

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable George C. James, Circuit Court Judge

BERNARD MCFADDEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002319

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

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ALAN WILSON
Attorney General

JULIE COLEMAN
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

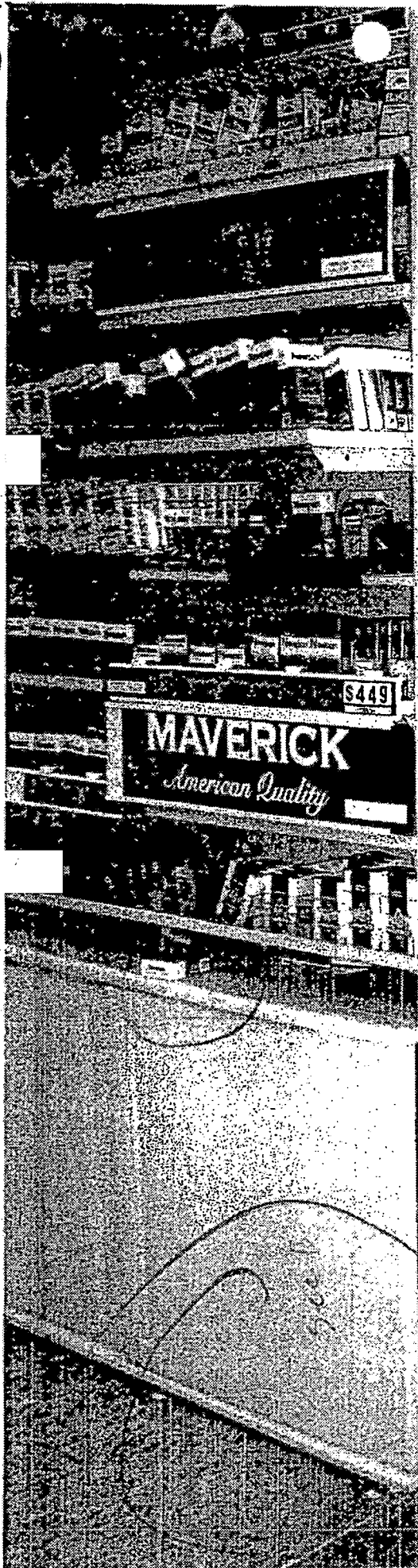
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SEP 18 2017

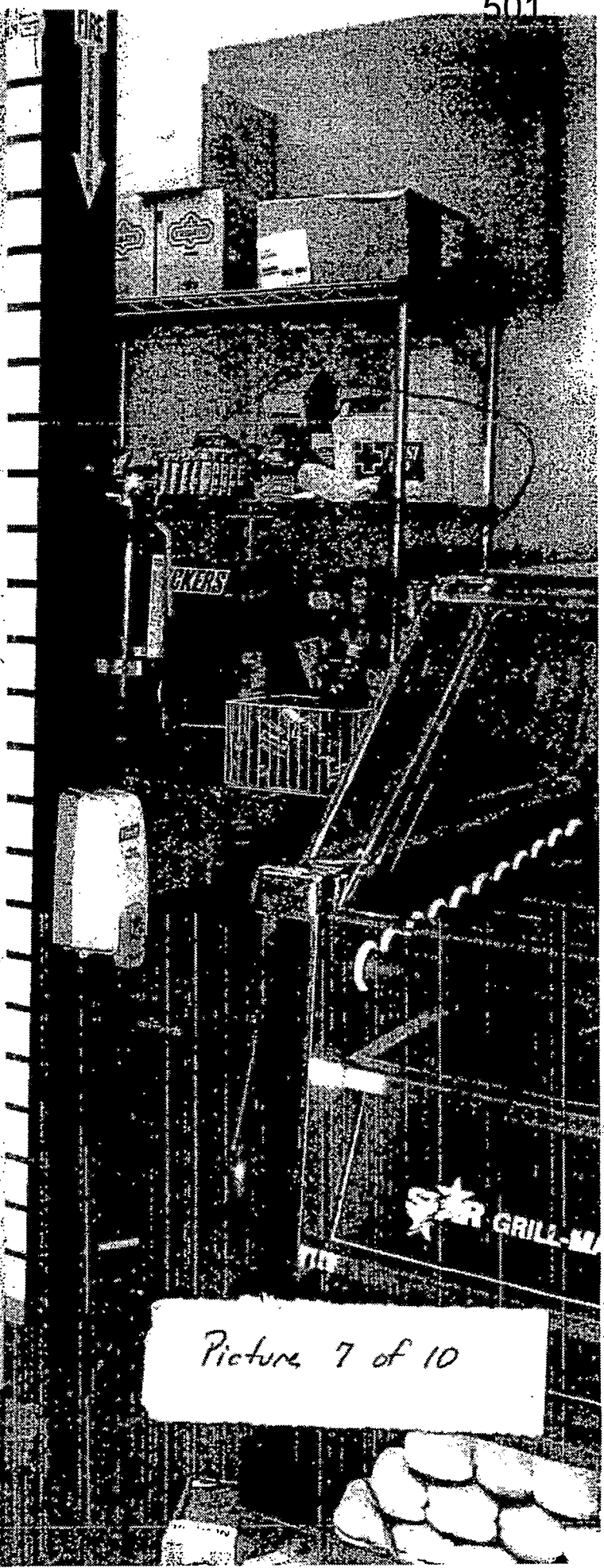
S.C. SUPREME COURT

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Far Shoot / First Aid kit Over Lapping
Pole of Shelf



Picture 7 of 10

74
320 16

Overlapping the
shelf and pole

Picture 8 of 10

HICKERS

100% FINISHED

LIFESAVERS

ASTERONE



ST
D



Overlapping
corner of
shelf

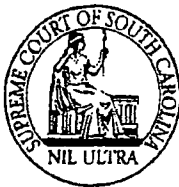
Picture 9 of 10



A white First Aid kit box
should appear here, but it
doesn't clearly in a
colored photo

Colored photo shows two
brown boxes in back ground.
First Aid kit is colored white,
black boxes but doesn't
appear here.

Picture 10 of 10



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

ROSALYN FRIERSON
DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-0269

March 17, 2011

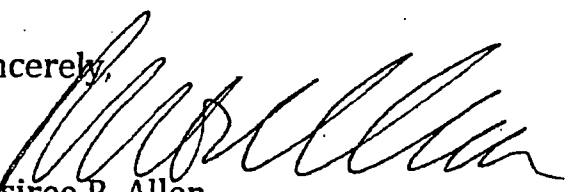
Mr. Bernard McFadden, #199135
Kirkland CI/R & E/F1-209(A)
4344 Broad River Road
Columbia, SC 29210

Dear Mr. McFadden:

I am writing in response to your letters dated February 23 and March 14, 2011 to me and Rosalyn Frierson. The court reporter, Ms. Margaret Sullivan has advised that the transcript from proceedings heard on November 16-19, 2010 has not been requested from her by anyone. Therefore, pursuant to Rule 607, the records to produce this transcript will be retained for a period of five years. After that time, they will be destroyed pursuant to Rule 607. I have enclosed a copy for your review.

If you would like to order the transcript, please do so before November 2015.

Sincerely,


Desiree R. Allen
Court Reporter Manager

Enclosure: Rule 607

CC: Margaret Sullivan, Official Court Reporter

(Attachment B)

Proof of Mailing

Case #1: _____

The undersigned hereby certifies that a true copy of the attached matter has been served to the person(s) listed below by depositing a properly-addressed-stamped envelope in the U.S. Mail this 18th day of October 2011; such matter being: PCR Application with 10 Pictures to Sumter County Clerk James C. Campbell with self-addressed-stamped envelope for returned-stamped-copies of picture 10 of 10, page 1 of 9 and Attachment B!

1) James C. Campbell, Clerk
of Court, Courthouse, Room
308, Sumter, S.C. 29150

Sworn And Subscribed Before me
This 18 day of October 2011
Catherine A. Chremon
Notary Public For South Carolina
My Commission expires: _____

Bernard McFadden
Bernard McFadden, 199135
Plaintiff Pose

My Commission Expires December 22, 2018

Bernard McFadden, 199135
 Kershaw CI/ MBDA
 4848 Goldmine Hwy
 Kershaw, S.C. 29067

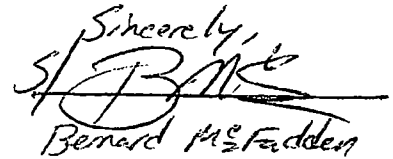
2011 OCT 20 PM 1:37

October 17th, 2011

2011-CF-43-1952

Dear Mr. Campbell:

Enclosed, please find the Applicant/Petitioner's PCR Application
 with 10 Pictures for filing in your office; also find a self-
 addressed - stamped envelope with an extra copy of picture 10 of
 10, page 1 of 9 and Attachment B for returned - stamped copies
 Thanking you for your attention in advance,

Sincerely,

 Bernard McFadden

Content and deposit are witnessed 10/18/2011 by:

PL	Personal	Copy	Sign	and	kept.	#
PL	Personal	Copy	Sign	and	kept.	#

Deposit for mailing also documented on SCDC Form 10-14.

Bernard McFadden, 199135
 Kershaw C/I MBDA
 4848 Goldmine Hwy
 Kershaw, S.C. 29067

2011 OCT 20 PM 1:37

October 17th, 2011

CELL
 CRT
 S.C.

2011-CP-43-1952

Dear Mr. Campbell:

Enclosed, please find the Applicant/Petitioner's PCR Application with 10 Pictures for filing in your office; also find a self-addressed - stamped envelope with an extra copy of picture 10 of 10, page 1 of 9 and Attachment B for returned - stamped copies. Thanking you for your attention in advance,

Sincerely,
[Signature]
 Bernard McFadden

Content and deposit are witnessed 10/18/2011 by:

P/	Personal	Copy	signed	and	kept.	#
P/	Personal	Copy	signed	and	kept.	#

Deposit for mailing also documented on SCDC Form 10-14.

SC AGENCY G
 RECEIVED

OCT 24 2011

Ref: *M. Williams*

Answered _____

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2011-CP-43-01952
	)	
Bernard McFadden, #199135,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post-conviction relief filed October 20, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted at the February 2010 term of the Sumter County Grand Jury for Burglary (Violent) – Second Degree (2010-GS-43-0257). Applicant was represented by Willie Brunson, Esquire. Applicant proceeded to a jury trial before the Honorable W. Jeffrey Young. Applicant was found guilty, and on November 19, 2010, Applicant was sentenced to fifteen years imprisonment.

A notice of appeal was filed December 15, 2010. An Order of Dismissal was entered on December 31, 2010 for failure of Appellant to timely serve Notice of Appeal on Opposing Counsel. The remittitur was sent on February 7, 2011.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, the appellate records, and the trial transcript.¹ The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Perjured testimony in violation of the 14th Amendment of the U.S. Constitution; and
3. Wrongly admitted prejudicial testimony in violation of the 14th Amendment of the U.S. Constitution and State v. Golf 525 S.E.2d 246 (S.C. 2000).

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

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

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

¹ As of the date of this return, the transcript has been ordered by Respondent but not yet received. The transcript will be forwarded upon receipt.

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

The Respondent submits that the second and third allegations should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;

3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, the Court should summarily dismiss this application for post-conviction relief.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

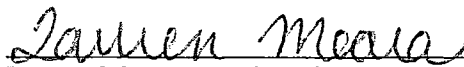
May 11, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2011-CP-43-01952
	)	
BERNARD MCFADDEN, 199135,	)	
	)	
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 **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter SC 29150

DATED this 18th day of May, 2012.


 Lauren Meara, Legal Assistant
 For Respondent

State of South Carolina)
)
County of Sumter)
)

Bernard McFadden
Plaintiff

2011-CP-43-01952
PCR

vs.

The State of South Carolina,
Defendants

April 16, 2015
Sumter, S.C.

Before the Honorable George C. James, Jr.,
Judge.

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

Mr. Bernard McFadden,
pro se

Mr. Daniel F. Gourley,
Assistant Solicitor for the State

Margaret T. Sullivan,
Court Reporter

1

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by Mr. McFadden

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10

EXHIBITS

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No. Description Id. Ev.

12

P-1 Affidavit 32 95

13

P-2 Photographs 39

14

15

16

17

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24

25

1 THE COURT: This is Mr. McFadden's case.
2 The docket number is, do you have it handy?

3 MR. GOURLEY: Yes, Your Honor
4 2011-CP-43-1952.

5 THE COURT: Mr. Cornwell, do you want to
6 tell me a little bit about it and then call your
7 first witness.

8 MR. CORNWELL: Your Honor, my client has
9 indicated to me that he wants to proceed pro se.

10 THE COURT: Mr. McFadden, please stand.

11 (Whereupon, the plaintiff is sworn.)

12 THE COURT: Do you understand that you do
13 have a right to counsel in this matter?

14 THE PLAINTIFF: Yes, sir.

15 THE COURT: You understand that.

16 THE PLAINTIFF: Yes, sir.

17 THE COURT: You do have the right also to
18 represent yourself. Do you understand that?

19 THE PLAINTIFF: Yes, sir.

20 THE COURT: What would you like to do?

21 THE PLAINTIFF: Well based on
22 Mr. Cornwell's performance, the last time we spoke
23 before Judge Cothran.

24 THE COURT: Yes, sir.

25 THE PLAINTIFF: He said he was going to

1 file a motion for an expert, blood splatter and
2 photography. And he hasn't corresponded with me
3 regarding those motions, or correspond with me
4 regarding the colored photographs, and a number of
5 transcripts. I think two of them. He's just, there
6 is just a complete breakdown in communication.

7 THE COURT: What transcript are you
8 talking about?

9 THE PLAINTIFF: There was a pretrial
10 transcript dealing with a motion to have Mr. Brunson
11 relieved as counsel.

12 THE COURT: Okay.

13 THE PLAINTIFF: And there were proceedings
14 right after trial and a bond hearing where I --
15 there was an indication from me and Mr. Brunson that
16 we should proceed on our appeal, the transcript, so
17 I didn't waive my right to appeal. None of those
18 transcripts are in our possession.

19 THE COURT: What does -- Mr. Cornwell, did
20 you tell the court or your client that you be
21 getting a photography expert or a blood spatter
22 expert?

23 MR. CORNWELL: Your Honor, exactly the
24 opposite at the proceeding. Mr. McFadden said that
25 he felt he needed one. And I told the court that's

1 not something he needed. He didn't an expert. And
2 then the court just suggested that can get copies of
3 the photographs. And Mr. McFadden agreed with that,
4 that would be fine.

5 THE COURT: Where are the original
6 photographs?

7 MR. CORNWELL: I do have digital copies of
8 those photographs.

9 THE COURT: Colored copies.

10 MR. CORNWELL: Colored copies. And I went
11 several times, scheduled visits to actually show
12 them Mr. McFadden, and each time he refused to see
13 me.

14 THE COURT: Did you refuse to see him,
15 Mr. McFadden, yes or no?

16 THE PLAINTIFF: Yes, sir, I did refuse,
17 because I had my reason. Like I said again, he did
18 stand before Judge Cothran and said that he was
19 going to file a motion. In fact he said he was
20 going to review the Attorney Brooks who originally
21 had this case.

22 THE COURT: Mr. Brooks had the PCR case?

23 THE PLAINTIFF: Yeah, this case. And
24 because of his performance, things that he did not
25 feel was necessary. See what I have here, is a

1 photograph---

2 THE COURT: No, I am not going to get in
3 to that. I'm not going to get in to any specifics.
4 Would you like to represent yourself?

5 THE PLAINTIFF: Yes, sir. I have a motion
6 pending. And---

7 THE COURT: To representative yourself?

8 THE PLAINTIFF: And a continuance.

9 THE COURT: When did you make the
10 motion for -- did you know about this Mr. Gourley?

11 MR. GOURLEY: Your Honor, I don't believe
12 so. I don't have anything in my file here.

13 THE COURT: Hand it to the officer and
14 he'll hand it to me. This is filed in October or
15 April of 2014.

16 THE PLAINTIFF: Yes, sir.

17 THE COURT: And it has no effect for
18 today.

19 THE PLAINTIFF: I mean it's pending. I
20 mean, I served them with it. I have tried to get up
21 here. We were up here before Judge Cothran. He
22 indicated---

23 THE COURT: Well evidently you were in
24 front of Judge Cothran.

25 THE PLAINTIFF: Yeah, he was -- I told him

1 that---

2 THE COURT: And it was continued.

3 THE PLAINTIFF: We have -- yeah, based on
4 his performance what he was -- we agreed upon him
5 moving forward, filing a motion, getting an expert.
6 Getting two experts. And getting the transcripts
7 that we needed. The two transcripts. And also
8 locate the witnesses. I meant we got -- there is no
9 way possible.

10 THE COURT: What witnesses?

11 THE PLAINTIFF: There is two witnesses
12 that had testified, and there was some side bar
13 conferences.

14 THE COURT: What witness?

15 THE PLAINTIFF: Her name is Leethel Lewis
16 and Albertus Lewis and Catherine Myers. I think she
17 changed her name to Anderson. Catherine Anderson.

18 THE COURT: Did any of these witnesses
19 testify at trial?

20 THE PLAINTIFF: Well I think Catherine
21 Anderson, yeah, all of them did. They had, two of
22 them I think the conversation that they with phone
23 calls. They were sought at the side bar and side
24 bar conferences, I think. And they eliminate the
25 testimony. There was some limitation on their

1 testimony, so they didn't get to really tell the
2 jury what they knew. Mr. Brunson didn't object to
3 it. Didn't file any motions concerning it. And,
4 you know, so that's kind of like off the record.
5 And Ms. Anderson also she was relieved when I feel
6 she shouldn't.

7 THE COURT: I saw that in the transcript.
8 She was perhaps acquainted with a juror.

9 THE PLAINTIFF: Yes, sir.

10 THE COURT: I saw that in the transcript.
11 So let's get back to today. Are you ready to go
12 forward today, and if not, why not?

13 THE PLAINTIFF: Because I'd like to file a
14 motion. I'd like to be able to obtain some funds so
15 I can be able to get an expert, and also locate
16 these witnesses.

17 THE COURT: Well you're not going an
18 expert and get any funds unless you have a lawyer.
19 Because the funds aren't -- nobody is going to be
20 handling the funds for you. You're not going to be
21 handling the funds.

22 THE PLAINTIFF: If possible, Your Honor,
23 if you can have a stand by counsel.

24 THE COURT: How many lawyers have you had
25 in the PCR?

1 THE PLAINTIFF: This would be the second.

2 THE COURT: How many lawyers did you have
3 in your underlying trial, just one?

4 THE PLAINTIFF: Just -- well initially I
5 had Lauren Stevens.

6 THE COURT: And then what, she was?

7 THE PLAINTIFF: I filed a grievance. And
8 I think it became a conflict of interest. So she
9 appointed Mr. Brunson.

10 THE COURT: She did.

11 THE PLAINTIFF: She did.

12 THE COURT: She appointed Mr. Brunson.

13 THE PLAINTIFF: But...

14 THE COURT: Mr. Brunson, were you
15 appointed or retained?

16 MR. BRUNSON: Your Honor, please the
17 court, the first part is correct, he applied for the
18 public defender's office. They assigned Lauren
19 Stevens. Ferrari at that time. Maybe Stevens. He
20 filed a grievance against Ms. Stevens. She felt
21 there was a conflict. She was relieved, and I was
22 appointed under 608. 608.

23 THE COURT: Mr. Gourley, is stand by
24 counsel permitted in a PCR matter?

25 MR. GOURLEY: Not that I am aware of,

1 Judge.

2 THE COURT: Mr. McFadden, I've reviewed
3 your materials. I don't know myself what in the
4 world any photography expert would add to this, or
5 blood spatter. It seems to me from your application
6 that you some enate problems with Detective Culick,
7 and you wanted to prove that she had set you up. Is
8 that correct?

9 THE PLAINTIFF: Yes, sir.

10 THE COURT: That is not a PCR ground. Her
11 setting you up is not a PCR ground. So what is it
12 about the photographs that would give you any --
13 lend any relevance to this PCR proceeding?

14 THE PLAINTIFF: Photograph 10 of 10. It
15 has a first aid kit where she provided false
16 testimony. I believe this -- if we blew this
17 photograph up, photograph 10 of 10 attached to the
18 PCR application.

19 THE COURT: I've seen the photographs.
20 You say that it's in certain photographs. And then
21 when another photograph is taken, it's not there.
22 Is that what you say?

23 THE PLAINTIFF: Yes, sir.

24 THE COURT: I've seen that in the PCR.

25 THE PLAINTIFF: I am not certain though.

1 We can't really see whether the first aid -- whether
2 she planted the first aid kit box in that scene or
3 not.

4 THE COURT: So you're saying she planted
5 the first aid kit.

6 THE PLAINTIFF: Yes, sir. I believe she
7 did. If we blow a -- if the photograph is blown up,
8 it may be there, it may not.

9 THE COURT: I presided over your first
10 trial. Do you remember that?

11 THE PLAINTIFF: Yes, sir, I do.

12 THE COURT: Do you remember presenting to
13 the jury certain testimony that you were trying to
14 prove she set you up?

15 THE PLAINTIFF: Yes, sir.

16 THE COURT: Did you present that testimony
17 in the second trial before Judge Young?

18 THE PLAINTIFF: I didn't testify. I
19 waived my right to, you know, based on, under the
20 advice of the Attorney Brunson.

21 THE COURT: So the answer to that
22 question, sir, is no, you did not testify.

23 THE PLAINTIFF: No, I didn't. And I
24 waived my right, yes, sir.

25 THE COURT: Mr. Gourley, he wants to fire

1 his lawyer. He wants to get discovery, which I am
2 not sure I am going to give him. Do you object or
3 consent to a continuance?

4 MR. GOURLEY: I would object, Your Honor.
5 This case is extremely old.

6 THE COURT: Why is it so old?

7 MR. GOURLEY: It's been continued time in
8 and time out, Judge. It's the same story, different
9 day.

10 THE COURT: Mr. Cornwell, what is your
11 position on his motion that you be relieved?

12 MR. CORNWELL: Your Honor, I haven't been
13 able to have a meaningful conversation.

14 THE COURT: You have?

15 MR. CORNWELL: I haven't been able to have
16 a meaningful conversation with Mr. McFadden. Every
17 time I schedule a visit, he refuses to see me.

18 THE COURT: How many times have you
19 scheduled visits in which he has refused to see you?

20 MR. CORNWELL: Your Honor, I know for sure
21 three. Maybe four times. Maybe more. Because
22 there was some phone interviews also I scheduled.

23 THE COURT: Would he talk to you over the
24 phone?

25 MR. CORNWELL: No, we weren't able to

1 speak over the phone.

2 THE COURT: Would he refuse, or you just
3 weren't able to set it up?

4 MR. CORNWELL: No, I actually set it up,
5 and it was refused, Your Honor.

6 THE COURT: By him.

7 MR. CORNWELL: Yes, Your Honor.

8 THE COURT: Mr. McFadden, how many times
9 have you refused to receive visits from
10 Mr. Cornwell, or refuse to talk to him on the phone?

11 THE PLAINTIFF: I recall one on the phone
12 and one on the visit.

13 THE COURT: That's what you can recall.

14 THE PLAINTIFF: Yes, sir.

15 THE COURT: Could there be more?

16 THE PLAINTIFF: I don't think there are
17 any more than that.

18 THE COURT: Then why wouldn't you talk to
19 him?

20 THE PLAINTIFF: Well he -- at first I was
21 trying to communicate with him through mail. I have
22 two letters here. I wrote him, and he never,
23 concerning case law that dealt with a photograph
24 being blown up, after discovered evidence, and the
25 procedure, the proceedings that would have got us

1 into a filing a motion in General Sessions Court for
2 a new trial. You know, he never really communicated
3 with me with that.

4 THE COURT: Well do you understand that
5 he does not -- he is the attorney and you are the
6 client?

7 THE PLAINTIFF: Yes, sir. And we're
8 supposed to be working as a team, and we're not.
9 It's kind of like break down and he doesn't.

10 THE COURT: Mr. Gourley, your the motion
11 for a continuance clocked in last April, when is the
12 last time this matter has been before a circuit
13 judge? For example, he referenced Judge Cothran.

14 MR. GOURLEY: Judge, give me one second.
15 I remember it was on the last term. I believe it
16 would have been in front of Judge Maddox, and
17 Mr. Cornwell had some medical emergencies and it was
18 continued for those reasons.

19 THE COURT: Before then.

20 MR. GOURLEY: Before then I believe it
21 would have been Judge Newman, either and we split
22 that term, Judge. It would have been August or
23 September. And I can look for sure.

24 THE COURT: So it was after the April 25,
25 2014 filed motion?

1 MR. GOURLEY: Yes, sir, Judge. Judge
2 Newman had a family member die, and we had to
3 continue it.

4 THE COURT: When was the proceeding in
5 front of Judge Cothran?

6 MR. GOURLEY: Do you remember?

7 MR. CORNWELL: I believe the term before
8 the October. I'm not sure.

9 THE COURT: And was it in before him as a
10 matter on a PCR motion. Excuse me, a PCR hearing or
11 hearing on the motion for a continuance or a motion
12 for discovery?

13 MR. GOURLEY: It would have been a PCR
14 hearing, Judge.

15 THE PLAINTIFF: Your Honor, may I?

16 THE COURT: Yes, sir.

17 THE PLAINTIFF: I will say this, for the
18 last year, I never made it for the -- I never
19 stepped foot in this courtroom, in any court. I
20 only made it as far as the holding cell. Had I been
21 in the courtroom, I would have informed the judge
22 about that pending motion. I never spoke to any
23 judge.

24 THE COURT: Well it got continued three
25 times. So, you know, wait your motion in April, it

1 really doesn't, last April of 2014, is of no
2 consequence because it was continued for whatever
3 reason at least two other times. So this motion is
4 a year old. This motion has nothing to do with
5 today, but you're going to make an oral motion. I'm
6 going to relieve Mr. Cornwell, and we're going to go
7 forward today. Now he's got colored photographs and
8 he's taking them with him.

9 THE PLAINTIFF: Yeah, I don't have the---

10 THE COURT: He's not going to not to leave
11 his laptop with you.

12 THE PLAINTIFF: Your Honor, I don't have,
13 according to the rules of court, I mean, I've
14 studied a little bit of law myself. I mean, I'm not
15 the sharpest tool in the box. And I'm not -- I am
16 not trying to think like I know everything. But
17 according to the rules of court, it would be fatal
18 for me to try to testify to what an expert would say
19 or what these witnesses that are about, somewhere
20 here in Sumter, I would say, I can't testify to what
21 they said against Mr. Brunson or what evidence that
22 the discussions whether Mr. Brunson every
23 interviewed them, I can't testify to that.

24 THE COURT: Are there witnesses -- are any
25 of those people, the witnesses who testified at the

1 trial during which you were convicted, are they?

2 THE PLAINTIFF: Yeah.

3 THE COURT: Then what could -- else could
4 they possibly offer today.

5 THE PLAINTIFF: The fact that Mr. Brunson
6 never interviewed those guys.

7 THE COURT: But he called them at trial.

8 THE PLAINTIFF: He called those folks at
9 trial, and he read from a list. He never
10 interviewed those guys. He read my list of
11 questions that I had prepared for him prior to that
12 trial.

13 THE COURT: I remember that. He did that
14 in the first trial too.

15 THE PLAINTIFF: Right. Yes, sir.

16 THE COURT: Do you understand that your
17 lawyer makes the decisions on what questions to ask?

18 THE PLAINTIFF: Yes, sir, I do that. And
19 not only the -- I mean that's just the witnesses and
20 some comments and the side bar conferences that they
21 had, the testimony that was suppressed, or
22 otherwise just you know didn't get on the record,
23 that, you know, for whatever reason. They still
24 have that information. I mean it was a---

25 THE COURT: Well I'm going to tell you

1 this, if I relieve Mr. Cornwell, and If I continue
2 this case, you will not get another lawyer. You
3 will not. Because I can tell you, you've had
4 Mr. Brooks. You fired him. You had Mr. Cornwell,
5 you fired him. You don't get the lawyer you want
6 unless you hire the lawyer with your own funds.

7 THE PLAINTIFF: Yes, sir.

8 THE COURT: So if I relieve Mr. Cornwell,
9 you're not getting a new lawyer.

10 THE PLAINTIFF: All right.

11 THE COURT: Because based on what I
12 understand, you have abused that by trying to
13 control 100 percent every aspect of your case. That
14 is not how this system works. If it does, it will
15 break down, and the lawyer becomes a mere puppet of
16 the client. And that is not the way I am going to
17 allow it to happen. Is that clear?

18 THE PLAINTIFF: Yes, sir.

19 THE COURT: So do you want Mr. Cornwell or
20 do you not?

21 THE PLAINTIFF: I do not.

22 THE COURT: So you want to represent
23 yourself completely without standby counsel?

24 THE PLAINTIFF: Yes, sir.

25 THE COURT: And why are you not ready to

1 go forward today?

2 THE PLAINTIFF: We don't have two
3 transcripts.

4 THE COURT: The transcript of the hearing
5 to relieve, or for you to fire Mr. Brunson, what
6 does that add to anything?

7 THE PLAINTIFF: Well I got a case law
8 here.

9 THE COURT: No, tell what it adds to it
10 factually.

11 THE PLAINTIFF: Well we -- he never went
12 down to contact the person. I was writing him,
13 communicating with him, through our mail to contact
14 at the SCDC headquarters so they can update my
15 record.

16 THE COURT: Record of what?

17 THE PLAINTIFF: I had a prior conviction.
18 It was---

19 THE COURT: The fact, I will tell you that
20 the fact you might should have been released earlier
21 from prison has nothing to do with whether or not
22 that conviction would have come in as far as the
23 calculation of the 10 years is concerned. I've read
24 that in the transcript. You may have an argument
25 that the conviction should not have been introduced

1 regardless of its age. But the claim that it was
2 more -- you were released from confinement more than
3 10 years before the trial, is not going to be based
4 upon when you should have been released. It is
5 based on when you were released.

6 THE PLAINTIFF: I understand, Your Honor.

7 THE COURT: But if you want to make that
8 legal argument, you can make it and you have
9 preserved it. If Mr. Brunson didn't make it and a
10 court determines that he should made it and didn't
11 make it properly or didn't preserve it, then you
12 have done your job. So that transcript of when you
13 were released from prison or when you should have
14 been released from prison, is not relevant. Because
15 that argument was made in the proceedings below.
16 Well is made especially in your PCR submissions, and
17 I probably counted 10 times.

18 THE PLAINTIFF: Yes, sir.

19 THE COURT: So why else do you need a
20 continuance?

21 THE PLAINTIFF: Okay, the fact that I
22 didn't waive my right to a direct appeal the Judge
23 Young---

24 THE COURT: We're going to get into that.
25 If your conviction wasn't appeal and you wanted to

1 appeal, then you don't need a transcript for that,
2 do you?

3 THE PLAINTIFF: Well I just wanted to show
4 my intent to appeal at the end, you know, at during
5 sentencing. It was during a probation revocation
6 hearing. He called me back in and I wanted to just
7 say, hey, you know, he was telling me you know to
8 get your transcript. Don't write the court
9 reporter. And, you know, that was just kind of like
10 another saying, yeah, well he didn't waive his
11 right.

12 THE COURT: Mr. Brunson, did he ever to
13 you tell you -- waive his right to an appeal?

14 MR. BRUNSON: He did not.

15 THE COURT: And you didn't file an appeal.
16 Was that just a mistake?

17 MR. BRUNSON: He never asked me to.

18 THE COURT: And he will say differently, I
19 am sure. He may, I don't know.

20 THE PLAINTIFF: The transcript will show
21 some indication that we discussed about trying to
22 preserve the record.

23 THE COURT: The transcript of the
24 probation violation?

25 THE PLAINTIFF: Yeah, the probation

1 revocation. And after he sentenced me, he called me
2 back in during a probation revocation hearing, and
3 Mr. Brunson and I stood before Judge Young.

4 THE COURT: The same week?

5 THE PLAINTIFF: The same day. Just a few
6 minutes later. Maybe 10 minutes later after being
7 sentenced.

8 THE COURT: And did you put on the record
9 then that he wanted to appeal -- you wanted to
10 appeal?

11 THE PLAINTIFF: Well I---

12 THE COURT: We'll have to take testimony
13 on that. If I think it needs to be left open to
14 obtain that transcript, we'll get it. Because that
15 won't be a long transcript.

16 THE PLAINTIFF: Yes, sir.

17 THE COURT: The transcript you will agree
18 will speak for itself.

19 THE PLAINTIFF: Yes, sir.

20 THE COURT: Now why else do you need a
21 continuance?

22 THE PLAINTIFF: Just well I just already
23 said, locate the witnesses. But, you know,---

24 THE COURT: Are you talking about
25 Catherine?

1 THE PLAINTIFF: Catherine Myers. She was
2 very -- I mean we dated back then when Culick and I
3 had a ran, you know. Of course you remember the
4 testimony.

5 THE COURT: I remember the -- you were
6 living with another lady and her son at the time of
7 the alleged burglary, correct?

8 THE PLAINTIFF: Yes, sir.

9 THE COURT: They testified.

10 THE PLAINTIFF: Yes, sir.

11 THE COURT: In front of Judge Young. Is
12 that correct?

13 THE PLAINTIFF: Yes, sir.

14 THE COURT: And you want the court -- me
15 to hear from Ms. Anderson or Ms. Myers.

16 THE PLAINTIFF: Yes, sir.

17 THE COURT: As to what she would have said
18 had she been actually called to the witness stand.

19 THE PLAINTIFF: Yes, sir.

20 THE COURT: If necessary, I will leave the
21 record open to secure her presence at a hearing at a
22 later time. Anything else that you want to put on
23 the record about why you need a continuance?

24 THE PLAINTIFF: I don't have the colored
25 photographs. I'd like the photographs in color.

1 And if I can, I mean, you already kind of like said
2 that well we're not going be getting an expert
3 but---

4 THE COURT: You need those photographs
5 blown up?

6 THE PLAINTIFF: I need one of them. At
7 least two of them, the blood droplet and the first
8 aid kit box.

9 THE COURT: And what is it about that,
10 that would indicate ineffective assistance by
11 Mr. Brunson?

12 THE PLAINTIFF: Mr. Brunson should have
13 hired an expert who would be able to confirm our
14 story that the blood droplet that was on the floor
15 that it couldn't have been -- it couldn't have been
16 a droplet. It couldn't have been a droplet.

17 THE COURT: Well there were multiple
18 droplets on the floor.

19 THE PLAINTIFF: No, sir.

20 THE COURT: There was just one drop.

21 THE PLAINTIFF: Just one throughout the
22 whole. And the blood splatter expert take a look at
23 it, he could have -- he would have been able to
24 inform the jury that it looks like it came from a
25 Q-tip.

1 THE COURT: Are you saying that Detective
2 Culick had your blood from some source and just
3 decided to drop it at the scene?

4 THE PLAINTIFF: Yes, sir. She located it,
5 and it moved it from some other location and did
6 that.

7 THE COURT: I'll leave the record open if
8 I think you've demonstrated you need to secure the
9 services of an expert.

10 THE PLAINTIFF: Thank you, Your Honor.

11 THE COURT: Are you otherwise ready to
12 proceed?

13 THE PLAINTIFF: No, sir. I mean, I can't
14 without those witnesses. I mean, I need a
15 continuance.

16 THE COURT: You can have a seat.
17 Mr. Gourley---

18 MR. GOURLEY: Your Honor,---

19 THE COURT: I know you are ready to
20 proceed, you want a continuance. But strictly on
21 the merits of what he's saying, what is your
22 response?

23 MR. GOURLEY: Judge, it's just -- this
24 case has continued several times, and he's had
25 multiple attorneys and multiple opportunities to get

1 these witnesses here today. Mr. Brunson has given
2 up his time on multiple occasions and we're ready to
3 go, Judge.

4 THE COURT: The motion, Mr. McFadden, is
5 denied. I assume that you would want to testify
6 yourself. Would you like to take the stand, or
7 would you like to call Mr. Brunson, or another
8 witness?

9 THE PLAINTIFF: I have some exhibits, Your
10 Honor, and I can just go ahead and give them too and
11 some transcripts and case law written out on them.

12 THE COURT: I have got all those. I've
13 got all the case law you've written. But what you
14 need to do is, you are under oath, and you can
15 testify from the witness chair over here, or you can
16 stand there. But you're going to need to explain to
17 me, or you're going to need to testify. And then
18 you will be subject to cross examination from
19 Mr. Gourley about what you say. So you'll have
20 to---

21 THE PLAINTIFF: Your Honor, I never served
22 any of these documents. You've got -- you may have
23 something that's kind of old, but I have some update
24 stuff. I just held on to it, because I know
25 Mr. Cornwell wouldn't really do anything with them,

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1 so I just kept them to myself. And I was planning
2 to have a copy for the State.

3 THE COURT: Come up here and have a seat
4 in the witness chair. You are under oath.
5 Mr. Cornwell, you may want to show me those colored
6 photographs. So make sure you stay so I can look at
7 the computer.

8 Bernard McFadden, being first duly sworn,
9 testified as follows:

10 THE COURT: You can proceed.

11 Direct Examination by Mr. McFadden:

12 A. If you will just give me a few seconds and
13 I'll get through these files.

14 THE COURT: Would you like take your
15 jacket off, or are you going to leave it on?

16 A. I think I'll all right. Your Honor, if I
17 can just get these exhibits identified, portions of
18 the transcript. I have an affidavit also that
19 hasn't been submitted yet. A 22-page affidavit. I
20 am going to read from it.

21 THE COURT: An affidavit is not
22 admissible. It has to come from a witness unless
23 the State consents. But you can proceed,
24 Mr. McFadden. Now what I do have and what has
25 presented to me by the State as far as this typical

Bernard McFadden-Direct Examination

1 packet is a letter from Charles Brooks dated
2 November 27th 2012, with an attachment to your PCR.
3 Another one from April 10, 2013. Another one from
4 November 30th 2012. I also have a copy of a trial
5 transcript from November 16th to 19th. And I have a
6 copy of part of the transcript dated November 17 and
7 November 18th.

8 MR. GOURLEY: Your Honor, if I may, and I
9 apologize. I am just thinking ahead for the record.
10 I don't know if you advised Mr. McFadden of the
11 dangers of proceeding pro se.

12 THE COURT: I will do that. Mr.
13 McFadden, as you know from experience, you do have
14 the right counsel, is that correct?

15 A. Yes, sir.

16 THE COURT: Do you understand that lawyers
17 are trained in how to represent folks like you who
18 have these Post Conviction Relief applications
19 pending?

20 A. Yes, sir.

21 THE COURT: Do you understand that lawyers
22 whether you immediately appreciate their services or
23 not, they are trained in how to spot issues that
24 should be preserved. They're trained in how to
25 present them, and they're also trained in how not to

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1 present issues that have no merit or any legal
2 bearing. Do understand that?

3 A. Yes, sir.

4 THE COURT: They understand what to say,
5 how to say it. They may be able to spot some things
6 that would be of great benefit to you that you
7 yourself wouldn't be able to realize. Do you
8 understand that?

9 A. Yes, sir.

10 THE COURT: And they may be able to notice
11 that certain issues could be raised would pale in
12 comparison to other issues that might be 100 percent
13 legitimate. Do you understand that?

14 A. Yes, sir.

15 THE COURT: Now you have already indicated
16 that you do not want Mr. Cornwell's services. Is
17 that still correct?

18 A. Yes, sir.

19 THE COURT: And you've indicated you want
20 to represent yourself, because I told you I wasn't
21 going to give you another lawyer. Is that correct?

22 A. Yes, sir.

23 THE COURT: Do you have any questions
24 about this?

25 A. No, sir.

Bernard McFadden-Direct Examination

1 THE COURT: Have you ever been diagnosed
2 with any mental illnesses?

3 A. No, sir.

4 THE COURT: Do you take medication?

5 A. No, sir.

6 THE COURT: Are you supposed to?

7 A. Well I'm taking high blood pressure, but
8 no mental health. No psychotic.

9 THE COURT: So you're thinking clearly
10 today?

11 A. Yes, sir.

12 THE COURT: Do you have any questions
13 about any of this?

14 A. Well it's a little bit of questions as far
15 as, you know, if I want to submit an affidavit into
16 evidence, if I testify to that affidavit, the facts
17 concerning that affidavit, would it be admissible?

18 THE COURT: Is it your affidavit?

19 A. Yes, sir.

20 THE COURT: Oh, if it's your affidavit
21 you can testify from it. But I thought it was an
22 affidavit of a third party.

23 A. No, sir.

24 THE COURT: Yes, sir. You can testify to
25 what's in the affidavit. Just a piece of paper

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1 doesn't necessarily come in.

2 A. Okay.

3 THE COURT: I find that Mr. McFadden is
4 capable of representing himself. He understands the
5 dangers of self representation. And he's assumed
6 this responsibility freely, voluntarily, knowingly
7 and intelligently with full knowledge of his rights
8 and the consequences of his decision to represent
9 himself. Go ahead, Mr. McFadden.

10 A. Yes, sir. I have an affidavit here. I've
11 got one for the clerk's office. Do you wish to have
12 the court identify it?

13 THE COURT: Yes, sir. You can hand it to
14 the court reporter. She will mark it.

15 A. This is the original. I'll let the
16 record reflect that.

17 THE COURT: What is it dated?

18 A. Yes, sir. It's dated October 3rd 2013.

19 THE COURT: You can hand that to the court
20 reporter.

21 A. I also have a copy. May I have mine
22 identified? It doesn't have to be, as far, you
23 know, I'll allow it goes into evidence. But just
24 have mine identified, this goes in to evidence once
25 I testify.

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1 THE COURT: Just stop talking for a
2 minute, and let her mark. Because but she can't
3 talk while she's doing that with her hands. I mean,
4 she can't type while she's doing that with her
5 hands.

6 (Affidavit marked Plaintiff's Exhibit No.
7 1 for Id.)

8 A. That's mine. I just wanted to get mine
9 identified as I go along.

10 THE COURT: Is what I'm holding in my hand
11 the same thing?

12 A. Yes. Yes, sir. I have your copy, and we
13 can switch back, Your Honor. Well you know what, on
14 that affidavit, I don't have that. I don't an extra
15 copy or you, because they stopped me from running
16 handwritten copies for whatever reason. So I don't
17 have---

18 THE COURT: I can look at the one that's
19 marked. Which one do you want to refer to while you
20 testify?

21 A. The one you've got.

22 THE COURT: Let's switch then. I've got
23 the one with the original sticker on it.

24 A. Your Honor, this affidavit has -- it was
25 designed to have the attorney Mr. Cornwell or

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1 whoever was representing me, it was designed to have
2 him ask me questions so I can preserve and made it
3 almost impossible for the court reporter to not be
4 able to change the testimony.

5 THE COURT: So you claim that a court
6 reporter would change your testimony.

7 A. Yes, sir. So I had sat back at the prison
8 and decided that probably the best way to do it, is
9 to do it this way.

10 THE COURT: So you have these 22 pages of
11 questions?

12 A. Actually I have the answers. And I'm just
13 going to give you, I'll just read down to what
14 the -- I mean I think we need standby counsel on
15 this, but I can read the question. And someone need
16 to read the question to him.

17 THE COURT: Do you have a copy for the
18 State?

19 A. And I don't have a copy. SCDC refused to
20 make any more handwritten copies of my documents or
21 any other inmate documents. So I don't have a copy
22 of it.

23 THE COURT: Make a copy. We'll wait until
24 he gets back.

25 A. Thank you, Your Honor.

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1 THE COURT: If anybody has got anywhere to
2 be, they better call and cancel.

3 MR. BRUNSON: May I step out, Your Honor?

4 THE COURT: Yes, sir. Does Mr. Brunson
5 have somewhere to be? You said he wanted this done,
6 today, is that correct?

7 MR. GOURLEY: Yes, sir. I can check with
8 him though.

9 THE COURT: I just wanted to make sure
10 because if he went outside to cancel an appointment
11 that he wanted to keep, that runs counter to you
12 telling me he wanted me to finish today.

13 MR. GOURLEY: Yes, sir. Let me check,
14 Judge. Yes, sir, Judge. Mr. Brunson has indicated
15 he wants to get it over with.

16 THE COURT: Plaintiff's Exhibit No. 1 has
17 been photocopied. A copy has to be given to the
18 State, so you can proceed. If you're going to --
19 was it your intention that these questions would be
20 asked to you verbatim?

21 A. Yes, sir. I figured I would have an
22 attorney to ask me the question. And without
23 reading from the transcript, give an answer.

24 THE COURT: Well you've elected to go
25 forward without an attorney. So you need somebody

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1 to read the questions.

2 A. Yes, sir.

3 THE COURT: I'll read from the exhibit.

4 How about that?

5 A. Yes, sir.

6 THE COURT: But so you're planning on
7 being here until 9 or 10 o'clock tonight.

8 A. No, sir. I have some transcripts here.
9 They're already been researched. I would just like
10 to get them identified.

11 THE COURT: Does the State object to this
12 just coming in, and me accepting this to be his
13 testimony?

14 MR. GOURLEY: No, Judge. If that's what
15 you want to do.

16 THE COURT: I'm asking you.

17 MR. GOURLEY: I just haven't had the
18 opportunity to read it, Judge. I don't know what's
19 in it. I just got it now.

20 A. That's why, Your Honor, I really wanted a
21 continuance so I could serve that document on him.
22 I couldn't serve it. I would have hybrid
23 representation. So that's why I---

24 THE COURT: Sir, this is two and a half --
25 a year and a half old. There have been multiple

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1 other things have been transmitted. You could have
2 mailed him a copy.

3 A. Yeah, but, you know, Your Honor, the
4 hybrid representation law, Your Honor.

5 THE COURT: If you had elected to confer
6 with Mr. Cornwell when he came to see you, you could
7 have cured it then. So it sounds like to me you
8 just have an issue with trusting people to do right
9 by you, including your lawyers. I can't do anything
10 about that.

11 A. Yes, sir.

12 THE COURT: If you have the advantages of
13 counsel and you choose not to use you them, you
14 can't decide when you want to do it one way and when
15 you'd like to do it another. And an attorney that
16 you would send this to would have some reasons
17 perhaps not to ask a question, because he knows it
18 might be inadmissible. The lawyer might know that
19 it might not help you. And the lawyer might know
20 that it's not relevant to post-conviction relief
21 proceeding. So you don't get to control how this
22 proceeding goes. Except you do have a right to
23 present your case in accordance with the rules.

24 There are 22 pages of questions and there
25 and are 39 questions total. And the answers in most

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1 instances are much, much longer than the question
2 itself, which is not unusual. There is stuff in
3 here about bond hearing documents being changed. Do
4 you have anything in there about the court reporter
5 transcribing things incorrectly?

6 A. I don't think I did. I don't think I put
7 anything in there.

8 THE COURT: And you realize Ms. Sullivan
9 here was your court reporter.

10 A. I just realized it.

11 THE COURT: And she's going to be here. I
12 don't know what to do. I am frankly one of the few
13 times in my life, at a loss for words.

14 MR. GOURLEY: Yes, sir.

15 THE COURT: It's your case to present.
16 You present it like you want to present it, as long
17 as the rules are followed. So go ahead.

18 A. Well, Your Honor, Ms. Catherine Myers and
19 that's one of the first questions, is an
20 ex-girlfriend of mine. Back in about 2002, Culick
21 was investigating a burglary, and she came over to
22 my house and questioned me about an incident. And
23 during the questioning, she asked me to pull a cut
24 open that was on me hand that was already healed.
25 In a sense that she was collecting evidence that was

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1 not relevant. It was old. It was an old cut.

2 Later Catherine Myers saw that once I was taken to
3 jail, that Culick was tampering around with a
4 motorcycle that was inside the shed.

5 THE COURT: That was back in 2002?

6 A. Back in 2002. Yes, sir. Culick also
7 removed some tobacco products from the house that
8 wasn't in the serve warrant, as missing items from
9 the, I think it was the Market Spirits Store. The
10 A, B, C Store, I think. And she removed those items
11 and indicated that those items, there was some
12 tobacco products came from that burglary, and they
13 didn't. They weren't listed in the search warrant.
14 I have copies of the search warrant documents here,
15 but I've already served the State. I don't know if
16 it would be all right. Your Honor, could you ask
17 the State do they have about 62?

18 THE COURT: I understand your testimony
19 about Detective Culick having it in for you. But
20 the search warrant stuff from 2002, I am not going
21 to admit that today. You can mark it as exhibits
22 for identification, but it's not going to enter into
23 my decision making on the ineffective assistance of
24 counsel. So if you've got the documents, you can
25 hand them to court reporter and they can be marked

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1 for ID.

2 A. Yes, sir.

3 (Photographs marked Plaintiff's Exhibit
4 No. 2 for ID.)

5 A. Yes, sir. There are 60 -- 62 pages here.
6 It stops. It has various exhibits. But there, I
7 count these out to be 63 pages. Some of the same
8 photographs that have already been attached to the
9 PCR application.

10 THE COURT: So these 60 pages were all
11 from 2002?

12 A. No, no. Some of the exhibits that I will
13 be referring to throughout this affidavit, they will
14 help corroborate what the facts that I'm stating
15 about this affidavit.

16 THE COURT: So she held on to cigarettes
17 for that long?

18 A. No, sir. 2002, she removed cigarettes
19 from the crime scene. I just wanted to testify
20 concerning her manipulations of crime scenes.

21 THE COURT: At Market Place Spirits?

22 A. At my home where I was staying at, at the
23 time, she kind of planted some stuff about. And On
24 the motorcycle pegs, and, you know, the case was
25 nol-processed, I guess.

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1 THE COURT: Nol-crossed.

2 A. Yes, sir. But these are 62 page
3 documents.

4 THE COURT: 62 pages from this case.

5 A. From this, yeah.

6 THE COURT: That we're here able today.

7 A. Yeah. I got the search warrant that's
8 included inside that.

9 THE COURT: Mark it. Hand it to the court
10 reporter and she'll mark it. Are you going to need
11 to refer to those today, sir?

12 A. Well as I talk, I'm going to referring to
13 from this affidavit. Yes, sir, I didn't give the
14 State.

15 THE COURT: Hand me those and go get a
16 binder please. Debbie's got some. Go ahead.

17 (Photographs marked as Plaintiff's Exhibit
18 No. 2 for Id.)

19 A. Mr. Brunson never really I believe
20 questioned Ms. Anderson. I know this is
21 inadmissible. It's not going to, you know, and I do
22 object to it, Your Honor, that you know I'm
23 testifying to something that Catherine Myers knows.
24 And that's according to the rules, am I correct,
25 that's that not admissible, isn't that right?

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1 THE COURT: It's not admissible, but I
2 told you I would leave the record open if you
3 demonstrated to me that you need her testimony
4 today.

5 A. Okay.

6 THE COURT: What is your understanding of
7 what she would say?

8 A. I believe she would say prior to going to
9 trial, Mr. Brunson never explained to her what her
10 testimony -- how relevant her testimony would be as
11 to this 2002 incident where Culick had as I allege,
12 staged a crime scene at my house.

13 THE COURT: In other words, you wanted to
14 establish to this jury that she had done this to you
15 before.

16 A. Yes, sir. And we had a -- you remember at
17 the first trial, we had a hung jury. It was 2 voted
18 for me and 10 for the State. Deadlocked.

19 THE COURT: I didn't know that.

20 A. And of course it showed that it worked.

21 THE COURT: Okay.

22 A. Down to No. 3 Mr. Albertus Lewis.
23 Mr. Albertus Lewis had testified that he wasn't my
24 roommate. And Mr. Brunson never asked Mr. Lewis
25 that, you know, what was it or who was it, or who

Bernard McFadden-Direct Examination

1 did it sound like made the phone call. Mr. Lewis
2 would have been able to testify and say that it was
3 a white female. Now that testimony wasn't....

4 THE COURT: And he was living with you
5 when?

6 A. He was living with me at the time of this
7 crime. In 2009.

8 THE COURT: The Young's Market.

9 A. The Young's Market, yes, sir.
10 Mr. Brunson never -- either was a side bar
11 conference or something like that, but that
12 testimony never come out to the jury.

13 THE COURT: So Mr. Lewis didn't testify.

14 A. He did testify, but not to that. Not to
15 what he heard over the phone. Not about the phone
16 conversation being a white female calling, and
17 saying that we got your blood.

18 THE COURT: Okay.

19 A. We don't know who it is. I'm not
20 insinuating. I mean I'm -- it was left for the jury
21 to believe whether it was Culick or not that made
22 the phone call.

23 THE COURT: Well was the phone call made
24 to Mr. Lewis?

25 A. Yes, sir.

Bernard McFadden-Direct Examination

1 THE COURT: Did he -- he just said it was
2 a female?

3 A. A white female. Sounded like a white
4 female.

5 THE COURT: And when did that phone call
6 allegedly happen?

7 A. It was during the night of the crime.

8 THE COURT: Okay.

9 A. Also, You Honor, I am sorry I did put
10 inside this affidavit that the court reporter did
11 not transcribe something. And that's at No. 5 of
12 this affidavit on page 2 of 22. I did put that,
13 that she did not transcribe that I stayed home every
14 night. I wasn't in flight from the police. That is
15 that relevant evidence. Flight---

16 THE COURT: My No. 5 says anything else
17 Mr. Brunson did or didn't do regarding the
18 questioning of Mr. Lewis.

19 A. And my answer at the bottom, yes, sir.

20 THE COURT: Transcript doesn't reflect he
21 asked Mr. Lewis whether I stayed at my residence
22 every night.

23 THE COURT: Okay, I got you. So you're
24 saying that court reporter didn't put that in there.

25 A. No, sir. It's not in the transcript.

Bernard McFadden-Direct Examination

1 Mr. Brunson never interviewed Mr. Albertus Lewis
2 prior to trial. And like I said, he read from a
3 list that I gave him.

4 THE COURT: Which is wanted, right? You
5 gave it to him.

6 A. Yes, sir. I knew he never spoke with him,
7 so I did the best I could. Ms. Ethel Lewis is the
8 mother of Mr. Lewis. She also testified. And she
9 also said that was some females playing on the phone
10 on July 3rd 2009, the night of the crime.

11 Mr. Brunson didn't interview Ms. Lewis prior to
12 trial. She really didn't know what to testify to.
13 One of the things -- one of flaws that Ms. Lewis did
14 was telling the jury that I cut grass and rake yards
15 for a living. And I have a certified, I'm a CDL, a
16 truck driver. I just got it. I never really had a
17 job, but that's what I am certified in doing. And I
18 felt like that was kind of like to the point where
19 it was not my character. But it didn't actually---

20 THE COURT: Because she didn't explain
21 your job. Your true vocation.

22 A. Didn't explain yes, sir. She kind of like
23 said a loafer would be a person that raked yards and
24 cut grass.

25 THE COURT: Okay.

Bernard McFadden-Direct Examination

1 A. Mr. Brunson didn't interview her, and she
2 ended up with that.

3 THE COURT: The next one about
4 Mr. Simpson.

5 A. Mr. Simpson, I overheard Detective Robert
6 Richburg, he was the lead detective in the case.
7 He wanted to manipulate the bond. And, you know,
8 just doing stuff that really did violate my
9 constitutional rights, and pretty much had an evil
10 motive. And I think that was -- I would say would
11 have demonstrated that he wasn't out for truth and
12 justice, but just to harass me.

13 THE COURT: Was your bond increased?

14 A. Yes, sir, it was. Moving on to page 4 of
15 22. Like I said, I think Culick had blood, staged a
16 crime scene on July 3rd 2009. We have some
17 photographs. I believe photograph with the only
18 blood droplet looks to be of the head of a Q-tip.
19 Your Honor, do you have a copy of that?

20 THE COURT: I have got all your
21 photographs. I've got No. 5 with your handwriting
22 on it. It looks like it could have been smeared
23 with swab gently on this floor unlike a blood
24 droplet.

25 A. Yes, sir. Now that's why I wanted the

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1 expert to be able to make confirmation on that. The
2 pull away indentations. If you drag, you pick up on
3 it, it's going to leave indentations around the
4 droplet. Or alleged droplet. And it's the same
5 size and diameter of a Q-tip. And it looks like it
6 was swabbed from the Newport box in photograph No. 4
7 of 10. It looked like she used the Q-tip and swiped
8 across that box and I assume put on the floor. But
9 I'm not an expert.

10 THE COURT: Is there blood on the Newport
11 box?

12 A. Yes, sir. It looks like blood and it
13 looks like some drag lines. And that's why I needed
14 a blood splatter expert to be able to confirm that.
15 Brunson was ineffective I believe, and it could have
16 changed the outcome of trial, had he put an expert
17 up to make that confirmation before 12 people were
18 in the box. Also, Your Honor, the order of the
19 photographs I think here on page 22 at No. 4, two
20 sets of lottery tickets were moved from the solid
21 floor and placed on---

22 THE COURT: What page?

23 A. Of the affidavit, on page 4 of 22. Down
24 at No. 4.

25 THE COURT: Uh-huh. (Affirmative.)

Bernard McFadden-Direct Examination

1 A. I have here, I asked the question why does
2 the two sets of lottery tickets on the speckled
3 floor in the photograph 3 were moved to the solid
4 floor in photograph No. 6 attached to the
5 application. You know, I, once again, I need to get
6 the order of the photograph. I need a photography
7 expert to be able to get the disk from Lieutenant
8 Duggan, I guess, whoever had the custodian.

9 THE COURT: And how do you know they are
10 the same lottery tickets?

11 A. These are only -- there were only three
12 strips or two strips of lottery tickets in this
13 case. And Culick testified that those are lottery
14 tickets removed from the speckled floor down to the
15 bottom floor. No real explanation. I think If I
16 can remember, she said so was looking for blood on
17 them or something.

18 THE COURT: So she admitted to moving
19 them.

20 A. Yes, sir. But I believe they were moved
21 before. I believe she -- that was an initial. The
22 solid floor was an initial spot she tried to stage
23 or did stage. And then she changed her mind and
24 moved it up it on to the speckled floor.

25 THE COURT: I see.

Bernard McFadden-Direct Examination

1 A. But in order to be able to confirm that a
2 photography expert would have to look at the disk,
3 and make a determination on the order of the
4 photograph, the way they were taken, you know, in
5 what order. And that would be able to establish
6 that she had did that. Back to the first aid kit
7 box in No. 5 on this page, 4 of 22.

8 THE COURT: Mr. Cornwell, pull up the
9 picture of, the colored pictures, please.

10 MR. CORNWELL: Your Honor, I do not have
11 the pictures of the first aid box. The pictures I
12 have are the ones with the Newport box with the
13 Newport cigarettes in them.

14 THE COURT: You don't have the pictures.

15 MR. CORNWELL: The ones I have do not
16 have the first aid kit boxes. But I do have the
17 Newport of the blood.

18 THE COURT: So you don't have the pictures
19 of the area of the store that shows some shelving?

20 MR. CORNWELL: No, sir. No, Your Honor.

21 THE COURT: Go ahead, Mr. McFadden.

22 A. Well, Your Honor, I wanted to on the
23 shelves of the store, the initial photographs you
24 took, is picture 10 of 10 attached to the PCR
25 application. It has a, as we discussed earlier in

Bernard McFadden-Direct Examination

1 pretrial, well earlier on, it look like that the
2 photograph isn't there. I mean the first aid kit
3 box isn't there on the corner of the shelf. I
4 believe if we blew the photograph up by a
5 photography expert, it would confirm whether it's
6 there or not. I mean, we don't know.

7 THE COURT: And the significance of it
8 being gone, would be what?

9 A. The significance of it being gone is not
10 in that photograph and being in photograph 7, 8 and
11 9, would be that she planted it there in 6, 7 and 8
12 and 9. 7, 8 and 9 photograph attached to the PCR
13 application.

14 THE COURT: Why would she plant it there?

15 A. Well she said that I clean up behind
16 myself. That's the reason why it was only one blood
17 droplet on the floor. She said, I cleaned. I
18 cleaned, I used the alcohol, the gauze. And I kind
19 of wiped up the blood, I guess, off the floor, and I
20 must have missed one that she put down there.
21 Allegedly put down there. I don't know.

22 THE COURT: Was there anything located in
23 the first aid kit? Any evidence?

24 A. She testified that what made her story
25 believable, what helped corroborate her story about

Bernard McFadden-Direct Examination

1 as to why the blood isn't on the floor, made it
2 relevant, made that first aid kit box relevant,
3 when she said that this is how she found it when she
4 put it there like that.

5 THE COURT: Okay.

6 A. She's saying, Your Honor, I mean it may
7 sound a little confusing right now, but what she's
8 saying is that when she came in and took an initial
9 photograph, what I'm saying is, when she took the
10 initial photograph, the first aid kit box wasn't
11 there. She took some more photographs after she put
12 the first aid kit box in the same area she took the
13 initial photo not showing the first aid kit box. So
14 clearly she staged that, and told the jury that's
15 the way she found things. It violated my 14th
16 Amendment Right to a fair trial, and it was perjury
17 testimony, Your Honor. You can't be convicted on
18 that.

19 THE COURT: And what Mr. Brunson do wrong
20 about that?

21 A. He never challenged it, Your Honor. Well
22 of course, well he couldn't. I mean, we didn't know
23 it. I mean, we didn't first aid kit box wasn't
24 there on the shelf. He didn't know it. I didn't
25 see it.

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1 THE COURT: Okay.

2 A. Again, she was the same detective in the
3 2002 case, did the same thing. And down to number,
4 page 5 of 22, I already testified that she swabbed a
5 Newport box. We believe a confirmation could come
6 from an expert saying that same thing. The order of
7 the photograph would also demonstrate that we
8 already talked about that, Your Honor. Now on
9 paragraph 9 on page 5 of 25.

10 THE COURT: Five of 22.

11 A. Excuse me, my bad. Five of 22, Your
12 Honor. Yes, sir. On paragraph 9, I have right
13 here that if we do a comparison, if the photography
14 expert does a comparison of photograph 1, and
15 photographs 13 A, we are going to see that a Newport
16 box has moved when she said that if the the maker is
17 down, and the marker isn't down, is after she moved
18 down things.

19 THE COURT: I don't have 13 A.

20 THE COURT: I've got 13, which is a rag.
21 It might be in these other ones you filed, because
22 the other ones you filed also just goes up to No.
23 13. And you're comparing photo No. 1 to photo 13 A.

24 A. Yes, sir.

25 THE COURT: I guess you better give me 13

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1 A. Do have in your copy of anything?

2 A. If you give me one second, Your Honor.

3 Oh, yes, sir, Your Honor. You know what, SCDC
4 refuses to make copies of any photographs. And at
5 that, they did made a few, and later on, decided
6 they weren't going to make anymore. It's in all the
7 grievances that I filed with the Department of
8 Corrections. I don't have a copy of that.

9 THE COURT: Do you have a photograph,
10 Mr. Cornwell, that may have the label 13 A on it?

11 MR. CORNWELL: I was looking. Mine, I
12 don't see any labeled that way, 13 A.

13 A. Your Honor, no one should have one.

14 THE COURT: No one should have it?

15 A. No, sir.

16 THE COURT: Well how did you have one
17 then?

18 A. I have the original, and I don't have it
19 with it.

20 THE COURT: You've got the original
21 pictures?

22 A. I have original -- no, yeah, my original
23 picture.

24 THE COURT: I'm talking about, you have a
25 colored copy? You have colored copies?

Bernard McFadden-Direct Examination

1 A. No, I don't have colored copies. They're
2 black and white.

3 THE COURT: So No. 1, shows what in
4 comparison to the other photo?

5 A. I want to say I numbered that photograph
6 13 A, but I don't have it with me, I can't find it.
7 I may have left that in my legal box. It's a, what
8 it is, is that from an angle, I can't, you know,
9 it's kind of hard to describe without looking at the
10 photograph; is that, one of Newport box is turned.
11 Culick said that if the marker is down on the floor,
12 things are, you know, hasn't moved around. However,
13 the marker isn't down, and you can look at these
14 photographs and see that the Newport box turning,
15 you know, and some evidence been moved about with
16 the marker not being down. So it's kind of
17 contradicting her statement. And that's pretty
18 much, you know, Brunson didn't catch that to be
19 able to explain that to the jury.

20 THE COURT: All right.

21 A. Now on page 6 of 22, the detective
22 unsealed a sealed plastic container holding three
23 packs of Newports. And it was -- he unreasonably
24 smudged out the swab site drag lines on the Newport
25 box in photograph N4 attached to the PCR

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1 application, for a sample to be sent the sled when
2 they already -- a sample had already been mailed to
3 sled. I mean it wasn't even necessary. And I felt
4 like---

5 THE COURT: What question were you on now?

6 A. I'm on page 6 of 22 at the top on answer

7 A.

8 THE COURT: So question 14. Who is
9 Lieutenant Duggan?

10 A. Duggans is the detective that --
11 custodian.

12 THE COURT: No, that's what the question
13 was. I wasn't asking you.

14 A. He is the detective that unsealed the
15 sealed plastic container holding 3 packs of
16 Newports. And unreasonably smudged out the swab
17 site drag lines on Newport box in photograph No. 4
18 for a sample to be sent to sled, when a sample had
19 already been collected.

20 THE COURT: From the floor.

21 A. From the floor, yes, sir. And I found---

22 THE COURT: So you're saying that he
23 shouldn't have taken a swab from the cigarette pack.

24 A. He shouldn't have smudged out the drag
25 lines anyway. But of course we've got the

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1 photograph. We've got the photograph where the drag
2 lines are on the Newport box. But he shouldn't have
3 smudged that out. And I felt like that was a way to
4 conceal what was going on. I mean a forensic
5 expert would have been able to probably even get
6 some fiber from the tissue that was swabbed across
7 that Newport box.

8 Mr. Brian Gibson, I'm going to move on
9 down, I don't want to hold the court time up.

10 THE COURT: No, this is your time.

11 No. 16.

12 A. Mr. 16, yeah, Mr. Jessie, excuse me,
13 Mr. Brian Gibson and Jessie Donald. Those folks
14 were never located by Mr. Brunson. They were at the
15 crime scene. They were able to testify and say
16 there that were no new -- no flashing lights at that
17 night. And that that testimony that Mr. McDonald
18 gave was clearly, could have been clearly
19 contradicted had Mr. Brunson called them up there.

20 THE COURT: Whether or not blue lights
21 were on.

22 A. Whether or not blue lights, yeah.

23 THE COURT: You think that was a big deal?

24 A. Yes, sir. I meant, you know, what
25 Mr. Brunson -- what Mr. McDonald said, I slide down

Bernard McFadden-Direct Examination

1 in the seat, it was like I got nervous, and I was
2 you know, trying to get away. And flight risk,
3 being in flight is evidence of guilt. And so I
4 wanted to be able to show the jury that there was
5 no flashing lights. Or at least some evidence so
6 they can consider Mr.----

7 THE COURT: One of the witnesses said you
8 were in the vehicle with him, and you saw the lights
9 and sunk down in the seat.

10 A. Yes, sir.

11 THE COURT: And who would say there were
12 no lights?

13 A. Mr. Brian Gibson and Jessie Donald. They
14 were the pressure washers that were at the store at
15 the time this happened.

16 THE COURT: And how do you know they would
17 say that?

18 A. That we do not know. I mean, I would
19 assume, you know, I'm just kind of---

20 THE COURT: How do you know? So you're
21 saying there were no lights.

22 A. I'm saying there are no lights. Yes, sir.
23 There were no flashing lights. When we passed that
24 store, there were no flashing lights.

25 THE COURT: Did the man who was driving

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1 you say there were?

2 A. Yes, sir. He said I was nervous, and that
3 I told him to speed the vehicle up and let's go. I
4 mean all a lie.

5 THE COURT: Go ahead.

6 A. And down to No., issue No. 3, I am going
7 to go ahead and---

8 THE COURT: No. 18? Question 18?

9 A. Yes, sir. I'm going on down to No. 3.
10 I'm just going to go ahead and abandon No. 2. I
11 think it's not going to be necessary to drag that
12 out, Your Honor. It's kind of like---

13 THE COURT: What was No. 2?

14 A. No. 2 dealt with a trial and something
15 that was for appellate review. Of course, we won't
16 even worry about that one.

17 THE COURT: So you've abandoned what?
18 There are several different things in here where
19 you've got grounds. And I don't know what issue
20 No. 2 is, so the probative value of your conviction?

21 A. Yeah, that's where the court -- an error
22 by, yes, sir, that's what issue No. 2 is.

23 THE COURT: You know, Mr. McFadden well,
24 if you want to abandonment that's fine.

25 A. No, no. The attorney being ineffective, I

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1 rephrased that. No. 3 is the attorney was
2 ineffective for not---

3 THE COURT: Oh, so No. 3, I got you.

4 A. Right. But No. 2 was just kind of like
5 an appellate question.

6 THE COURT: I got you.

7 A. You know, it wasn't framed ineffective
8 assistance of counsel.

9 THE COURT: No. 3 alleges Brunson was
10 ineffective for not investigating to determine the
11 conviction was more than 10 years old when
12 considering jail time credit. You can proceed with
13 that one.

14 A. Yes, sir. Now I wrote Mr. Brunson several
15 letters, and that's in that, those exhibits, those
16 62 exhibits I already exhibits I already submitted.
17 Some of those letters are contained in that. I
18 wrote him several letters from Sumter/Lee Regional
19 Detention to him. Both him and Ms. Counts. Monica
20 Counts. She's Monica Wallace now. To correct an
21 incorrect 6/1/1995 max out date. Start date, excuse
22 me, to the correct 4/15/1995 start date.
23 Mr. Brunson did not investigate those facts. Have
24 the record audited so it court reflect the max out
25 date rendering it more than 10 years old.

Bernard McFadden-Direct Examination

1 THE COURT: When were you released? When
2 did you walk out of prison?

3 A. I walked out of prison, I made parole out
4 of prison.

5 THE COURT: When did you get out of
6 prison?

7 A. My conviction was vacated. I got out of
8 prison, give me a second, let me think about that.
9 I want to say about October of 2001. But that
10 conviction was sustained. It was over. It was
11 vacated.

12 THE COURT: Sustained and vacated mean two
13 opposite.

14 A. Well I'm sorry. I didn't meant to say
15 that.

16 THE COURT: So your conviction was
17 vacated?

18 A. Yes, sir. The 15-year conviction, that's
19 when I got out of prison on parole. It was vacated
20 while I was out on parole. He never really -- the
21 records weren't audited after that.

22 THE COURT: So you're saying that
23 conviction was vacated as if it didn't exist.

24 A. The 15-year sentence---

25 THE COURT: The conviction, sir.

Bernard McFadden-Direct Examination

1 A. Yes, sir. It was two burglaries. One
2 was 10. The other was 15.

3 THE COURT: I remember that.

4 A. Yes, sir. They vacated the 15. They
5 never really audit the account for the 10.

6 THE COURT: So you're saying you walked
7 out of prison more than 10 years before this trial
8 take place.

9 A. Not quite.

10 THE COURT: Did you walk out of prison
11 less than 10 years before this trial took place?

12 A. On that charge, that burglary charge?
13 Yes, sir.

14 THE COURT: All right.

15 A. It was 2001. I went to trial in 2010.
16 That was about 9 years and some maybe over 6 months.

17 THE COURT: Okay.

18 A. On issue No. 3, I also filed a motion for
19 new counsel before Judge Young. The motion was
20 denied by Judge Young on November the 4th.
21 Mr. Brunson was aware during trial that I wanted to
22 testify as I did in the first trial before you
23 judge.

24 THE COURT: Yes, sir. Did I allow your
25 conviction in?

Bernard McFadden-Direct Examination

1 A. Yes, sir. And it was very damaging. I
2 think if it didn't, I probably would have won.

3 THE COURT: That doesn't hurt my feelings.

4 A. That's all right.

5 THE COURT: I mean it doesn't hurt my
6 feelings that you don't agree with that.

7 A. Mr. Brunson appeared to have a --
8 remoteness of convictions. I don't think he was
9 too aware. Because on trial transcript page 30, 369
10 line 14 through 7, he had a miscomprehension of rule
11 for remoteness by incorrectly saying rather than
12 outside of 10 years when imposing the use of prior
13 convictions and that was very -- that was not --
14 that's not the rule. It's not outside of the 10
15 years, it's inside when they can use it. And he had
16 miscomprehension of that. That was kind of like---

17 THE COURT: To the extent that the 10
18 years matters in the ultimate analysis, you walked
19 out of prison less than 10 years before this trial
20 on that burglary charge.

21 A. Yeah, I got out of prison, the conviction
22 hadn't been overturned. It was overturned in 2002.
23 But yes, it was -- I got out of prison, it was like
24 like 9 years or something like that. The one that
25 was vacated, I'm saying.

Bernard McFadden-Direct Examination

1 THE COURT: So you're saying that the
2 sentence you had fulfilled was more than 10 years
3 completed by the time this trial took place. The
4 one that wasn't vacated.

5 A. Yes, sir.

6 THE COURT: Keep going.

7 A. The max out date, Your Honor, is I'm down
8 to No. 21. Question No. 21. The reason why the max
9 out date is wrong they didn't apply the jail time
10 credit. We already discussed that. I am not going
11 to---

12 THE COURT: Well, no, you have right the
13 present it. I may have spoken too early. You go
14 ahead and talk. I don't want to cut -- I don't want
15 to preempt your right to cover that. So that's page
16 8.

17 A. Yes, sir. Page 8 of 22.

18 THE COURT: Go ahead.

19 A. The reason why that is max out date is
20 wrong, is the sentence start date is, it wasn't
21 readjusted after my conviction was vacated.

22 THE COURT: From a record keeping
23 standpoint.

24 A. Yes, sir. And I felt that if Mr. Brunson
25 would have communicated that with SCDC, had Ms.

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1 Monica Counts, now Monica Wallace, audit the account
2 it would have reflected the correct max out date be
3 more than 10 years old. And I feel like he was
4 ineffective that would allow me to be able to
5 testify without being impeached. Of course then you
6 know it was more prejudicial. That's another issue.
7 But that's, you know, that's something that I felt,
8 you know, the judge should have ruled also that
9 there was no prejudicial than probative. And as a
10 result, I involuntarily waived my right to testify,
11 you know, and explain that Culick had staged a crime
12 scene, that Mr. McDonald had lied about me wanting
13 to or seen blue lights flashing.

14 THE COURT: Is it Donald or McDonald?

15 A. McDonald. Yes, sir. On issue No. 4 it
16 was about perfecting notice of intent to appeal.
17 Of course, we don't have the transcript on that.
18 During the probation revocation hearing about 10
19 minutes after I was sentenced, Judge Young called me
20 back in, Mr. Brunson and I. And he had informed us
21 that we should not contact, Ms. Margaret, the court
22 reporter here, Sullivan. And we should contact the
23 South Carolina Supreme Court for our transcript if
24 we wanted to appeal.

25 THE COURT: That's right.

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1 A. That was enough to be able to say, hey, I
2 did not waive my right. And I wanted to file a
3 notice of intent to appeal and have an appeal of
4 that conviction.

5 THE COURT: Do you recall if you ever
6 expressly told him you wanted to appeal?

7 A. I don't recall that, because once he said
8 that you all, you know, I figured an appeal would be
9 perfected. I mean he's saying don't contact
10 Ms. Sullivan, contact the court reporter about your
11 transcript.

12 THE COURT: And that's the judge saying
13 that.

14 A. That's the judge saying that. Yeah, and I
15 felt like it was an implied, an agreement, you know,
16 it was.

17 THE COURT: Okay.

18 A. Yes, sir. And that was during a probation
19 revocation hearing.

20 THE COURT: The same day.

21 A. Yes, sir. Now what Mr. Brunson did was he
22 filed his notice of intent to appeal. I'm on page
23 10 of 22. And Mr. Brunson obviously didn't perfect
24 the appeal within the 10-day time period. It was
25 dismissed. And I feel that was very ineffective.

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1 It was unprofessional for him. And it caused me --
2 caused my appeal, my appellate rights to, you know,
3 not be pursued.

4 THE COURT: Okay.

5 Q. Issue No. 5, it dealt with not filing a
6 motion to suppress or dismiss the indictment on the
7 grounds of police outrageous conduct. You know, I
8 wrote several letters to him. I told him about, you
9 know, to file a motion to suppress the evidence or
10 the indictment based on Mr. Richburg's July 7th 2009
11 arrest warrant affidavit. It was outrageously false
12 in comparison to testimony. This July 7th 2009
13 affidavit, incorrectly arranged a witness by putting
14 the store manager, Janice Billifers, Detective
15 Culick second, and witness McDonald third. Exhibit
16 D that we already submitted, identified. No. 40
17 showing a Robert Richburg's July 7th 2009 affidavit.
18 Actual testimony from Detective Culick states clerk
19 Janice Billup was there; that McDonald was there.
20 That they all were there before she was. And he has
21 Detective Culick first. It was a false statement in
22 the arrest warrant affidavit.

23 Excuse me, she has Janice Billup was
24 first. Actually was first. He arranged them, and
25 had Janice Billup first. Detective Culick second

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1 and witness McDonald third. Actual testimony from
2 Culick herself states that Janice Billups was there
3 when she got there; that McDonald was there. Or
4 otherwise, that all were present at the store before
5 she was there.

6 Second, I tried to get Mr. Brunson to show
7 bad faith and harassment in connection with the
8 blood stage crime scene by getting Mike Simpson who
9 overheard Judge Gibson and Detective Richburg on
10 July 12th, discussing how to make it hard on me when
11 changing my bond from 10 to 50,000. And these
12 exhibits are 4, 41, 42, 43. Those are bond hearing
13 documents. Exhibit 44 showing Judge Ferrell Cothran
14 ultimately reduced that bond back down to 2010. I
15 meant, excuse me, \$10,000. Exhibit 45 shows
16 Brunson's March 15th 2010 letter acknowledging
17 witness Mike Simpson, but never locating Simpson to
18 corroborate my claim of outrageous bad faith
19 conduct, of bond tampering and blood -- in this
20 blood stage crime scene case.

21 Exhibit 64, excuse me, 46.

22 THE COURT: 46.

23 A. 46. Yeah, Exhibit 46, 47, 48, show my
24 July 6th 2010 letter and certified, certificate of
25 mailing, excuse me, dated July 7th 2010, informing

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1 Mr. Brunson of incorrect statements as to the order
2 of the witnesses appearing on the crime scene. That
3 Detective Culick was the same person that made the
4 false statement in collecting evidence from my
5 residence. Of course we discussed all that. It
6 also talks about a lawsuit that was filed against
7 Ms. Allen and the court reporters that I was just
8 having a whole bunch of problems with.

9 THE COURT: What happened to that lawsuit?

10 A. That lawsuit was dismissed, Your Honor.

11 THE COURT: That was in federal court?

12 A. Yes, sir. Another letter that was sent on
13 August 16th 2010. A copy in Exhibit No. 49 and 50.
14 So a second letter that I sent to Mr. Brunson. I
15 additionally asked Mr. Brunson that a motion to
16 suppress be filed to suppress DNA evidence and packs
17 of cigarettes. Exhibit D, 51 is a Sumter Police
18 Department Chain of Custody and inventory dated July
19 3rd 2009. Mr. Brunson and I reviewed for
20 suppression showing Detective Duggan's added No. 7
21 after unsealing the evidence bag containing three
22 packs of cigarettes. He did it in bad faith,
23 unreasonably and outrageously altered the packs of
24 cigarettes from its original. As we discussed
25 earlier about smudging out that -- those drag lines.

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1 We already discussed on page 13 of 22
2 about the Newport boxes in 2002 being taken -- the
3 tobacco products being taken from my house by
4 Culick. I am not going to be redundant on it. Your
5 Honor, I move on to 28. It talks about, you know,
6 Brunson should have filed a motion to suppress, have
7 the indictment dismissed of this conduct. We move
8 on to page 14 of this affidavit. Mr. Brunson didn't
9 really wanted to challenge police officers on the
10 staging of the crime scene on the theory of, you
11 know, of being set up. He just didn't want to
12 pursue that. And I mean the evidence I believe
13 corroborate the blood -- the Q-tip swab, the swabs
14 from the box. The location of the first aid kit box
15 demonstrate that these are -- these things were done
16 to -- they were manufactured, Your Honor. I mean it
17 just -- we don't really need an expert to look at
18 this one blood droplet on the floor and say, hey.

19 THE COURT: And let me ask you this. Why
20 would you want to bring up a burglary arrest from
21 2002? Wouldn't the jury kind of say, hey?

22 A. I mean and that may be his strategic
23 reason why he didn't. But we did before. We
24 already testified that, Your Honor, before you. I
25 testified to that. And with that testimony it at

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1 least got two votes out of 12 for me. I mean, we
2 should have tried that again, I think.

3 THE COURT: We were on page 14.

4 A. Yes, sir. This just talks about
5 Mr. Brunson and the search warrant about 2002. It
6 was about Mr. Arthur Wilder represented me back then
7 on Exhibit D, No. 59 and 60. Culick falsely
8 state -- you know, was involved in falsely stating
9 that my keys were found among broken glass. To the
10 contrary, and as opposed to the keys were found in
11 the parking lot.

12 THE COURT: Your keys?

13 A. My keys.

14 THE COURT: In the parking lot of a 2002
15 burglary?

16 A. Yes, sir.

17 THE COURT: And you wanted the jury to
18 hear that.

19 A. Well I wanted the jury to be able to show
20 that hey, you know, this -- I mean, it's not
21 impossible for you to lose your keys.

22 THE COURT: And you also got in that your
23 hands were cut up after the 2002 burglary.

24 A. It was an old cut. And then she tried
25 to -- Arthur Wilder may still have access to the

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1 picture, but it was old cut. And it wasn't a fresh
2 cut. It just happened you're saying the night
3 before, less than 12 hours later, that cut should
4 have been healed. And it was, and she tried to get
5 me to pull it open. When, you know, again I say she
6 took some tobacco products, some Newports, cigars,
7 Black and Mild's. She removed those from the house
8 and said that they came from the Market Spirits when
9 they didn't.

10 THE COURT: In 2002.

11 A. In 2002. Yes, sir.

12 Q. On page 15 of 22 down to on issue No. 6, I
13 allege that Mr. Brunson was ineffective for not
14 hiring a photography expert, a crime scene expert
15 witness to support motion to suppress DNA evidence
16 or explain to the jury. The photograph did not
17 represent a true and correction position of crime
18 scene evidence. Explain to the court what
19 Mr. Brunson did. And I would say again the 10
20 photographs attached to the PCR application taken by
21 Culick made it plausible for Mr. Brunson -- excuse
22 me, I believe the 10 photographs attached to the
23 PCR application taken by Culick make it plausible,
24 Mr. Brunson was ineffective for not filing motions
25 for experts, in support of the motion to suppress

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1 DNA evidence, particularly to review the manual
2 position of evidence in 10 photographs as discussed
3 on the page 2 of 6, of the amended PCR application
4 dated 11, November 6th 2012. Except, you know the
5 defense was prejudice, you know, I wanted to add
6 that, you know we were prejudiced by not presenting
7 expert testimony. The jury could have believed that
8 expert testimony corroborated manual position
9 evidence shown in attachment -- in the 10 attached
10 photographs. Other than this, I don't have anything
11 else on issue No. 6. I'll move on to issue No. 7.

12 THE COURT: Okay.

13 A. No. 7 alleges Brunson was ineffective for
14 impeaching Detective Robert Richburg.

15 THE COURT: For not impeaching.

16 A. For not impeaching. Excuse me. Thank
17 you, Your Honor. Derrick McDonald with their prior
18 conviction. Didn't impeach Derrick McDonald with
19 his, Robert Richburg and Derrick McDonald, with
20 their prior inconsistent statement. Or didn't
21 object or appeal trial court's limitation on cross
22 examination, or his slouch down statement as
23 hearsay.

24 THE COURT: Is Derrick McDonald the person
25 you were riding with?

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1 A. Yes, sir.

2 THE COURT: And you're saying him saying
3 that you were slouched down was hearsay?

4 A. No, he said that other detective --
5 Derrick told other detective that I slouched down.
6 And he was testifying to that. I didn't get to
7 cross examine the other detective. And that's my
8 answer in page 17. I'm saying here that Mr. Brunson
9 did not object to file motions to Mr. Richburg's
10 testimony. Derrick McDonald told other detectives
11 that I slouched down in my seat and became nervous.
12 And that all that together, the magistrate signed a
13 warrant as discussed on page 3 of 6 of my amended
14 PCR application, Dated November 6th of 2012.
15 Mr. Brunson did not object or file a motion for the
16 slouch down statement as hearsay.

17 THE COURT: Was that testimony at trial,
18 sir, or at the bond hearing?

19 A. That was at trial.

20 THE COURT: Okay.

21 A. And that's my answer. Second,
22 Mr. Brunson -- well first, Mr. Brunson didn't
23 attempt to impeach Mr. Richburg on the ground that
24 the slough down statements was new and was omitted
25 from his July 7th 2009 affidavit statement.

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1 Mr. Brunson did not file any motions to appeal
2 that -- appeal trial court's conviction. I meant
3 trial court's limitation on direct examination.
4 Second, Mr. Brunson did not impeach Detective
5 Richburg's -- didn't impeach Richburg's affidavit
6 statement as to the order of these three witnesses.
7 Richburg's affidavit have store after store clerk
8 Janice Billups first, Culick second, McDonald third.
9 However actual testimony from Culick indicates
10 that---

11 THE COURT: And you're saying that makes a
12 difference, sir?

13 A. Yes, sir. You know, these statements are
14 very inconsistent with each other.

15 THE COURT: About who got there first.
16 You're really pursuing that.

17 A. Yes, sir. I mean...

18 THE COURT: I understand you're saying
19 that on one occasion she said so and so got there
20 first. On another occasion she said, somebody else
21 got their first. Is that what you're saying?

22 A. I'm saying Detective Richburg's affidavit
23 says that somebody got, you know,---

24 THE COURT: There first.

25 A. Right. And then but testimony is the

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1 opposite.

2 THE COURT: Testimony from who? Affidavit
3 from Richburg. Testimony from who?

4 A. From Culick.

5 THE COURT: So two people said two
6 different things.

7 A. Yes, sir, in this instance. Because, you
8 know, he did say -- now on the 3rd, Mr. Brunson
9 didn't impeach Richburg's affidavit statement,
10 stating McDonald was first approached. Now Richburg
11 testified too. He said that I approached
12 Mr. McDonald, and I didn't. I approached the girls.
13 It omits, and I say here on page 18 of 22, it omits,
14 the three witnesses, Kendra Brown, Shanese Cummings
15 and Teresa Cummings were first approached. Actual
16 testimony is three witnesses observed me before
17 McDonald, as discussed on page 4 of 6 of the amended
18 PCR application dated November 16th 2012. And it's
19 in the trial transcript. I have the trial
20 transcript without trying to read it.

21 THE COURT: Page 178, lines 12 through 25.
22 Page 179, lines 1 through 8.

23 A. Yes, sir. And finally Mr. Brunson didn't
24 impeach Mr. Richburg's 7/7/2009 affidavit statement.
25 Witness McDonald noticed I had a cut and blood on my

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1 leg, with blood on my pants and shoe. When I got
2 into the truck, actual trial testimony from McDonald
3 indicates McDonald saw the cut when he went out into
4 the front yard and saw me lying out there bleeding,
5 had a laceration on my right leg.

6 THE COURT: Which is true? Where were---

7 A. I was laying out in the front yard. I
8 didn't get in his truck. And then when he saw the
9 cut, they brought tissue when I was outside laying
10 on the ground.

11 THE COURT: You were bleeding.

12 A. Yes, sir.

13 THE COURT: He didn't want you to bleed in
14 his truck.

15 A. Well actually he said that the affidavit
16 said that I approached him. And he noticed when I
17 got in the truck.

18 THE COURT: You were bleeding though.

19 A. Yes, sir.

20 THE COURT: You can continue.

21 A. You know the only thing I would want to
22 add to that, Your Honor, except that defense was
23 prejudiced by Mr. Brunson's failure to effectively
24 move to dismiss hearsay and confront my accusers
25 with a number of their prior inconsistent

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1 statements, the jury could have disbelieved these
2 witnesses had Mr. Brunson effectively questioned
3 them about these prior inconsistent statements. On
4 page 19, and I could not cross examine these other
5 detectives. Witness McDonald told that I slouched
6 down in his truck.

7 On issue No. 8, 8 alleges that Mr. Brunson
8 was ineffective for not filing any appropriate
9 motions in connection with the trial court's
10 limitation and direct examination of defense witness
11 Albertus Lewis' phone conversation of hearing what
12 might have been a white female saying we, or they
13 got your blood. Explain to -- of course, you
14 know---

15 THE COURT: Well you've already talked
16 about that, haven't you?

17 A. Yes, sir.

18 THE COURT: But you can continue if you
19 have additional information on that. But please try
20 to avoid repeating any grounds.

21 A. Yes, sir. What I'm doing here, I'm asking
22 the question on 34, 19 of 22. Page 19 of 22. And I
23 kind of later made a mistake. I needed someone to
24 read that. And I'm reading the question without
25 giving the answer.

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1 THE COURT: But the question is, as
2 printed, explain to the court what Mr. Brunson did
3 or didn't do here. So just act like that question
4 was asked.

5 A. He didn't file the appropriate motions
6 when the trial court held a side bar conference and
7 limited the direct examination of defense witness
8 Albertus Lewis' July 3rd 2009, incoming cell phone
9 call. A conversation of what might have been a
10 white female saying, we got your blood. Anything
11 else except, you know, my right to bring this
12 evidence, prejudiced the defense. The jury could
13 have believed Albertus' testimony of hearing a white
14 female, we got your blood, came from Detective
15 Culick. Could have.

16 THE COURT: Before she planted your blood.

17 A. Yeah, it could have.

18 THE COURT: That's what it says here.

19 A. On issue No. 9 Brunson was ineffective for
20 not---

21 THE COURT: Now we're on page 20.

22 A. Yes, sir. Mr. Brunson was ineffective for
23 not interviewing and presenting defense witness
24 Catherine Myers now Anderson, observation that was
25 2002, sir. And we already went through that, Your

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1 Honor, pretty much. You know my answer to that
2 Mr. Brunson did not discuss with Mr. Myers how her
3 testimony was relevant and important prior to trial.
4 Upon information and belief Ms. Myers was never
5 interviewed by Brunson prior to trial and therefore,
6 contributed to Mr. Anderson's confusion and
7 exclusion of very important testimony. I believe
8 Ms. Anderson will also attest to the same.

9 THE COURT: Attest to what?

10 A. That he never really discussed with her---

11 THE COURT: What was she going to testify
12 to?

13 A. She was going to testify to the fact that,
14 you know, this, you know, detective in the 2002
15 incident, had possibly been tampering with the
16 motorcycle pegs and some glass shards that were --
17 pictures that were taken showing glass shards on the
18 motorcycle pegs.

19 THE COURT: Okay.

20 A. I mean, you know, that because I couldn't
21 testify. Somebody could give some testimony on.
22 This was -- it was more than one encounter with
23 Detective Culick. This was at least a second
24 encounter.

25 THE COURT: But the jury---

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1 A. But-----

2 THE COURT: She would have provided
3 confirmation that you and Detective Culick had had a
4 previous encounter.

5 A. Yes, sir. And that of course she saw
6 Culick, you know, tampering with the motorcycle pegs
7 and so forth. Newports that were in the house that
8 weren't -- that didn't belong to that burglary,
9 Culick collected and submitted as if it came from
10 that burglary. They wasn't in the search warrant
11 and so forth. Now I am going to go ahead and move
12 on to, let's see what is conference.

13 THE COURT: Issue No. 10.

14 A. I think Mr. Brunson kind of released her
15 from the subpoena that we had on her, and she didn't
16 really explain anything to us. Now on page 21 of
17 22, on issue No. 10, alleges that Brunson was
18 ineffective for failing to argue that the
19 prejudicial effect of the 1995 burglary second
20 conviction, Indictment 95-GS-14-187 outweighed its
21 probative value within the meaning of Green v.
22 State, 52, S.C. 2nd, 98, 2000 case. You know I
23 wanted to explain here to the court that during the
24 start of that defense case, Mr. Brunson didn't even
25 attempt to argue that it was more prejudicial than

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1 probative when the court admitted my 1995 burglary.

2 It was more prejudicial. And I have transcripts out
3 here on page 21 of 22 where that cite is at.

4 THE COURT: Yeah, and I'm familiar with
5 those cases.

6 A. Okay.

7 THE COURT: Actually, the standard is, if
8 it's not a crime of dishonesty then the state or the
9 proponent of the evidence has to convince the court
10 that the probative value outweighs its prejudicial
11 effect to you. But you said it a little bit
12 opposite, but I understand your argument.

13 A. Your Honor, I'm not the expert here.
14 Now, Your Honor, that does it with the affidavit.
15 Now I would like to move it into evidence.

16 THE COURT: Any objection, Mr. Gourley?

17 MR. GOURLEY: No, since it's his
18 affidavit.

19 THE COURT: It's in as No. 1 with a
20 sticker.

21 A. May I, I have my copy here. Can she kind
22 of like give me or either a copy of that or?

23 THE COURT: Well so you don't trust the
24 court reporter?

25 A. Your Honor, I have -- honestly I don't.

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1 THE COURT: Well I think that's
2 unfortunate.

3 A. I'm sorry. We just....

4 THE COURT: Because no, what you have to
5 do is present credible testimony to me. And if you
6 devote yourself to topics like that, it lessens your
7 credible to the average man. I just want you to
8 understand that. My clerk is going to go now make
9 two copies of what's been with the sticker on it.

10 A. Okay.

11 THE COURT: Go ahead and make two copies.
12 Two of that. One will be for me, and one will be
13 for you. With the sticker on there.

14 A. Thank you. Now I have just some sections
15 of the transcript.

16 THE COURT: So you have more issues?

17 A. Yes, sir. I mean just the---

18 THE COURT: It's a quarter till 5 now.
19 How much longer do you think you want to take?

20 A. Maybe another 20 minutes.

21 THE COURT: Anybody need to take a break?
22 Keep going.

23 A. Your Honor, I have here for the court
24 reporter the original transcripts.

25 THE COURT: No, sir. I have those. The

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1 transcript is in evidence.

2 A. Yes, sir.

3 THE COURT: It is a part of the record.

4 Do you agree?

5 MR. GOURLEY: Yes, Your Honor.

6 THE COURT: The transcript is part of the
7 record, and I've got it right here. We're not going
8 to be marking any pages. You tell me pages, and I
9 will look at those intently. And I'm going to read
10 every word of it anyway. So you tell me page
11 numbers, but they will not be anything transcript
12 wise entered into this record, because it's already
13 part of the record.

14 A. The statement, he want a copy of this.

15 THE COURT: He's got it.

16 A. Not with these case laws on it.

17 THE COURT: No, sir, you make your case
18 law arguments. Your case law arguments do not
19 become exhibits.

20 A. Well on page---

21 THE COURT: That's not testimony, that's
22 argument. There is a difference. Unless the
23 attorney general wants to consent to those things
24 coming in.

25 MR. GOURLEY: No, Your Honor.

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1 THE COURT: You don't.

2 MR. GOURLEY: No, sir.

3 THE COURT: Then we'll take the time to go
4 through them one by one.

5 A. I have a copy for you, Your Honor.

6 THE COURT: Hand it to me. And you're
7 required to give a copy to your opponent.

8 A. Yeah, I have a copy.

9 THE COURT: Have you got a copy for him
10 too?

11 A. Yes, sir.

12 THE COURT: Come up and get your copy,
13 Mr. Gourley. And you can hand me my copy, but those
14 aren't marked as exhibits.

15 A. Can they be marked for identification?

16 THE COURT: No, sir. Legal arguments
17 aren't marked. That's just a rule and you're going
18 to have to go by it.

19 A. This is an original. This is for the
20 clerk, I meant.

21 THE COURT: That's for me.

22 A. Okay.

23 THE COURT: These do not appear to be
24 legal citations. These are summaries of your view
25 of the evidence. Is that correct?

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1 A. Yes, sir. And, if, you know, I kind of
2 like really talk about the testimony in them. I
3 just really wanted them to be identified.

4 THE COURT: They're identified because
5 you've submitted them to me.

6 A. I have wanted to talk a little bit about
7 some of the case laws.

8 THE COURT: You can do that. And just for
9 the record, Mr. McFadden.

10 A. Yes, sir.

11 THE COURT: And you have given me four,
12 five stapled documents with penciled No. 9 with a
13 circle around it, so I assume that relates to issue
14 No. 9.

15 A. No, it's just kind of like an order that I
16 have was, you know, I wanted to kind of pull out and
17 you know some issues I wanted to deal with.

18 THE COURT: So what the 9 mean?

19 A. The 9, just, you know, it's just something
20 for my argument, so I know that we're looking at the
21 same document. I have some up here 1 and 2 circled
22 in the corner, on the top left hand.

23 THE COURT: No, all of these are circled
24 No. 9.

25 A. No, sir.

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1 THE COURT: See, 9, 9, 9, 9, 9.

2 A. Yes, sir. But I have an affidavit that
3 they've already got a copy of. And it's No. 1.
4 It's one of the first ones I sent in. And I kind
5 of like, you know, these stacks that I had, I had
6 numbered them. So that number on the top is
7 irrelevant, Your Honor.

8 THE COURT: I got you.

9 A. But at the bottom on the right hand side,
10 it does have Issue No. 1, Item 1 through 10. At
11 the bottom there, the very first one.

12 THE COURT: I got it.

13 A. Yes, sir. And this is talking about false
14 testimony.

15 THE COURT: Uh-huh. (Affirmative.)

16 A. It cites the case law down. And, you
17 know, it talks about the digitally blown up
18 photograph. The experts could possibly confirm.
19 But down here at the bottom somewhere it's a case
20 law on here. And it's U.S. v. Young. It's on page
21 2 of 10. Maybe on the back sheet of that first one.

22 THE COURT: I see it. Ninth Circuit case.

23 A. Yes, sir. And I couldn't find anything, I
24 don't think in the 4th circuit. But, you know, and
25 it says that the defense is entitled to a new trial.

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1 The defendant is entitled to a new trial based on
2 evidence of the detective regarding a location of an
3 incriminating notebook was false, even if the
4 government presented that testimony unwittingly.
5 And that's U.S. v. Young.

6 THE COURT: I've got that cite.

7 A. 17 South---

8 THE COURT: I've got that cite. I've got
9 it right here.

10 A. I just had wanted to point something else
11 out too on page 4 of 10 on this same issue No. 1.
12 And maybe flip a pages over. Page 4 of 10. Here
13 Culick was reluctant to admit that she knew me about
14 naming me as a suspect in the morning in question.

15 THE COURT: She was reluctant to admit she
16 knew you?

17 A. Yeah. She was reluctant to naming me as
18 a suspect. I meant during that night. I mean she's
19 kind of hesitant about saying, you know, she already
20 had me as a suspect. On to issue No. 2, the next
21 set of stapled copies.

22 THE COURT: Page 1 of 3.

23 A. Yeah, page 1 of 3. This when an attorney
24 gives you bad advice, have you waived your rights
25 concerning the erroneous advice, it cites a case

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1 called Horton v. State. It's---

2 THE COURT: 411 S.C, 2nd, 223.

3 A. Yes, sir. And it's a holding that a
4 petitioner receive ineffective assistance of counsel
5 when trial counsel erroneously inform him that he
6 could be cross examined on his prior conviction
7 resulting to his decision not to testify. And
8 that's exactly what happened in this case.
9 Mr. Brunson told me that if I testify, he didn't
10 challenge them, that, you know, I would be
11 impeached on these convictions. They were
12 prejudicial. That was error. I mean had he
13 challenged them, we could have gotten an appeal on
14 them. And of course burglary it doesn't have any
15 probative value. I remember you saying that, Your
16 Honor. But and that's the same conclusion I got in
17 case laws I read.

18 THE COURT: Horton v. State is still good
19 law.

20 A. Yes, sir. I've shephardized it. It's
21 still good. U.S. v. Russell dealt with the not
22 investigating or getting the records ordered of a
23 criminal defendant. The attorney does have a duty
24 to go and conduct adequate investigations concerning
25 a criminal record. Now on this page, I don't, I

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1 might this issue No. 3 on page 2 of 3.

2 THE COURT: Issue No. 3?

3 A. The next set -- the next issue 3 at the
4 bottom.

5 THE COURT: Give Mr. McFadden one of the
6 photos. Do you trust my law clerk?

7 A. Yes, sir.

8 THE COURT: He's giving you a photocopy of
9 Exhibit 1. He's going to give the original back to
10 the court reporter. I've got issue No. 2, page 1 of
11 3, which we've already discussed.

12 A. Yes, sir.

13 THE COURT: I've got issue No. 1, which
14 we've already discussed.

15 A. Yes, sir.

16 THE COURT: I've got pieces that say issue
17 5, issue 6, issue 7A, 7B, and issue 10.

18 A. I've got an issue 3 here, you must not
19 have what I've got here.

20 THE COURT: No, you didn't give me that.
21 Have You did got that, Mr. Gourley?

22 MR. GOURLEY: Yes, Your Honor. I believe
23 if you flip the page and it goes on page 374, he has
24 it labeled as No. 3.

25 THE COURT: Oh, I see. I do have that.

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1 It's stapled to No. 2. I apologize.

2 A. Now down at the bottom, you know, I'm
3 accusing Mr. Brunson of not investigating my
4 criminal record. And U.S. v. Russell, the cites,
5 do you see them down at the bottom, Your Honor?

6 THE COURT: Yes, sir.

7 A. You know, the language of that said
8 failure to conduct an adequate investigation into
9 client's criminal record, may support findings of
10 ineffective assistance of counsel. I just wanted to
11 point that out. We'll move on to No. 5. I mean,
12 excuse me, hold on for me one second. No. 4 I don't
13 have a transcript of that. You know and I wanted
14 to---

15 THE COURT: Do you know what page number
16 it is on?

17 A. Number.

18 THE COURT: Oh, that's what you don't have
19 the for?

20 A. Yeah. That's the one about the direct
21 appeal. We don't have that transcript. So I'll
22 just skip that.

23 THE COURT: I'll make arrangements to get
24 that.

25 A. We'll just skip on to No. 5.

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1 THE COURT: One of page, one of 5.

2 A. Yes. Yes, sir. That was issue No. 6.

3 THE COURT: We've got 7 A and 7 B.

4 A. Yes, sir.

5 THE COURT: Go ahead.

6 A. I cited case law in there. U.S. v Ince.

7 It's I-N-C-E looks like. It cites 21 Federal 3rd.

8 560. 576. It's on page 1 of 3, issue No. 7 A.

9 THE COURT: I see it.

10 A. It was a 4th Circuit case. One method of
11 attacking credibility. This is where Mr. Brunson
12 didn't impeach or attack the credibility of the
13 witnesses that I have discussed, is to show that he
14 has previously made a statement that is inconsistent
15 with his present testimony. I cited a State case,
16 it's Mayes v. Mayes. It says the same. On page 2
17 of 3, U.S. v. again, it says the same. It's
18 redundant on that.

19 That, you know, the method of detecting
20 the credibility of the witnesses to show that he
21 made a prior inconsistent statement. Mr. Brunson
22 did not do that. On to issue 7 B, it cites case
23 law, Jolly v. State. On page 1 of 2.

24 THE COURT: Well didn't Mr. McDonald give
25 you a ride? Didn't he give you a ride?

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1 A. Yes, sir.

2 THE COURT: So he gave you a ride. So
3 other detectives telling him that McDonald told him
4 he had given you a ride, that's correct.

5 A. Well no, no, it was more than just giving
6 me a ride, Your Honor. He said that he -- he said
7 that told Detective Richburg said McDonald was
8 telling other detectives that I sloughed down and
9 got nervous. See, you know, I couldn't cross
10 examine those other detectives. I have a right to
11 confront those. Now he shouldn't have---

12 THE COURT: Go ahead.

13 A. ---testified to that. So I use the case
14 law here, I got Jolly v. State. Holding that
15 counsel's failure to object to witness' hearsay
16 testimony that alleged victim told witness that
17 defendant had sexually assaulted her, denied
18 defendant effective assistance of counsel. I cite
19 another case called Vail v. State. It's on here up
20 under issue No. 7 B on page 1 of 2. The cites of
21 738 S.E. 2nd, 503, on page 510 of that case. It's
22 says improper corroborating testimony that is merely
23 cumulative to the victim's testimony cannot be
24 harmless. It is precisely the accumulative effect
25 which enhances the devastating impact of improper

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1 corroboration.

2 And what he did was just got another --
3 he's referring to other detectives saying that
4 McDonald told him the same thing that was in
5 corroborating. It was supporting....

6 THE COURT: I understand. You're saying
7 that was improper.

8 A. Yes, sir. And the attorney was
9 ineffective for not objecting to it. And it damaged
10 the trial. I think my trial on that.

11 Now I am going to go ahead and move on to
12 issue No. 10, and this will be the last one, and
13 that will conclude my testimony.

14 THE COURT: No, it won't, because
15 Mr. Gourley is going to cross examine you. So go
16 ahead. Mr. Gourley is going to cross examine you.
17 He's not going to cross examine you on the law, but
18 you go ahead. This is your burglary conviction.

19 A. Yeah, it talks about the probative value
20 being outweighed by the prejudicial effect. I cited
21 a case law Green v. State.

22 THE COURT: Well there are others, but
23 I'll cover that later.

24 A. Yes, sir. I am not going to go into, we
25 already discussed pretty much what Green talks

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1 about, about the prejudicial effect and so forth.
2 There's one other case law back here on page 4 of 5
3 up under issue No. 10. Our U.S. District Court.
4 You follow me?

5 THE COURT: Yes, sir.

6 A. Yes, sir. It's Cradle v. Bottison. It's
7 in our area. It a 2011 case. That case was
8 reversed because the defendant had involuntarily
9 waived his right based on bad advice from the
10 attorney and the trial court. A few cases in there
11 concerning the trial court. You know, and it cites
12 Horton again. It cites another case law, Blackburn.
13 If I can, Your Honor, can I get just that one page
14 identified here?

15 THE COURT: No, sir, you cannot. You
16 can't. It's illegal authority. That's not marked
17 as an exhibit. So you tell me where it is, because
18 I've got a copy of it, and I'm going to read it.

19 A. Well it's on page---

20 THE COURT: Page 1 of what? I mean,
21 excuse me, page what of 5?

22 A. 4 or 5. Under issue No. 10.

23 THE COURT: Blackburn v. Folks, Green v.
24 State. Cradle v. Bottison.

25 A. Yeah, could you read, I meant, I don't

Bernard McFadden-Direct Examination

1 have access to a law book, but that case dealt
2 exactly with what we're dwelling here today, Your
3 Honor.

4 THE COURT: I know, believe you.

5 A. Okay.

6 THE COURT: Okay. The law is the law.
7 Whether it matches up to your facts is for me to
8 determine.

9 A. Okay.

10 THE COURT: I know what the law is.

11 A. Yes, sir, I know.

12 THE COURT: And the law is exactly as you
13 state it.

14 A. Yes, sir.

15 THE COURT: If he misformed you about the
16 admissibility of a criminal conviction, On occasion
17 it might be ineffective assistance of counsel.

18 A. Yes, sir. Thank you, Judge James. And
19 that concludes me.

20 THE COURT: Cross examination. By the
21 way, does anybody need to take a break?

22 (Whereupon, the court takes a short
23 recess.)

24 A. I'd just like, I don't believe I remember,
25 and of course, I'm not a professional at this,

Bernard McFadden-Cross by Gourley

1 about, you know, that affidavit being admitted into
2 evidence.

3 THE COURT: It's admitted into evidence
4 with the State's consent. Exhibit No. 1 is in
5 evidence.

6 A. They don't get any markings that they're
7 in evidence or anything like that?

8 THE COURT: Mr. McFadden, it's in
9 evidence.

10 A. Okay.

11 THE COURT: You have A copy of.

12 (Affidavit admitted as Plaintiff's Exhibit
13 No. 1 into evidence.)

14 Cross Examination by Mr. Gourley:

15 Q. Mr. McFadden, did you have any discussions
16 with Mr. Brunson about your appellate rights?

17 A. Yes, sir. I mean we never really
18 discussed appealing until after I was convicted.

19 Q. Yes, sir.

20 A. And he, for whatever reason, Judge Young
21 called us back in, and we got on the record about
22 procuring the transcript.

23 Q. Yes, sir.

24 A. From that, I figured he would put his
25 notice in, and then an appeal would go from there.

Bernard McFadden-Cross by Gourley

1 Q. Okay.

2 A. We don't have that transcript here, but it
3 was the one that we discussed about the probation
4 revocation hearing.

5 Q. Now there was a couple of witnesses that
6 you wanted Mr. Brunson to testify. I think you said
7 the two power washers that were at the scene of the
8 crime.

9 A. Yes, sir.

10 Q. Did you tell Mr. Brunson about those two?

11 A. Yes, sir.

12 Q By Mr. Gourley) I beg the court's indulgence,
13 Your Honor. Judge, That's all I have.

14 THE COURT: Anything else you'd like to
15 say, Mr. McFadden, in response to his questions?

16 A. Only that the expert can -- in response to
17 his question, only that the transcript that will
18 reflect or should reflect, and it's a few witnesses
19 that were there at the probation revocation hearing,
20 overheard Judge Young saying that do not contact
21 Ms. Margaret Sullivan about your transcript
22 concerning your appeal. Because why else would I
23 want a transcript.

24 THE COURT: I understand that. I may --
25 I'll likely get that transcript. You can step down.

Bernard McFadden-Cross by Gourley

1 A. Yes, sir.

2 THE COURT: Any additional witnesses,
3 Mr. McFadden?

4 A. Other than the ones that---

5 THE COURT: No, I'm talking about any
6 witnesses other than that are here today that you
7 want to call?

8 A. No, I didn't, you know, we don't have an
9 opportunity to get the witnesses over here.

10 THE COURT: I'll consider your request
11 that I leave the record open for Ms. Meyers to come
12 or Ms. Anderson. And the photography expert and the
13 blood spatter expert.

14 A. What about Ms. Lewis and the limitation on
15 cross examination?

16 THE COURT: That's in the record. I'll
17 consider that too. Are you talking about Ethel May
18 Lewis?

19 A. Ethel and Lee -- Albertus Lewis. The
20 phone call conversation that they had, it didn't
21 come in. The jury didn't hear anything about this
22 being a white female calling.

23 THE COURT: Well where are they today?

24 A. I don't know.

25 THE COURT: I'll consider that too.

Willie Brunson-Direct by Gourley

1 Mr. Gourley, do you have any witnesses?

2 MR. GOURLEY: Yes, Your Honor. We'd call
3 Mr. Brunson.

4 THE COURT: Come on up, Mr. Brunson.

5 Willie H. Henry Brunson, being first duly
6 sworn, testified as follows:

7 THE COURT: And your full name, sir?

8 A. Willie H. Henry Brunson.

9 THE COURT: Thank you, sir.

10 Direction Examination by Mr. Gourley:

11 Q. Mr. Brunson, can you talk -- give us a
12 little bit of background about the case and your
13 theory of the case, if you will?

14 A. Yes, I recall having been assigned this
15 case and meeting with Mr. McFadden. We discussed
16 various methods of defending him. Some approaches
17 he wanted me to take I did not agree with, and
18 declined to take them. And advised him that I was
19 not going to take them. We tried the case once, and
20 the jury was hung. And I believe at that point the
21 only offer that the State had made was a 12-year
22 plea. After the jury was hung, there was a plea
23 offer for 3 years.

24 THE COURT: Three you said?

25 A. Yes, sir. And I advised Mr. McDonald to

Willie Brunson-Direct by Gourley

1 take the plea, and he declined. And basically
2 indicated that, oh, we're going to win the next
3 time. Of course I advised that it's a little more
4 difficult the second time around as the State has an
5 idea, or not an idea, they know what we're going to
6 do. And that we had pretty much had our best
7 opportunity in the first trial. He declined the
8 plea, and we prepared for trial yet again. And I
9 believe that we did the best we could under the
10 circumstances.

11 Q. Mr. Brunson, I am just going to run
12 through Mr. McFadden's affidavit very briefly. Who
13 was Catherine Anderson, and did you look into her?

14 A. Yeah, regarding her, and I guess I can
15 deal with Catherine Anderson, Albertus Lewis, and
16 Ethel Lewis at the same time. Mr. McFadden wanted
17 to introduce facts regarding a previous burglary
18 that he was investigated for. And I believe he was
19 officially charged with a burglary. And the
20 burglary was a second degree. It was of a
21 convenience store just like this case. And the
22 facts in that case from the 2002 burglary were
23 identical to this one. The perpetrator broke the
24 glass front of a convenience store, entered the
25 building, and removed cigarettes. The same type

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1 that were removed in this case, mainly.

2 Of course, I told him that that wouldn't
3 otherwise come in; that he was subject of an
4 investigation that was identical. And he wanted me
5 to introduce this evidence, because he thought that
6 taking the approach that if we accused Detective
7 Culick of staging the evidence in this burglary,
8 that it would be a winning strategy. I disagreed
9 with that, and decided to not pursue it. Therefore
10 the testimony that was going to come from Catherine
11 Myers Anderson was in large part regarding that old
12 burglary case.

13 Q. Okay. So she would not have been able to
14 offer any useful evidence in this trial. However, I
15 subpoenaed her, talked with her. That's how I knew
16 she wasn't going to be able to offer anything
17 meaningful. Mr. McFadden was adamant that he wanted
18 her to take the stand. Well she indicated that she
19 was related to one of the jurors. And so before we
20 elicited any testimony from her, I brought that to
21 the judge's attention. And we had conference
22 regarding it. And I believe what Judge Young
23 decided to do was to remove the juror that she said
24 she was related to. Although that was questionable,
25 because she didn't even know his last name. But

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1 the judge said in order to clarify that, that he
2 going to remove that juror and replace her with an
3 alternate. Or replace him with an alternate. And
4 before we were able to even do that, before she
5 could testify, I conferred with Mr. McFadden, and he
6 instructed that we didn't want to use her anyway.
7 And so we kept the same jurors, and I advised the
8 court that we were not going to elicit any testimony
9 from Ms. Anderson. And she went on about her way.

10 Q. What about Albertus Lewis?

11 A. Albertus Lewis and Ethel Lewis, I talked
12 with them. Mr. McFadden was adamant that they could
13 offer some meaningful testimony. So I tried to
14 utilize them in the best way that I knew how. So I
15 put him on the stand. And I thought that if they
16 told -- if they were able to testify that he was
17 known for riding a bicycle, and that he was clumsy
18 and he fell a lot, that we could kind of corroborate
19 his story that on the night of this burglary that he
20 did what he had done on number of occasions prior,
21 that he had ridden a bike, and that he'd fall and
22 cut himself. Which would what explain why he had
23 arrived at McDonald's home with cuts and a bicycle.
24 And so that was the whole purpose. Since he wanted
25 me to put him up, that's the only thing I could get

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1 from him. And so I said well at least I will get
2 that. So I got that---

3 THE COURT: That he was clumsy?

4 A. That he had fallen from a bicycle before,
5 and that he had hurt himself when he fall. And that
6 was going to be the theory that we approached this
7 case with. And that's why he appeared at McDonald's
8 home with a bicycle and injured, because he had
9 fallen that night like he had done before. And
10 Albertus testified to that, and Ms. Ethel Lewis also
11 testified to that. I remember he mentioned
12 something my not obtaining from her that he had a
13 CDL.

14 Q. Yes, sir.

15 A. Well I did ask her if she knew whether he
16 had a driver's license, and she said that he did
17 not. In fact she testified on cross examination
18 after I brought that up at his demand, that she
19 thought his license had been suspended. So it hurt
20 our case that he was adamant that I'd asked, so I
21 asked it anyway.

22 THE COURT: You can sit down, sir. I'm
23 sorry, do you have any objection?

24 THE PLAINTIFF: No, sir. I was just kind
25 of getting these questions I am going to ask

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1 Mr. Brunson.

2 THE COURT: Oh, you need to stand up to do
3 it.

4 THE PLAINTIFF: Yes, sir. I got these.

5 THE COURT: I'm sorry. I apologize. You
6 can do that. I thought you were standing up because
7 you were just watching. But you can stand up if you
8 need to.

9 MR. MCFADDEN: I did got engaged just now.
10 I was trying to hear the testimony.

11 THE COURT: If you need to organize your
12 papers, certainly you can stand up, I apologize.

13 Q. Mr. Brunson, what about Ethel Lewis in
14 regards to the testimony of the phone conversation?

15 A. Oh, I believe Mr. McFadden made an
16 allegation that I did not object to Ms. Lewis being
17 permitted to testify regarding a telephone
18 conversation. Well what happened, is that,
19 Ms. Lewis began to testify about receiving a phone
20 call that evening. And of course when she was about
21 to say what was said to her, the solicitor objected
22 and said that that was hearsay. And the judge
23 sustained that objection. So Ms. Lewis was not
24 permitted to say what someone told her on the
25 telephone, because the judge ruled that it was

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1 hearsay.

2 Q. Now Mr. McFadden on page 3 of 22, has
3 listed a Mike Simpson. Are you familiar with a Mike
4 Simpson?

5 A. Mike Simpson, I think that's one of the
6 power washers?

7 THE PLAINTIFF: Your Honor, I object to
8 that for the record.

9 THE COURT: Evidentiary objection not
10 because you think he's wrong. Do you have an
11 evidentiary rule objection? You can question him
12 later if you think his testimony is incorrect.

13 THE PLAINTIFF: Yes, sir. It's incorrect.

14 A. You can't just talk and speak up when you
15 think he said something incorrect.

16 THE PLAINTIFF: I am sorry.

17 THE COURT: You indicated that Mr. Simpson
18 was present at a bond hearing.

19 THE PLAINTIFF: Yes, sir.

20 THE COURT: But I assume that's what your
21 objection is going to be.

22 THE PLAINTIFF: Yes, sir.

23 THE COURT: You can question him about
24 that later. Go ahead, Mr. Gourley.

25 Q. Mr. Brunson, do you have basis to feel

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1 like you could challenge Detective Culick's
2 credibility or in any whatsoever?

3 A. I did not. Mr. McFadden wanted me to
4 basically use a theory that she staged the whole
5 blood collection, that she somehow planted the blood
6 in the store. And we had no evidence suggesting
7 that she did that. So I declined to utilize that as
8 a theory.

9 Q. And you used the alternate theory that
10 Mr. McDonald was the one in fact planted---

11 THE PLAINTIFF: I object to the leading at
12 this time.

13 THE COURT: Overruled.

14 A. That is exactly correct. And obviously
15 this is a difficult part of the case. And
16 Mr. McFadden wanted me to say that Detective Culick
17 put it there. Well I didn't know what happened, so
18 I went back to the time line. And based on this
19 time line in this case, we learned from the officer
20 that first responded, that he arrived at
21 12:37 a.m., roughly.

22 Q. Correct.

23 A. Mr. McDonald had testified that my client,
24 Mr. McFadden, first arrived at his home around 9:30
25 p.m. And that 15 minutes later he was taking

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1 Mr. McFadden on the south side of town, I believe to
2 Olive Street. And I thought that from 9:30 to
3 12:30, it was enough time for Mr. McDonald to take
4 my client to the south side and come back. Who
5 knows, he could have possibly had blood in his
6 truck, because my client was bleeding on his front
7 step, and he transferred a bike in which my client
8 had bled on as well, in the back of his box truck.

9 So Mr. McDonald also testified that my
10 client gave him cigarettes in exchange for the ride.
11 So Mr. McDonald had blood from my client, and had
12 cigarettes from my client. And they found blood in
13 the store and cigarettes with blood on them, in the
14 store. So Mr. McDonald could have conceivably been
15 the one to put it there. I did not know whether he
16 put it there or not. The only thing I know is that
17 if he left his house at 9:30, and the officer didn't
18 arrive until 12:30, that's 10:30, 11:30, 12:30.
19 It's three hours.

20 Q. Did you feel any need to get a blood
21 expert or photograph expert? I believe that's all
22 the experts he was asking for.

23 A. I do not. I did not see where they would
24 be able to assist in our theory.

25 MR. GOURLEY: I beg the court's

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1 indulgence, Your Honor.

2 THE COURT: Okay.

3 Q. Did you feel any basis to challenge the
4 blood on the Newport cigarettes?

5 THE COURT: Inside the store?

6 MR. GOURLEY: Yes, sir.

7 A. I am sorry, your question. Did I---

8 Q. Did you feel any basis to challenge the
9 blood found on the Newport cigarettes or on the
10 floor of the store?

11 A. Whether or not it was Mr. McDonald's? I
12 mean, McFadden's?

13 Q. Right.

14 A. No, I didn't.

15 Q. Regarding the power washers, Brian Gibson
16 and I believe Jessie McDonald were the two power
17 washers that Mr. McFadden he wanted to be present.
18 Were you were aware of those witnesses?

19 A. I did.

20 Q. Did you -- what was your strategy in
21 calling or not calling those witnesses?

22 A. Well I didn't think they could offer any
23 substantive evidence. I know Mr. McFadden has
24 indicated that they didn't see any lights or
25 something to that effect. But I did not see where

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1 they would be able to offer any testimony that would
2 help our case.

3 Q. Mr. McFadden did not testify in this case.
4 He was potentially going to be impeached with some
5 prior burglary convictions. Can you elaborate on
6 those for me?

7 A. Yes. We had discussed that, as we always
8 do in these types of cases. And of course the State
9 provides a copy of the defendant's criminal history
10 as they did in this case. And Mr. McFadden did have
11 a prior burglary. I believe he was released from
12 the department of corrections in 2001. So the
13 remoteness was not an issue. The judge applied a
14 balancing test and concluded that he was going to
15 allow it in. Now a lot of the discussions regarding
16 this may have occurred in chambers. I am not sure.

17 Q. Yes, sir.

18 A. I tried this case twice. And if I am not
19 mistaken I believe the -- well the judge said he was
20 going to let it in. And he communicated that to
21 Mr. McFadden.

22 Q. And it was ultimately Mr. McFadden's
23 decision not to testify.

24 A. It was. In fact Mr. McFadden initially
25 said that he wasn't sure whether he was going to

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1 testify or not. He said that, well the judge asked
2 him, do you want to hear the testimony first and
3 then make the decision. Mr. McFadden said yes.
4 After he heard the testimony, the judge asked him
5 again. Of course, Mr. McFadden indicated that
6 because you are going to let the prior conviction
7 come in, I'm not going to testify.

8 So he did state for the record that that
9 was the reason that he wasn't going to testify. But
10 it was because the judge said he was going to let it
11 in.

12 Q. Did you advise Mr. McFadden of his right
13 to appeal?

14 A. The judge did. In fact when we -- when
15 the judge delivered the sentence in open court, he
16 of course advised him of his right to appeal.
17 Mr. McFadden never told me that he wanted to appeal,
18 and he was taken out of the courtroom. After that,
19 there was some discussion regarding Mr. McFadden
20 writing or contacting the court reporter directly.

21 THE COURT: Was that on the record, or off
22 the record?

23 A. That was off the record. And if I am not
24 mistaken, I believe the court reporter might have
25 requested that the judge give an instruction for

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1 Mr. McFadden to not contact her directly regarding a
2 transcript. And so the judge I believe agreed with
3 that request, and had Mr. McFadden brought back in
4 to the courtroom for the purpose of instructing him,
5 if he wanted a transcript to not request it from the
6 court reporter directly. I think his instruction
7 was to request it from court administration, if I am
8 not mistaken.

9 Q. Mr. Brunson, did you feel you had any
10 basis to try to suppress the evidence or dismiss the
11 indictment on the ground of police misconduct?

12 A. I did think there was any evidence that
13 would support it. So the answer is, no.

14 Q. Did you feel you had any basis to file a
15 motion to suppress the DNA evidence found on those
16 packs of cigarettes from Mr. McDonald's car?

17 A. I'm sorry. Say that one more time.

18 Q. There was blood on the cigarettes found
19 at -- in Mr. McDonald's car, correct? Truck?

20 A. No.

21 Q. There was not?

22 A. Well we don't know. We don't know whether
23 there was blood on those cigarette or not.

24 Q. Can you explain why?

25 A. Well because Mr. McDonald indicated that

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1 when he arrived at the scene, and the officer was
2 there, he approached the officer and said, hey, what
3 happened. Or I think I might know what happened.
4 And I think I might know who did. And I believe his
5 testimony basically indicated well I just gave this
6 guy a ride him home, and he gave me cigarettes for
7 doing it. And I believe Mr. McDonald gave the
8 officer about 7 packs of cigarettes.

9 Q. Did you feel any basis to impeach
10 Detective Robert Richburg about his potential
11 inconsistent statement regarding whether or not
12 Mr. McFadden slumped down in the car?

13 A. Well I think what happened was, when
14 Mr. McDonald came back to the scene, or came to the
15 scene, he advised the officers there that when he
16 was giving Mr. McFadden a ride home, and they passed
17 the store, that Mr. McFadden had slumped in his seat
18 in the car.

19 Q. Yes, sir.

20 A. So to answer your question did I feel a
21 need to impeach him on that statement, the answer is
22 no, because Mr. McDonald testified from the stand
23 that that's what Mr. McFadden did.

24 MR. GOURLEY: I beg the court's
25 indulgence, Your Honor.

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1 THE COURT: Yes, sir.

2 Q. Mr. Brunson, did you feel you had any
3 argument regarding the 1995 burglary second
4 conviction in regards to its prejudicial effect?

5 A. Did I feel like I had an argument there?

6 Q. Yes.

7 A. Of course.

8 Q. Did you in court?

9 A. It's been a long time, so I don't recall
10 whether we had -- I think we had that discussion off
11 the record and in chambers is what I think. That's
12 what I recall. And it was almost one of those
13 situations where we had the argument and the judge
14 says well I don't know what I'm going to do, and
15 we'll see when it comes or when it's time, or
16 something along those lines.

17 Q. Yes, sir.

18 A. And the solicitor never made the argument
19 that the probative value exceeded the prejudicial
20 effect. And the judge never did the balancing test
21 on the record.

22 Q. Yes, sir.

23 A. He just came out because we had had the
24 discussion back, and it was almost like, okay, well
25 I'm going to go ahead and rule on this. I'm going

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1 to let it in. I did a balancing test. It's not
2 remote. It's coming in. So it's almost like, I'm
3 going to finish up our conversation out here. And
4 there was a statement that he made, and that he had
5 concluded that that's what he's was going go to do.
6 And I probably should have objected on the record.

7 Q. Correct.

8 A. And I probably should have had the
9 argument that we had in chambers again on the record
10 to preserve the issue.

11 Q. Do you recall what your argument was in
12 chambers?

13 A. Just that it was too similar. And that
14 would be prejudicial to allow evidence of a previous
15 burglary to be introduced in a burglary case. And
16 that it would certainly be more prejudicial than
17 probative.

18 MR. GOURLEY: Your Honor, that's all I
19 have.

20 THE COURT: Mr. McFadden, you can question
21 the witness. You can come to the podium, if you
22 like, put your papers up there. But just stay at
23 the podium or at your desk either one. Whatever you
24 think.

25 Cross Examination by Mr. McFadden:

Willie Brunson-Cross by McFadden

1 Q. Mr. Brunson, how are you doing?

2 A. Doing well, sir.

3 Q. I just have a few. I want rehash a few of
4 the questions on the answers that you just gave.

5 A. Yes, sir.

6 Q. We had a first trial. Did you remember,
7 do you recall having a first trial?

8 A. I do recall.

9 Q. Did we use that 2002 burglary in the first
10 trial and had a hung jury?

11 A. I don't recall.

12 Q. The first jury trial that we had.

13 A. I recall that we had a trial, yes.

14 Q. Was it guilty or not guilty?

15 A. It was neither. It was a hung jury.

16 Q. A hung jury. Did we use any information
17 or did I testify to any information about that 2002
18 Culick was involved in? You don't recall me
19 testifying to that.

20 A. Give me a moment. I don't recall.

21 Q. You don't recall?

22 A. No.

23 Q. Mr. Simpson, do you recall a bond hearing
24 with Mr. Simpson, about something altering a bond
25 from 10 to \$50,000? Do you recall the information,

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1 any letters that I wrote to you concerning
2 Mr. Simpson and the bond incident. The bond being
3 changed from 10 to 50,000? You don't remember any
4 of that?

5 A. I don't recall being present at a bond
6 hearing.

7 Q. I am not asking whether you were present
8 at a bond hearing. I'm asking you do you recall me
9 ever bringing that information to you maybe in a
10 written letter or something like that?

11 A. I do recall you bringing that up.

12 Q. Now what was your strategic reason? Why
13 do you feel that it wasn't necessary to ask
14 Mr. Simpson whether he overheard the detective and
15 the judge in cahoots increasing the bond to
16 harassment? You didn't see that was really
17 necessary for the jury to understand that it was
18 more than just justice being sought here?

19 A. A bond for a charge that you were not
20 being tried for currently, correct?

21 Q. It was the bond, this offense here? A
22 bond in this case here.

23 A. Tell me again what happened. I don't
24 recall.

25 Q. Mr. Simpson, let me get his first name

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1 here.

2 THE COURT: You said Mike. You said Mike
3 earlier.

4 Q. I think it's Mike Simpson. Yes, sir.
5 Mr. Mike Simpson was at a bond hearing, at his bond
6 hearing, and he overheard Detective Richburg
7 telling Magistrate Judge Gibson that he wanted to
8 change my bond from \$10,000. The bond was later
9 increased to 50,000. I gave you information in
10 written correspondence. You said you may -- you got
11 that information. You just testified to that. Why
12 haven't you -- why don't you see how relevant it is
13 to question or find Mike Simpson or even question
14 Detective Richburg about this bond manipulation
15 before the jury?

16 A. Well---

17 Q. What is your strategic reason for not
18 questioning?

19 A. Mike Simpson is another defendant,
20 correct? He is someone that was present in a bond
21 hearing, but he doesn't have to anything to do with
22 your case. Is that right?

23 Q. Correct.

24 A. I did not interview Mr. Simpson or ask him
25 about a bond manipulation because I did not think we

Willie Brunson-Cross by McFadden

1 had evidence regarding the sabotage or evidence
2 supporting your theory that Irene Culick planted the
3 evidence. I did not see where that was relevant.

4 Q. Am I correct when I say Detective Richburg
5 was the lead detective, is that correct?

6 A. You are correct.

7 Q. And you didn't see it was important to
8 bring that fact out to the jury coming from
9 Detective Richburg at least?

10 A. Well I don't know that it's a fact. I
11 think that Detective Richburg testified that he did
12 two things. I believe when I cross examined
13 Detective Richburg, it was almost in a chastising
14 manner. I believe he testified that he wrote the
15 affidavit on the warrant, and that he did one other
16 thing. Oh, he pulled together a photo line. He
17 said that was the extent of his investigation. So
18 when it came to my cross examination of him, it was
19 more along of lines of the things that he did not
20 do. When I was questioning that detective on the
21 stand, I asked him about fingerprints. As the lead
22 investigator, why didn't you collect fingerprints.
23 I asked him that. He said that he didn't think he
24 needed to or something to that effect.

25 I asked him well why didn't you interview

Willie Brunson-Cross by McFadden

1 any witnesses. And I don't know what his response
2 was, but he didn't do that either.

3 Q. That's okay. Thank you for answering.
4 You had the opportunity to review the photographs,
5 the one single blood droplet on the floor, didn't
6 you?

7 A. Yes.

8 Q. And in your opinion, in your lay opinion,
9 do you believe that it's a blood droplet, or it's a
10 dab from a Q-tip?

11 MR. GOURLEY: Judge, he can't. He's not
12 an expert.

13 THE COURT: Overruled.

14 A. I think in my opinion do I believe it's a
15 droplet or a smudge from a Q-tip?

16 Q. Yes, sir.

17 A. I believe it's a droplet in my lay
18 opinion.

19 Q. The slouch down statement that
20 Mr. McDonald said it was like two witnesses. We
21 discussed the power washers, the guys that were
22 there on the scene. Do you recall those power
23 washers being there at that time?

24 A. I'm sorry, you said, you've got two. Ask
25 the question again. Slouched down.

Willie Brunson-Cross by McFadden

1 Q. There were two power washers on the night
2 in question.

3 A. Yes.

4 Q. Flashing blue lights were going on.
5 McDonald said he saw flashing blue lights. To
6 confirm or provide testimony contradicting
7 McDonald's statement that he saw flashing lights,
8 and I slouched down, or at least the flashing lights
9 did you thought about, or what is your reason for
10 not maybe impeaching or subpoenaing or finding the
11 two pressure washers to contradict that statement?

12 A. McDonald said that there were flashing
13 lights when you passed by when he was taking you
14 home.

15 Q. Yes, sir.

16 A. He did say that.

17 Q. While the pressure washers were present,
18 why didn't you find the pressure washers to be able
19 to contradict that statement?

20 A. I don't recall him saying while the
21 pressure washers were present.

22 Q. If you recall, the pressure washers were
23 there. Do you remember the scenario that the
24 pressure washers called law enforcement and noticed
25 the broken glass.

Willie Brunson-Cross by McFadden

1 A. Yes.

2 Q. And during that time, you don't recall or
3 and you didn't see necessary to find those two
4 witnesses and ask them did they see flashing blue
5 lights. You didn't think about doing that. That's
6 my question.

7 A. I did not.

8 Q. Why didn't did you do that?

9 A. I did not. And I'll explain why. Because
10 if the pressure washers arrive before the police and
11 the police arrive, and there's a burglary, if law
12 enforcement are there on the scene of a burglary, it
13 wouldn't be uncommon for them to have lights on.
14 So you're asking me why didn't I ask the pressure
15 washers whether law enforcement had their lights on?

16 Q. Yes, sir.

17 A. I didn't think that was relevant.

18 Q. You didn't it was relevant.

19 A. No, sir.

20 Q. Now Mr. McDonald made the statement and
21 Detective Richburg got on the stand and testified to
22 the statement that McDonald told other detectives.
23 Do you recall that testimony?

24 A. McDonald told other detectives what?

25 Q. That I slouched down. And it was -- that

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1 McFadden became nervous, slouched down in his seat.

2 Detective Richburg gave testimony that other
3 detectives told him that McDonald then told I
4 slouched down.

5 A. I don't recall that testimony. What I do
6 recall is that McDonald said from the stand that you
7 slouched down.

8 Q. Well we're not talking about McDonald's
9 testimony. We're talking about Richburg's
10 testimony. Richburg.

11 A. About what McDonald said?

12 Q. Yes, sir.

13 A. I thought that Richburg's testimony was
14 consistent with McDonald's testimony; that he
15 slouched down when -- that you slouched down when
16 the two of you passed the incident location. I
17 found it consistent.

18 Q. Now I am talking about Richburg. Hear my
19 question now, Mr. Brunson.

20 A. I'm listening.

21 Q. Mr. Richburg---

22 A. Yes, sir.

23 Q. ---testified that McDonald told other
24 detectives why did you object to that for
25 being hearing -- from the hearsay rule?

Willie Brunson-Cross by McFadden

1 A. Well I don't know that if that's
2 Mr. Richburg said it or not.

3 Q. It's in the, trust me it's in the
4 transcript.

5 A. I don't know whether he said it or not.
6 But the reason if he did say it that way, I would, I
7 mean it's -- McDonald testified. Yeah, his name is
8 McDonald. McDonald testified from the stand that
9 very same statement. So it wouldn't have been
10 objectionable, because the declarant is in court.

11 Q. But he, excuse me, but he's talking about
12 telling other detectives. I can't cross examine the
13 other detectives.

14 A. The answer to your question, sir, why did
15 I not object, I don't recall. But in answering your
16 question further, if Mr. McDonald told others, or if
17 it was said that Mr. McDonald told others that you
18 slumped in the seat when you passed the scene, it
19 would be consistent what he said from the stand,
20 that you slumped in the seat when you passed the
21 scene. So--

22 Q. We're not---

23 A. ---the fact---

24 Q. You are talking about McDonald's
25 statement. You're talking about---

Willie Brunson-Cross by McFadden

1 A. Well that's what you are talking about.

2 Q. No, I'm talking about Richburg said.

3 MR. GOURLEY: Judge, this has been asked
4 and answered.

5 THE COURT: He's answered the question.
6 It may not to your satisfaction, but he's answered
7 it. You can move on. And he said first of all, I
8 didn't know. Second of all, he says hearing your
9 answer -- hearing your question today is because
10 that's what Mr. McDonald already said. So you can
11 move on.

12 MR. MCFADDEN: Based on Richburg's
13 testimony.

14 THE COURT: You can make your argument,
15 and you've made your argument about why you think
16 that's ineffective, but the rules don't permit you
17 to argue with the witness.

18 MR. MCFADDEN: Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 Q. Mr. Brunson, why didn't you object to
21 Mr. Richburg's prior inconsistent statements
22 regarding McDonald seeing blood on the leg of me
23 rather than, you know, when I got into his truck.
24 It's very inconsistent in Mr. Richburg's affidavit.
25 Why didn't you impeach Mr. Richburg on that?

Willie Brunson-Cross by McFadden

1 A. I am sorry. What was the statement that
2 you wanted me to impeach?

3 Q. Mr. Richburg gave a prior inconsistent
4 statement I believe, when he said that McDonald saw
5 blood on my leg when I got into his truck.

6 A. McDonald saw blood when you got into the
7 truck.

8 Q. Yes, sir. And that's in his affidavit.
9 That's a sworn statement.

10 A. Okay.

11 Q. Now on the stand and when he testified,
12 all the testimony was different. It wasn't that he
13 saw the blood when I got into his truck, but he saw
14 the blood when I was laying down in his yard. Why
15 didn't you impeach him with that statement?

16 A. I don't know, because the witness is
17 testifying that he saw you bleeding. You're
18 indicating that he said he saw it when he was in
19 your truck at one point. And he testified at a
20 later date that he saw it when you were in his yard.

21 Q. Right.

22 A. Well because probably because it's just
23 such short distance of time between your yard and
24 his truck, like a matter of seconds. So it isn't
25 going to be material. The material fact is that you

Willie Brunson-Cross by McFadden

1 were bleeding in his presence.

2 Q. What about the impeaching him on the
3 arrangement of how inconsistent he had the witnesses
4 appearing on the scene. What about that? You
5 didn't see that was relevant either?

6 A. Well tell me what you're referring to
7 specifically.

8 Q. The affidavit that Mr. Richburg used is an
9 arrest warrant affidavit, an attachment. It said
10 that the manager appeared first. Detective Culick
11 arrived second. And McDonald himself arrived third.

12 A. Okay.

13 Q. However trial testimony confirms that,
14 opposite of that almost. Or it says that McDonald
15 was first. Culick was second, and the store manager
16 was third. Why didn't you see any -- you didn't
17 significance in bringing that out to the jury and
18 showing that that was inconsistent, two sworn
19 statements not being corroborating?

20 A. Well first of all, I don't have in front
21 of me, so I don't recall as to what order it was
22 said that the individuals arrived. So before I can
23 answer your question, I'd have to first see the
24 document that you're referring to. And then I'd
25 have to look at the transcript to see what was said.

Willie Brunson-Cross by McFadden

1 So if you would like, I can---

2 Q. I have a copy of search warrant affidavit.

3 May I approach?

4 THE COURT: Hand it to the officer please.

5 And then you can tell them what page number of the

6 transcript. And, Mr. Gourley, you can help the

7 witness out there. Do you have the transcript?

8 A. Not the big one. I have the short one.

9 Your Honor.

10 THE COURT: Yes, sir.

11 A. May I make a statement unrelated to this?

12 THE COURT: Yes, sir.

13 A. I actually have a client arriving at my
14 office at 6.

15 THE COURT: You need to make a phone call?

16 A. Yes, sir.

17 THE COURT: You can do that. You can
18 step outside and do that. Mr. Tomlin, he can step
19 right outside and make his phone call. And while
20 he's walking out, could you give me page number of
21 the transcript, please, sir?

22 MR. MCFADDEN: Yes, sir. 192.

23 THE COURT: 192 is where Mr. Richburg is
24 talking about it?

25 MR. MCFADDEN: Yes, sir.

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1 THE COURT: And the arrest warrant
2 affidavit is what you are going to show---

3 MR. MCFADDEN: Yes, sir.

4 THE COURT: ---him when he comes back in?

5 MR. MCFADDEN: Yes, sir.

6 THE COURT: Mr. Brunson, were you able to
7 get what you needed to get done?

8 MR. BRUNSON: Yes, sir. I reached my
9 client.

10 THE COURT: He's going to refer you to
11 page 192 of the transcript, and the arrest warrant
12 affidavit that has already been handed up.

13 A. I have them, Your Honor.

14 THE COURT: Let him review those, and then
15 tell him when you've finish reading those,
16 Mr. Brunson.

17 A. Yes, sir.

18 THE COURT: Page 192 is that Detective
19 Culick's testimony?

20 THE PLAINTIFF: You're correct, Your
21 Honor. If I may move down, it's a few. Hold on one
22 second. Yeah, here it is.

23 THE COURT: So the arrest warrant was
24 authored by -- or the affidavit was authored by
25 Detective Richburg. And you're referring the

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1 A. Yes, sir.

2 Q. You still have my affidavit, don't you?
3 The Richburg's affidavit. Attachment to my
4 affidavit.

5 A. Yes, sir.

6 Q. Now do you see in there, could you read
7 that for the record maybe? I mean, you know, just
8 the relevant section?

9 A. Sure.

10 Q. Regarding the timing, and when the
11 witnesses appeared on it.

12 A. I'll read it, if it pleases the court.

13 THE COURT: Yes, sir.

14 A. Brian Gibson called law enforcement in
15 reference to a possible burglary at the Young's Food
16 Store. Gibson stated that when he arrived at the
17 store to pressure wash, he noticed that the front
18 door had been broken. When officers had arrived on
19 the scene, it was confirmed that a burglary had been
20 committed. The manager responded to the scene and
21 told officers that approximately \$480 worth of
22 cigarettes and \$143 worth of lottery tickets were
23 taken. Detective Culick was notified, and responded
24 to the scene. So it would appear that the washers
25 arrived first. And that officers arrived second,

Willie Brunson-Cross by McFadden

1 and that the manager arrived third. And then
2 Culick arrived fourth.

3 Q. You missed McDonald. When did he come?

4 A. I didn't read that from here. You're
5 asking me what this affidavit contained. I just
6 read it.

7 Q. That may not be a complete copy. Does it
8 have an inside of that, a blocked out, maybe some
9 writing on the front of it, on the face of it?

10 A. This is what I have.

11 Q. Yes. It should have be in there that
12 McDonald that had appeared in there. I don't think
13 you missed it.

14 A. Would you like for me to continue reading?

15 Q. Yes, sir.

16 A. Detective Culick was notified and
17 responded. While processing the scene, Detective
18 Culick discovered that the person that committed the
19 burglary had cut themselves, and blood was found
20 inside the crime scene both on the floor, and on
21 several packs of cigarettes. While on scene,
22 officers were approached by a witness that lived in
23 the area of the store.

24 Q. Now would you agree that McDonald was
25 third?

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1 A. That doesn't say when or what order he
2 arrived. It says while on scene. So what that
3 means is, at any point after the officers arrived,
4 the witness appeared. That what's I take from that.

5 Q. Thank you. I beg the court's indulgence.

6 THE COURT: Yes, sir. Take your time.

7 Q. This is regarding Detective Culick. It
8 was the Newport's box that is in the photographs
9 attached to PCR application?

10 A. Yes, sir.

11 Q. You didn't see it being real odd that one
12 pack of Newports were so evenly flushed on one of
13 two sets of lottery tickets? You didn't see -- you
14 didn't see a need for an expert to possibly
15 investigate or to possibly confirm that she possibly
16 set that Newport box on the top of those lottery
17 tickets?

18 A. I did not think that it was necessary.

19 Q. You already confirmed. You're saying that
20 the blood droplet, it wasn't necessary also, right?

21 A. Pardon me?

22 Q. A single blood droplet that's on the floor
23 in the store, you didn't see it was necessary that
24 you hired an expert to examine it, maybe a
25 photography expert, blood splatter expert, to

Willie Brunson-Cross by McFadden

1 confirm that it was possibly placed there by Culick
2 with a Q-tip swab? You didn't see that was
3 necessary?

4 A. I did not.

5 Q. The same thing with moving the lottery
6 tickets from the speckled floor to a solid floor.
7 You didn't see it necessary to investigate that,
8 maybe hire experts?

9 A. An expert for what purpose?

10 Q. To demonstrate that a photography expert,
11 to demonstrate that the order she took the
12 photographs in? You know, the disk would show the
13 order, to compare the order to her testimony as to
14 how she took the photograph? You didn't see that
15 was necessary, a photography expert?

16 A. I did not.

17 Q. Also didn't -- you didn't see it was
18 necessary to -- for an expert to, a photography
19 expert, to confirm that Culick possibly moved the
20 first aid kit box from some other location, and
21 placed it on the shelf? And moved the items from
22 out of it, to help corroborate her testimony that
23 she cleaned -- that I cleaned up behind myself? You
24 didn't see that was necessary either?

25 A. I did not.

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1 Q. Did you talk with Albertus Lewis prior to
2 trial? Did you interview him? Discuss, got any
3 statements or anything from him?

4 A. Oh, yes.

5 Q. You did?

6 A. Yup. That's how I was able to determine
7 that he would testify that he had seen you riding a
8 bicycle previously, and that he was aware that you
9 had fallen from a bicycle before.

10 Q. And you did the same thing? What about
11 Ms. Leethel Lewis, you all did the same with her?

12 A. That is correct. For the same purpose.

13 Q. Concerning Detective Duggans, did you see
14 it was necessary maybe, to maybe ask him why did he
15 break the seal on the bag and smudge out, you know,
16 the original, the blood stain on the Newport box,
17 and try to obtain a sample when a sample had already
18 been obtained? What are your reasons for not filing
19 a motion possibly to suppress DNA evidence based on
20 that fact?

21 A. I am sorry, again what is the allegation
22 that Mr. Duggan did?

23 Q. Truman. Detective Duggan.

24 A. Truman.

25 Q. Yeah. Detective Truman Duggan. What he

Willie Brunson-Cross by McFadden

1 did was.

2 A. Uh-huh. (Affirmative.)

3 Q. And he had testified to this very point.

4 A. Okay.

5 Q. That he went inside of a sealed box of
6 Newports. A sealed pack of Newports, with 3 packs
7 of Newports in it. He obtained a swab. He went
8 across the blood swipes Newport pack. Smudged it
9 out to obtain a sample to send to sled. My question
10 is, you didn't see it was necessary to file a motion
11 to suppress maybe the DNA evidence based on that
12 type of tampering?

13 A. I did not.

14 Q. What is your explanation as to why you did
15 not file a motion or ask for a mistrial or object to
16 the court using my prior burglary conviction to
17 impeach me with? What is your trial strategy for
18 that?

19 A. Well as indicated earlier, the majority of
20 that discussion occurred off the record. And that
21 when the judge---

22 Q. Excuse me. Pardon me, Your Honor.

23 THE COURT: He said the majority of the
24 discussion occurred off the record.

25 A. And when the judge came in and he made the

Willie Brunson-Cross by McFadden

1 statement to the effect that he was going to allow
2 it in, I didn't object. I probably should have.

3 Q. Didn't object. Probably should have.

4 A. But because you indicated that you were
5 not going to testify, it never became an issue,
6 because if you were to testify, if you decided you
7 were going to testify, and if the State then decided
8 that they were going to impeach you with it, I would
9 have objected at that time. So it never occurred,
10 because you decided that you were not going to
11 testify.

12 Q. Now let me get a good understanding of
13 this. Now did you hear me tell the judge that
14 because he ruled that he would use my prior record,
15 how come you didn't object at that point of
16 interjecting that?

17 A. I didn't. Your question is, why didn't I?

18 Q. Yeah, why didn't you? At this point when
19 I told the judge that because he ruled that my prior
20 record could come in.

21 A. Yup.

22 Q. My prior burglary conviction, why didn't
23 you argue, file a motion, that was more prejudicial
24 than probative?

25 A. Well because I agreed with your opinion to

Willie Brunson-Cross by McFadden

1 not testify. Not for that reason, but because you
2 had made the selection to not testify, I thought
3 that it was a good selection under the
4 circumstances. Now---

5 Q. Well let's switch. Let me get an
6 understanding now.

7 THE COURT: No, sir. You let him finish
8 his answer, and then you can ask for clarification.

9 A. So to answer your question, I did not
10 object because the judge had made the ruling, and I
11 believe that that discussion occurred off the
12 record. And because you never got to a point to
13 where it was about to be offered, where I would have
14 made the objection at that time. So that's why,
15 because you decided not testify. And so the State
16 never attempted to introduce it.

17 Q. Now so I get some clarification here.

18 A. Yes, sir.

19 Q. What I am asking you is, did you overheard
20 me informing the judge that I did not want to
21 testify because of the prior record. Now I would
22 otherwise want to. Wouldn't you agree to that? I
23 mean, I'm trying to find a way to testify. So the
24 issue was whether I wanted to waive my right.
25 Wouldn't you agree?

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1 A. What's the question?

2 Q. The issue, the judge advised me of my
3 right to testify.

4 A. He did.

5 Q. Right. At that point you're saying that I
6 had already made a determination, or that I changed
7 my mind at that point when he was asking me that
8 question whether I wanted to testify as to the
9 reason he didn't?

10 A. What is your question?

11 Q. I told the judge in the transcript. And
12 it's written there. And you would not have to go to
13 it. In the transcript I told the judge that the
14 reason why I didn't want to testify was because he
15 ruled that my prior burglary conviction will come
16 in.

17 A. Yes.

18 Q. And I said based on that, we already
19 discussed that. Now it's your testimony today that
20 I didn't want to testify.

21 THE COURT: No, I think the testimony was
22 that he didn't want you to testify. And since you
23 said you weren't going to, he decided to leave it
24 alone. Is that your testimony?

25 A. That is correct.

Willie Brunson-Cross by McFadden

1 Q. Now in your legal opinion.

2 A. Yes, sir.

3 Q. You're on trial for burglary. The
4 defendant is on trial for burglary. A prior
5 conviction is coming in, would it be more probative
6 or more prejudicial, or which? Would it be more
7 probative or more prejudicial?

8 A. Well that's a question for the judge.

9 Q. I mean, you should have some type of
10 knowledge about the law when it comes down to being
11 tried for the same type of offenses. I mean,
12 wouldn't you agree with that?

13 A. You're asking me what the law is in regard
14 to it?

15 Q. No, no. I mean asking you in your
16 professional opinion.

17 A. Okay.

18 Q. If a defendant is being tried for the
19 impact same offense that they are trying to impeach
20 him with---

21 A. Okay.

22 Q. ---in your legal opinion.

23 A. Yes.

24 Q. Do you see any grounds for objection for
25 that?

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1 A. I do.

2 Q. You do.

3 A. I think so.

4 Q. So you admit that that you make a mistake,
5 and you should have objected to the prior burglary
6 coming in.

7 A. Well I don't admit to that. I admit that
8 I should have put the argument on the record. And
9 that the judge ruled, and I should have objected
10 again. Yes, I admit that. I should have objected
11 again.

12 Q. So you put the argument in chambers,
13 that's what you're telling me? That you and the
14 judge discussed that in chambers?

15 A. No, what I am saying is, that I did not
16 object after the judge came in and made his ruling.

17 Q. About the limitation on cross examination
18 on Albertus Lewis. Your testimony is that the judge
19 had ruled being hearsay. You didn't -- how come you
20 didn't object to that? What was your strategic
21 reason for not objecting to that limitation?

22 A. Because it is hearsay.

23 Q. Hearsay. You didn't see relevant a phone
24 call being made to a number that someone gave the
25 number.

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1 A. That testimony did come out. That phone
2 call was made.

3 Q. The number, someone gave a number that
4 came to me. It went Albertus Lewis. You don't --
5 someone is making a phone call. I mean it's just
6 not out of the blue. We don't know, we're just not
7 talking about a random somebody just making a phone
8 call and we don't know who it is. But, you know, if
9 I gave a number, and you're talking about blood.
10 And you don't see where that was more than hearsay.
11 I think it was kind of like corroborating, wouldn't
12 you say?

13 A. Well first of all, the testimony did come
14 out that a phone call was made. The testimony came
15 out that a phone call was made through both
16 witnesses. The objection arose when the State did
17 not want the witnesses to say what was said. That
18 was the objection, the content of the communication.
19 And so that's where the objection came in.

20 Q. But you didn't object. Excuse me. You
21 didn't object to that.

22 A. The State objected.

23 Q. But you didn't file a motion or explain on
24 the record.

25 A. I did not.

Willie Brunson-Cross by McFadden

1 THE PLAINTIFF: Thank you. That's all.

2 Your Honor, I don't believe I have any more
3 questions for this witness. Thank you so much,
4 Judge James, and the court reporter. Thank you.

5 THE COURT: Mr. Gourley, do you have any
6 redirect?

7 MR. GOURLEY: No, Your Honor.

8 THE COURT: I will ask the witness one
9 question. Any objection, Mr. Gourley?

10 MR. GOURLEY: No, Your Honor.

11 THE COURT: Mr. McFadden?

12 THE PLAINTIFF: No, sir.

13 THE COURT: Now you indicated,
14 Mr. Brunson, that you thought that his decision not
15 to testify was good for other reasons unrelated to
16 the admission of the burglary conviction. What were
17 your -- what was your reason for thinking it was a
18 good idea that he not testify?

19 A. Well, Your Honor, because he would have
20 opened the door to prior burglaries coming in. I
21 thought that would have been very damaging to him.

22 Q. By him bringing it out himself?

23 A. Yes, sir. I thought that if he testified,
24 he was going too---

25 MR. MCFADDEN: Your Honor, I'm going to

Willie Brunson-Cross by McFadden

1 have to -- may I -- can I object to he's speculating
2 right here. I mean that's mere speculation, what he
3 thought I might do. I mean, you don't know what I
4 would have done.

5 THE COURT: Your objection is sustained.
6 You can step down. Thank you. Okay any other
7 witnesses from the State?

8 MR. GOURLEY: No, Your Honor.

9 THE COURT: Other than your witnesses that
10 you wanted leave to call, Mr. McFadden, anything
11 you'd like present today by way of evidence?

12 MR. MCFADDEN: Except noted for the record
13 for appeal purposes that, you know, I don't have, I
14 didn't want to proceed without the photography, the
15 blood splatter expert, the two Albertus witnesses.
16 Albertus Lewis.

17 THE COURT: And Ethel Lewis.

18 THE PLAINTIFF: Ethel Lewis and Captain
19 Myers. Donald, Mr. McDonald, and, you know, the
20 pressure washers. Just a few witnesses that I
21 wasn't able to be able to locate them. I had
22 family and friends. I have got documentation
23 letters from family and friends trying to locate
24 these witnesses.

25 THE COURT: What I will do, Mr. McFadden,

Willie Brunson-Cross by McFadden

1 is depending on what my decision is about you
2 calling these other witnesses, I've left the record
3 open to take that into account. If I decide that
4 the record is complete as it is, I will be issuing
5 an order. I will be sending Mr. Gourley a copy.
6 Mr. Gourley will then transmit a copy of the order
7 to you. The order will say one of two things in
8 essence, that I grant your application or that I
9 deny it.

10 MR. MCFADDEN: And that's for the expert?

11 THE COURT: No, sir. This is in the end.

12 If I decide that you're not going to get the
13 experts, and you're not going to be calling other
14 witnesses, I will issue a final order that you win
15 or you lose. If I decide you're entitled to call
16 those other witnesses, we're going to get back
17 together. You'll be just notified by an order of
18 transport. But if I do issue an order that you
19 prevail in this, that you win in this application,
20 the you'll get a copy of that order. If I decide
21 that you do not prevail, you'll get a copy of that
22 order. You will have 30 days from the date you
23 receive that order, to file an appeal.

24 THE PLAINTIFF: Thank you, Judge.

25 ---End of Requested Transcript of Record---

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the
Third 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 Common Pleas/Nonjury Court on
April 16, 2015, in Sumter County, Sumter, South
Carolina.

I do further certify that I am neither kin,
counsel, nor interest to any party hereto.

4/13/17
DATE



COURT REPORTER

My Commission expires: 9/7/21

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2016 OCT 24 PM 4:02

Bernard McFadden, #199135,

JAMES D. WAGGELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2011-CP-43-01952

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 20, 2011. Respondent filed a Return on May 11, 2012, requesting an evidentiary hearing be convened on Applicant's ineffective assistance of counsel allegations. A hearing was held on April 14, 2015, at the Sumter County Courthouse. Applicant was present and represented by Fulton Casey D. Cornwell, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Willie Brunson, Esquire. This Court had before it the Sumter County Clerk of Court records, the appellate records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the trial transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the February 2010 term of the Sumter County Grand Jury for Burglary (Violent) - Second Degree (2010-GS-43-0257). Applicant was represented by Willie Brunson, Esquire. Applicant

[Signature]

proceeded to a jury trial before the Honorable W. Jeffrey Young. Applicant was found guilty, and on November 19, 2010, Applicant was sentenced to fifteen years imprisonment.

A notice of appeal was filed December 15, 2010. An Order of Dismissal was entered on December 31, 2010 for failure of Appellant to timely serve Notice of Appeal on Opposing Counsel. The remittitur was sent on February 7, 2011.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
 - a. Failure to object
 - b. Failure to move to limit witness testimony
 - c. Failure to investigate
 - d. Failure to present additional witness testimony at trial
 - e. Failure to properly cross-examine
2. Perjured testimony in violation of the 14th Amendment of the U.S. Constitution; and
3. Wrongly admitted prejudicial testimony in violation of the 14th Amendment of the U.S. Constitution and State v. Golf 525 S.E.2d 246 (S.C. 2000).

III. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

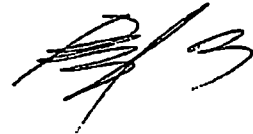
professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.



Ineffective Assistance of Counsel

Applicant asserts several allegations of ineffective assistance of counsel. Based on the following analysis, this Court finds that these allegations are meritless and should be dismissed.

Failure to call Catherine Myers Anderson as a witness

At the evidentiary hearing, Applicant testified that Catherine Myers Anderson is an ex-girlfriend who should have been called as a witness at trial.

Keeping in mind that the subject burglary occurred in 2009, Applicant maintains she
should have been called to testify at trial in an attempt to establish that in 2002, Detective Irene Culick of the Sumter Police Department tampered with evidence in another burglary investigation for which Applicant was investigated. That burglary was very similar in nature to the burglary leading to the instant conviction, i.e., a broken convenience store window and stolen cigarettes. Applicant maintains that Catherine Anderson would have testified that she knew tobacco products removed from a mobile home by Detective Culick during the 2002 investigation were neither truly missing from the 2002 crime scene, nor were they sought in a search warrant.

Trial Counsel testified at the PCR hearing that Applicant wanted to introduce evidence of this 2002 burglary investigation and that it was Applicant's belief that Ms. Anderson's testimony would allow him to establish that Detective Culick had planted evidence at the 2009 crime scene. Her motive for doing so, according to Applicant, was that Detective Culick was not happy about not being able to prove Applicant had committed the 2002 burglary and that Detective Culick had motive to frame Applicant for the subject burglary. Trial Counsel testified that he disagreed with this strategy.



Trial Counsel testified that Applicant wanted to argue that Detective Culick planted Applicant's blood at the scene as part of the framing of Applicant. Instead, Trial Counsel advanced the theory at trial that Derrick McDonald, who gave Applicant a ride home after Applicant showed up bloodied on his doorstep, planted Applicant's blood at the scene after Mr. McDonald burglarized the store. This theory, though somewhat speculative, at least has some modicum of plausibility when compared to the theory Applicant wanted to advance.

This Court concludes that the theory that Detective Culick planted his blood was
unavailing, because even if Detective Culick had motive to plant blood, there is no evidence as to where she may have gotten the blood to plant in the first place. The first officer on scene, Patrolman David Capell, arrived at 12:37 a.m. He called his supervisor, Sgt. Stubbs, who arrived next. Culick arrived after 1:00 a.m. Capell testified that before Culick arrived, he entered the store to clear the building and observed Newport cigarette packs scattered on the floor and lottery tickets that had been ripped off the display stand. When Detective Culick arrived, Capell assisted her in processing the scene; his role was limited to holding a bag for her to place evidence in. Capell also spoke with witness Derrick McDonald who told him that he had given a ride to a man who said his name was Bernard (who turned out to be Applicant) and that the man was bleeding and had given him Newport cigarettes in exchange for the ride. For a jury to seriously consider that Culick planted Applicant's blood at the scene, the jury would have to believe that Detective Culick was called to the scene, had Applicant's blood with her already, and decided to plant it inside the store after she arrived, and that she did this because seven years earlier, she had not been able to prove Applicant committed another convenience store burglary.

The trial transcript reveals that Ms. Anderson was actually called to the stand but then told Trial Counsel that she was related by marriage to a juror. Trial Counsel advised the court of

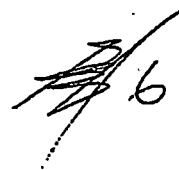
this development. The trial judge excused the jury and there was a colloquy between the solicitor, Trial Counsel, and the court about what to do. The transcript reveals that after the trial judge indicated he would excuse the juror and seat an alternate, Trial Counsel advised the trial judge that he would not call Ms. Anderson as a witness. Trial Counsel testified at the PCR hearing that after the trial judge indicated he would remove the subject juror, he and Applicant conferred briefly, and Applicant told him that Ms. Anderson's testimony wasn't necessary; therefore, she was not called to testify. This Court finds Trial Counsel's testimony credible on this point and concludes that any claim of ineffective assistance of counsel is therefore not viable.

Even if Applicant did not tell counsel that Ms. Anderson's testimony was not necessary, this Court concludes that it was certainly valid trial strategy not to call Ms. Anderson as a witness for the purpose of opening the door to the 2002 burglary investigation. Such a strategy would not have been at all beneficial to Applicant, especially since there has been no evidence presented to establish or even remotely infer that Detective Culick tampered with evidence or otherwise acted improperly in 2002 or 2009.

Ms. Anderson was not called to testify at the PCR hearing, so the court cannot speculate as to what she would have testified to. Even if she had testified at the hearing, her testimony, according to Applicant, would have supposedly allowed him to establish that Detective Culick removed tobacco products from the 2002 scene and had some type of motivation to frame Applicant seven years later. Applicant's demand for relief on this ground is denied.

Failure to call Mike Simpson as a witness

Mike Simpson was identified as a pressure washer who arrived at the burglary scene to pressure wash the parking lot or building and discovered the broken front glass of the store. He



called law enforcement. Applicant claims that Mr. Simpson was at a bond proceeding and overheard lead detective Robbie Richburg urge the magistrate to increase Applicant's bond from \$10,000.00 to \$50,000.00. Applicant claims this would demonstrate the bias, bad faith, and harassment on the part of law enforcement. He claims that Detective Richburg should have been impeached with this information, or that it could have been used to dismiss the indictment, or to suppress evidence. Since Mr. Simpson was not called to testify at the PCR proceeding, any relief on this ground is denied. Further, the totality of the circumstances establishes that even if

Trial Counsel was ineffective for failing to call this witness, this testimony would not have resulted in a different outcome. Therefore, this allegation must be dismissed.

Failure to call Brian Gibson and Jessie Donald as witnesses

Applicant claims these witnesses would have testified that these two individuals would have contradicted McDonald's testimony that there were flashing blue lights outside the store. These witnesses were not called to testify at the PCR hearing and the Court cannot speculate what their testimony might have been. Therefore, Applicant has failed to meet his burden of proof and these allegations are denied and dismissed.

Failure to elicit certain testimony from Albertus Lewis

Albertus Lewis did testify at trial and stated that on the night of the subject burglary in 2009, a lady called the house and asked if he knew Applicant. He did not know what time the woman called. He also testified that Applicant had a bike and that he had fallen off it before (one of Applicant's defenses is that he did not sustain his cuts and abrasions when breaking through the convenience store glass, but rather from falling off his bike). Applicant claims that Trial Counsel should have elicited testimony from Mr. Lewis that the female who called the house sounded like a white female and said something to the effect that "We [or they] got your

blood." However, this statement would have obviously been hearsay because it was offered to prove the truth of the matter asserted, and there is no hearsay exception that would allow the statement into evidence.

Applicant also maintains that Trial Counsel should have asked Lewis if Applicant had stayed at the residence every night after the crime or whether the police came to the residence days after the crime in an effort to establish that he had not been evasive. Even if this testimony should have been elicited, this Court concludes that it would not have likely made a difference in the outcome of the trial. Therefore, this allegation also fails to meet the prejudice prong of the Strickland test and must be denied.

Failure to elicit certain testimony from Ethel Lewis

Ethel Lewis testified at trial that Applicant lived with her and her son Albertus and that an unidentified female called the house the night of the subject burglary. She testified that she saw Applicant after the night of the burglary and that he had no cuts on him. She stated that Applicant's common mode of transportation was a bicycle and that he had fallen off his bike numerous times due to the chain popping. She stated that he made money raking yards and cutting grass and that he also worked for Ramrod Construction. She stated on cross-examination that she and Applicant had a romantic relationship. She also stated on cross that both the McDonald home (where Applicant showed up bloodied) and the convenience store where the burglary occurred are both a pretty fair distance from where she and Applicant lived.

Applicant claims that Trial Counsel should have asked Ms. Lewis what else Applicant did other than raking yards and cutting grass. Applicant also claims Trial Counsel should have elicited testimony from her that he spent the night at home every night after the burglary to establish he was not being evasive.

There is absolutely no evidence that the failure to elicit this testimony prejudiced Applicant in any way. Any claim for relief on this ground is denied.

Failure to properly cross-examine Detective Culick

Applicant's Exhibit #1 introduced at the PCR hearing discusses several supposed shortcomings in Trial Counsel's examination of Detective Culick. This Court has already concluded that Applicant's chosen theory that Detective Culick planted his blood at the scene, even if advanced at trial, would not have changed the outcome of this trial. Trial Counsel extensively cross-examined Culick. The questions in Exhibit #1 that Applicant now maintains Trial Counsel should have asked Detective Culick would not have likely changed the outcome of this trial. Therefore, this allegation is denied and dismissed.

Failure to properly cross-examine Lt. Truman Duggin

Lt. Duggin is the crime scene investigation supervisor for the Sumter P.D. He testified that he received items of evidence in this case, including a swab of blood collected from the scene, a pack of Newport cigarettes, a bag of glass, lottery tickets, a first aid kit, a bottle of rubbing alcohol, and seven packs of Newports obtained by Officer Capell from Mr. McDonald. A SLED DNA expert testified the blood from the store was a DNA match to a buccal swab taken from Applicant.

Applicant argues that Trial Counsel should have asked Duggin why he unsealed sealed evidence bags to obtain a sample of blood for SLED when a sample had already been taken from the floor of the store by Detective Culick. Since Duggin did not testify at the PCR hearing, the court cannot speculate what the answer to this question might have been, and any claim for relief on this ground must be denied.

Failure to impeach Detective Richburg and Derrick McDonald with prior inconsistent statements, or object to or appeal trial court's limitation on cross-examination

This Court has reviewed Applicant's Exhibit #1 and the trial transcript and discerns that there was no deficient performance and no prejudice arising from this alleged failure. Applicant references certain prior statements of witnesses that he claims are inconsistent; however, the court does not have any of these statements, with the exception of Detective Richburg's affidavit. Any appellate issue arising from this scenario can be explored within the belated appeal.

Evidence regarding Applicant's prior burglary convictions

Applicant claims he did not testify at trial because the trial judge ruled that it would allow the State to impeach him with his 1995 burglary conviction. Applicant was released from confinement within ten years of the date of trial; however, Applicant claims that he had records to prove that his sentence start date and max-out date for that offense was incorrectly recorded by SCDC and that he should have been released more than ten years prior to trial. He claims that Trial Counsel did not properly pursue the issue of remoteness (which would have markedly changed the admissibility analysis conducted by the trial judge), nor did Trial Counsel properly argue the prejudicial effect to Applicant in light of the fact that the prior conviction was for burglary. See Rule 609, SCRE.

The trial court employed the five-factor balancing test enunciated in State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000) and, despite the fact that Applicant was on trial for burglary, determined the prior burglary conviction would be admitted if Applicant testified, presumably finding that the probative value of the conviction outweighed its prejudicial effect to Applicant. Applicant did not testify and claims that he decided not to testify because the prior conviction was going to be admitted into evidence.

In State v. Glenn, 285 S.C. 384, 330 S.E.2d 285 (1985), our Supreme Court held that "when the trial judge chooses to make a preliminary ruling on the admissibility of prior convictions to impeach a defendant and the defendant does not testify at trial, the claim of improper impeachment is not preserved for review." This Court can find no appellate PCR cases in this state which address whether a PCR applicant can advance this ground if he did not testify at trial. In Legare v. State, 333 S.C. 275, 509 S.E.2d 472 (1998), the court cited Glenn but did not discuss its applicability to a PCR action. This Court can see no reason not to extend the rationale in Glenn to a PCR setting because the fact remains that Applicant must show prejudice; absent his trial testimony and the introduction of the burglary conviction to impeach his credibility, there is no showing of prejudice stemming from Trial Counsel's failure to argue the prior conviction was too remote in time to be introduced. Therefore, this allegation is denied and dismissed with prejudice.

Failure to move to suppress evidence or indictment because of Detective Richburg's "outrageously false" arrest warrant affidavit, etc.

This Court concludes this ground is categorically without merit and agrees with Trial Counsel that such motions would have been justly denied. Therefore, this allegation is dismissed.

Perjured and Wrongly Admitted Testimony

Applicant alleges that he is entitled to post-conviction relief based on two allegations of perjured testimony and wrongly admitted testimony in violation of the Fourteenth Amendment of the United States Constitution. This Court finds that these allegations should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20 (1976).

This Court finds that Applicant failed to present any facts that, even if true, support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, these allegations are meritless and should be denied and dismissed with prejudice.

Failure to File a Notice of Appeal

Applicant further alleges Counsel was ineffective in failing to perfect an appeal after he requested him to do so. Applicant was found guilty and sentenced on November 19, 2010. Trial Counsel filed a notice of appeal on December 15, 2010. The appeal was dismissed as untimely.

Applicant claims he asked Trial Counsel to appeal his conviction but that Trial Counsel did not do so until December 15, well after the ten-day time limit expired. Trial Counsel testified that at sentencing, the trial court advised Applicant he had ten days to appeal but that Applicant never told him he wanted to appeal. This Court concludes Applicant's testimony that he told Trial Counsel he wanted to file an appeal is credible, especially in light of the fact that Trial Counsel did file a notice of appeal, *albeit* too late.

"[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). Therefore, Applicant is granted leave to file a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Other than the belated appeal issue, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Trial Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v.



State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations except a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974); and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 11 day of October, 2016.

State, South Carolina


 GEORGE C. JAMES, JR.
 Presiding Judge
 Third Judicial Circuit

RECORDED
2015 NOV -2 PM 3:54
State of South Carolina
County of Sumter
The Court of Common Pleas
Third Judicial Circuit
Case # 2011-CP-43-01952

Bernard McFadden, 199135,

Appellant,

VS.

State of South Carolina,

Respondent.

Motion For Reconsideration
And Motion For Hearing On Funds
For Blood Spatter And Photography
Experts Pursuant To Rule 59 (E)

McFadden moves for reconsideration because the Order does not address all (10) Issues raised and testified to as shown in his Exhibit 1 dated 4/16/2015, entitled Affidavit of Bernard McFadden with findings of fact and conclusions of law. This court also left the record open for the named witnesses and experts mentioned below.

- 1) Where this court's order states Fulton Conwell represented the Applicant, McFadden submits this court ordered him to proceed pro-se and all direct and cross-examinations were asked by McFadden.
- 2) Order rearranged and re-edited his allegations at p. 2 of 14. (See 10 Issues raised in Exhibit # 1 with case laws written thereon transcripts, all submitted upon testifying at hearing.)
- 3) Where this court's order concluded that Detective Cutick planted the blood is unavailing at p. 5 of 14, McFadden directs the court's attention to the fact that his argument is that had counsel obtained blood splatter and photography expert witnesses, he could have contradicted Cutick's testimony that she found a blood droplet before

the jury in that experts will confirm that droplet was placed by a Q-tip and the first-aid-kit was placed on shelf when comparing a blow-up photo. (See photos attached to (per) application.) Thus, Culick's testimony was false and violated his 14th Amendment right.

4) This court's order has also concluded witnesses were not called after leaving the record open for statements not mentioned in the order from Catherine Anderson, Lee Ethal Lewis, Albertus Lewis, Mike Simpson, Brian Gibson and Jessie Donald because McFadden had no way of locating them. So, this court left open the possibility of appointing an investigator to locate these witnesses.

5) The court's order states there's no evidence Det. Culick tampered with evidence at p. 6 of 14. This court's attention is directed to photograph # 5 (the alleged blood droplet) and the ability for a blood splatter expert to confirm that it was made with a Q-tip, and thus, the lie to jury is more than enough evidence for a new jury to vote not guilty, same as with the first-aid-kit box. Culick could have simply swab some other location out-side the store.

6) Where this court's order states it doesn't have inconsistent statements at p. 10 of 14, McFadden directs this court's attention to Richburg's testimony McDonald told other detectives McFadden sloughed down as grounds for hearsay and inconsistent statements. Although slough down statement is in the testimony, it's not in Richburg's affidavit, and the other detectives did not testify, as written in Exhibit 1 at p. 17 and 18, citing relevant sections of the trial transcript. (See Exhibit 1, totaling 22 pages.)

7) This court's order incorrectly stated a hearing was held on and that the trial court held the free-factor balancing test; no such hearing and balancing test were held.

2016 NOV -2 PM 3:50

J. J. CAMPBELL
CLERK OF COURT
SOUTH CAROLINA

Proof of Mailing

Case #: 2011-CP-43-01952

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly addressed-stamped-envelope in the US Mail this 28th day of October 2016; such matter being: Motion For Reconsideration And Motion For Rulings On Funds For Blood Splatter And Photography Experts Pursuant To Rule 89(E);

1) James C. Campbell, Clerk
Of Court, 215 N. Warren Street
Room 303, Sumter, South
Carolina 29150

2) Julie A. Citeman, Asst.
Attorney General, P.O. Box
11549, Columbia, South
Carolina 29911;

and 3) George C. James, Jr., 3rd
Circuit Court Judge, P.O. Box
1716, Sumter, S.C. 29151

Sworn And Subscribed Before Me
This 28th day of October 2016
Christine A. Amador
Notary Public For South Carolina
My Commission expires: _____


Bernard McFadden, 199135
Appellant, pro se

RECORDED
 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
 COUNTY OF SUMTER 2015 NOV -4 AM 10:02 THIRD JUDICIAL CIRCUIT

Bernard McFadden, #199135, DEPT. CLERK OF COURT
 SUMTER COUNTY, S.C.

2011-CP-43-01952

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER DENYING APPLICANT'S MOTIONS
 FOR RECONSIDERATION AND FOR
 HEARING ON FUNDS**

CERTIFIED TRUE COPY
 OF ORIGINAL FILED

[Signature]
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

This case is before the court on the applicant's "Motion for Reconsideration and Motion for Hearing on Funds for Blood Splatter Experts Pursuant to Rule 59 (e)". For the reasons set forth herein, the motion is denied, except as to clarification as to issue (1) raised by the applicant. The court will address the issues raised in the same numerical order set forth by the applicant.

1. The court stated in its order that the applicant was represented by counsel. However, the applicant correctly points out that he represented himself during the hearing. The order is amended to reflect the same.
2. Relief as to issue (2) is denied.
3. Relief as to issue (3) is denied.
4. Concerning issue (4), the court did consider leaving the record open to allow the applicant to procure the testimony of certain witnesses. However, the court concluded that there was no justification for doing so. Relief as to this issue is denied.
5. Relief as to issue (5) is denied.
6. Relief as to issue (6) is denied.
7. Relief as to issue (7) is denied.
8. Relief as to issue (8) is denied.

[Signature]

9. Relief as to issue (9) is denied.

For the reasons set forth above, the applicant's motion is denied. Reference is craved to this court's order denying the application for relief but granting the applicant a belated appeal.

SO ORDERED.

November 4, 2016



George C. James, Jr., Circuit Judge

State of South Carolina
County of Sumter

In South Carolina Superior Court
Case # 2016 NOV 17 AM 10:25

JAMES C. JAMES
CLERK OF COURT
SUMTER COUNTY, S.C.

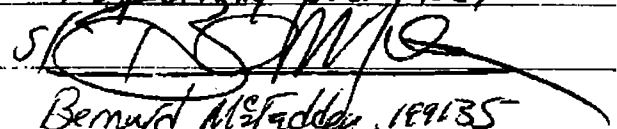
Bernard McFadden, 199135,
Appellant,

vs.

Notice of Intent To Appeal

State of South Carolina,
Respondent.

Please take notice that the Applicant Bernard McFadden does hereby appeal the Hon. Judge George C. James' 10/11/2016 Order of Dismissal received 10/28/2016; and Judge James' 11/04/2016 Order Denying Motions For Reconsideration And For Hearing On Facts Received 11/08/2016 this 11th day of November 2016 in McFadden vs. State, Case # 2011-CP-43-0152.

Respectfully Submitted,

Bernard McFadden, 199135
Kershaw CI/0B2
4848 Goldmine Hwy.
Kershaw, S.C. 29067

Date: 11/11/2016

Bernard McFadden, 199135
 Kershaw C.I. / O.B.
 4388 Goldmine Hwy.
 Kershaw, S.C. 29067

2016 NOV 17 AM 10:25

11/11/2016

SUMTER COUNTY, S.C.

Margaret Sullivan, Sumter County
 3rd Circuit Court Reporter, 504
 Henderson Street, Sumter, S.C. 29150

RE: My 9/14/2015 (PER) Hearing Transcript Before Judge George
 C. James, Jr., At The Sumter County Courthouse In McFadden
vs. State, Case # 2011-CP-43-01952

Dear Mrs Sullivan:

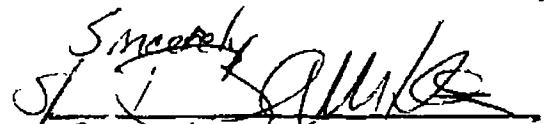
Please be advised that I am ordered to proceed pro-se and
 do hereby request that the tapes of any transcribed transcript
 be maintained to allow me time to review it for accuracy -
 not Mr. Fulton Connell.

Be also advised that I am indigent and believe this requires
 Respondent to provide funds to you for your service. This is my
 effort to come to an agreement or to comply with payment for
 furnishing the transcript found in S.C. Appellate Court Rule 207.

If any questions, please feel free to write me - not Mr. Connell.

Sworn And Subscribed Before Me
 This _____ day of _____ 2016
 Personal copy signed.

Notary Public For South Carolina
 My commission expires: _____

Sincerely

 Bernard McFadden, 199135
 Applicant / ~~Attorney~~, pro-se

Proof of Mailing
Case # 2011 - CP - 43 - 01952

RECORDED
2016 NOV 17 AM 10:25
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the persons listed below by depositing a properly-addressed-stamped-envelope in the U.S. Mail this 10th day of November 2016; such matter being: Notice of Intent to Appeal Hon. Judge James' 10/11/2016 and 11/04/2016 Orders with Letter To Court Reporter Sullivan For 01/14/2015 (PCR) Hearing Transcript:

- 1) Margaret Sullivan, Sumter County, 3rd Cir. Court Reporter, 504 Henderson Street, Sumter, South Carolina 29150;
- 2) Julie H. Coleman, Assist. Attorney General, P.O. Box 11549, Columbia, South Carolina 29211;

- 3) Daniel Shearouse, Clerk, S.C. Supreme Court, P.O. Box 11330, Columbia, South Carolina 29211; and
- 4) James C. Campbell, Clerk of Court, 215 N. Main Street, Room 303, Sumter South Carolina 29150

(Enclosing Judge Jones' Orders)

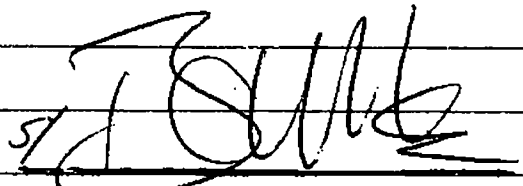
Forma Papers Motions are enclosed for Mr Shearouse and Ms. Coleman, only.

Sworn And Subscribed Before Me

This 10th day of November 2016



Notary Public For South Carolina



Bernard McFadden, 199155

My commission expires Jan 27, 2025 Applicant/Petitioner Pro-se

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680

8

Bernard McFadden, 199135
 Kershaw CI/MA40
 4848 Goldmine Hwy.
 Kershaw, S.C. 29067



10/03/2013

RE: Issues #1 through 10 And Related Questions For Bernard McFadden
vs. State, (PCR) Case # 2011-CP-43-1953

Dear _____:

Affidavit of Bernard McFadden

Personally Appeared Before Me, One Bernard McFadden, 199135, who is being duly sworn, deposes and states:

PCR Issues # 1-10 | (PCR) Questions Intended To Be Ask At Hearing

Miscellaneous Questions: 1) Who is Mrs. Catherine Anderson?

A) She's an X-girl friend that was present during a 2002 searchwarrant incident involving Det. Irene Culick tampering with a motorcycle in a shed and taking pictures afterwards. Mrs. Anderson also knows items (tobacco products) removed from trailer by Det. Culick were not missing from

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PCR Issues # 1 - 10 (PCR) Questions Intended To Be Ask At Hearing

- 2002 crime scene or sought in searchwarrant.
- 2) Did Mr. Brunson interview Mrs. Anderson prior to trial to discuss the reason for her testimony?
- A) Not that I know of. He only told me Mrs. Anderson said she didn't know anything about the charges I then faced.
- 3) Who is Mr. Albertus Lewis?
- A) He was my roommate at the time this crime was committed and testified at my criminal trial.
- 4) What Mr. Brunson did or didn't do regarding Mr. Lewis?
- A) Brunson never argued to get the judge to allow Mr. Lewis to say one of the females that called on his cell phone sounded like a white female saying, "We or they got your blood."
- 5) Anything else Mr. Brunson did or didn't do regarding the questioning of Mr. Lewis?
- A) Transcript doesn't reflect he asked Mr. Lewis whether I stayed at my residence every night thereafter this crime or whether police came to the residence days after this crime to demonstrate I wasn't exasive.
- 6) Do you know if Mr. Brunson interviewed Mr. Lewis prior to trial?
- A) Upon information and belief, no he didn't. Mr. Brunson only read from a list of questions I prepared for each witness.
- 7) Who is Ms. Lee Ethal Lewis?

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PCR Issues # 1 - 10 (PCR) Questions Intended To Be Ask At Hearing

A) She was also my roommate, the mother of Mr. Lewis, who also testified to answering phone calls from females that were playing on the phone the early morning of 7/3/2009.

8) What, if anything, Mr. Brunson did or didn't do regarding Ms. Lewis?

A) Mr. Brunson also didn't interview Ms. Lewis and, as a result, she didn't know to testify to what I was certified in doing - which is more than cutting grass or raking yards.

9) Anything else he didn't do with Ms. Lewis?

A) The transcript doesn't reflect whether Mr. Brunson asked whether I spent the night home every night thereafter 7/3/2009 to demonstrate I wasn't evasive.

10) Who is Mike Simpson?

A) On 7/12/2009, Mr. Simpson overheard the lead Det. Robert Richburg urging magistrate Judge George Gibson to change my bond from \$10 to 50,000, disregarding my civil rights and a show of brassiness, bad faith or harassment - prior bad acts that were not presented by Mr. Brunson for motions to suppress evidence, to dismiss indictment or to impeach Det. Richburg.

1) Issue # 1 Questions: 1) Issue # 1 alleges perjured testimony where Det. Irene Culick says I used first aid kit box, when in fact, attached pictures show she moved the kit from somewhere location... Is that correct?

p. 3 of 22

PCR Issues # 1 - 10 (PCR) Questions Intended To Be Ask At Hearing

11) Yes, Sir.

12) Who is Detective Irene Culick?

At She is the on-call detective that blood staged the crime scene during the early morning hours of 7/3/2009 and deliberately testified falsely the way evidence was found in crime scene

13) What Mr. Brunson did or didn't do regarding Det. Culick?

At Brunson didn't ask Det. Culick about the following:

1) Why does the Newport box appear so evenly flushed with one set of lottery tickets in photograph # 3?

2) Why smear on box appear to have been swab-swipped with a cue tip swab in photograph # 4?

3) Why spot on floor appear to be in same size and diameter as a cue tip swab with pull-away indentations from swab in photograph # 5?

4) Why the same (2) sets of lottery tickets on the speckled floor in photograph # 3 were moved to the solid floor in photograph # 6?

5) Why doesn't first aid kit box appear at all in initial photograph 10 of 10, but does appear in photographs 7, 8 and 9 on corner of shelf?

6) Whether she is the same detective in 2002 burglary case involving a search warrant

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PCR Issues # 1 - 10

(PCR) Question Intended To Be Ask At Hearing

for which she inventoried items she knew were not missing from 2002 crime scene nor sought in search warrant to show Jury previous encounter and prior bad acts?

7) Why she wanted to swab Newport box in photograph # 4 in lab again after swabbing blood droplet in store?

8) Whether she could show, and show, order photographs were taken in on disk in Det. Duggins' possession [Trial Tr. p. 234, lines 19-22]?

9) And finally, Mr. Brunson didn't show the Jury that Det. Culick's testimony that if pictures have the blood marker on floor, then picture would be after she moved things around [Trial Tr. p. 218 and 219] is contradicted by comparing her testimony to photograph 1 and photograph 13(A) where the circled Newport boxes are moved and the blood marker has not been put down on floor by her as she stated.

Mr. Brunson also didn't file any motions in connection with Det. Culick by - passing him to talk with (3) defense witnesses. (See Affidavit D of Bernard McFadden dated 9/22/2010 submitted in my mistrial before Judge James attached to my 11/20/2012 Affidavit.)

No motions for funds for experts was filed by Brunson to show manual position of evidence.

14) Who is Det. / Lt. Truman Duggins?

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PCR Issues # 1-10

(PCR) Questions Intended To Be Ask At Hearing

A) He is the detective that unsealed sealed plastic container holding (3) packs of Newports and unreasonably smudged-out the swab-swipped drag lines on Newport box in photograph # 4 for a sample to be sent to SLED when a sample had already been collected from floor by Det. Culick.

15) What Mr. Brunson did or didn't do regarding Det. Duggins?

A) Mr. Brunson did not ask Mr. Brunson why was it necessary to unseal sealed evidence to obtain a sample of blood for SLED when a sample had already been taken from floor of business by Det. Culick.

16) Who are Brian Gibson and Jessie Donald?

A) Mr. Brunson didn't locate to question these two male individuals that were capable of contradicting witness McDonald's testimony that police flashing blue lights were used on scene that night; no blue lights were flashing when we passed store.

17) Anything else with Issue # 1

A) Except that the Defense was prejudiced as to the jury believing and voting on this false testimony, no, Sir.

2) Issue # 2 Abandoned:

3) Issue # 3 Questions:

18) Issue # 3 alleges Brunson was ineffective for not investigating to determine your 8/16/1995 Burglary 2d. conviction was more than (10) years old when considering jail-time credits... Will

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PCR Issues # 1 - 10

(PCR) Questions Intended To Be Ask At Hearing

you explain this Issue # 3 for the Court?

A) I wrote letters to Mr. Brunson with Certificates of Mailing and have also SLRDC receipts for to both Mr. Brunson and Ms. Monica Counts (now Wallace) to correct and incorrect 6/1/1995 sentence start date to the correct 4/15/1995 start date for Burglary 2d. indictment # 95-GS-14-187. (See Exhibit B # 15, 16, 17 - Showing letters mailed to Mr. Brunson and Ms. Counts of SCDC with SLRDC receipt for mailing.)

19) Anything else with this Issue # 3?

A) Yes. I filed a Motion For New Counsel. One of the grounds was Mr. Brunson refused to investigate SCDC and Clarendon Clerk of Court's records to determine the correct max-out date. This motion was denied by Judge Young on November 4th, 2010 (See Exhibit B # 20, 21 and 22 - Motion For New Counsel - one grand refusal to investigate Clarendon County Clerk of Court and SCDC records.

After Judge Young denied this motion, Mr. Brunson was aware during trial I wanted to testify [Trial Tr. p. 369, 14-17]. However, Mr. Brunson appeared to have had a misapprehension of the rule of remoteness by incorrectly saying within, rather than out-side of, (10) years when opposing the use of my prior

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PCR Issues #1-10

(PCR) Questions Intended To Be Ask At Hearing

conviction [Trial Tr. p. 374, lines 22-24].

20) Any thing else with this Issue # 3?

A) Yes. I renewed my Motion For New Counsel, but was refused notary by SJRDC officials. (See Exhibit B # 24, 25, 26, 27 and 28, showing SJRDC Grievance alleging Lt./Mrs. Kelly refused to notarize 11/16/2010 Certificate of Service.)

21) After your 2010 incarceration in SDC, did you ever found out what caused the max-out date to be wrong?

A) Yes. Warden Reynolds of Kershaw stated I received no jail-time credits in a disposition (See Exhibit B # 29 showing SDC Request to Staff disposition of Warden Reynolds showing no jail-time credits.) However, Exhibit B # 30 shows Sergeant George McConner served arrestwarrant # E-017123 on 4/15/1995, and not 6/1/1995. Exhibits 31 and 32 are the sentencing sheets of Judge McGinnis showing concurrent sentencing and credit for jail-time served. Also, Clarendon County Clerk of Court Beulah G. Roberts' General Sessions Case History for this warrant # E-017123 shows a 4/15/1995 violation date, and Roberts' September 21st, 2011, letter indicates no security bond for this arrestwarrant, suggesting I wasn't released on bond. In Exhibit B #

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PCR Issues # 1-10 | (PCR) Questions Intended To Be Ask At Hearing

33 and 34.

22) Anything else on Issue # 3?

A) Except that in light of the trial court's erroneous ruling, I involuntarily waived my right to testify to the prior bad acts of Det. Culick when inadmissible (1995) Burglary 2d. conviction was not argued by Mr. Brunson as too remote. This prejudiced the Defense where they could have believe my testimony regarding Det. Culick's bad acts in (2002) case. Other than this prejudice, no, Sir.

4) Issue # 4 Questions: 23)

Issue # 4 alleges Mr. Brunson was ineffective for not perfecting the Notice of Intent to Appeal your conviction to obtain appellate review of perjured testimony for suppression, erroneous rulings regarding prior conviction for impeachment purposes and ineffective assistance of counsel regarding investigations of remoteness of (1995) Burglary 2d. conviction... Will you explain to the Court what happen here?

A) A probation revocation hearing was held the same day after 11/19/2010 conviction involving James Rodgers and Mr. Sumter. During this hearing, I was escorted back into the courtroom before Judge Young and told not to ever write courtreporter Margaret Sullivan again and to write the S.C. Supreme Court for my transcript to appeal my conviction. However, Mr. Brunson filed the late Notice of Intent to Appeal

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PCR Issues # 1-10(PCR) Questions Intended To Be Ask At Hearing

more than (15) days after the (10) day period on December 15th, 2010. (See Exhibit C # 35 and 36 showing Brunson's late Notice of Intent to Appeal.)

24) Did the Court of Appeals accepted this late Notice of Intent to Appeal from Mr. Brunson?

A) No it didn't. Judge Few's 12/21/2010 Order and the Deputy Clerk's 2/7/2011 letter confirmed dismissal of my direct appeal. (See Exhibits C # 37, 38 and 39.)

25) Any thing else on Issue # 4?

A) Except Mr. Brunson's late Notice of Intent to Appeal prejudiced my right to get review of meritorious issues of denied Motion For New Counsel, to review inadmissible DNA evidence and to review the inadmissible like prior (1995) Burglary 2d. conviction for impeachment purposes. Other than this prejudice, no, Sir.

5) Issue # 5 Questions:

26) Issue # 5 alleges Mr. Brunson was ineffective for not filing a motion to suppress evidence or dismiss indictment on the ground of police outrageous conduct... Explain to the Court what you tried to get Mr. Brunson to do here.

A) First, I tried to get Mr. Brunson to motion to suppress evidence or indictment because Det. Robert Richburg's July 7th, 2009, Arrestwarrant Affidavit was obviously outrageously false in comparison to testimony. This July 7th, 2009, Affidavit

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PCR Issues #1-10

(PCR) Questions Intended To Be Ask At Hearing

incorrectly arranged witnesses by putting the store manager Janice Billips 1st, Det. Culick 2^d. and witness McDonald 3^d. (See Exhibit D # 40 showing Det. Robert Richburg's 7/7/2009 Affidavit.) Actual testimony from Det. Culick states clerk Janice Billips was there, that McDonald was there or that all were present at store before her [Trial Tr. p. 192, lines 15-22].

Second, I tried to get Mr. Brunson to show bad faith and harassment in connection with this blood staged crime scene by getting Mike Simpson, who overheard Judge George Gibson and Det. Robert Richburg on July 12th, 2009, discussing how to make it hard on me when changing my bond from \$10 to 50,000. (See Exhibit D # 41, 42 and 43 - bond hearing documents, illegally changed to suggest bad faith and harassment.) (See also Exhibit D # 44 showing Judge Ferrell Colthron's 7/22/2009 Order remodifying back to \$10,000.) Exhibit 45 shows Mr. Brunson's March 15th, 2010, letter acknowledging witness Mike Simpson, but never locating Simpson to corroborate my claim of outrageous or bad faith conduct of bond tampering in this blood staged crime scene case brought to harass me.

Exhibit 46, 47 and 48 show my July 6th, 2010, letter and Certificate of Mailing dated July 7th 2010, informing Mr. Brunson of 1) inconsistent

p. 11 of 22

(PCR) Issues # 1-10

(PCR) Questions Intended To Be Ask At Hearing

statements as to the order of witnesses appearing on the scene, 2) that Det. Culick was the same person that made a false statement in collecting evidence from my residence (tobacco products) not missing from business in (2002) burglary case and 3) courtreporter Margaret Sullivan had previously altered a trial transcript litigated in McFadden vs. Allen lawsuit.

Exhibit 49 and 50 show my 2d. letter dated August 16th, 2010, informing Mr. Brunson again about the (3) issues raised by me in my July 6th, 2010, letter - additionally asking Mr. Brunson that a Motion To Suppress be file to suppress DNA evidence and packs of cigarettes.

Third, Exhibit D # 51 is a Sumter Police Department Chain of Custody of Evidence Inventory dated 7/3/2009 Mr. Brunson and I reviewed for suppression showing Det. Diggins added Item # 7 after unsealing sealed evidence bag containing (3) packs of Newports, and in bad faith, unreasonably and outrageously altered the pack of cigarettes from its original condition in photograph # 4 - smudging-out the cue tip swab-swipped drag-lines in this outrageously blood-staged crime scene case.

Fourth, Exhibit D # 52 and 53 is the 1st trial Affidavit of Bernard McFadden before Judge

2.12.2012

(PCR) Issues # 1-10

(PCR) Questions Intended To Be Ask At Hearing

George James Mr. Brunson and I discussed for suppression on bad faith and outrageous conduct of Det. Culick prior bad act of collecting evidence (tobacco products) in a (2002) burglary case she knew were not stolen from business because tobacco products were not listed in searchwarrant as missing from business. Exhibit A # 14 I already mentioned earlier is my 1st trial Affidavit D of Bernard McFadden that Mr. Brunson and I discuss for suppression when Det. Culick, outrageously and in bad faith, by posed him and interviewed (3) defense witnesses after not interviewing these witnesses for a whole year or only a few days before trial.

28) Any thing else with Issue # 5?

A) Except that the Defense was prejudiced by Mr. Brunson's failure to file a motion to suppress evidence or dismiss indictment upon showing police outrageously bad faith conduct. Court could have verywell grant motion in light of this type conduct, and if not, an appellate court could have reversed the ruling upon review of this type conduct.

Fifth, Exhibit 54, 55 and 56 is my 3d. letter dated September 26th, 2010, with SLRDC Request to Staff and receipt dated 9/28/2010 and 9/29/2010 for mailing where I again sought for suppression the 2002 Searchwarrant Affidavit to impeach

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(PRT) Issues # 1-10

(PRT) Questions Intended To Be Ask At Hearing

Culick with cigarettes included in the (2002) case knowing that they were not missing in (2002) burglary, that which Mr. Brunson did not use in 1st trial with testimony from Catherine (Myers) Anderson to corroborate Culick taking items from my residence that could not have been taken from (2002) burglary.

Sixth, Exhibit D # 57 and 58 is my 4th letter dated for 10/14/2010 to Mr. Brunson complaining of lack of response, and additionally, I express the possibility of Mr. Brunson being pressured by state representatives to not present this frame by police defense theory.

Q And were you able to get this (2002) Search-Warrant prior to trial?

A Yes. Exhibit D # 59 and 60 is a copy that was retrieved from Mr. Arthur Wilder by Mr. Brunson, but was not used by Mr. Brunson during trial. This (2002) Searchwarrant Affidavit involving Det. Culick falsely state that keys were among broken glass just outside location of forced entry, when - to the contrary - an incident report states keys were found in parking lot.

Also, Exhibit D # 61 and 62 shows Det. Culick outrageously, and in bad faith, removed bag containing cigars, Black + Mild and Newports when she knew business didn't miss these items,

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(PC12) Issues #1-10

(PC12) Questions Intended To Be Ask At Hearing

items not included in searchwarrant as items sought - to include Det. Culick planting glass shards on motorcycle peg and then taking pictures, observed by Catherine (Myers) Anderson.

That all these circumstances to show bad faith and harassment - 1) Det. Richburg's inconsistent Arrestwarrant Affidavit, 2) bond being illegally changed from 10 to 50,000; 3) Mike Simpson's testimony hearing Det. Robert Richburg and Judge Gibson's plot to harass me, 4) Det. Culick's prior bad act of falsely identifying evidence in (2002) case not involved or sought in searchwarrant, 5) intentionally and knowingly using same courtreporter Margaret T. Sullivan who is alleged to altered (2003) trial transcript, 6) a Det. Duggins unreasonably unsealing sealed evidence and smudging-out cue tip, swab-swipped drag-lines when adding Item # 7, 7) a same Det. Culick, who was involved in a (2002) case that alleged false and planted evidence, has now staged a 2010 crime scene corroborated by her own photographs, 8) a Det. Culick outrageously by-passing defense counsel Brunson and urging (3) defense witnesses to change their testimony - were not used to support a motion to suppress or dismiss indictment for outrageous conduct by Mr. Brunson.

6) Issue # 6 Questions:30) Issue # 6 alleges Mr. Brunson was ineffective

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(PCR) Issues # 1-10

(PCR) Questions Intended To Be Ask At Hearing

for not filing a motion to hire a photography / crime scene expert witness to support motion to suppress DNA evidence or to explain to Jury that photographs did not represent a true and correct position of crime scene evidence ... Explain to the Court what Mr. Brunson didn't do here.

1) I believe the (10) pictures attached to the (PCR) application taken by Cullik make it plausible Mr. Brunson was ineffective for not filing motions for experts in support of a motion to suppress DNA evidence, particularly to review the manual position of evidence in these (10) photographs, as discussed on page 2 of 6 of Amended Application dated 11/6/2012.

31) Anything else on Issue # 6?

A) Except that the Defense was prejudiced by not presenting the expert's testimony to Jury. Jury could have believed experts' testimony corroborating the manual position of evidence shown in the (10) attached photographs. Other than this prejudice, nothing else further on #6.

7) Issue # 7, Questions:

32) Issue # 7 alleges Mr. Brunson was ineffective for not impeaching Detective Robert Richburg and Derrick McDonald with their prior inconsistent statement or didn't object or appeal trial court's limitation on cross examination ... or stretched down statement as hearsay ... Explain this for the Court.

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(PCR) Issues #1-10

(PCR) Questions Intended To Be Ask At Hearing

At Mr. Brunson didn't object or file motions to Mr. Richburg's testimony McDonald told other detectives I slouched-down in my seat and became nervous, and that all that together, the magistrate signed a warrant as discussed on p. 3 of 6 of my Amended (PCR) Application dated 11/6/2012. [See also Trial Tr. p. 293, lines 16-25; p. 294.] Mr. Brunson didn't object to or file appropriate motions for this slouched-down statement as hearsay as discussed on p. 3 of 6 of Amended (PCR) Application. [See Trial Tr. p. 293-294.] Several inconsistent statements are as follows:

First, Mr. Brunson didn't attempt to impeach Det. Richburg on the ground that the slouched-down statement was new and omitted from Richburg's 7/7/2009 Affidavit statement. Mr. Brunson did not file any appropriate motions to appeal trial court's limitation on direct examination of Richburg [See Trial Tr. p. 311, lines 9-23].

Second, Mr. Brunson also didn't impeach Richburg's affidavit statement as to the order of (3) witnesses coming on the scene. Richburg's Affidavit has store clerk Janice Billips 1st, Det. Culick 2^d and witness Derrick McDonald 3^d. However, actual testimony from Det. Culick indicates Ofc. Capel, his Lieutenant, the store clerk, the couple of people to pressure wash... and witness

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(PCR) Issues: #1-10

(PCR) Questions Intended To Be Ask At Hearing

Derrick McDonald all were before her. [See Trial Tr. p. 192, lines 15-22.]

Third, Mr. Brunson further didn't impeach Ritchburg's Affidavit statement stating McDonald was first approached; it omits (3) witnesses kindra Brown, Sharice Cummings and Teresa Cummings were first approached. Actual testimony is that (3) witnesses observed me before McDonald as discussed on p. 4 of 6 of Amended (PCR) Application dated 11/16/12 [See Trial Tr. p. 178, lines 12-25; p. 179, lines 1-8.]

And finally, Mr. Brunson didn't impeach Ritchburg's 7/7/2009 Affidavit statement witness McDonald noticed I had a cut and blood on my leg with blood on my pants and shoe when I got into the truck. Actual trial testimony from McDonald indicates McDonald saw the cut when he went out into his front yard and saw me lying out there ... bleeding, had a laceration on ... my right leg. [See Trial Tr. p. 112, lines 5-16.]

33) Anything else on Issue #7?

At Except that the Defense was prejudiced by Mr. Brunson's failure to effectively move to dismiss hearsay and confront my accusers with a number of their prior inconsistent statements. Jury could have disbelieved these witnesses had Mr. Brunson effectively question them about these prior inconsistent statements,

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(P12) Issues #1-10

(P12) Questions Intended To Be Ask At Hearing

and I could not cross examine the other detectives witness McDonald told I slouched down in Det. Richburg's testimony. Other than this prejudice, there's nothing further.

8) Issue #8 Questions:

34) Issue #8 alleges Mr. Brunson was ineffective for not filing any appropriate motions in connection with the trial court's limitation on direct examination of defense witness Albertus Lewis' phone conversation of hearing what might have been a white female saying, "We or they got your blood ...". Explain to the Court what Mr. Brunson did or didn't do here.

A) Mr. Brunson didn't file any appropriate motions when the trial court held a side bar conference and limited direct examination of defense witness Albertus Lewis' 7/3/2009 incoming cell phone conversation of what might have been a white female saying, "We or they got your blood." [See Trial Tr. p. 388, lines 4-15.]

35) Anything else on Issue #8?

A) Except my right to bring this evidence prejudiced the Defense. Jury could have believe Mr. Albertus' testimony of hearing a white female saying, "We or they got your [my] blood" came from Det. Culick prior to or after staging blood through -act building. Other than this prejudice, there's nothing further on Issue #8.

p. 19 of 22

(PC7) Issues # 1-10

(PC7) Questions Intended To Be Ask At Hearing

9) Issue # 9 Questions: 367

Issue # 9 alleges Mr. Brunson was ineffective for not interviewing and presenting defense witness Catherine (Myers) Anderson's observation of a (2002) searchwarrant incident involving Det. Cullek moving tobacco products from residence not belonging to business or sought in searchwarrant and taking pictures after tampering with a motorcycle in a shed, particularly to show Jury Cullek and you had a previous encounter... Explain to the Court what Mr. Brunson did or didn't do here.

A) Mr. Brunson did not discuss with Mrs. Anderson how her testimony was relevant and important prior to trial. Upon information and belief, Mrs. Anderson was never interviewed by Mr. Brunson prior to this trial, and therefore, contribute to Mrs. Anderson's confusion and exclusion of very important testimony. I believe that Mrs. Anderson will also attest to the same, that Mr. Brunson never held a conference with her and that this caused her to be confused. She was therefore released from a subpoena without a conference ever being held by Mr. Brunson after we briefly discussed this issue before the trial court. [See Trial Tr. p. 385, lines 11-20.]

377- Anything else on Issue # 9 ?

A) Except my right to bring this evidence prejudiced the Defense. Jury could have believed Mrs. Anderson's

P. 20 of 28

(202) Issues # 1-10

(202) Questions Intended To Be Ask At Hearing

testimony that Culick and I had a previous encounter in (2002) where Det. Culick removed items (tobacco products) she knew weren't taken from (2002) burglary and that Det. Culick took pictures after tampering with a motorcycle in a shed. These are prior bad acts the Jury had obviously had absolutely no knowledge of. Other than this prejudice, no, Sir.

10) Issue #10 Questions: 39)

Issue # 10 alleges Mr. Brunson was ineffective for failing to argue that the prejudicial effect of your (1995) burglary 2d. conviction, indictment # 95-65-14-187, outweighed its probative value within the meaning of Green vs. State, 529 S.W.2d 98 (2000). Explain to the Court what Mr. Brunson did or didn't do here.

A) During the start of the Defense case, Mr. Brunson didn't even attempt to argue that it was more prejudicial than probative when the trial court admitted my (1995) Burglary 2d. conviction because of the exact nature [See Trial Tr. pgs. 376, 377, 378 and 402, lines 1-13.] And that based on the trial court's ruling, I waived my right to testify, leaving the Jury with no information regarding Det. Culick (2002) prior bad act [See Trial Tr. p. 401, lines 22-25; p. 402, lines 1-3.]

39) Anything else on Issue # 10?

A) Except that the Defense was prejudiced because of

pgs. 10 to 100

(PCR) Issues # 1 - 10

(PCR) Questions Intended To Be Ask At Hearing

Mr. Brunson's failure to argue that my (1995) Burglary 2d conviction's probative value was outweighed by its prejudicial effect caused me to involuntarily waive my right to testify in my own defense. The Jury could have believed my testimony that Det. Colick had a previous encounter with me in (2002) where she removed items (tobacco products) she knew weren't taken from (2002) burglary and that Det. Colick took pictures after tampering with a motorcycle in a shed. These are prior bad acts the Jury had absolutely no knowledge of. Other than this prejudice, no, sir.

Further Affiant, Sayth Not.

Sworn And Subscribed Before Me
This 3 day of October 2013

Cathrine A. Conway

Notary Public For South Carolina

My commission expires: My Commission Expires December 22, 2016

st J M Fadden
Bernard McFadden, 199135

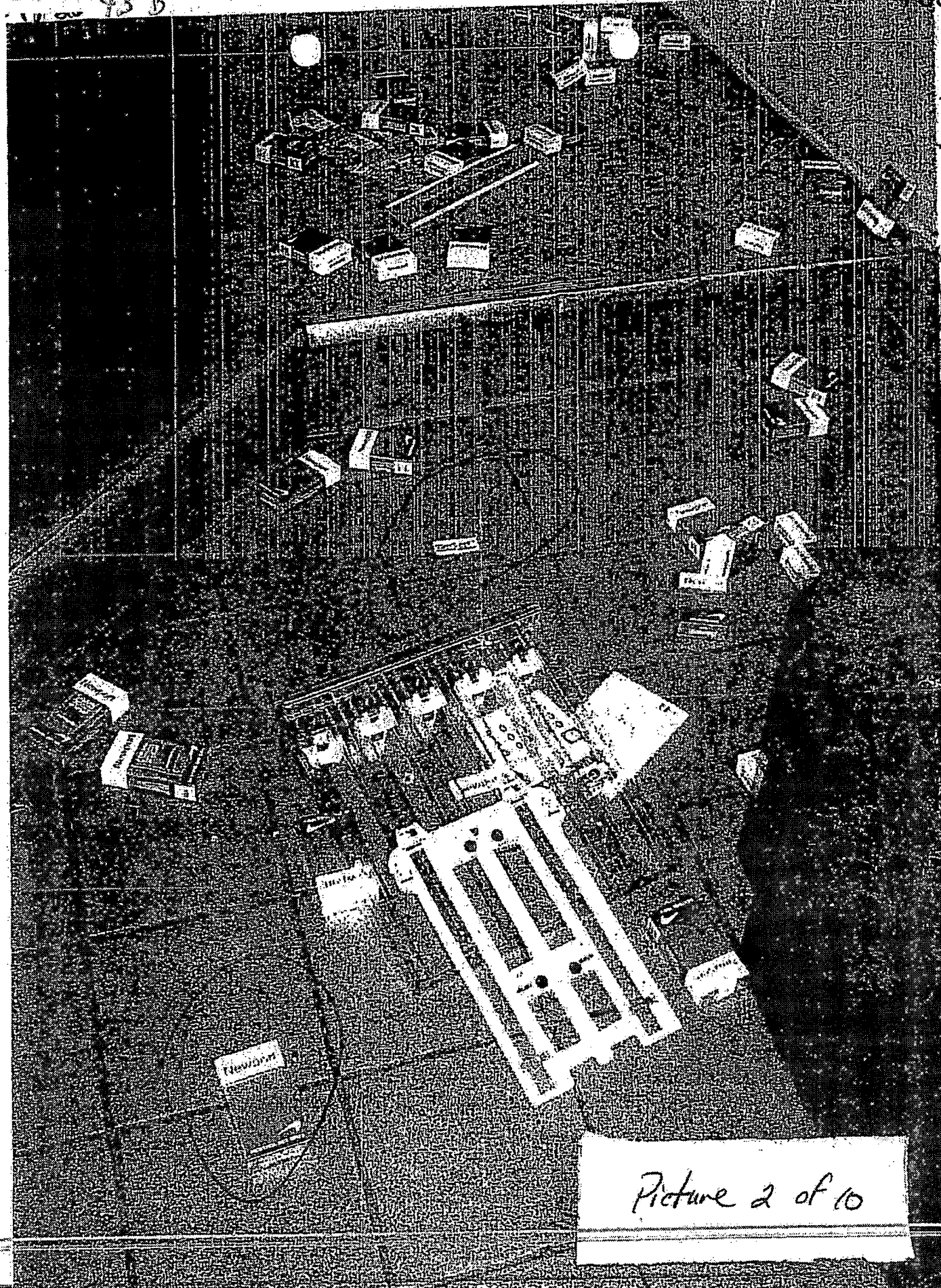
Affiant, Pro-se

st J M Fadden
Bernard McFadden, 199135

Affiant, Pro-se

P. 22 of 22

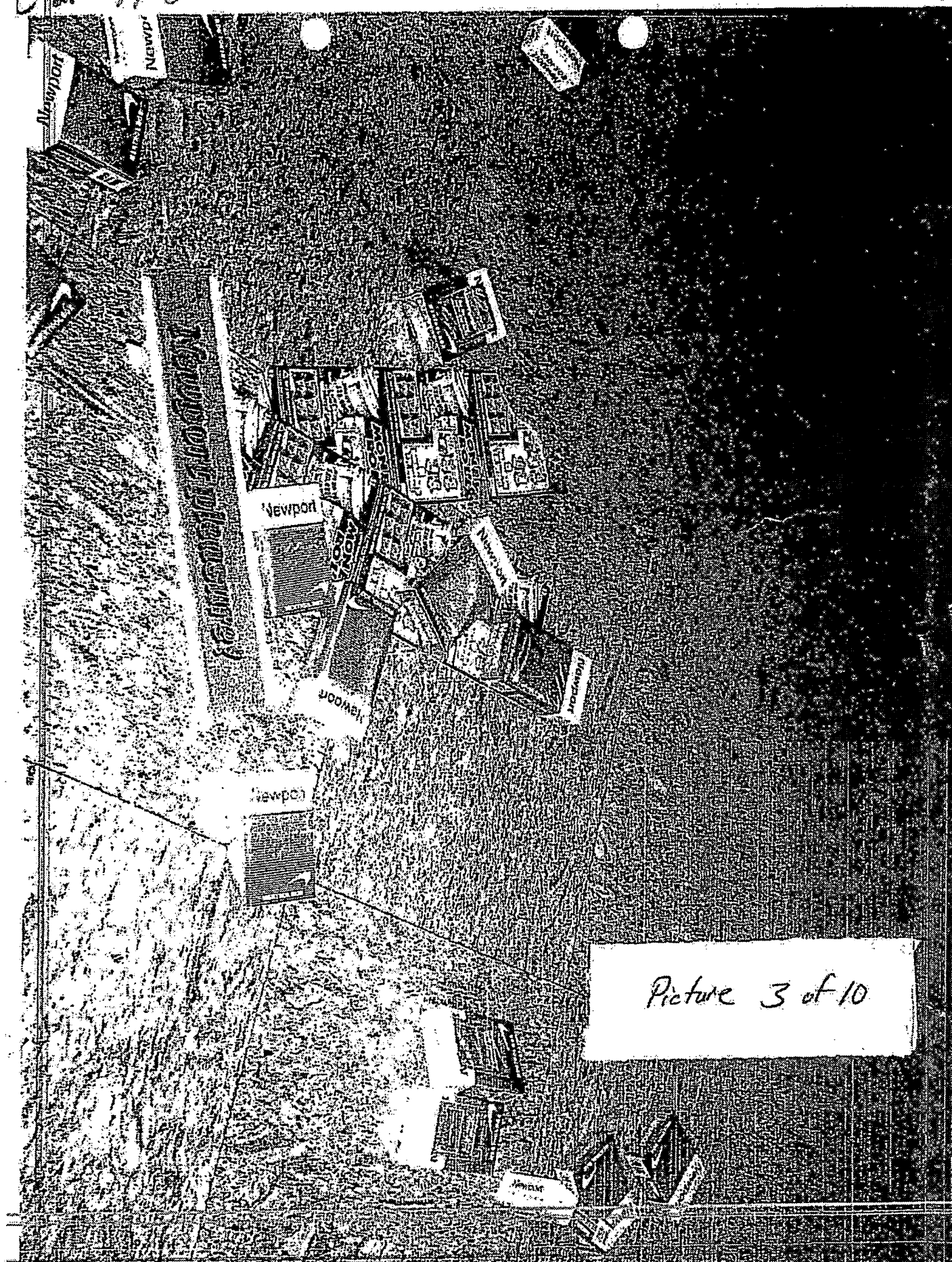




Picture 2 of 10

704

44 C



Picture 3 of 10

22 45 D

It's not likely possible for this Newport box to have fallen from a shelf and become so evenly flushed with this lottery ticket until you can evenly read 6 chances to win. Doesn't make sense to the Defense; does it make sense to you?

Defendant's
Exhibit M



Picture 4 of 10

This alleged blood spot on floor looks like it
could have been smeared with swab gently (dab)
on this floor, unlike a blood droplet.

Defendant's
Exhibit K

09072555

Picture 5 of 10

477

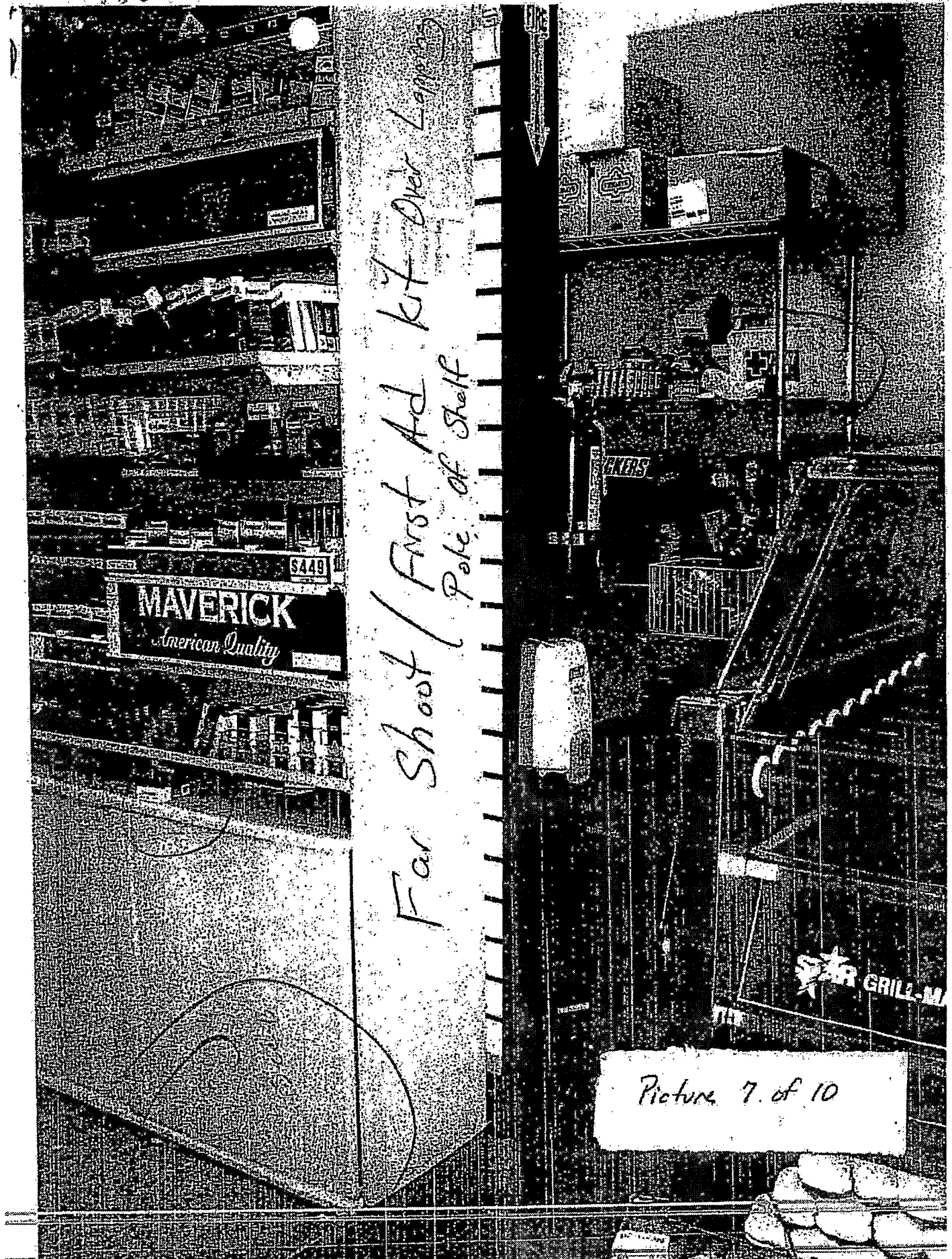


Picture 6 of 10

708

486

Far Shoot / First Aid kit Over Lapping
Pole of Shelf



016

11 41

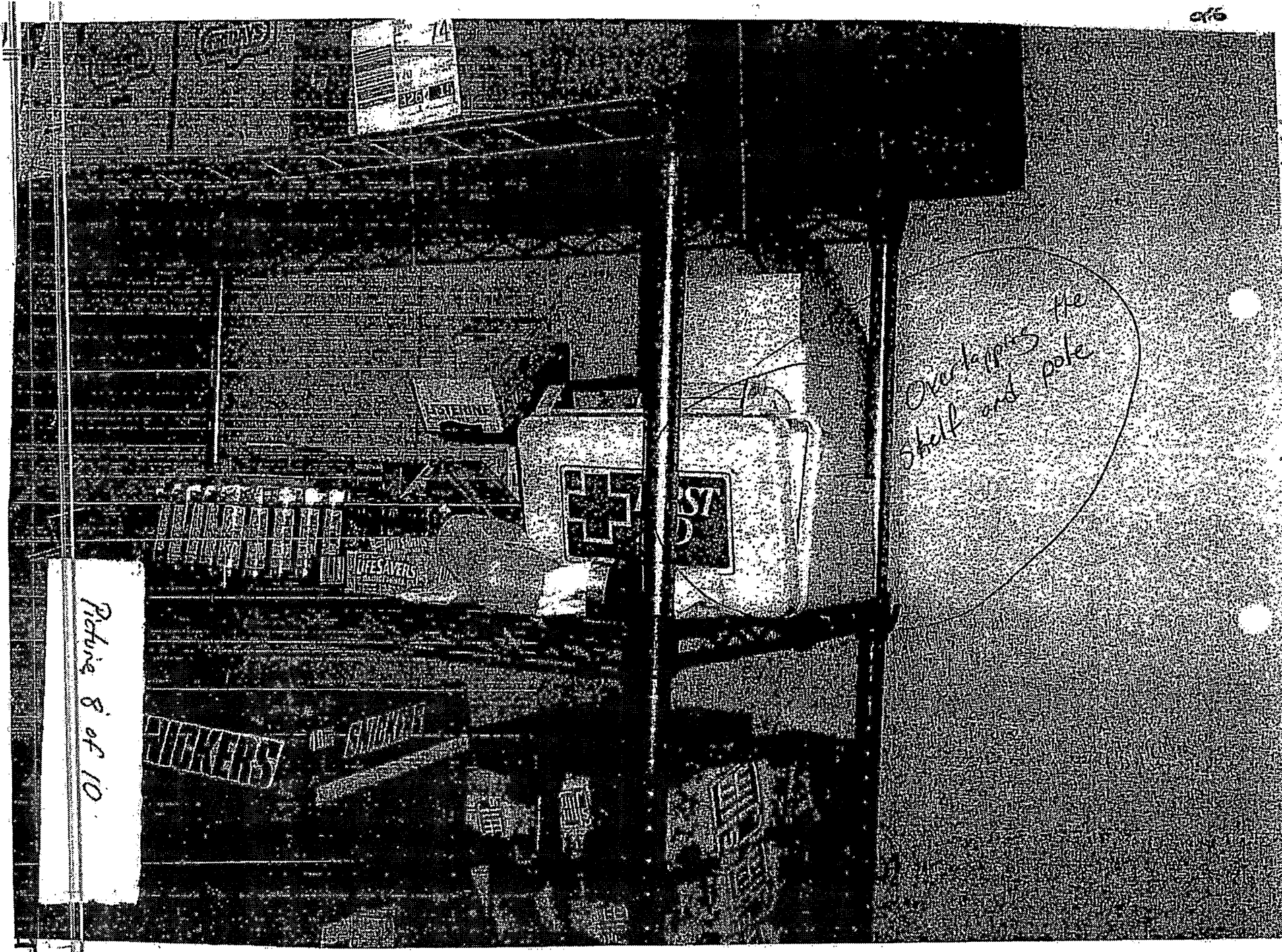
Overlaps the
shelf and pole

11:15:10 a.m.

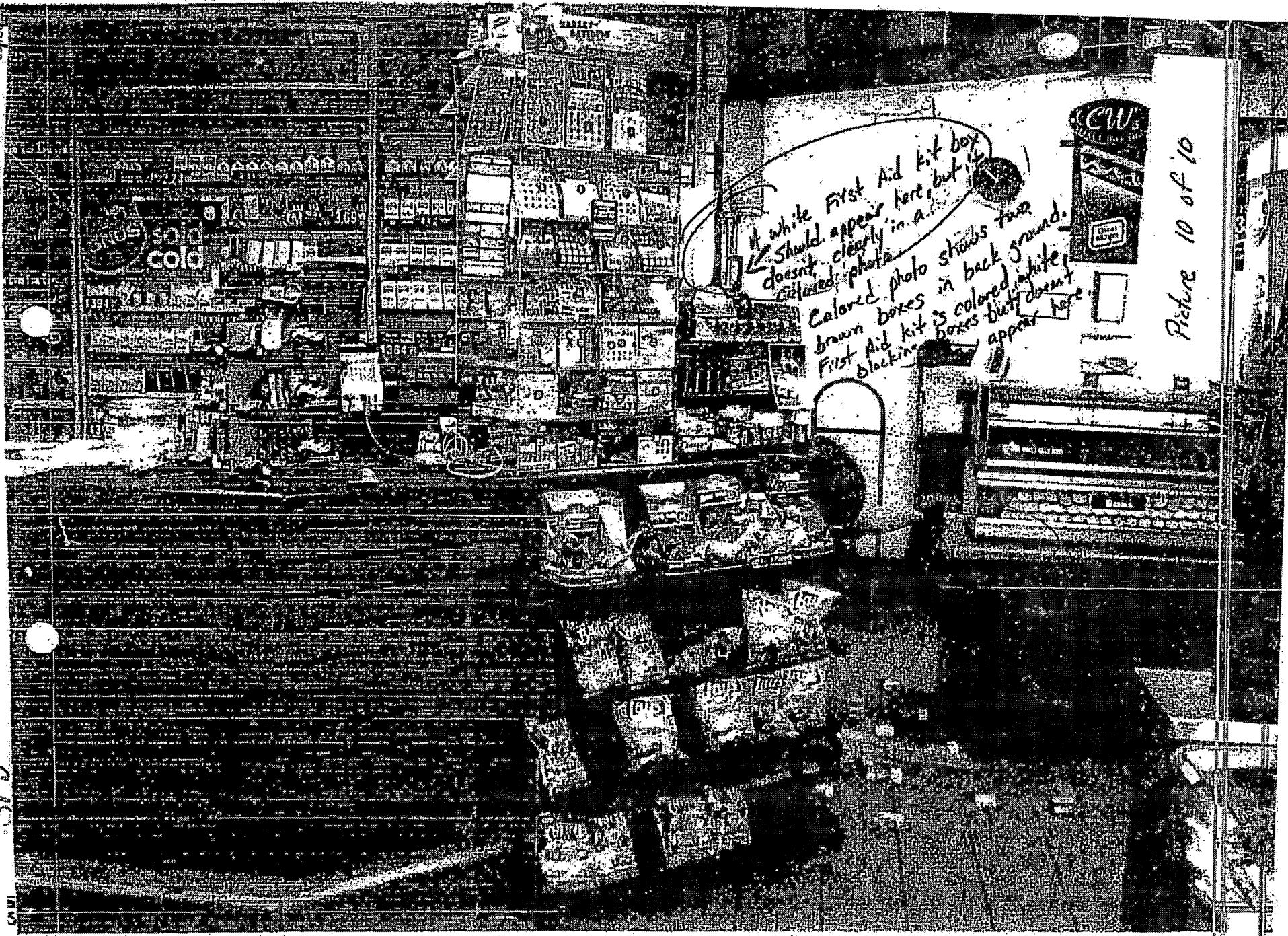
05-26-2017

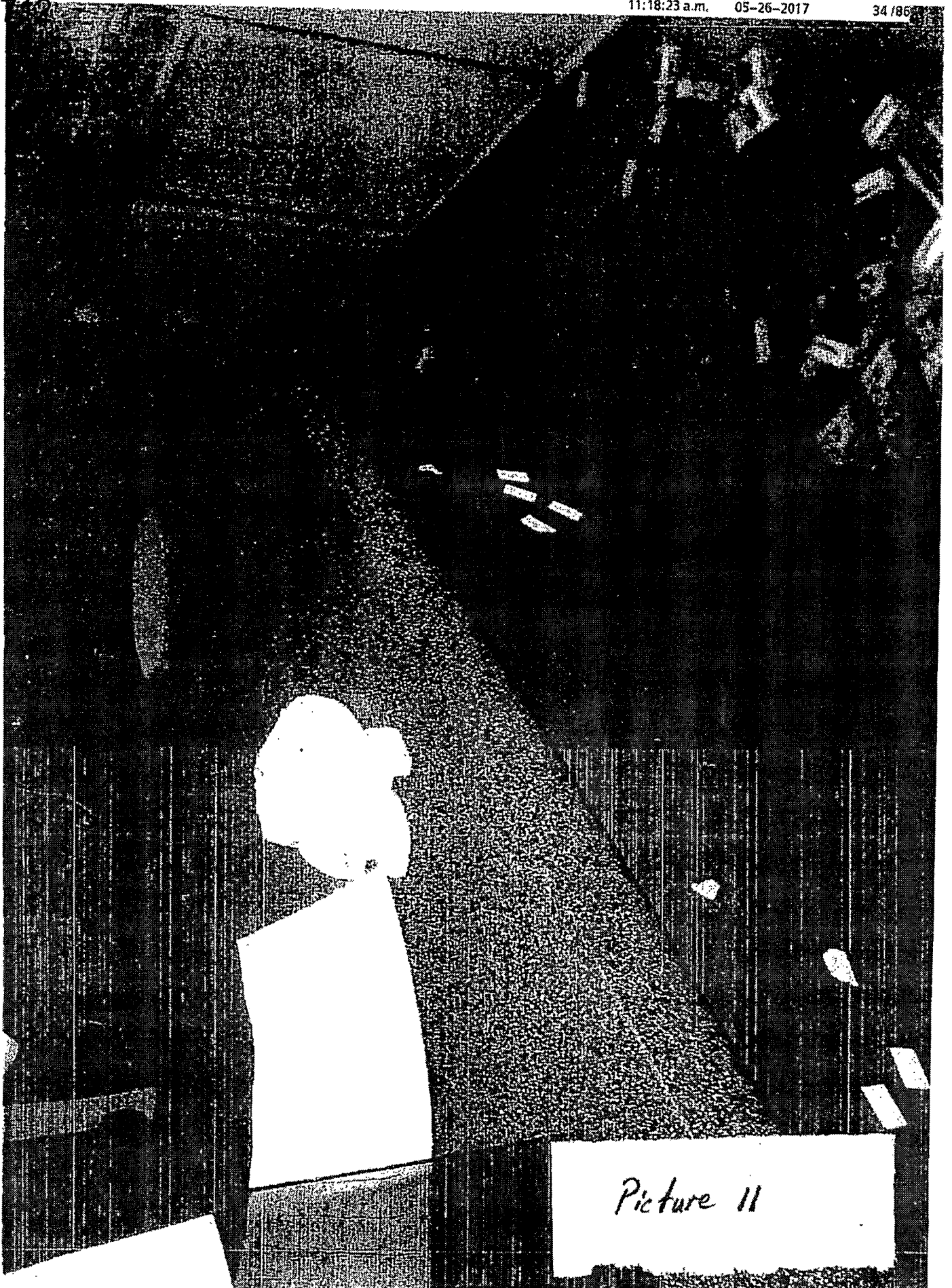
31/86

Picture 8 of 10

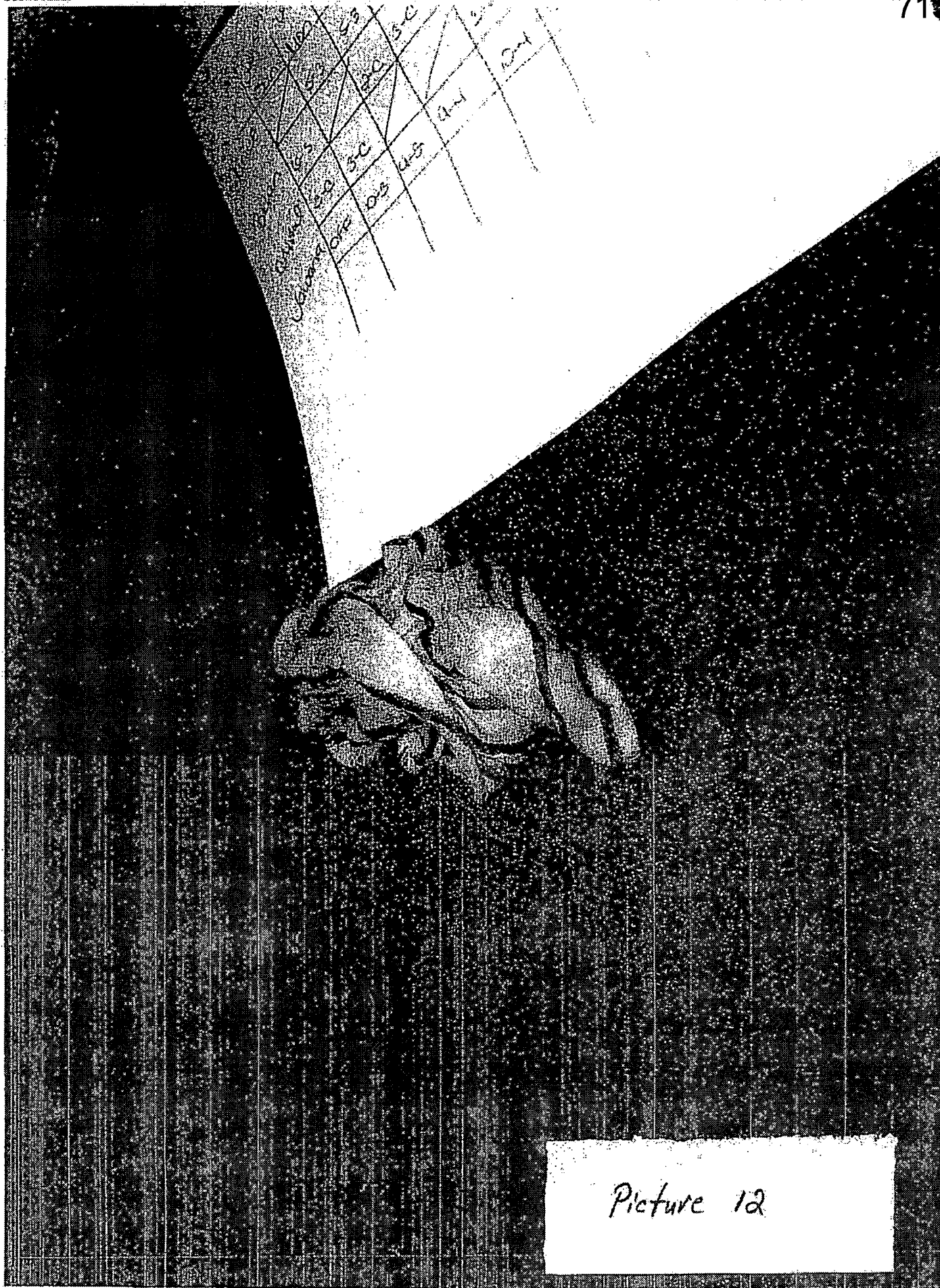








Picture 11





Picture 13

WITNESSES

Robert Richburg, Sumter Police Dept.

ARREST WARRANT NUMBER

M001180

ACTION OF GRAND JURY

True Bill

Leroy A. Thompson

Foreperson of Grand Jury

Date: 2-18-10

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-43-0257

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY

TERM

2010

THE STATE

vs.

BERNARD MCFADDEN

Indictment for

Burglary / Burglary (Violent) (After 06/20/85) - Second degree

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Burglary / Burglary (Violent) (After 06/20/85) - Second degree

At a Court of General Sessions, convened on February 18, 2010 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE

BURGLARY, SECOND DEGREE
(VIOLENT)

That Bernard McFadden did in Sumter County on or about July 3, 2009, enter without consent and with the intent to commit a crime therein, a building of Young's Food Store located at 940 E. Liberty St., and the defendant, Bernard McFadden, did enter the building in the nighttime, in violation of Section 16-11-0312(B), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made
and provided.

A handwritten signature in black ink that reads "P. Kelly Jackson". The signature is written in a cursive, flowing style.

SOLICITOR