
9 in my name for the fact that she was under Section 8. She
10 would of lost the, the government housing.

11 Q And you testified at trial that you pretty much didn't
12 receive any mail there, is that not correct?

13 A For the most part nothing that could be basically like
14 a light bill or something. None of that was in my name.

15 Q And would you have received any employment information?

16 A That I don't know because I had like 4,000 in that
17 year. I'm sorry, within the prior year. So, I don't know
18 if I, I signed my mother's address to it or hers, or
19 Tiffany's.

20 Q Okay. And your attorney did, although you disagree
21 that he argued effectively, he did argue on a directed
22 verdict against the burglary charge stating that the State
23 had not met its burden of proof, is that right?

24 A Yes, but he didn't object twice.

25 Q Okay. And he didn't, you claim, make an effective

1 argument, is that right?

2 A He didn't object twice, but you got to object twice to
3 it.

4 Q Okay. And I think we've gone over the picture of the
5 toothbrush.

6 That was entered in and discussed as well as testimony
7 in his closing by your attorney?

8 A Yeah, like I say, he, he discussed, for the most part,
9 everything, but he did not go into detail about what these
10 things were or what substantial content that they had
11 involving my trial, involving my case.

12 Q All right. And the indication on the I believe it was
13 Page 468 where, I'm sorry, 479 the issue of something that
14 was struck through. I believe it was on a verdict form, and
15 the Court says it appears to have been the initials of the
16 foreperson, and the foreperson acknowledges that and says
17 yes, sir, it's correct, no problem with it.

18 A What, what number, what line?

19 Q Page 479.

20 A What line?

21 Q That's Lines 4 through 9. That was the issue that you
22 said you were concerned that maybe a juror did not want to
23 go through with the verdict or maybe they had an issue.

24 Isn't it true that the juror foreman acknowledged right
25 beneath that that he had made initials and struck through

1 them and said there was no problem, and then the jury was
2 essentially polled and asked, by raising their hands, if
3 they all had made that, given that verdict?

4 A Yes, ma'am.

5 Q Okay.

6 MS. WHITE: Your Honor, I think that's all the
7 questions I have at this time.

8 THE COURT: Any redirect limited to what she went into?

9 MS. BLANCHETTE: Very briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. BLANCHETTE:

12 Q You were asked by the State about the situation when
13 you had the handcuffs on, and you were asked about the fact
14 that Mr. Warder was very experienced and he thought things
15 were going well.

16 Did things go well for you with the burglary charge?

17 A I got 20 years.

18 Q Now, you're also asked about the version of events that
19 specifically that Charlene gave about whether or not you
20 were living there, and is that, in fact, why you took the
21 stand, to try to refute the State's witness' versions of
22 events as to whether or not you were living there?

23 A Yes, for the most part I mean they pretty much refuted
24 itself because they made statements and then they came on
25 the stand and lied and said something else.

1 Q Okay. And you were asked several questions about the
2 pictures that we introduced as Applicant's Exhibits.

3 Those were actually introduced in bulk or all at the
4 same time at your trial, is that correct?

5 A Yes, ma'am.

6 Q So, it's hard to tell from the record exactly which
7 pictures were introduced, but I'm going to ask you do you
8 specifically remember being asked about the folder with the
9 paperwork, and did you have the opportunity to explain it
10 like you did today?

11 A No, I didn't.

12 Q Okay. Now, the State asked you about records, what
13 could be in that folder, different records such as work
14 records.

15 In this, in preparation for your PCR, did you, in fact,
16 hire a private investigator?

17 A Yes, I did.

18 Q And did she try to obtain a number of records on your
19 behalf?

20 A Yes, she did.

21 Q And was the result mostly in those records that too
22 much time had passed for us to be able to obtain any of
23 those records?

24 A Yes, ma'am.

25 Q Now, you said something that confused me a little bit.

1 So, I want you to clarify. When asked about the directed
2 verdict motion you said your attorney failed to object
3 twice. I think you might be confused a little bit.

4 Are you actually alleging today that he just did make
5 the, an effective argument on your behalf?

6 A Yes, that's what I'm saying.

7 MR. BLANCHETTE: Okay. I have no further questions.

8 THE COURT: All right. Thank you, sir. You may step
9 down.

10 DEFENDANT: Thank you.

11 THE COURT: Lawyers want to approach a moment?

12 (Whereupon, a bench conference was held at this time.)

13 THE COURT: We'll step down.

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

15 THE COURT: Yes, ma'am.

16 MS. BLANCHETTE: Your Honor, that concludes our
17 witnesses. I may need to call reply witnesses. I'm not
18 sure at this time until the conclusion of that case.
19 However, I do have some cases to hand up in support of our
20 arguments.

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

22 MS. WHITE: Yes, Your Honor.

23 THE COURT: Call your witnesses.

24 MS. WHITE: The State would call Richard Warder to the
25 stand.

1 THE COURT: Mr. Warder, come up here and let me swear
2 you in.

3 RICHARD WARDER, being first duly
4 sworn, testified as follows:

5 THE COURT: Thank you. Have a seat and pull the chair
6 up to the microphone if you would.

7 DIRECT EXAMINATION

8 BY MS. WHITE:

9 Q Mr. Warder, if you wouldn't mind placing your name on
10 the record for us.

11 A It's Richard H. Warder.

12 Q And if you could, just give us a brief history of how
13 long have you been practicing law.

14 A I graduated from Law School in 1974. I, I took the
15 Iowa bar and South Carolina bar that year and been
16 practicing since then.

17 Q And you -- in regards to your practice, I guess, that's
18 been a little over 35, 37 years of practicing law.

19 Have you always practiced criminal law?

20 A I had a general practice that slowly became more
21 criminal. For about the last 15 years I've done nearly
22 exclusively criminal, and at the present time I'm only
23 accepting cases in criminal.

24 Q Okay. And in regards to the types of cases, you said
25 criminal, what levels of court have you practiced in and

1 what types of cases I guess which is in the criminal law,
2 realm?

3 A Well, I do, I do, do general. I actually -- I take
4 magistrate level court cases. I take Federal Court cases.
5 I take all General Sessions cases. Generally, if you've
6 been arrested I'm interested in handling your case.

7 Q So, this was not your first murder or burglary first
8 case?

9 A No.

10 Q Now, how did you become acquainted with Mr. Buckson in
11 this case?

12 A I'm sure it was his -- I don't know the exact way, but
13 I think his mother came to see me.

14 Q Okay. And you were retained to represent him in the
15 case?

16 A Yes, ma'am.

17 Q Okay. Mr. Buckson mentioned that he was not bonded out
18 at the time, just a brief mention of a preliminary hearing.
19 I just wanted to touch on that.

20 Do you recall going to a preliminary hearing for Mr.
21 Buckson?

22 A Do not recall. But in Spartanburg I often times pick
23 up the discovery, the written discovery at, at that time is
24 the first chance to get it. Generally the officers just
25 read the discovery if you have the hearing and sometimes it

1 works out just as well for me to get what they would of read
2 into the record.

3 Q Okay. And is that something in your practice here in
4 Spartanburg that normally, the defendant, it's necessary for
5 him to be present at?

6 A Well, if we don't have a hearing, there's, there's not
7 much necessity for me either cause I share what we get with
8 him. I do it, hearings only when there's some issue that I
9 need, need to get some sworn testimony and get nailed down
10 early in the case.

11 Q Okay. And in regards to just the basis of the case
12 with Mr. Buckson, total meetings, do you recall at all how
13 many meetings you had with Mr. Buckson?

14 A I know I had far more meetings with his mother than I
15 did Mr. Buckson. Mr. Buckson had the luxury of having a
16 terribly interested mother. I don't mean terrible in the
17 bad sense. If, if any son ever had a mother that was
18 devoted and his advocate on his behalf, she was his
19 advocate. She would -- if she heard something in the
20 community she would call. If she thought there was
21 something I needed to know she would call me. If there was
22 something that Jerome would ask for that, that she wanted an
23 answer to and he told her she would call me. She would come
24 and see me. She would drive to Greenville. She was
25 tremendously involved and really a tremendous advocate on

1 his behalf.

2 Q Okay. And do you recall in, I guess, your initial
3 meetings with Mr. Buckson and maybe his family, is the story
4 that, that you've heard today and that was presented at
5 trial, is that story remained consistent in regards to what
6 happened that evening?

7 A I'm not, not sure. I don't think that, that -- seldom
8 do, do a first interview and meetings does it remain
9 constant with no facts that have changed by the time you go
10 to trial. I think that there was things we focused on,
11 things we developed, things we talked about early on that we
12 didn't talk about at trial. There's things that we didn't
13 talk about that we did talk about in trial preparation. But
14 it, over the course, became more focused on what we were
15 doing.

16 Q And over the course of, of the, the meetings, what did
17 become your focus?

18 A Well, the case was, was certainly two crimes that were
19 intertwined. They happened, you know, the same time, short
20 period of time. Obviously I focused on the ones that I saw
21 was the most problematic, had the most problems, and we
22 discussed probably the murder more than the armed robbery, I
23 mean more than the burglary.

24 Q And what was the reason for that you think?

25 A Well, there's more issues with the murder generally and

1 there's more defenses.

2 Q And in regards to the strategy as attacking the charge
3 for murder, what were you going in there with regarding
4 strategy and defenses?

5 A Well, we had to, to convince a jury that the
6 perpetrator was not my client, it was the man confronted.
7 And, so, there was a lot of problems with that, and we were
8 looking -- we were generally focused on how we would do
9 that, how we would, would convince the jury, put evidence up
10 that would, would be persuasive on whether or not that
11 happened.

12 Q So, it's never an issue of self-defense as a strategy?

13 A Well, I think self-defense was, was fine, and my client
14 didn't do the shooting or anything. But certainly any
15 actions he took was in response that, his efforts to, to
16 save himself.

17 Q Obviously we'll kind of skip ahead because obviously he
18 was acquitted of the murder. You did present testimony, I
19 guess, witnesses at the, at the trial.

20 Is it fair to say that the witnesses were focused more
21 on the burglary aspect whereas your cross-examination
22 focused a little more on the murder?

23 A Well, you understand, you understand the murder, there
24 was fewer possible witnesses as to, to the circumstances of
25 the robbery. The -- my, my client was the, the real only

1 witness, and the, the man that we claimed was the,
2 perpetrated the murder, you know, with that.

3 So, it was -- in the murder there was only two
4 witnesses, each accusing the other.

5 Q And, so, when it came down to the trial, your
6 cross-examination of Mr. Watson, how would you characterize
7 the importance of that?

8 A Well, well, very important. But I think -- you know, I
9 don't mean, mean -- I think the whole trial was very
10 important. You know, it's -- a trial's not a short thing.
11 It's a drama that, that proceeds and we try and, and ask
12 questions that focus upon what's, appears to be the
13 controversy of the, of the moment, but our plan, in trial
14 from my experience and the way I see it, changes all the
15 time. It's not a, a dynamic thing that you start at the
16 front and don't deviate from. We deviate as we think it
17 will be more persuasive.

18 Q So, you're saying you could start with an idea of what
19 you're gonna do and then, depending on what the witnesses
20 would say, it could change with time?

21 A Sure.

22 Q So, have you had a chance to -- and I believe
23 Mr. Buckson did testify that you had reviewed discovery with
24 him?

25 A Over, over the course we, we looked at, tried to look

1 at everything. We tried to look at what was good about it,
2 what was negative about it. Okay. What, how that -- each
3 piece affected our overall chance, and, and pick out how we
4 were gonna go, proceed.

5 Q And we've talked earlier about it, but obviously you
6 did -- there were several pictures that the State presented
7 that you were able to try to focus on somewhat in testimony
8 regarding his possible living at the, the apartment, is that
9 right?

10 A Yes.

11 Q Okay.

12 A Frankly on that issue, you know, I thought we -- if,
13 if -- when I sat down at, before, after the testimony,
14 before, I thought we were strong on the issue of that. I, I
15 really thought that we, you know, as to the living issue,
16 whether he lived there, I thought we had most of the
17 testimony on that. I thought we had the most credible
18 testimony on that.

19 Q And, in fact, the, that was an issue, I guess, of
20 credibility. There was no direct evidence either way, was
21 there, or --?

22 A Well, I mean there was direct evidence that, that the,
23 the, the direct evidence, of course, would of been the
24 things that were found, found in the house, the testimony we
25 had of, of people that had seen him there and of that. So,

1 I mean there was some, some direct, you know, some
2 circumstantial evidence certainly.

3 Q And with the concept of you said these two cases were
4 obviously linked in that the burglary was essentially what
5 led to, as the State was saying, the murder I guess inside
6 of the apartment?

7 A Well, yeah, they were both -- the, the State's theory
8 was that we, we burglarized and broke into the apartment,
9 the apartment, we then committed a murder, and then we, we
10 withdrew from the scene on both crimes and we left her
11 and---

12 Q In regards to some of the witnesses that, that
13 Mr. Buckson has presented today and, and alleges that he
14 asked you to call, I want to just touch base on some of
15 those. Starting off with the first one that was presented,
16 Mrs. Shirley Hall.

17 Do you recall receiving, first of all, I guess the note
18 that was in your file from Ms. Hall saying that she was a
19 neighbor and could testify?

20 A I did and, you know, you recall funny things, but
21 that's one that my investigator did go and talk to because
22 we discussed quite a bit how little helpful information she
23 would give at the time and she would of told us nothing that
24 was beneficial.

25 Q And did you receive any kind of statement from her

1 after your investigator went and talked to her?

2 A I don't take statements typically, and my reason is
3 that they would be subject to discovery. If the defense had
4 statements taken from witnesses, you've got to furnish them.

5 Q Okay. So, you did have a chance to talk with her and
6 just didn't think she would be very helpful, is that --?

7 A After, after Wade went and talked with her, we felt
8 like there was nothing that seemed to be productive out of
9 it.

10 Q Okay. What about Mr. Cannady, Elliott Cannady, the
11 gentleman that was in the home playing cards that night.

12 Do you recall any conversation?

13 A I don't recall on, on the Cannady part.

14 Q And he was a gentleman I believe that was friends with
15 Mr. Watson, Mr. Mark Watson at that time and had left, I
16 think, the home of Mr. Watson prior to the events that
17 occurred that evening.

18 Had you had a chance -- did you talk with -- obviously
19 Mr. Watson was kind of the, the other person you were
20 accusing of the crime.

21 Did y'all speak with Mr. Watson or was he willing to
22 speak with y'all?

23 A I don't have any recollection as to what, what happened
24 on that. I know we or I feel confident we would of explored
25 that to some degree, but I don't know what happened.

1 Q What about Mr. Tate, he testified for you for
2 Mr. Buckson at trial. He testified today that he never
3 spoke to you or your investigator prior to trial until he
4 arrived here at the courthouse.

5 Do you know if that's accurate?

6 A I don't have a direct recollection on that. I think
7 that's not accurate. I feel it's not. But that's just a
8 general recollection I kind of remember that we didn't get
9 much out of him, but he had talked to my client's mother I
10 think and we had quite a bit of input there that he would be
11 helpful, and I think that was the basis of the subpoena.

12 Q He mentioned that your investigator had come to his
13 home in an attempt to talk to his children, the victim's
14 children.

15 Do you recall anything about that?

16 A That is -- I think we would of attempted to talk to him
17 at the same time.

18 Q Okay. And in regards to his testimony, did you feel
19 that his testimony was very helpful---

20 A Yes.

21 Q ---in the matter?

22 You did also call the applicant's mother and his aunt
23 as well, is that correct?

24 A Yes.

25 Q And that was in an attempt to support his allegation of

1 living at the apartment?

2 A well, I called his mother for more than that. I mean
3 she, I thought, added a good face for Jerome that the jury
4 would perceive from the fact, the fact that it was a, a
5 family who was close and that her son had been responsive
6 and cared for her brother and stuff. I thought there was a
7 lot of good things from his mother. I thought she was an
8 effective advocate for him and did a good job.

9 Q So, not just for the, the issue of the, the burglary of
10 the residence, but---

11 A She was more important for more.

12 Q Okay. Did you feel like you were able to get from
13 those, those four witnesses, or I guess primarily the three
14 to begin with Mr. Tate, his mother, and his aunt, some good
15 information from them in regards to his residence and his
16 relationship with the victim?

17 A Yes.

18 Q Now, in regards to Mr. Buckson's testimony, was that
19 ever an issue?

20 Did, did you think that he would be a good witness on
21 his own behalf or---

22 A Yes.

23 Q Okay.

24 A He's very intelligent, able, dressed, looked, presented
25 himself well.

1 Q Now, in regards to him being able to share his side of
2 the story, and being able to, to say the things he wanted to
3 be able to say, he, he testified that he thought that there
4 was some things, you know, you wanted, he wanted you to get
5 from each of the other witnesses.

6 Is there anything that -- was anything else you
7 thought -- and obviously, you know, looking back on it now,
8 it's been several years, but anything else that you wished
9 y'all would of been able to present through, through Mr.
10 Buckson's testimony?

11 A I've never tried a case that I lost that I wouldn't
12 like to try again, and I would change things generally
13 because if it's unsuccessful the first time, certainly there
14 are things you could get that would be more helpful. I
15 tried it at the time. I feel like I did the best I could.
16 I was satisfied at the end of the trial. I -- and no one
17 felt worse about the results. I was certainly glad that he
18 didn't get convicted of murder, and certainly sorry that he
19 got convicted of burglary.

20 Q Now, Mr. Williams also testified earlier here today,
21 Lloyd Williams, the victim's stepfather.

22 Had you talked with him at all?

23 Do you recall that?

24 He was the gentleman that I believe had come over
25 earlier that night with the car for the victim.

1 A Once again, I had information, I'm not sure how I got
2 it, and I think I attribute it to Jerome's mother.

3 Q But you don't recall if you thought he would be a
4 helpful or not helpful witness?

5 A Certainly with things he could be helpful on.

6 Q would you have called him if he had been, if you
7 thought he was gonna be helpful?

8 A I somehow think there was something negative, but I
9 can't remember what we did. I think we discussed, discussed
10 it and made a decision, but I can't remember exactly where
11 it came from.

12 Q And one other witness that was presented today,
13 Mr. Antwan Walker, was the friend of Mr. Buckson's that he
14 had been with earlier that day moving I think some
15 furniture. I think he is testified primarily today that,
16 that the victim had called Mr. Buckson some during the day.

17 Do you recall any conversations with him or with
18 Mr. Buckson about calling him as a witness?

19 MS. BLANCHETTE: Your Honor, I don't know if it's an
20 objection. I just wanted to clarify for the record that it
21 was Antwan Martin.

22 MS. WHITE: Oh, I'm sorry.

23 MS. BLANCHETTE: I just wanted to make sure just so Mr.
24 Warder wasn't confused.

25 MS. WHITE: I'm sorry. Antwan Martin. Thank you.

1 A I can't remember all about him, but I know he was with
2 him. I, I was thinking that he had something to do with the
3 club. I think that maybe they went together to a nightclub
4 or he met him at a nightclub or something. There was some
5 good and bad on him I think.

6 Q In regards to your strategy about calling witnesses,
7 how do you make a decision in general as to whether or not
8 you want to call a witness?

9 Obviously you've been practicing for a while.

10 A Yes.

11 Q Do you call every witness---

12 A I---

13 Q ---that one of your clients asked you to call?

14 A Certainly not. Every witness, while he brings
15 something good, sometimes brings cross-examination with him
16 and sometimes that can be a disaster. You can lose more
17 ground than you can gain. I try and call witnesses that I
18 can get something out of and that the State won't have a
19 stronger case when I sit down.

20 MR. WHITE: One moment please, Your Honor.

21 (Pause.)

22 Q In regards to the jury seeing Mr. Buckson in the, the
23 handcuffs, do you recall that incident?

24 A Don't recall that. I'm, I'm not saying it didn't
25 happen or anything. I just don't recall that.

1 Q In your experience, is that a situation that you would
2 normally, in your general practice, have, have asked for a
3 mistrial?

4 A I guess it would depend on, on the circumstances of the
5 viewing and when it was. I think that it's always somewhat
6 prejudicial for them to see your, your client in handcuffs.
7 I'm not sure that always it will raise to the level of a
8 mistrial that -- I think that -- but I think jurors know, in
9 reality, that people are taken into custody during the
10 course of a trial, that -- and I don't think that it would,
11 it would be, they would weigh that against them.

12 Q You -- was there any other information that was
13 presented to you by the applicant or his family that you did
14 not present at trial that you felt supported his residence
15 at the, at the apartment?

16 A There might of been, been individual things that did,
17 but, but might of -- we didn't elect to put everything up
18 that there was there. We tried to represent a strong case
19 on that, and I still believe the record can produce a strong
20 case on it, on that.

21 Q But it---

22 A I---

23 Q I'm sorry.

24 A But that he was living there. I think that the
25 transcript reflects that -- I think there's more favorable

1 that he lived there than he didn't. But they brought a
2 great deal of information contrary to it that kind of---

3 Q And, in fact, there was a great deal of testimony that
4 he probably had, in fact, been living there for, for a long
5 time. It seemed perhaps that the question revolved around
6 the last couple of weeks.

7 Is that accurate?

8 A Or even shorter than that. I think that the, the real
9 testimony, the real issue was had he lived there and had
10 they split up and was, and was he no longer living there. I
11 think that clearly the, that's preponderance of it would of
12 been that he lived there at least at some, on some occasions
13 sometimes.

14 Q In regards to the issue of the lesser included
15 instructions, Mr. Buckson raised an issue that you, you
16 didn't raise any or didn't request a lesser included
17 instruction.

18 A I really didn't see the evidence support anything but a
19 burglary first. I thought it was a burglary first or
20 nothing. I guess I didn't see how a jury could conclude it
21 didn't happen in the nighttime or in a dwelling house.

22 Q What about the issue of the supplemental instructions
23 having to do with burglary first when the jury came back and
24 asked for additional instructions?

25 A You know, reading it today, there might of been a more

1 artful instruction certainly by the judge. I don't think
2 the instruction misstates the law. I, at that time, I, I
3 didn't object to it. So, I'm sure that, as I, I listened to
4 it, I concluded the judge had correctly stated the law.

5 Q And had you felt there was anything at issue with it,
6 would you have made an objection at that point?

7 A Oh, yes, I was trying to win the case. If I -- there
8 was something we could object to that would of made our
9 position stronger on that I would of done that.

10 Q In regards to the issue on the initials that were
11 struck through on the verdict form of the foreman, did that
12 raise an issue in your mind when, when that was mentioned?

13 A Raised none at that time. You know, the jury was, was
14 saying it was their verdict. They were raising their hand,
15 it was their verdict. The foreman struck through -- I don't
16 see as that -- I just don't see there's anything, trying to
17 say improper about that. I don't think it would of raised
18 to the level that would set the verdict aside or anything.
19 It might indicate that they were all close to one decision
20 and changed their mind or something and thinking about one
21 way or I just don't know. But the time they come out they
22 were all in agreement.

23 Q Overall you represented him on both the murder and the
24 burglary charge, and, in general, did you feel that you
25 presented defenses on both charges?

1 A Well, I certainly didn't feel the jury told me I
2 didn't, but I thought, I thought and I thought we presented
3 a strong case and I did feel the jury told me that it wasn't
4 good enough.

5 Q And ultimately he was acquitted of the murder charge
6 and---

7 A Yes.

8 Q ---convicted and received 20 years for burglary first,
9 is that correct?

10 A That's correct.

11 Q Okay. Thank you.

12 That's all I have at this time, Your Honor.

13 THE COURT: Yes, ma'am.

14 MS. BLANCHETTE: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. BLANCHETTE:

17 Q I just have a couple questions for you, Mr. Warder. I
18 believe you haven't yet discussed the media attention in
19 this case.

20 Was there any -- was there heavy media attention in
21 this case, do you remember?

22 A I'm sorry. I have a little bit of hearing problem. I
23 couldn't hear all that.

24 Q I'm sorry. I was trying to be quieter this afternoon.
25 I felt like I yelled all morning.

1 As far as the media attention in this case, was there a
2 lot of media attention?

3 A The only answer is, is yes, there was, there was media
4 attention. There's -- it wasn't -- didn't interrupt the
5 courtroom. Nothing intensive, didn't interrupt the
6 courtroom, but there were reporters about and around and
7 they were writing about it.

8 Q Do you recall that you-all had an extra day off because
9 of snow over the weekend?

10 A I didn't recall it until I read the transcript, and I,
11 I really don't have that much recollection about that.

12 Q Did you -- and can you recall if you had any concerns
13 about the media that the jury may have been exposed to
14 during that long break, and do you recall why you didn't ask
15 the judge to poll the jury on that matter?

16 A I kind of kept track of what was in the papers at the
17 time. I didn't, didn't see any and I wasn't really -- I
18 wasn't really concerned about anything. I had no reason to
19 believe and at that time my client didn't mention anything
20 to me about it. But, you know, I just -- and I generally,
21 in my practice, if you'll give me a break between the end of
22 testimony and the jury deliberations, I always like it. I,
23 I maintain the philosophy that the longer you deliberate on
24 anything the more doubt you'll come up with, and if, if I
25 could have the jury deliberate for a week before they voted

1 I probably would of tried to do that.

2 Q Now, the break actually took place before their
3 deliberations because it was in the middle of trial, but
4 would your answer remain the same?

5 A I think it's the end of the evidence. As I, I read the
6 transcript, I thought there was no testimony after that,
7 that except for---

8 Q So, you didn't mind the extra time for them to think
9 over things?

10 A I would not. Certainly the more you think about the
11 State's case the more I think that you could come up with
12 something that wasn't there.

13 Q Now, the State asked you questions about the witnesses
14 that testified here today at the PCR.

15 Did you have the opportunity, opportunity to hear all
16 their testimony today?

17 A Yes.

18 Q Okay. And based upon what you heard today, and if you
19 want to speak about people specifically, would the
20 information have been helpful to the defense at trial?

21 A In hindsight it would of been helpful at trial.

22 Q Okay. Do you feel that the outcome of your case could
23 have been different if you would of utilized one or any of
24 those witnesses?

25 A Obviously now I wish I put up more witnesses because of

1 what the jury did, but I feel that I presented a strong
2 case. I have thought about this. I've thought about it
3 certainly a lot after it was over, and I always thought that
4 it, it looked like sometimes the defense lawyers call a
5 compromise verdict that sometimes they acquit on one and
6 convict on another though I don't know if you can say that
7 happens, but I've often felt that sometimes it happens.

8 Q And, so, as you thought about the case, you feel that
9 maybe the verdict was compromised in the sense that the jury
10 elected for the lesser charge to find your client guilty on?

11 A Yes.

12 Q Okay. And specifically I want to ask you about Antwan
13 Martin. He testified today and you indicated on direct that
14 you thought he had something to do going to a nightclub.
15 With Mr. Buckson.

16 Do you know if you maybe confused that with another
17 individual named Jarvis Pete?

18 A I told you the best I -- I could of confused it with
19 Jarvis Pete, but what I told you was the best I, I recalled
20 at the time I answered the question. I guess it still could
21 be.

22 Q Mr. Warder, also regarding Antwan, he testified about
23 these phone calls that Mr. Buckson had received while
24 helping him move and those phone calls came from the victim,
25 and then Mr. Buckson went into detail using the phone

1 records.

2 My first question is, is there a reason you didn't have
3 Mr. Buckson go over the details of those phone records
4 during his testimony?

5 A I wasn't sure in my mind that inferentially the calling
6 would of been positive rather than negative.

7 Q And the information that Antwan had about those phone
8 calls, is there a reason that you did not utilize that at
9 trial?

10 A Phone calls didn't seem to me like it indicated people
11 living together anything more than it indicated people who
12 had broken up or were feuding.

13 Q Now, turning to some of the witnesses that were called
14 at trial.

15 Were you aware of the fact that the State planned to
16 call the maintenance man and the assistant manager from the
17 apartment complex?

18 A I don't know. I don't, I don't remember knowing that
19 during the trial. This was a, a case that I'm sure I didn't
20 have a witness was before I come to trial, but I don't, I
21 kept communications open somewhat with the solicitor's
22 office, and I really don't recall what they imparted to me.
23 I had tried to make plea bargains some. I tried to see
24 where we're at on that, and I just don't know what they
25 might of told me on that. I don't know the answer to that

1 question.

2 Q And going back to the witnesses that testified today,
3 I'm sorry, earlier that the State asked you about Elliott
4 Cannady, if you talked to him, why you didn't utilize him,
5 and I was actually conferring with my client and didn't hear
6 your answer. So, I was just gonna reask you that question.

7 Did you speak with Mr. Cannady and why did you choose
8 not to utilize him at trial?

9 A I'm not exactly sure. Mr. Cannady was the gentleman
10 that -- I want to say -- which one was it?

11 Q Mr. Cannady was present in the home that night, was the
12 friend of Mr. Watson. He was listed as a State's witness.

13 A The fellow playing cards with---

14 Q Yes.

15 A He, I don't think, tremendously helped our case in any
16 way. You know, he puts Mr. Watson there and which was
17 consistent with kind of the, the theory of us that he had
18 snuck back over, taking his friend home, snuck back over
19 there. So --.

20 Q Now, correct me if I'm wrong, but the State's theory of
21 it appeared to be that Ms. Foggie and Mr. Buckson had broken
22 up shortly before this. So, he was no longer welcome in
23 that residence.

24 A Right, that would of been their theory.

25 Q Okay. Now, if that was the State's theory, my question

1 to you is why did you not call anybody besides Mr. Buckson,
2 his mother, and his aunt, so all relatives of Mr. Buckson,
3 to refute that theory?

4 A I thought that they made good witnesses, they looked
5 good, and brought no baggage with them.

6 Q Now, in your directed verdict motion you argued about
7 the lack of intent to commit a crime, and then, when asked
8 by Judge Cole, you added an additional ground of the fact
9 that he had consented to be there.

10 why did you not argue further on the consent portion of
11 the burglary charge?

12 A I don't know exactly. I would, you know, I think I, I
13 think I felt Judge Cole had made his mind up, and I was
14 protecting the record.

15 Q Now, the State, on direct, asked you a number of
16 questions just about the murder charge and that you focused
17 on the murder charge, that that was the more complicated
18 charge in this case, but was this case severed or were you
19 going forward on both charges?

20 A Both charges were, you know, what we went to trial
21 about.

22 Q So, both charges would of essentially been equally
23 important, is that correct?

24 A Well, yes and no.

25 Q would you like to explain?

1 A Certainly the risk was more on the murder, the maximum
2 penalty on the murder. And, so, I guess, to some degree,
3 that, that would take up most of the focus. But it was all
4 a fact situation, and while I know it's possible, I hadn't
5 contemplated a lot that they would split on the, on, on
6 that. It seems to me that if he, he came there to the back,
7 you see, and didn't intend to commit a crime, I didn't see
8 no evidence, you know, he didn't commit the crime of murder,
9 that he hadn't committed a burglary, and if he lived there
10 he hadn't committed a burglary. I mean either one would be
11 a required element for the part to have, of the, to have
12 entered with intent to commit a crime therein, and I think,
13 when you -- there's no -- if not involved in a murder, I
14 thought he wouldn't be found guilty of it, of the, the
15 burglary.

16 Q With your answer I just have another question.

17 Is -- do you feel that you properly focused on the
18 residence issue with that in mind?

19 A Yeah, I didn't leave the residence issue out. I
20 certainly went after it.

21 MS. BLANCHETTE: Your Honor, if I could just beg the
22 Court's indulgence one moment.

23 (Pause.)

24 MS. BLANCHETTE: I have no further questions.

25 THE COURT: Any redirect on what she went into?

1 MS. WHITE: I do not believe so, Your Honor. Nothing
2 further from the State.

3 THE COURT: Thank you, sir. You may step down. I mean
4 you may step down.

5 WITNESS: Thank you, Your Honor.

6 THE COURT: The State have any other witnesses?

7 MS. WHITE: The State has no other witnesses, Your
8 Honor.

9 THE COURT: Do you know if you intend to call reply
10 witnesses?

11 MS. BLANCHETTE: If I could just beg the Court's
12 indulgence for one moment.

13 (Pause.)

14 MS. BLANCHETTE: I have no reply witnesses.

15 THE COURT: All right. Did you say you did have some
16 information on cases you wished to provide?

17 MS. BLANCHETTE: Yes, Your Honor. I have printed out
18 three copies of cases for you. I can put the name of each
19 case on the record and briefly explain why I'm handing it
20 up.

21 The first case is State versus Singley, S-I-N-G-L-E-Y.
22 That's out of the Supreme Court of South Carolina, and it is
23 reported at 392 S.C. 270 and it's a 2011 case.

24 This is a very interesting case in the fact that our
25 Supreme Court in South Carolina has rarely talked about the

1 burglary statute, and specifically the residency portion of
2 it, and this case goes through a very extensive analysis of
3 the burglary first statute, and a number of the issues that
4 we've talked about here today.

5 Now, in this case they looked at ownership interest, a
6 son had a part ownership interest in a home, and they looked
7 at that. But they go into an excellent analysis of the
8 burglary statute.

9 In -- the Court reaches a number of conclusions and
10 I'll provide a copy to Your Honor. But the essential
11 question they looked at is whether or not the defendant uses
12 the dwelling in such a manner that it could of been said to
13 be his own home, which I think is the real issue that should
14 of been before the jury. That was the real issue we
15 attempted to present through our witnesses and evidence
16 today, and that's the issue that we are saying that
17 Mr. Warder should have more effectively presented on Mr.
18 Buckson's behalf.

19 The second case is Bannister versus State, and that is
20 out of the Supreme Court of South Carolina. That's reported
21 at 333 S.C. 298. That's a 1998 case.

22 This case deals with the fact that you're gonna allege
23 there should be witnesses called at a trial as part of your
24 PCR application, you must call those witnesses at the PCR
25 hearing because the Court can't decide and give weight to

1 those witnesses without hearing their testimony and
2 determining whether or not that testimony could of affected
3 the outcome, and the final case I'm gonna hand up is Lounds,
4 L-O-U-N-D-S, versus State. It's also out of the Supreme
5 Court of South Carolina. It's reported at 380 S.C. 454, and
6 it's a 2008 case.

7 This case deals with counsel's independent
8 investigation. It says at a minimum, pursuant to Ard versus
9 Catoe, a defense attorney must at least speak with witnesses
10 to determine whether or not they're useful for trial, and I
11 think there's a question today as to whether or not
12 Mr. Warder even spoke to all these witnesses we've
13 presented, and it also goes into ineffective assistance of
14 counsel for failure to call witnesses, which is one of our
15 primary allegations today.

16 of course, there's been a lot of detailed testimony.
17 We have submitted a detailed amendment that goes into other
18 issues. So, I'd be happy to answer any questions the Court
19 has for me.

20 THE COURT: All right.

21 (Pause.)

22 THE COURT: What is it -- what is your contention in
23 regards to the verdict form where the initials of the, I
24 believe the testimony was the foreman's initials?

25 What is your contention about that?

1 MS. BLANCHETTE: Specifically, Your Honor, I think
2 Mr. Warder put it best, that it somewhat made him question
3 if there was a compromised verdict in this case.
4 Unfortunately, when he, he was in the moment and at trial he
5 did not ask for any further clarification or make any post
6 trial motions on that issue, and, therefore, that issue was
7 not at all addressed or incorporated in the appeal in this
8 case, and I think another reason for pointing that out is
9 that goes to the overall strength of the case, State's case
10 and shows just how important it would of been to call these
11 additional witnesses and use this additional testimony if
12 there was something going on with the question regarding the
13 verdict. It's clear that something was stricken through and
14 initialed.

15 THE COURT: It looks, it looks like they wrote the word
16 not and they, and they---

17 MS. BLANCHETTE: It does.

18 THE COURT: ---and then X'd it out and put the initials
19 above it.

20 MS. BLANCHETTE: And that's exactly what I was gonna
21 say, Your Honor, but I'm glad that you put that on the
22 record because it really calls into the question of did they
23 originally find him not guilty, and, as a default, found him
24 guilty on the burglary. If that's the case, with just a
25 little bit more evidence, just a better prepared witness,

1 just an additional witness pushed them over that line. So,
2 that's what we were trying to show today is that the outcome
3 could of been different with this additional information
4 that's provided at PCR.

5 THE COURT: And you think Mr. Warder deviated from
6 acceptable norms by not asking and inquiring of that?

7 MS. BLANCHETTE: I just -- I think that the issue
8 should have been preserved better on the record and Judge
9 Cole should of had more specifically responded to a motion
10 from the defense. I know he did, in fact, ask the foreman
11 and inquire as to the jury, but there's no argument from the
12 defense. I thought what Mr. Warder said today was very
13 persuasive and should of been presented to the judge. Judge
14 Cole should of heard I think this verdict might be
15 compromised. Furthermore, Judge Cole would of heard it,
16 then our Appellate Court would of heard it, and because he
17 did not raise that specific issue it was not preserved for
18 an appeal nor was it raised to Judge Cole.

19 (Pause.)

20 THE COURT: All right. I'll take a look at my notes.
21 I believe I understand the positions by both the applicant
22 and the State. Let me just take a look at my notes real
23 quick.

24 (Pause.)

25 THE COURT: What would it be your applicant's

1 contention that on the directed verdict issue, looking at
2 the testimony at Page 284, what would be the applicant's
3 position on how, how the attorney should have phrased his
4 directed verdict motion?

5 MS. BLANCHETTE: What I, what I found interesting about
6 it when I read it, Your Honor, is that only when asked by
7 the Court does Mr. Warder add the ground about lack of proof
8 that he didn't live at the residence. When you read the
9 statute, that's, that's an and. Those are the and elements.
10 I think those carry equal importance.

11 And, so, I think this is indicative of the fact that
12 the focus was primarily on the murder, and in his directed
13 verdict, his initial directed verdict, if not asked further
14 by the Court, he doesn't specifically address the lack of
15 proof or consent and it has to be asked by the Court to
16 address that matter. And then when he's addressed, he just
17 offers two sentences in support of that contention.

18 And the unfortunate part of this is even though this
19 was raised on appeal, on a direct appeal you can only argue
20 those grounds submitted by the defense attorney. You have
21 to argue exactly in line with what they argued. So, this
22 gave the appellate defender very little, if anything, to
23 work with as far as those elements of burglary and
24 specifically this issue of the residency.

25 THE COURT: All right. I was, looked at the photograph

1 of the bathroom.

2 Did I hear testimony today that -- I see -- I only see
3 one toothbrush in this particular picture.

4 Did I hear testimony there was a picture that actually
5 had another toothbrush in it?

6 MS. BLANCHETTE: My client did testify that's a picture
7 on the bannister that had another toothbrush in it, and I
8 went through the pictures that I was provided by Mr. Warder.
9 I did not specifically see that picture. I had some
10 pictures of a bannister, but I didn't specifically see that.
11 So, that's the reason I only introduced that picture.

12 THE COURT: Okay.

13 MS. BLANCHETTE: But, Your Honor, it's my understanding
14 that all the pictures were introduced and are part of the
15 record in this case. So, it very well may be in the Clerk
16 of Court's file. I'm just not sure.

17 THE COURT: But it's not part of my record that I have?

18 MS. BLANCHETTE: No, Your Honor, it is not.

19 THE COURT: And the -- at the time of this trial,
20 burglary -- I ask this question because the, Mr. Warder
21 testified that, you know, that his focus was on the murder
22 aspect of the case as opposed to the burglary first, I mean
23 was more focused on that because my impression is that
24 Mr. Warder felt that was the more serious offenses.

25 But my understanding of the burglary first, and correct

1 me if I'm wrong, carries at this time 15 to life?

2 MR. WARDER: Yes, sir.

3 THE COURT: And then the murder charge would carry --?

4 MS. BLANCHETTE: Thirty to life.

5 THE COURT: Thirty to life. Okay.

6 MS. WHITE: Okay.

7 MR. WARDER: It would been of thirty or life I think
8 back then.

9 THE COURT: And you can suspend burglary first at those
10 types of offenses. All right.

11 MS. WHITE: And I think the service for burglary is the
12 day-for-day?

13 Is it day-for-day then?

14 MS. BLANCHETTE: If you get a term or years, it's
15 day-for-day versus the burglary. You served that -- if we
16 can say 85 percent, whatever SCDC calculated that to be.

17 THE COURT: Okay. I think that's all of my questions.

18 MS. BLANCHETTE: Thank you, Your Honor.

19 THE COURT: I will let y'all know.

20 MS. WHITE: Thank you, Your Honor.

21 THE COURT: Thank you very much.

22

23 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

24

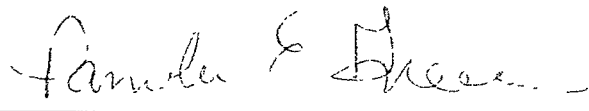
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 23rd day of September, 2011, as reported by Pamela Faucette and transcribed by myself to the best of my ability.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 11th, 2012

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

Shirley Hall

I am the neighbor and I saw him (Jerome)
when living with Tiffany Foggie
about a yr and up until the
shooting.

A-1

Jerome Buckson

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Transaction Search Call Detail Record

line on
Tiffany Rumb

not received
" " →
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received
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3	grvgs	4100 -	18642055274	8649210301	Jan-30-2006 07 47 22	Jan-30-2006 07 47 22	00 00 01
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6	grvgs	4100 -	18642055274	8648092501	Jan-30-2006 07 11 02	Jan-30-2006 07 11 12	00 00 10
7	grvgs	4100 -	18642055274	8645836000	Jan-30-2006 07 09 41	Jan-30-2006 07 09 44	00 00 03
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(9)

(10)

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111	grvgs	4103 -	18642055274	411	Jan-29-2006 02 56 14	Jan-29-2006 03 02 34	00 08 20
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114	grvgs	4104 -	18646211479		Jan-29-2006 02 35 33	Jan-29-2006 02 36 43	00 01 11
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Tiffiney Foggie

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Transaction Search Call Detail Record

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4	grvgs	4140	18846211479	01118642055274	Jan-29-2006 23:15:01	Jan-29-2006 23:15:53	00:00:53
5	grvgs	4140	18846211479	01118642055274	Jan-29-2006 23:04:19	Jan-29-2006 23:14:33	00:10:14
6	grvgs	4140	18846211479	01118642055274	Jan-29-2006 23:03:09	Jan-29-2006 23:03:50	00:00:41
7	grvgs	4140	8645832293		Jan-29-2006 23:02:04	Jan-29-2006 23:02:37	00:00:34
8	grvgs	4140	8644891324		Jan-29-2006 22:58:17	Jan-29-2006 22:58:32	00:00:15
9	grvgs	4140	18642055274		Jan-29-2006 22:57:20	Jan-29-2006 23:02:25	00:05:05
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12	grvgs	4140	18646211479	18846211479	Jan-29-2006 22:29:10	Jan-29-2006 22:29:58	00:00:48
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16	grvgs	4140	8848381741		Jan-29-2006 19:15:58	Jan-29-2006 19:16:27	00:00:29
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31	grvgs	4040	8644891324		Jan-29-2006 15:10:18	Jan-29-2006 15:21:43	00:11:25
32	grvgs	4140	8645784495		Jan-29-2006 14:58:21	Jan-29-2006 15:05:10	00:06:48
33	grvgs	4140	8645784495		Jan-29-2006 14:56:15	Jan-29-2006 14:58:51	00:02:36
34	grvgs	4140	18646211479	8644318080	Jan-29-2006 14:51:28	Jan-29-2006 14:52:31	00:01:03
35	grvgs	4140	18646211479	01118642055274	Jan-29-2006 14:20:01	Jan-29-2006 14:30:40	00:01:39
36	grvgs	4040	8644318080		Jan-29-2006 13:23:04	Jan-29-2006 13:24:58	00:01:54
37	clm02	4021	8645740292		Jan-29-2006 13:01:57	Jan-29-2006 13:04:37	00:02:40
38	clm02	4021	8642055274		Jan-29-2006 12:39:12	Jan-29-2006 12:57:42	00:18:30
39	grvgs	4140	8644318080		Jan-29-2006 11:49:16	Jan-29-2006 11:53:08	00:03:53
40	grvgs	4140	18646211479	18005545268	Jan-29-2006 11:14:08	Jan-29-2006 11:15:12	00:01:03
41	grvgs	4140	18646211479	8642053345	Jan-29-2006 10:53:24	Jan-29-2006 10:59:42	00:06:18
42	grvgs	4140	18846211479	01118642055274	Jan-29-2006 10:51:58	Jan-29-2006 10:52:25	00:00:27
43	grvgs	4140	8645832293		Jan-29-2006 10:39:39	Jan-29-2006 10:51:23	00:11:45
44	grvgs	4140	8645832293		Jan-29-2006 10:12:56	Jan-29-2006 10:14:35	00:01:40
45	grvgs	4140	8644891324		Jan-29-2006 09:51:20	Jan-29-2006 09:58:28	00:07:08
46	grvgs	4140	18846211479	8642053345	Jan-29-2006 09:27:48	Jan-29-2006 09:27:50	00:00:02
47	grvgs	4140	18646211479	18644891324	Jan-29-2006 09:22:53	Jan-29-2006 09:22:58	00:00:05
48	grvgs	4140	18642055274		Jan-29-2006 03:59:28	Jan-29-2006 04:00:00	00:00:33
49	grvgs	4140	18646211479	01118642055274	Jan-29-2006 02:35:33	Jan-29-2006 02:36:43	00:01:11
50	grvgs	4140	18646211479	18645211479	Jan-29-2006 02:34:28	Jan-29-2006 02:35:02	00:00:34

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Spartanburg County Court House
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M. Hope Blackley

Clerk of Court

10-25-11

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Jerome Curtis Buckhorn
Applicant # 319845

7TH JUDICIAL CIRCUIT

CASE # 2010CP42-5670

VS
Free
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the

In this action dated

10-21-2011

on

10-25-11

Order granting Application for Post Conviction Relief

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:

Ann Mueller
Suzanne White
Jerome Buckhorn

10-25-11

(Date)

Corrie Fay
(Signature)

PE

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Jerome Curtis Buckson, 319845,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-5670

ORDER GRANTING APPLICATION
FOR POST CONVICTION RELIEF

M. HOPE BLACKLEY

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I. PROCEDURAL HISTORY

A. Post Conviction Relief Procedural History

This matter comes before the Court by way of an Application for Post Conviction Relief (PCR) filed in Spartanburg County on October 22, 2010. On or about May 3, 2011, the State submitted a Return. On September 8, 2011, Applicant, through counsel, submitted an Amendment to Application for Post Conviction Relief, which added the following specific allegations to his original allegation of ineffective assistance of trial and appellate counsel for failure to prepare and investigate, failure to interview and call witnesses and failure to present a viable defense:

1. Ineffective assistance of trial counsel for failure to prepare and investigate by obtaining all necessary records and evidence to establish that the apartment at issue was Applicant's dwelling and/or residence and his lack of intent to crime therein.
2. Ineffective assistance of trial counsel for failing to call witnesses to establish that the apartment at issue was Applicant's dwelling and/or residence and his lack of intent to crime therein.
3. Ineffective assistance of trial counsel for failure to prepare and utilize witnesses called at trial to establish that the apartment at issue was Applicant's dwelling and/or residence and his lack of intent to crime therein.
4. Ineffective assistance of trial counsel for failure to effectively argue on directed verdict that the Applicant had custody and control of and the right

and expectation to be safe and secure in the dwelling burglarized. See State v. Singley, 392 S.C. 270, 709 S.E.2d 603 (2011).

5. Ineffective assistance of trial counsel for failure to object or request further jury instructions following the court's instructions in response to the jury's questions regarding the elements of burglary. Transcript pp. 468-474.
6. Ineffective assistance of trial counsel for failure to address the matter stricken through by the jury on the burglary indictment. Transcript p. 479.

An evidentiary hearing into the matter was held on September 23, 2011 at the Spartanburg County Courthouse in front of the Honorable J. Mark Hayes, II. The Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. The State was represented by Suzanne H. White, Assistant Attorney General.

During the hearing, Applicant testified on his own behalf. Applicant's counsel also called Shirley Hall, Barry Adair, Elliott Canada, Antwan Martin, Chad Tate and Lloyd Williams to the stand. Applicant's counsel introduced eight exhibits. The Respondent called Richard H. Warder, Esquire, to the stand. This Court also had before it a copy of the Application, the Respondent's Return, Applicant's Amendment, the records of the Spartanburg County Clerk of Court concerning the subject conviction, the trial transcript, and Applicant's records from the South Carolina Department of Corrections.

At the close of the hearing, the Honorable J. Mark Hayes, II, took the matter under advisement. Thereafter, the Honorable J. Mark Hayes, II, requested that Applicant's counsel submit a proposed Order, from which this Order follows.

B. General Sessions Procedural History

The Applicant is presently confined in the South Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During

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the February 2006 term of the Spartanburg County Grand Jury, Applicant was indicted for Burglary, First Degree (Indictment No.: 2006-GS-30-0845) and Murder (Indictment No.: 2006-GS-30-0846). On January 30, 2007, a jury trial was conducted in Spartanburg County in front of the Honorable J. Derham Cole. Applicant was represented by Richard H. Warder, Esquire. The jury returned a verdict of not guilty on the Murder charge and guilty on the Burglary, First Degree, charge. On February 2, 2007, the Honorable J. Derham Cole sentenced Applicant to confinement for a term of twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by M. Celia Robinson, South Carolina Office of Appellate Defense. Following the submission of the Brief of Appellant, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Buckson, Op. No. 2010-UP-282 (filed May 20, 2010). A Petition for Rehearing was filed and denied on June 17, 2010. Applicant filed a Petition for Writ of Certiorari to the South Carolina Supreme Court, which was voluntarily withdrawn. The South Carolina Supreme Court issued the Remittitur on October 6, 2010.

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II. APPLICABLE LAW

In a PCR action, the "burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

For Applicant to meet his burden of proof and prevail on his allegations of ineffective assistance of trial counsel, the two-prong test applicable to such a claim must be met. See Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2065 (1984). The first prong analyzes whether counsel failed to render reasonably effective assistance

under the prevailing professional norms. Id. The second prong places the burden on Applicant to show that but for counsel's deficient performance the outcome would have been different. Id. The second prong is known as the "prejudice" requirement. This requirement is met if counsel's actions or inactions resulted in prejudice to Applicant. See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 539 (1995).

III. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT POST CONVICTION RELIEF HEARING

A. Testimony of Shirley Hall

Shirley Hall testified that she currently resided in Apartment 5-C at the Bradford Grove Apartments. She explained that she was a neighbor to the victim (Tiffany Fogey) and she recalled seeing Applicant at the apartment prior to January 30, 2006. She also recalled providing a written statement for trial counsel, which she identified and was introduced as Applicant's Exhibit One. After acknowledging that her memory was better at the time she gave the statement, Ms. Hall read the following portion of her statement: "I am the neighbor and I saw him (Jerome) when living with Tiffany Foggie... up until the shooting." Ms. Hall could not remember speaking with trial counsel or receiving a subpoena, but she indicated that she would have been willing to speak with him and testify at trial.

B. Testimony of Barry Adair

Barry Adair testified that he worked with Helms and Company Construction and served as Applicant's supervisor in the summer of 2006. He recalled picking Applicant up for work at the Bradford Grove Apartments, and Ms. Fogey picking Applicant up after work. He knew that Mr. Buckson was in a relationship with Ms. Fogey. He was not contacted by trial counsel nor was he asked to testify at trial.

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C. Testimony of Elliott Canada

When Elliott Canada took the stand, he explained that he was at Tiffany Fogey's apartment on the evening of January 29, 2006, with Ms. Fogey, Charlene Ellis, and Slamarcus Watson. They were playing cards and hanging out, but Ms. Fogey seemed nervous all night. He knew that Ms. Fogey had a "friend" and it was apparent that there were men's items in the apartment. He recalled Ms. Fogey saying the name "Jay". After playing cards, Mr. Watson took him home, but it was his understanding that Mr. Watson was going back to Ms. Fogey's apartment and was going to bring his gun due to his concerns about her "friend" returning.

Prior to Applicant's trial, Mr. Canada was in the county detention center on unrelated charges that were later dismissed. While at the detention center, Mr. Canada recalled meeting with representatives from the Spartanburg Solicitor's Office and the victim's family. He anticipated that he would be called as a witness since he was present in the apartment that night. He was not called as a witness by the State and was never contacted by trial counsel. Mr. Canada made it clear that he would have been willing to testify for the defense, and he surmised that his testimony would have been helpful to Applicant's defense.

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D. Testimony of Antwan Martin

Antwan Martin explained that he was Applicant's friend since junior high school, and he was with Applicant from 3-8 p.m. on January 29, 2006. Applicant had helped him with a move and had left his vehicle at his brother's house. When they returned to Applicant's vehicle, Applicant retrieved his cell phone from his vehicle, and he had a lot



of messages from Ms. Fogey. Mr. Martin explained that he gave Applicant a hard time about the number of messages he had from Ms. Fogey.

Mr. Martin explained that it was apparent that Applicant was still dating and living with Ms. Fogey on January 29, 2006. Applicant never mentioned having a fight with Ms. Fogey or breaking up, and he overheard Applicant retrieving the voicemails she left for him. When asked, he stated that he considered Applicant's home to be the apartment he shared with Ms. Fogey at Bradford Grove Apartments.

Mr. Martin recalled that the apartment had flooded in the weeks prior to the incident, and Applicant and Ms. Fogey stayed with Applicant's mother. He recalled that new keys needed to be made, and Applicant gave his key to Ms. Fogey's mother.

Mr. Martin was never contacted by trial counsel and thought he would be called to testify about being with Applicant that day and the information he knew about their relationship. Mr. Martin attended the trial, but he was not called as a witness. He explained that he was willing to speak with trial counsel and testify at trial.

E. Testimony of Chad Tate

Chad Tate acknowledged that he dated Tiffany Fogey from 1996 to 2001, and he had two sons with her. He also acknowledged that he lived with Ms. Fogey at Oak View and Bradford Grove Apartments, and he was not on the lease due to Section Eight housing restrictions. After they broke up, he recalled that Ms. Fogey began dating Applicant, and he knew that Applicant had moved in with her and their two boys. He recalled Applicant always being there when he called or picked up the boys, and Applicant had permission to pick up the boys from school and daycare. He explained that his boys continued to have a close relationship with Applicant.

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Mr. Tate acknowledged that he testified for the defense at trial, but he recalled being confused by the questions asked. He explained that he did not feel that he was properly utilized by trial counsel since he was not asked questions about pertinent information. He received a subpoena, but trial counsel did not speak with him until the day of trial.

Over objection, Mr. Tate testified about an incident that occurred in December 2001. He detailed how he returned to the apartment he shared with Ms. Fogey to find a masked man in their bedroom with a gun. Mr. Tate did not know why he was not asked about this incident at trial

F. Testimony of Lloyd Williams

Lloyd Williams explained that he married Ms. Fogey's mother (Taffie Williams) when Ms. Fogey was four years old. After reviewing his statement from June 8, 2011 to refresh his memory, Mr. Williams testified that Ms. Fogey began dating Applicant after breaking up with Chad Tate. He realized that Applicant was living with Ms. Fogey when he saw him there all the time, and he discussed it with her. After Ms. Fogey explained that Applicant helped pay the bills, he gave her his approval.

Mr. Williams recalled Applicant having a key before the sewer backed up, and it was his understanding that Applicant gave his key to Mrs. Williams. He explained that Applicant and Ms. Fogey would put the boys through the back window to open the door.

Mr. Williams remembered going to a birthday party at Applicant's mother's home and indicated that Applicant left with Ms. Fogey at the end of the night. He also remembered that Applicant, Ms. Fogey and the children stayed with Applicant's mother when the sewer backed up at the apartment.

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On January 29, 2006, Mr. Williams went to the apartment to bring Ms. Fogey a car. When he arrived, no one came to the door, but he saw the boys upstairs. After calling Ms. Fogey, she let him in, and he saw Charlene Ellis, Elliott Canada, and Slamarcus Watson. He asked Ms. Fogey if she was doing "a sneak up in here", which he explained meant sneaking men in the apartment while Applicant was away.

Mr. Williams stated that it was his understanding that he was going to be called as a witness at trial, and he remembered being listed as a witness at the start of trial. During the lunch break, he informed Mrs. Williams that he believed that Applicant was innocent and just going home. After the break, he was not called as witness for the State or defense. When asked, Mr. Williams agreed that he would have been willing to testify for the defense, but he was never contacted by trial counsel.

G. Testimony of Jerome Buckson

When Jerome Buckson (Applicant) took the stand, he affirmed his trial testimony and explained that there were several other issues, specifically trial counsel's failure to call witnesses, which he would like to address. Applicant hired Mr. Warder and went up for bond with him. He also went to a preliminary hearing but did not make it beyond the holding cell. He thought Mr. Warder had explained that it was not needed. Mr. Warder provided him with copies of the discovery, but a number of the pages were blank. He specifically remembered Mr. Warder advising him that he could not break into his own home and he focused a majority of his time and attention on the murder charge.

Applicant recalled that Mr. Warder utilized a private investigator, but he did not recall seeing any reports or documentation regarding his investigation. He believed that trial counsel spoke with Chad Tate the day of trial, but he was unsure as to whether any

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other witnesses were contacted. Applicant explained that counsel failed to fully utilize Chad Tate to establish that Applicant resided at Ms. Fogey's apartment. Applicant gave Ms. Hall's statement to Mr. Warder and did not understand why counsel failed to contact her or any other neighbors. Applicant provided Mr. Warder with information on Antwan Martin and asked him to speak with Elliott Canada and call both of them as witnesses at trial. Applicant explained that Mr. Martin and Mr. Elliott were eyewitnesses to the events that occurred on January 29, 2006. Furthermore, both could have testified that Applicant lived in the apartment and was in a relationship with Ms. Fogey. Mr. Martin also could have testified to a number of matters such as the sewage back up, the key situation, and Ms. Fogey's phone calls to Applicant on January 29, 2006. Regarding the phone calls, Applicant identified and counsel introduced a copy of the phone records Applicant and Ms. Fogey that were introduced at trial. Applicant's Exhibit 2 & 3. Applicant requested that trial counsel utilize the records to show the number of phone calls he received from Ms. Fogey, but he failed to do so.

Applicant was adamant that he asked Mr. Warder to speak with Lloyd Williams and utilize him at trial. Applicant explained that Mr. Williams' firsthand knowledge was vital to his defense on the burglary charge and he was also present in the apartment on January 29, 2006. He also explained that Mr. Williams would have refuted the state's witnesses.

Turning to trial, Applicant recalled that he raised his concerns about the heavy media attention to counsel, but counsel did not make any motions or address the matter with the court. Specifically, Applicant explained that the weekend break was extended due to snow and there were a lot of media stories over the break. Applicant noted that

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trial counsel did not request any jury questions or instructions following the extended break nor did he address Applicant's concerns about the jury seeing him in handcuffs.

After the locks were changed, Applicant explained that he gave Mrs. Williams his key since her copy of the key did not work. Referencing the trial transcript, Applicant noted that Officer Satterfield testified that Applicant told him it was his residence but he went in the window. Transcript p. 79, Ins. 11-13, 15-18. He also noted that Charlene Ellis testified on direct that Applicant's items were not in the apartment, yet she testified on cross examination that she told Ms. Fogey to put Applicant's belongings outside. Transcript pp. 135, Ins. 1-7, 140, Ins. 20-25, 141, Ins. 1-4.

Applicant stated that he had no notice that the State intended to call the following witnesses about his address: 1) Captain Jones testified that he gave 114 Cannon Circle at the county detention center, 2) Susan Bagwell testified that he gave 114 Cannon Circle at the county auditor's office, and 3) Elizabeth Starnes testified that his driver's license listed 114 Cannon Circle. Transcript pp. 182, 195, 245. He testified that 114 Cannon Circle is his mother's address, and he tried to explain his reasoning for using her address at trial even though counsel gave him no notice of this issue. He further explained that the State focused more on the residency issue than his trial counsel, which was detrimental to his case.

Applicant acknowledged that counsel argued for a directed verdict, but he noted that counsel only raised the lack of evidence to commit a crime. Transcript p. 284, Ins. 11-20. Only after being asked by the court, trial counsel added a brief argument on the lack of proof that Applicant did not live at the apartment. Transcript p. 284, Ins. 23-25.

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Applicant briefly addressed the testimony of the defense witnesses, Theresa Buckson and Deborah Poteat, and he explained his concern with the weight the jury may have given their testimony since they were his family members. Considering he gave trial counsel information on other witnesses, Applicant did not understand why Chad Tate was the only non-family member utilized for his defense

Applicant highlighted portions of his testimony and utilized pictures introduced trial to explain his testimony. He explained that he was truthful while on the stand, but he did not feel that he was properly prepared by counsel to take the stand. Specifically, Applicant explained that he had to carry his entire defense on his shoulders, and he had expected counsel to shoulder some of that weight. Turning to closing argument, Applicant noted that trial counsel argued that you cannot burglarize your own home, but Applicant questioned what trial counsel did to substantiate that argument.

Applicant questioned counsel's failure to request a jury instruction on a lesser included charge, but Applicant explained that he did not discuss it with him. He noted that the jury had a number of questions and requested to hear the 911 tapes and be reinstructed on malice and the elements of burglary. Transcript p. 468. In response to the jury's questions, the court reinstructed the jury on the elements of burglary, and Applicant alleged that the instruction was very confusing and trial counsel failed to object or request further instructions. Transcript pp. 472-73. The Applicant also explained that he had concerns about the jury's verdict since it was stated on the record that something was stricken through and initialed by the foreperson and it was clear from the verdict form that the jury had stricken through a finding of not guilty on the verdict form.

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Transcript p. 479, Ins. 1-15. Even though Applicant was concerned, he explained that trial counsel did not address the matter on the record or file any post trial motions.

Regarding his direct appeal, Applicant acknowledged that his Application alleged ineffective assistance of appellate counsel. When asked to explain his allegation, Applicant said it was his understanding that Celia Robinson, Appellate Defender, was suffering from a brain tumor when she was handling his case, which concerned him.

H. Testimony of Richard Warder

Richard Warder, Esquire, acknowledged representing the Applicant and his extensive experience in the area of criminal defense. He testified that he could not recall a preliminary hearing or how many times he met with Applicant. He did recall meeting with Applicant's mother more than the Applicant, and he explained that she was a very concerned and involved parent. He was adamant that Applicant's story remained consistent, but they focused on different details throughout the course of their meetings. He acknowledged that they discussed the murder charge more since he deemed it more problematic involving more defenses and more issues.

Regarding the burglary charge, Mr. Warder explained that he tried to use the State's pictures to show Applicant lived in the apartment. He thought the case was strong through direct and circumstantial evidence that Applicant lived there. He explained that Applicant, his mother and aunt were good witnesses on the residence issue and he was satisfied at the close of Applicant's case. Upon hearing the verdict, he explained that he felt horrible and knew there was more he could have done.

As to the witnesses presented at the PCR hearing, Mr. Warder recalled receiving the note from Shirley Hall, and he indicated that his investigator would have spoken with

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her. He remembered exploring Antwan Martin as a witness, but he could not remember the specifics. He could not remember anything about Elliott Canada, but surmised he would not have been tremendously helpful. He remembered calling Chad Tate, but he could not remember if they met before the day of trial even though he had a "feeling" that they might have met. He recalled having information on Lloyd Williams that was helpful, but he could not remember if there was something negative about him. Mr. Warder specifically stated that he should have used more witnesses at trial.

Mr. Warder could not remember the jury seeing Applicant in handcuffs or the media attention given to the trial. On the burglary charge, he saw no evidence to support a lesser included charge to the jury, so he did not request one. As to the court's supplemental instruction on the elements of burglary, he thought it could have been more artful but was not a misstatement of the law. When asked about the apparent change on the verdict form from not guilty to guilty, Mr. Warder said it seemed that the jury was in agreement, but he was concerned that the verdict was "compromised." He acknowledged that he did not file any post trial motions regarding the verdict.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the entire record and has heard the testimony and arguments as presented at the hearing. This Court has also had the opportunity to observe each witness and pass upon his or her credibility. This Court has weighed the testimony accordingly. This Court finds the testimony of Shirley Hall, Barry Adair, Elliott Canada, Antwan Martin, Chad Tate, Lloyd Williams, and Jerome Buckson to be credible. This Court finds the testimony of Richard Warder to be credible on the matters that he specifically recalled, but this Court cannot make a finding of credibility

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on all the matters he could not recall. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Ineffective Assistant of Trial Counsel

The Applicant was charged and tried for the offense of Murder and Burglary, First Degree. The jury returned a verdict of not guilty on the Murder and a verdict of guilty on Burglary, First Degree. At trial, the issue of murder was strongly contested and third party guilt was asserted as a defense. This Court agrees with Applicant's assertions that trial counsel was ineffective when he failed to prepare and investigate, failed to call witnesses, and failed to utilize trial witnesses to establish that the apartment at issue was his dwelling and/or residence and his lack of intent to commit a crime. This Court further finds that Applicant was prejudiced as a result of counsel's ineffective assistance.

In pertinent part, S.C. Code Ann. § 16-11-310(3)(a) (2003) provides: "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 ... the entering or remaining occurs in the nighttime." The burglary charge presents two important issues for the Applicant. First, the issue is to what degree did the Applicant have a right to claim possession to the victim's apartment; and the second issue is the implication of his lack of intent to commit a crime when he entered the victim's apartment. Recently, in State v. Singley, 392 S.C. 270, 271-72, 709 S.E.2d 603, 604 (2011), the South Carolina Supreme Court affirmed the Appellant's conviction for first degree burglary and armed robbery of the home he jointly owned with his mother and brother. The Court found that ownership does not preclude a burglary conviction as a matter of law since burglary is a crime against possession and habitation not a crime against ownership. Id. at 272, 274, 709 S.E.2d at 604-605. The

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Court reasoned that the jury must determine whether Appellant used the dwelling in such a manner that it could have been said to be his own home because one cannot commit the offense of burglary by breaking into his own home. Id. at 276, 709 S.E.2d at 606. The Court noted that inherently this determination requires a very fact intensive analysis. Id. at 277, 709 S.E.2d at 606. The Court held that the proper test is whether, under the totality of the circumstances, a burglary defendant had custody and control of, and the right of expectation to be safe and secure in, the dwelling burglarized. Id. at 278, 709 S.E.2d at 607.

At the PCR hearing, Applicant alleged that trial counsel failed to focus on the burglary charge during the preparation and investigation phase of his representation. Even though the Applicant was going to trial on murder and burglary, Applicant explained that counsel focused on the murder charge and trial counsel did not refute this assertion. Trial counsel explained that the murder charge was more complicated and was his primary focus. Interestingly, both charges carry a life sentence, yet counsel determined that he would regrettably put his entire focus on the preparation and presentation of Applicant's murder defense. This Court finds this decision to focus on the murder charge to be unreasonable and ineffective, which resulted in prejudice to the Applicant. The State has argued that the not guilty verdict on the murder is indicative of counsel's effective investigation and preparation, but this Court is not convinced of this argument. When counsel choose to focus his investigation and preparation on the murder charge, he could not anticipate a not guilty verdict nor does his preparation on one charge excuse the unreasonableness of his preparation and investigation on the other charge.

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In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), the Supreme Court of South Carolina reversed the lower court and granted PCR relief when counsel failed to conduct a reasonable investigation. The Court held that a reasonable investigation includes interviewing witnesses and conducting an independent investigation of the facts of the case. Lounds, 380 S.C. at 460, 670 S.E.2d at 649, See Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). Trial counsel could only specifically remember speaking with Applicant and his mother prior to trial, and he "felt" that he met with Chad Tate the day of trial. Counsel also could not recall obtaining any records, and he failed to review and utilize the phone records that were provided by the State. This Court finds counsel's investigation, including interviewing witnesses, and preparation does not meet the requirements set forth in Lounds. Clearly, counsel failed to conduct an independent investigation into the burglary charge and speak with witnesses prior to trial. The Applicant and trial counsel agreed that counsel focused on the murder charge despite both charges carrying a potential life sentence. As a result, this Court finds counsel's preparation and investigation was deficient and Applicant was prejudiced as a result.

Trial counsel's deficient and prejudicial representation is further demonstrated by the witnesses he failed to contact or utilize on the Applicant's behalf. It is well established that a PCR applicant must produce the testimony of a favorable witness or offer the testimony in accordance with the rules of evidence at the evidentiary hearing to establish prejudice from the witness' failure to testify. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Here, the Applicant called a number of witnesses at his PCR hearing that were not utilized at trial. This Court finds that trial counsel's failure to investigate and utilize the testimony of Shirley Hall, Elliott Canada, Antwan Martin and

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Lloyd Williams was beyond reasonableness. This Court finds that the testimony of Barry Adair was too remote in time to have aided the Applicant's defense. As noted by the South Carolina Supreme Court, a burglary charge requires a very fact intensive analysis, which would have been aided by the testimony of Shirley Hall, Elliott Canada, Antwan Martin, and Lloyd Williams.

Shirley Hall provided a letter to Mr. Warder indicating that she was a neighbor and aware that Applicant lived at the victim's apartment. Mr. Warder provided no viable explanation for his failure to utilize this information or call Ms. Hall or any other neighbor at trial. When residency was one of the primary issues on the burglary charge, it is unreasonable that counsel had this information and did not provide it to the jury to assist in their fact intensive analysis of the burglary charge.

Elliott Canada was an eyewitness to the events that took place in the apartment on the evening of January 29, 2006, and he was told by Mr. Watson of his intention to return to the apartment with his gun. He testified that it was obvious there was a man living in the apartment and both the victim and Mr. Watson seemed concerned about "Jay" returning to the apartment that night. Interestingly, Mr. Canada was interviewed by the State, but he was not called as a witness for the State at trial. Despite Applicant's requests that counsel contact or subpoena Mr. Canada, he was not interviewed or contacted by trial counsel. Mr. Canada affirmed his willingness to speak with trial counsel and be called as a witness for the defense. He also asserted that he had useful information that he thought should have been provided to the jury, and this Court agrees.

Antwan Martin also was an eyewitness to the events that took place on January 29, 2006. He testified about being with the Applicant from approximately 3-8 p.m. while

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Applicant was helping him with a move. He specifically recalled that Applicant left his vehicle behind and left his phone in it. When they returned to Applicant's vehicle, he recalled Applicant retrieving numerous messages from Ms. Fogey and giving Applicant a hard time about it. This testimony clearly would have substantiated Applicant's claims that Ms. Fogey had been calling him and trying to determine when he was coming home. He was also adamant that Applicant and Ms. Fogey were in a dating relationship on January 29, 2006, and Applicant was living with her. This testimony would have directly refuted the testimony of Taffie Williams that they were not dating and had been broken up for two weeks. Transcript p. 121, lns. 18-24. He also knew about the Applicant not having a key to the apartment and their recent stay with his mother. He was willing and available to speak with trial counsel and even attended trial, yet counsel failed to speak with him. Due to counsel's inactions, Mr. Martin's vital testimony was not provided to the jury to account for the events of January 29th, refute the testimony of the State's witnesses or confirm the Applicant's testimony. This Court finds this failure to be unreasonable, unexplained by trial counsel, and highly prejudicial to the Applicant.

Lloyd Williams was the victim's stepfather and also was at the apartment on January 29, 2006. He explained that he knew that the Applicant lived with Ms. Fogey and contributed to the bills, which refuted the testimony of Mrs. Williams regarding the bills. Transcript pp. 114-115. Mr. Williams recalled Applicant having a key before the sewer back up, and it was his understanding that Applicant gave his key to Mrs. Williams. This testimony would have refuted the testimony of Mrs. Williams regarding her receipt of a key. Transcript p. 106, lns. 21-24. He also remembered that they stayed with Applicant's mother when the sewer backed up at the apartment. On January 29,

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2006, Mr. Williams went by the apartment and, he saw Charlene Ellis, Elliott Canada, and Slamarcus Watson. He asked Ms. Fogey if she was doing "a sneak up in here", which he explained meant sneaking men in the apartment while Applicant was away. At trial, he informed Mrs. Williams that he believed that Applicant was innocent and just going home. When asked, Mr. Williams agreed that he would have been willing to testify for the defense, but he was never contacted by trial counsel.

This Court finds that trial counsel's failure to contact and/or utilize Shirley Hall, Elliott Canada, Antwan Martin, and Lloyd Williams was not excusable nor was it a reasonable tactical decision. Each witness provided pertinent testimony on the issues of Applicant's residency and intent to commit a crime at the apartment. These witnesses also could have refuted the State's witness testimony and affirmed Applicant's testimony. At trial, counsel only called Applicant, Chad Tate, his mother, and his aunt for the defense. Even though these witnesses provided some pertinent testimony, trial counsel only called one non-family member when these other vital non-family member witnesses were available. Interestingly, Lloyd Williams and Elliott Canada were listed as potential State witnesses and were willing to testify for the defense despite being Ms. Fogey's stepfather and Mr. Watson's friend. This Court finds that these factors combined with the credibility of the witnesses' testimony would have been highly persuasive to the jury and would have likely affected the outcome of the trial.

As to the witnesses called at trial, both Applicant and Mr. Tate testified that they were not properly prepared by counsel to testify nor did they feel they were fully utilized by counsel on the issue of residency and intent to commit a crime. At the PCR hearing, Mr. Tate provided ample testimony on these issues that was not offered to the jury at

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trial. As was explained by Mr. Tate, counsel did not speak to him until the start of trial, and this lack of preparation was evident in Mr. Tate's trial testimony. As a result, this Court finds that trial counsel's was ineffective in his preparation and utilization of Mr. Tate and that Applicant was prejudiced as a result.

Furthermore, this Court is not convinced by the Respondent's position that the jury's not guilty verdict on the murder charge amounts to a showing of effective representation on the burglary charge. Specifically, it does not establish that counsel effectively addressed the burglary element of "intent to commit a crime" since counsel could not anticipate the jury's verdict when he prepared and presented the Applicant's defense at trial. After a review of the entire trial transcript, the Court is convinced that counsel focused his efforts at trial on the murder charge to the detriment of the burglary charge. After listening to counsel's explanation during the present hearing and observing his demeanor, this court is convinced that counsel did not prepare his case in anticipation for a not guilty verdict to the murder charge and a guilty verdict to the burglary charge. Viewed in a light most favorable to counsel, the best that may be concluded is that if he were successful in defending the murder charge that the burglary would simply go away. The court has searched the transcript and has considered the testimony presented at the present hearing for a reasonable justification for such an opinion and can find none. This Court finds that counsel's above detailed failures cannot be cured by a not guilty verdict on the murder charge when the jury found the Applicant guilty on the burglary charge. This Court further finds that trial counsel's ineffective assistance directly affected the verdict on the burglary charge, and but for counsel's ineffective performance the outcome of the trial would have been different.



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This Court finds that counsel was not ineffective in his argument on directed verdict. Even though his argument was minimal at best, trial counsel touched on the two major arguments regarding residency and intent to commit a crime. Though indicative of counsel's lack of concern with the burglary charge, this Court finds that counsel's argument did not fall below professional norms.

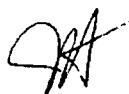
This Court finds that trial counsel was not ineffective when he failed to object or request further jury instructions following the court's instruction in response to the jury's question regarding the elements of burglary. As trial counsel explained, the instruction was a correct statement of the law even if it was not the most artful instruction. The jury's question and court's response demonstrate the jury's indecision on the burglary charge. It appears that the jury was struggling with the elements of burglary and their verdict on the charge. Notably, trial counsel, not the trial court, failed to clearly address those elements and present a viable defense for the Applicant. As a result, this Court finds that counsel was not ineffective for his failure to request further instructions, but the jury's questions is demonstrative of the prejudice the Applicant suffered by counsel's failures in regards to his investigation and representation on the burglary charge.

This Court finds that trial counsel was ineffective when he failed address the matter stricken through by the jury on the burglary indictment, and this Court finds that this issue further demonstrates the jury's indecision with their verdict on the burglary charge. As does the jury's questions, it clearly shows how close the jury may have been to a not guilty verdict and how important it was for counsel to prepare, investigate and call the witnesses discussed above on the burglary charge. On its face, this issue with the verdict form does not appear to be a matter of ineffective assistance of counsel, but trial

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counsel's testimony on the matter cannot be ignored. When asked about this issue, trial counsel stated that he thought the jury verdict was compromised. Here, trial counsel thought the jury verdict was compromised, yet he failed to bring his concern to the trial court's attention or preserve the issue for appellate review. Due to his own testimony on the matter, this Court finds trial counsel's performance was deficient and Applicant was clearly prejudiced as a result.

B. Ineffective Assistant of Appellate Counsel

Based upon the testimony, exhibits and arguments presented at the evidentiary hearing, this Court finds that the Applicant has failed to show that appellate counsel's performance was deficient under prevailing professional norms and that he was prejudiced as a result of such deficient performance. To prevail on his claim of ineffective assistance of appellate counsel, the Applicant must establish that there is a reasonable probability that the result of the proceeding would have been different, the conviction and sentence would have been overturned, if appellate counsel raised the issues alleged by the Applicant. See Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). Here, Applicant shared his concerns about his appellate defender's medical condition, but this Court has reviewed the merits brief submitted by counsel and does not share in Applicant's concerns. Therefore, this Court finds that appellate counsel rendered effective assistance of counsel, and the Applicant suffered no prejudice as a result of her representation.

V. CONCLUSION

Based upon the foregoing, this Court orders that the Application for Post Conviction Relief is hereby granted. This Court further finds that no other allegations



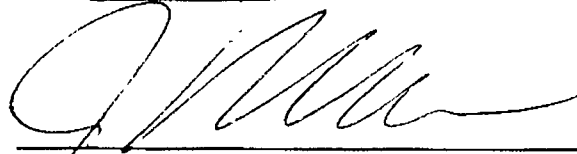
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were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

IT IS THEREFORE ORDERED:

1. That Applicant has met his burden of proof as to his allegation of ineffective assistance of trial counsel;
2. That Applicant has not met his burden of proof as to his allegation of ineffective assistance of appellate counsel;
3. That the Application for Post Conviction Relief be granted and his convictions be vacated and granted a new trial;
4. That Applicant be released from the custody of South Carolina Department of Corrections and transferred to the custody of Spartanburg County pending the disposition of his criminal case, with normal bond proceedings.

AND IT IS SO ORDERED this 21st day of October, 2011


 The Honorable J. Mark Hayes, II
 Judge, Fifth Judicial Circuit

Spartanburg, South Carolina

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Jerome Curtis Buckson, #319845,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-5670

**MOTION TO ALTER OR AMEND
THE ORDER GRANTING RELIEF
PURSUANT TO RULE 59(e)**

Respondent, by and through undersigned counsel, making its Motion to Alter or Amend, pursuant to Rule 59(e), SCRCPP, would respectfully show unto this Court:

1. The matter is before the Court by way of the Applicant's application for post-conviction relief.
2. An evidentiary hearing was convened on September 23, 2011, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. The Respondent was represented by Suzanne H. White of the South Carolina Attorney General's Office.
3. After the evidentiary hearing, the post-conviction relief court issued an order dated October 21, 2011, and served on October 25, 2011, granting the Applicant's application for post-conviction relief.
4. Respondent moves this Court to reconsider the final order due to the following:
 - a. The State asks this Court reverse its earlier decision and deny post-conviction relief where the Applicant failed to meet the Strickland standards and where Counsel's conduct fell within the realm of reasonable representation specifically in relation to the following:
 - i. Respondent submits that the Court's finding that Counsel was ineffective for failing to address the matter stricken through by the jury on the burglary indictment and the Court's finding that the issue demonstrates the jury's indecision with their verdict on the burglary charge was not supported by factual testimony or evidence presented

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by the Applicant. Respondent submits that it is speculation to determine that the strike through indicates indecision by the jury, when it is just as likely that the jury made a clerical mistake and began to write on the wrong verdict sheet initially. Additionally, Respondent argues that Counsel's testimony that the verdict was compromised indicated that he believed the jury felt Applicant was guilty of something, but did not want to convict him of the murder, so they compromised and chose the lesser charge, not that something happened that compromised their verdict.

- ii. Respondent submits that the Court's findings as to each of the witnesses presented by Applicant and factual recitation of their testimony needs to be altered or amended as follows¹:

1. **Shirley Hall** – p. 4 – However, Ms. Hall also testified that she could not have offered any testimony at trial as to whether or not the Applicant had a key to Ms. Foggie's apartment or whether or not the Applicant and Ms. Foggie had recently broken up at the time of the incident.

Respondent submits that Ms. Hall also testified to this and it should be included to fairly represent her testimony at the hearing.

2. **Barry Adair** – p. 4 – Barry Adair testified . . . supervisor in the summer of 2005.

Respondent submits that Mr. Adair testified that he worked with Applicant perhaps in the months of June – August 2005.

¹ Respondent has noted the passages that should be altered or amended in italics and any specific areas that need to be added or amended are underlined.

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3. **Elliott Canada** – p. 5 – *He knew Ms. Fogey had a 'friend.'* Canada had observed men's items in the apartment on previous occasions when he was at the home, but he also testified that he did not observe any men's items at the home on the 29th and from what he saw on the 29th, it did not appear that a man lived there.

p. 17 – *Canada was an eyewitness to events that took place at the apartment on the evening of January 29, 2006, prior to the incidents that resulted in Ms. Foggie's death, and he was told...; however, he had no knowledge if Watson actually returned to the home with a gun that evening.*

Respondent submits that at the PCR hearing, Canada testified that from where he was on the 29th, it did not appear a man lived there and he never saw men's clothing on the 29th. Respondent submits that Mr. Canada's testimony is not accurately represented in the Order and it should be amended to fairly represent what he testified to at the hearing.

Respondent also submits that the wording of the Order indicates that Mr. Canada was an eyewitness to the events that took place in the apartment that evening, up to and including the burglary and murder. Respondent submits that the underlined portions should be included to clarify that he was not present at the time of the evening related to the actual incidents relating to the charges on trial.

4. **Antwan Martin** – p. 6 – *Mr. Martin explained that it was his understanding from his conversations with the Applicant that the Applicant lived with Ms. Foggie and was still dating*

her on January 29, 2006.

He recalled that the apartment had flooded . . . stayed with Applicant's mother. He also thought the apartment was broken into and Foggie and Applicant had to get new locks, but Mr. Martin had no idea as to whether or not Applicant had a key to the apartment once the locks had been changed. Mr. Martin testified that he had only been to the apartment twice and had not been there in the weeks prior to the events on January 29th.

p. 17 - Antwan Martin also was . . . to events that took place on January 29, 2006 between the hours of 3-8 pm, while Applicant was helping Mr. Martin with a move.

Respondent submits that Mr. Martin testified that his "understanding" from what Applicant told him what that the victim called the Applicant that day. Additionally, Mr. Martin testified at the hearing that he was not aware of whether or not Applicant had a key to the apartment or had any information regarding the night after 8pm and the Order should be altered to accurately reflect his testimony.

5. **Chad Tate** - p. 7 - Respondent asks that the Court amend the Order of Dismissal to remove the second paragraph that references a previous incident that occurred more than five years previous to this incident and that was irrelevant to the hearing.

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p. 7 – He received a subpoena and Counsel's investigator came to his home to speak with his children; however, trial counsel did not speak with him until the day of trial.

Respondent submits that Tate testified that Counsel's investigator did come to his home, but that he did not meet with counsel until the day of trial and to fairly represent his testimony, this should be included.

Tate also testified that he had no knowledge whether or not Applicant had a key to the apartment that night or had given his key to anyone else. Tate testified that when he and Ms. Foggie were dating, she would often leave the door open for him when he needed to come in for something.

Respondent submits that Tate also testified that he had no knowledge regarding the key and testified that the victim left the door open for him often and this should be included to fairly represent his testimony.

6. **Lloyd Williams** – p. 7 – Mr. Williams first testified that he did not know if the Applicant lived with the victim or had a key to the apartment; however, after reviewing his statement . . .

Mr. Williams also testified that he understood that the Applicant would be at the apartment all of the time, but Williams couldn't say that he lived there, so Williams discussed Ms. Foggie having men living with her and she informed Williams that the Applicant helped her pay the bills.

p. 18 -- recitation of testimony amended to comport with testimony as indicated above

Respondent submits that Mr. Williams testified first to not knowing if Applicant lived at the apartment or had a key and

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also testified that he couldn't say he lived there and to accurately reflect his testimony, this should be added.

7. **Jerome Buckson** – p. 11 – *Applicant highlighted portions of his testimony and utilized pictures introduced at trial to explain his testimony. However, Applicant acknowledged that Trial Counsel did introduce each of these pictures at trial showing the futon with the shirt, the jacket in Applicant's car, and the pictures of the Applicant's documents in the home.*

Respondent submits that the information needs to be included to fairly represent Applicant's testimony.

8. **Richard Warder** – p. 13 – *Mr. Warder specifically stated . . . at trial; however, he also testified that he does not call every witness that a client wants because of the State's ability for cross examination and the chance it would hurt the defense.*

Mr. Warder also testified that both charges were equally important, but he did not believe that the jury would split on them as they did.

Respondent submits that the Order should be amended to reflect Mr. Warder's testimony.

- iii. Respondent also asks this Court to amend its findings as it relates to the credibility of witnesses presented by the Applicant. (p. 13). Respondent submits that the testimony of **Elliott Canada** was not credible. Canada, a man who testified that he was a close friend of the lover and accused shooter of the victim (by Applicant), testified that although he did not know the Applicant or even know

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his name, wanted to testify on Applicant's behalf at trial. Additionally, Canada was dating the cousin of the victim at the time of her death, so Respondent submits that the testimony that he would have testified on behalf of the man accused of killing the victim is completely implausible and not credible. Canada also acknowledged that he had been arrested and was jailed in the Spartanburg County Detention Center at the time of the Applicant's trial.

Respondent also submits that the testimony of **Antwan Martin** was not credible. Martin testified that when he and Applicant returned to Applicant's car after moving, Applicant had numerous messages from Ms. Foggie. Martin testified that the numerous phone calls and messages appeared as if Ms. Foggie was trying to track Applicant down. However, at trial, Applicant himself testified only that "a couple of the messages was from Tiffany and a couple was from my Mom." (Tr. p. 321). Additionally, Martin testified that he had only been to the apartment of Ms. Foggie twice before, but had not been there in the weeks before the incident. Respondent submits that his testimony cannot be deemed credible.

Respondent further submits that the testimony of **Lloyd Williams** cannot be deemed credible based on the inconsistencies in his statements. Mr. Williams testified at the hearing several times that he did not know if the Applicant was living with Ms. Foggie, that he did not know if the Applicant had a key, and that he never had anyone specifically say that the Applicant lived at the apartment. However, PCR Counsel refreshed his memory with the statement he gave her investigator and he made a contradictory statement to indicate that he did know that the Applicant lived at the apartment

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and had a key. Respondent submits that the lack of consistency in Mr. Williams' testimony indicates a lack of credibility.

Furthermore, Respondent submits that the Applicant did not meet his burden of proof because although he presented several witnesses in support of his claims that he claims could have and should have testified on his behalf, these three witnesses were not credible in their testimony and therefore, their testimony should not be considered in the determination of whether or not Counsel was ineffective in this matter.

- iv. Respondent also asks this Court to amend its findings in the Order as it relates to Counsel's "focus on the murder charge to be unreasonable and ineffective, which resulted in prejudice to the Applicant." (p. 15), and Counsel's ineffectiveness regarding his preparation and failure to call the named witnesses was prejudicial to Applicant.

First, Respondent submits that the testimony does not indicate that Counsel focused solely on the murder charge. Counsel testified that the murder charge had more issues and defenses and therefore it was discussed more. However, Counsel also testified that he thought each charge was equally important and that he thought they presented a strong direct and circumstantial evidence case that the Applicant lived at the apartment. Counsel and Applicant acknowledged that Counsel produced three witnesses, in addition to Applicant, who testified to Applicant living at the apartment, in addition to several pictures of clothing and items at the house that were Applicant's.

Respondent submits that the testimony presented at the hearing by

the various witnesses was insufficient to prove that had they testified the outcome of the trial would have been different based on the facts of the case and the Applicant's testimony at trial. Furthermore, Respondent submits that Counsel's actions and preparation was reasonable in light of the State's focus on the murder versus the burglary charge, as evidenced throughout the trial.

- (5) The State requests a hearing to fully argue the 59 (e) motion and address each of the raised issues before this Court.

Respectfully submitted,

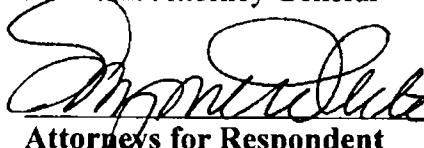
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:


Attorneys for Respondent
P.O. Box 11549
Columbia, S.C. 29211
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M. HOPE BLACKLEY

November 7, 2011.

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PCR DIVISION 803.734.3737
PCR FACSIMILE 803.734.4113

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
IN THE 7th JUDICIAL CIRCUIT

Jerome Curtis Buckson, #319845 ,

2010-CP-42-5670

Applicant,

vs.

AFFIDAVIT OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Motion to Alter or Amend of the Respondent in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette, LLC
P.O. Box 12725
Columbia, South Carolina 29211

Anne Mueller
Anne A. Mueller
Legal Assistant for the Respondent

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M. HOPE BLACKLEY

DATED this 7th day of November, 2011.

STATE OF SOUTH CAROLINA

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COUNTY OF SPARTANBURG

Jerome Curtis Buckson, #319845

☐ Plaintiff

v.

State of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-42-5670

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Tricia A. Blanchette, Bar No.

Address:

PO Box 12725

Columbia, SC 29211

phone: 803-988-0008 fax: 803-988-8070

e-mail: other:

Defendant's Attorney:

Suzanne H. White Bar No.

Address:

P.O. Box 11549

Columbia, SC 29211-11549

phone: (803) 734-3737 fax: (803) 734-4113

e-mail: other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Alter or Amend Pursuant to 59(e), SCRCP

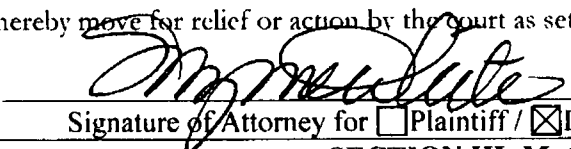
Estimated Time Needed: 45 min. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed Order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

November 7, 2011

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	DOCKET NO.: 2010-CP-42-5670
Jerome Curtis Buckson, #319845,	)	
Applicant,	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	MOTION TO ALTER OR AMEND
State of South Carolina,	)	PURSUANT TO RULE 59(e), SCRPC
Respondent.	)	
	)	

COMES NOW the Applicant, through his undersigned counsel, and moves before the Honorable J. Mark Hayes, II, to dismiss the State's Motion to Alter or Amend the Order Granting Application for Post Conviction Relief signed on October 21 2011, which was filed on October 25, 2011. The Applicant, through counsel, received a copy of the State's Motion to Alter or Amend on November 10, 2011.

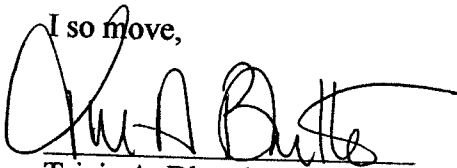
This matter comes before the Court by way of an Application for Post Conviction Relief filed on October 22, 2010. The State submitted a Return on or about May 3, 2011. An evidentiary hearing was conducted on September 23, 2011 at the Spartanburg County Courthouse in front of the Honorable J. Mark Hayes, II. The Applicant was present and was represented by Tricia A. Blanchette, Esquire. The Respondent was represented by Suzanne H. White, Assistant Attorney General.

The Applicant respectfully submits the following grounds in support of the instant Motion:

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. If such is not done, a party may move

under Rule 59(e), SCRCP, for the post conviction relief judge to make specific findings of fact and conclusions of law on each issue raised at the evidentiary hearing. Here, the State has made a Motion to Alter or Amend under Rule 59(e), SCRCP, but the State is asking this Court to reconsider, not alter or amend, the Order on four grounds. In sum, the State has asked this Court to reconsider based upon the State's analysis of the testimony, the State's position on the credibility of the Applicant's witnesses, and the State's position regarding counsel's preparation. The Applicant submits that the State has not filed a Motion Pursuant to Rule 59(a), SCRCP, asking for a rehearing, but the State is essentially asking this Court for a rehearing and entry of a new Order under the guise of a Motion to Alter or Amend. Therefore, the Applicant submits that the Motion is improper and should be denied.

Furthermore, the State is not asking for an alteration or amendment to the Order, but is asking this Court to rescind the Order and deny Post Conviction Relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (Noting that the proper use of a Rule 59(e) Motion is to preserve issues raised but not ruled upon by the trial court.) Since the State has failed to raise an issue properly raised and not ruled upon, the Applicant requests that the Motion be dismissed.

I so move,


Tricia A. Blanchette
 Attorney for the Applicant
 Post Office Box 12725
 Columbia, South Carolina 29211
 (803) 988-0008

November 15, 2011
 Columbia, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Jerome Curtis Buckson, 319845,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

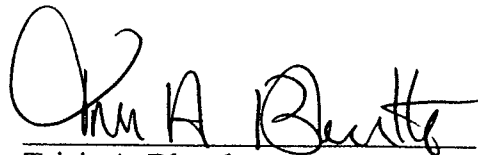
IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2010-CP-42-5670

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that I placed in the mail this 15th day of November 2011, a copy of Return and Motion to Dismiss Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP, to Suzanne H. White of the Attorney General's Office, at:

Office of the Attorney General
 ATT: Suzanne H. White, Ast. AG
 PO Box 11549
 Columbia, SC 29211



Tricia A. Blanchette
 PO Box 12725
 Columbia, SC 29211
 (803) 988-0008
 Attorney for the Applicant

November 15, 2011

768

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Jerome Curtis Buckson,
#319845,

Plaintiff

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

Case No.: 2010-CP-42-5670

ORDER

This is a post-conviction relief application which is presently before the Court on the State's Rule 59(e) Motion to Alter or Amend the Court's prior order granting the application.

Rule 59

A Rule 59 motion allows an adverse party to ask the court to reconsider a previously raised and decided issues encompassed in a prior decision. Rule 59 also allows an adverse party the opportunity to ask the court to decide an issue which was previously presented to the judge but not previously ruled upon. Rule 59(f) provides that the motion may in the discretion of the court be determined on briefs filed by the parties without oral argument. The motion is denied without further arguments.

Discussion

After a review of the materials filed by the parties and a review of the prior decision issued by this Court, the prior ruling stands as the decision of this Court. The only clarification to the prior ruling is to the last paragraph on page 21 of the order in addressing the trial counsel's decision not to address the matter stricken through by the jury on the burglary

COMPUTER

indictment. The Court agrees with the State that such an action by the jury, standing alone, one cannot conclude with any degree of certainty the jury's intent. Likewise, counsel's failure to address the matter with the Court, standing alone, would not lead to the conclusion of ineffective assistance of counsel. Such an action by the jury could indicate a number of conclusions as to their intent from a clerical mistake as suggested by the State, a compromised verdict as suggested by trial counsel, or any other number of conclusions. Nevertheless, this factor, added to the totality of other credibility evidence presented before this Court, supports the conclusion that trial counsel was ineffective in his representation of the applicant on the burglary charge. He should have addressed the matter with the Court. Otherwise the last paragraph on page 21 needs no further clarification.

Therefore present motion is denied and the prior order stands as the order of the Court with the above clarification.

IT IS SO ORDERED.



J. Mark Hayes, II
Circuit Court Judge

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 MAR 12 PM 1:44
M. HOPE BLACKLEY

3/9, 2012
Spartanburg, South Carolina

5
770

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Spartanburg County



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

March 13, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Jerome C. Buckson
Applicant # *319845*

7TH JUDICIAL CIRCUIT

CASE # *2010CP425670*

CERTIFICATE OF SERVICE

State VS
Respondent

I certify that, on this date, I served a copy of the

In this action dated *3-9* *2012* on

Order

3-13-12

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:

Jane Miller

Suzanne White

Jerome Buckson

Tricia Blanchette

3-13-12

(Date)

Cassie Sey
(Signature)

WITNESSES

1. ATTENDANCE MADE

2. SPARTANBURG PUBLIC SAFETY DEPT.

3. CAJON

4. CHECKED VEHICLE

5. ASSESSMENT FINE CARD MADE

6. TRAFFIC VIOLATIONS

ARREST WARRANT NUMBER

091564

ACTION OF GRAND JURY

True Bill

Amy E. Cronice

Foreperson of Grand Jury

Date: 02/23/07

VERDICT

GUILTY

William R. Elbert

Foreperson of Petit Jury

Date: 2/2/07

006-GS-42-0845

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 27 2006

TERM

THE STATE
VS.

Jerome Buckson

Indictment for
BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2006 FEB -1 PM 3:00

WARD KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

FEB 23 2006

At a Court of General Sessions, convened on _____, the Grand Jurors of
Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE

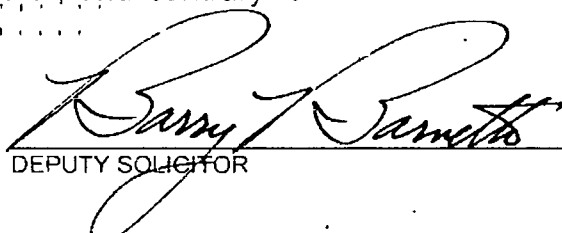
(DWELLING)

The Defendant, Jerome Buckson, did in Spartanburg County, on or about January 30, 2006, wilfully and intentionally enter the dwelling belonging to Tiffany L. Foggie located at 2096 E. Main Street #5A, Spartanburg, South Carolina without consent and with the intent to commit a crime therein, and either:

- (1) the Defendant did enter in the nighttime and/or
- (2) armed with a deadly weapon; and/or
- (3) caused physical injury to any person who is not a participant in the crime; and/or
- (4) uses or threatens the use of a dangerous instrument; and/or
- (5) ~~displays what is or appears to be a knife, pistol, revolver, rifle,~~
shotgun, machine gun, or other firearms

In violation of Section 16-11-311 and Section 16-1-57, 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.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

773
IN THE COURT OF GENERAL SESSIONSCOUNTY OF SPARTANBURGSTATE OF VEROME CURTIS BUCKSON

AKA: _____

Race: B Sex: M Age: 27DOB: 4/10/1979 SS#: _____

Address: _____

City, State, Zip: WELLFORD, SC 29385

DL# _____ SID# _____

INDICTMENT/CASE#: 06-GS-42-845AW#: K091564Date of Offense: JANUARY 30, 2006S.C. Code §: 16-11-311CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: BURGLARY FIRST (1st) DEGREEin violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Bobby Smith
SolicitorVerome Curtis Buckson
DefendantRichard Warden
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§35.13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

H. B. McKinnon, DC.

Clerk of Court/ Deputy Clerk

Court Reporter: Linda Moffitt

PRESIDING JUDGE

Judge Code: 2Sentence Date: February 2, 2007