VOLUME II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

FURMAN E. TAYLOR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001587

APPENDIX

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The State must, also, prove beyond a reasonable doubt that the Defendant intended to permanently deprive the owner of the property.

Now, ladies and gentlemen, that covers all the substantive elements of the crimes and the law that applies to this particular matter. Just let me give you a few remarks about your deliberations.

Mr. Foreman, I've prepared a verdict form, which the lawyers have seen and reviewed. It simply asks two questions about each of those two crimes. And you can only sign the verdict form when your verdict is unanimous. And that means all 12 of you have to agree, of course.

And remember that you serve as jurors not to be partisans or advocates for either the State or Mr. Taylor. You serve to determine whether the State has met its burden of proof, and determine the true facts of the case. You are judges, not advocates. And your sole interest is to determine whether the State has met its burden of proof.

So in your deliberations you, I know, will courteously and conscientiously discuss the evidence amongst yourselves. But the genius of our jury system is it allows 12 different people from 12 different backgrounds and walks of life to come together, discuss the evidence, and consider each others points and points

of view. You each have a vote. And your vote is just that, it's yours and nobody else's.

And if some of you are of a different mind than others and you're persuaded by others viewpoints, don't be afraid to change your view. But don't change your view or your vote simply to get the case over with or to reach a unanimous verdict. Because, obviously, this case is very important for the State and for Mr. Taylor.

So thank you for your attention to me.

The record is closed in this case. And that means that once you start deliberating and see the exhibits and you think about something that may have been referred to in this case that you don't have back there as an exhibit, I can't give it to you. Because there are not going to be any more exhibits. And you'll have to rely on your memory of the testimony.

So don't start talking about the case until you get the exhibits. Because that will be your signal that you can, finally, start deliberating.

And if -- sir, and, ma'am, if you'll just stay behind as the alternates, I'll talk to you separately.

Thank you very much.

(WHEREUPON, the jury was excused from open court at approximately 10:36 a.m.)

THE COURT: All right. Ladies and gentlemen, the law

doesn't allow y'all to go back in the jury room during the deliberations. So I'd just ask if you'd stick around for five or 10 minutes just to make sure we don't have a problem with any of the regular jurors. Sometimes, we do. And, after that, you're free to go.

I don't know about the other trial.

Do they have enough jurors for that?

THE CLERK: Yes.

THE COURT: Okay.

THE CLERK: No. I'm sorry, Your Honor. She did ask if they could be sent down and be part of that.

THE COURT: So in just about 10 minutes or so, you can go back downstairs.

Thank you for your service.

You gave us the peace of mind to know we could finish the case if something did happen.

If y'all will just put them in a separate room for about 10 minutes. And don't forget about them.

THE BAILIFF: Yes, sir.

(WHEREUPON, the alternate jurors exited the courtroom.)

THE COURT: All right. Is there any objection to the charge from the State?

MR. WALLACE: None from the State, Your Honor.

THE COURT: From the Defense?

MR. KORNFELD: None from the Defense.

THE COURT: Y'all confer about the exhibits and make sure everything's in order before they go back.

(WHEREUPON, the proceedings were recessed at approximately 10:38 a.m.)

QUESTION FROM THE JURY

THE COURT: We have a note from the jury. They just want to view the two disks. They're waiting to do that.

MR. WALLACE: Do they have a DVD player back there?

THE BAILIFF: No.

MR. WALLACE: Yes, Judge. We can provide a TV set with a DVD player.

THE COURT: Well, why don't we bring the Foreman out and ask them if they want to do it in here or back there.

THE BAILIFF: You want to bring the Foreman out?

THE COURT: Yes.

MR. WALLACE: That limits their ability to discuss it and view it. I would ask that they have the ample time they need to review the videos.

THE COURT: Well, we'll find out what exactly they want to do.

(WHEREUPON, Juror #71, Donald Godbey, entered the courtroom.)

THE COURT: Yes, sir. We can let you watch it in here again, or we can find some way to get a player back

there so y'all can have it back there and view it at your leisure.

Do you have any idea what the will of the jury would be on that?

JUROR #71, DONALD GODBEY: I think they'd prefer to see it back there.

THE COURT: Okay. That's fine.

JUROR #71, DONALD GODBEY: All right.

THE COURT: We'll make that possible.

JUROR #71, DONALD GODBEY: All right.

THE COURT: Thank you.

(WHEREUPON, Juror #71, Donald Godbey, exited the courtroom.)

THE COURT: Mr. Wallace.

MR. WALLACE: Okay. Your Honor, we'll do that.

THE COURT: Have you got -- are you going to bring the player in here?

MR. WALLACE: If we don't have one over here in the Court area, then we can bring one from the Solicitor's Office.

THE BAILIFF: Would it be possible for them to look at it on a laptop, sir? I don't know if that's enough definition. I'm just --

THE COURT: I don't know who's got what.

MR. WALLACE: I guess the only issue there would be

if there's Internet access or not.

THE COURT: Yes.

MR. WALLACE: That's why I was thinking that we don't want them looking up stuff on the Internet.

THE COURT: Okay.

(WHEREUPON, Court's Exhibit No. 1 was marked for identification and admitted into evidence.)

(WHEREUPON, the proceedings were recessed.)

THE COURT: I understand we have a verdict.

Anything before we bring the jury in?

MR. WALLACE: Nothing from the State, Your Honor.

MR. KORNFELD: Nothing from the Defense.

THE COURT: All right. Yes, sir. Bring the jury in.

(WHEREUPON, the jury came into open court at approximately 1:28 p.m.)

THE COURT: Mr. Foreman, has the jury reached a unanimous verdict, sir?

JUROR #71, DONALD GODBEY: Yes, we have.

THE COURT: If you'd hand the verdict to the bailiff, we'll receive it and publish it.

All right. Yes, ma'am.

VERDICT

THE CLERK: Thank you, Your Honor.

Your Honor, this is case number 2012-GS-23-6511 and 6513. As to the charge of burglary first degree, we, the

jury, unanimously find the Defendant, Furman E. Taylor, Jr., guilty.

As to the charge of petit larceny we, the jury, unanimously find the Defendant, Furman E. Taylor, Jr., guilty, signed the Foreperson, Donald Godbey.

If this is the verdict that you reached in the jury room and it is your verdict now, please, raise your right hand.

(WHEREUPON, all jurors raised their hands.)

THE CLERK: Thank you.

THE COURT: Any motions or matters before the jury is discharged?

MR. WALLACE: Nothing from the State.

MR. KORNFELD: Nothing before the jury is discharged, Your Honor.

THE COURT: Do you wish to have the jury polled?

MR. KORNFELD: No, Your Honor.

THE COURT: Ladies and gentlemen, thank you for your service.

We still have other cases that are on the docket.

So they just -- they just need to call back after 6:00?

THE CLERK: Yes, sir.

THE COURT: And they'll give you further instructions about the rest of the week.

Have a good afternoon.

(WHEREUPON, the jury was excused from open court at approximately 1:31 p.m.)

THE COURT: All right. Any motions at this stage?

MR. WALLACE: Nothing from the State.

THE COURT: Yes, sir.

MOTIONS

MR. KORNFELD: Your Honor, yes.

My first motion is to -- a motion for a new trial on the basis that the evidence that was had -- specifically, Amanda Caldwell's statements were so contradictory throughout the testimony that it was to the point of unbelievableness [sic], and that no reasonable jury could have come back with a verdict of not guilty.

THE COURT: I respectfully deny the motion.

MR. KORNFELD: And my other motions are the same as they have been before, just to preserve them for the record.

THE COURT: Okay. And I'll incorporate all your previous arguments, Mr. Kornfeld, and deny your motions.

MR. KORNFELD: And I'm going to be protected if I don't put these on the record again?

THE COURT: Go ahead. Whatever you feel you need to do.

MR. KORNFELD: Well, I want to -- I just want to make

sure I'm protected on any of those other motions -- that he's protected, I guess, for his other motions. But if you say I'm protected, I guess I don't have to.

THE COURT: Well, to the extent I can protect you from any error preservation issues, all previous motions you've made, if they need to be renewed, I consider them to be renewed at this time.

That's your intent; right?

MR. KORNFELD: Yes, Your Honor.

THE COURT: And any grounds underlying the motions are similarly renewed and respectfully denied. And that includes arguments and motions you may have made before trial, during trial, after the State's case, and at any other point.

MR. KORNFELD: Thank you, Your Honor.

MR. WALLACE: Thank you, Your Honor.

THE COURT: I don't know if any of the jurors --

THE BAILIFF: I think she's checking right now. If you can give them one minute.

THE COURT: I'll see if they're going to come in here before we do the sentencing.

(Pause.)

THE COURT: Yes, sir, Mr. Wallace.

MR. WALLACE: Thank you, Your Honor.

You've heard all the facts of the case during the

trial. I'd like to go ahead and put the Defendant's prior record on the record at this time.

THE COURT: Yes, sir.

MR. WALLACE: Your Honor, his convictions are 1985, shoplifting; 1991, carrying of a pistol two counts, another shoplifting, assault and battery; 1992, simple possession of marijuana; 1992, burglary first degree three counts, burglary second degree two counts, attempted burglary, shoplifting; 1993, probation revocation; 2005, shoplifting, burglary second degree; 2009, criminal domestic violence, grand larceny, driving under suspension, assault with intent to kill, failure to stop, and another probation revocation.

THE COURT: All right, sir.

MR. WALLACE: Your Honor, back on August the 7th of 2014, we served the Defendant and his attorney with notice of intent to seek life without parole in this case.

THE COURT: Mr. Kornfeld.

MR. KORNFELD: To the extent of his record, I don't know if there is a dispute of all those charges for my client. If it is material, I may need to talk with him for a minute.

As far as the LWOP notice, I don't think it is disputed that he was served with the LWOP previously with his previous attorney at his previous trial.

On the other hand, he tells me now that he was not served for this trial. So to the point that that's material to any legal procedure, I would just like to put that on the record. I did receive additional discovery with the notice of LWOP.

THE COURT: Thank you.

MR. KORNFELD: And, also, Your Honor, as far as the two prior burglaries in 2003, I did not have time -- or in 1993 that were used in these charges, the -- I guess under the three strikes rule or two previous, Mr. Taylor tells me that he was sentenced on both of those at the same time. And that he was instructed that that would be one strike for both of those, instead of two strikes. Again, I don't have the transcript from 1993, or when that was. But those are my other arguments.

THE COURT: Well, that would be peculiar because there was not a two strikes law at that time.

MR. KORNFELD: Again, this is -- I don't know if that would change the analysis from the Judge's point of view if he was -- if those charges were not considered under the statute that we are under now, thereby, not being a strike or not.

That would be Mr. Taylor's argument, Your Honor.

THE COURT: Okay. I understand.

May I see the notice?

MR. WALLACE: Yes, Your Honor.

THE COURT: Well, I understand your argument. I don't know how it could be material because it is indisputably a most serious offense. So this will be another conviction for a most serious offense, which would trigger the life without parole of 17-25-45.

Okay. Anything further from the State?

MR. WALLACE: Nothing from the State.

THE COURT: Mr. Taylor, anything you'd like to say, sir?

DEFENDANT TAYLOR: I would just like a retrial. That's the only thing I can say. Because I really -- I'm not guilty of these charges. I don't want to take them, but I don't have a choice at the moment.

SENTENCE

THE COURT: All right, sir. The sentence of the Court is you be committed to life in prison based on 17-25-45 on the burglary first.

And the petit larceny, the --

What's -- is that a 30-day maximum?

MR. WALLACE: Yes, Your Honor.

THE COURT: 30 days concurrent.

All right. Good luck, sir.

How long has he been in custody? When did he go into custody?

MR. KORNFELD: Since June of 2012, I believe.

DEFENDANT TAYLOR: Yes, sir.

MR. KORNFELD: When he was first arrested.

THE COURT: All right. Thank you.

**********END OF TRANSCRIPT OF RECORD**********

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 5th, 6yh, and 7th days of January, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 4, 2015

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FURMAN EUGENE TAYLOR,

APPELLANT

APPELLATE CASE NO. 2015-000066

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying the motion for a directed verdict to the charges of burglary in the first degree and petit larceny when the State failed to present any substantial evidence beyond a reasonable doubt that appellant participated in the crimes?

STATEMENT OF THE CASE

Appellant was convicted of burglary in the first degree and petit larceny after a jury trial held before the Honorable D. Garrison Hill on January 5-7, 2015, in Greenville County. Appellant was sentenced to life imprisonment for burglary and to 30 days for petit larceny. Alex Kornfield, Esq. was trial counsel. Matthew L. Wallace, Esq. was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in denying the motion for a directed verdict to the charges of burglary in the first degree and petit larceny because the State failed to present any substantial evidence beyond a reasonable doubt that appellant participated in the crimes.

Appellant was accused of committing a burglary and petit larceny with a co-defendant, Amanda Caldwell, at a residence off White House Road in Greenville County on May 19, 2012. Renna Taylor who lived at the residence testified that she was out of town visiting friends. She said there was a horseshoe driveway in front of the house. There was a main front door and a side door. She called T.R. Perry to come pick up the trash while she was gone. When she got to North Carolina, T.R. called her and asked if she knew anybody with a blue and white van. She said, no. He asked her if anybody was supposed to be at her house. She said, no. He said a man and a woman were coming out of her door and the man had a bag in his hand. She called the sheriff's office and headed back home. When she got home T.R. and his brother were there along with an officer. She noticed a storm door on the small back porch was pried open. She then saw that the door that leads into the kitchen was pried open and split and glass was broken out. (Tr. p. 62, l. 4- p. 67, l. 10)

T.R. Perry testified that a male and female came running out of the house but he did not get a good look at them. (Tr. p. 89, l. 7- p. 91, l. 1) He did not get a license plate number for the van. (Tr. 95, l. 16-18) The police showed him photo line-ups but he could not pick out either a male or female. (Tr. p. 96, l. 5-10)

David Perry, T.R.'s brother, testified that he also saw a male and female exit the house but he, too, did not get a good look at them. (Tr. p. 124, l. 2- p. 125, l. 18)

Officer Kretschman testified that he was in forensics. He went to the house and dusted for prints but was not able to remove any. (Tr. p. 134, l. 15- p. 135, l. 18)

After the State presented all of its evidence, defense counsel moved for a directed verdict to the charges because the State failed to prove beyond a reasonable doubt the identity of the male that was seen leaving the house. The trial court denied the motion. (Tr. p. 256, l. 10- p. 257, l. 20) That ruling was in error. Due process as guaranteed by the Fourteenth Amendment requires "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

> [T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is "sufficient to raise a strong suspicion of the guilt of the accused" is not sufficient to constitute "any evidence form which the guilt of the accused may be fairly and logically deduced." State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted,

therefore, "where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused's guilt." State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974). "If the evidence is consistent with both innocence and guilt it cannot support a conviction." United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir 1971). Guilt is only to be found when there is a "rationally supportable state of near certitude." Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir 1994).

In this case, neither T.R. Perry nor David Perry could identify appellant as the male leaving the house. The only person to implicate appellant was Amanda Caldwell who was the female at the scene by her own admission. Her testimony implicating appellant was not credible.

CONCLUSION

A directed verdict should be granted to the charges of first degree burglary and petit larceny.

Respectfully submitted,

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of July, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
D. Garrison Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FURMAN EUGENE TAYLOR,

APPELLANT

APPELLATE CASE NO. 2015-000066

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Furman Eugene Taylor Jr.states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge D. Garrison Hill, which was held on January 5-7, 2015, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Furman Eugene TaylorJr..

Respectfully submitted,

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of July, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FURMAN EUGENE TAYLOR,

APPELLANT

APPELLATE CASE NO. 2015-000066

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) Trial Transcript
(2) Indictment

I certify that this designation contains no matter which is irrelevant to this appeal.

July 1st, 2015

Robert M. Pachak
Appellate Defender

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Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 1, 2015

Robert M. Pachak

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
D. Garrison Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FURMAN EUGENE TAYLOR,

APPELLANT

APPELLATE CASE NO. 2015-000066

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Furman Eugene Taylor, Jr., #198161 at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 1st day of July, 2015.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of July, 2015.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

RECEIVED
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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
D. Garrison Hill, Circuit Court Judge

THE STATE,

Respondent,

V.

FURMAN EUGENE TAYLOR,

APPELLANT.

APPELLANT CASE NO. 2015-000066

WRITTEN MEMORANDUM OF LAW

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APPELLANT

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Rules:

S.C.R. Crim. P. 3(c); Rule 5

S.C.R. evid. 403; 404(b); 901; 1003

Federal Practice and Procedure §5250

Statement of Issues on Appeal

1.) Did the trial court err by not quashing/dismissing indictments since the prosecution took 304 days to present them to the Grand Jury without ever seeking any extention?

2.) Was the accused denied a fair trial due to the excessive amount of time it the prosecution to bring it to court?

3.) Because of these undue delays was the accused prejudiced in his ability to obtain exculpatory evidence in his favor?

4.) Did these delays result from Bad faith actions by the prosecution?

5.) Was the States witness, Amanda Caldwell, coerced, threatened, or intimidated to testify as she did?

6.) Does the Statue S.C. code Ann. §16-11-311(A)(2) Contraven the well-established rule that evidence that an accused has committed other crimes is not admissible in the prosecution for the crime charged?

7.) Is Statue §16-11-311(A)(2) Unconstitutional?

Statement of Issues on Appeal (cont.)

8.) Did the accused receive a fair trial after evidence of prior convictions of the same "name" and "nature" as the crime charged presented and published to the jury as exhibits?

9.) Was it improper and prejudicial to bring this evidence into play in the presents of the jury without any meaningful balancing test being performed first outside the presents of the jury?

10.) When the defense gave a stipulation to the prior crimes did it not trigger an obligation for the court to eliminate the "name" and "nature" of the prior offenses from the case?

11.) Was the accused prejudiced by a "Mug Shot" being produced and published to the jury as an exhibit?

Statement of Issues on Appeal (Cont.)

12.) When the "Mug Shot" was produced by Captain Jinny Moran of the records division was it not highly prejudicial when she stated "I pulled the most recent photo?"

13.) Would not a sophisticated juror have deduced by and/or infered from such a statement as "most recent photo" when referring to the "Mug Shot" that the accused had a prior record?

14.) Was it improper and prejudicial not to perform a meaningful balancing test prior to producing this evidence in the presents of the jury?

15.) Was the video a duplicate?

16.) Did the video include what was purported by the investigator who impaanded it claimed?

17.) Was the duplicate video unfair to admit in lieu of the original?

Statement of Issues on Appeal (Cont:)

18.) Why was the video(s) not produced at the first trial if they were so probative?

19.) Was exculpatory evidence intentionally withheld by way of duplicate being produced rather than the original with enough elapsed time to prevent the original from being obtained by the accused?

20.) Why was the video held for two weeks by the investigator?

21.) Why did the investigator take other actions than the ones he described as proper to the Chain of Custody?

22.) Why did the investigator take the video to his office prior to initiating the digital Chain of Custody?

23.) Why would the proponent claim to the court that this video was an original when the investigator whom impounded it said it was a copy from when he first got it?

Statement of Issues on Appeal (cont.)

24.) Why would the investigator claim the video(s) contained something they clearly did not?

25.) Was it an abuse of discretion to allow Ms. Bennick to testify to authenticate the video without knowledge of what was on the video(s) or even how long Mashak had them before bringing them to property and evidence?

26.) What would be the use of any testimony from Ms. Bennick other than to confuse the jury and/or try to obtain a conviction based on an improper basis?

27.) Was it an abuse of discretion to admit a duplicate into evidence when it was clearly unfair to the accused in lieu of the original?

28.) Did the prosecution elicit false testimony at trial knowingly?

Statement of the Case

On June 04, 2012, appallent was arrested and charged for Burglary first degree; indictment no. 2012-GS-23-6511, and Petit Larceny; indictment no. 2012-GS-23-6513. A trial by jury was held on February 11th and 14th, 2014, before the Honorable R. Knox Mcmahon. Appellant was represented by Rob Ianuario, esq. Mark Mayer was the attorney for the State. Trial resulted in a hung jury. Appellant was again tried by jury before the Honorable D. Garrison Hill, on January 5th, 6th, and 7th. Alex Kornfeld (esq) represented appellant. Attornel for the State was Matthew Wallace. Appellant was found guilty of Burglary in the first degree and Petit Larceny and sentenced pursuant to 17-25-45 to Life without the possibility of parole. Appellant's attorney defected notice of appeal.

(X)

Question

Did the trial court error by not quashing/dismissing indictments and denying appellant a fair trial when undue delays by the prosecution impaired his ability to obtain and present favorable evidence at trial?

Discussion

At trial appellants attorney, Mr. Kornfeld, moved to have both indictments dismissed because the prosecution failed to get and/or request any extention before seeking to indict. (Transcript pg.5, Lines 18-25, all pg.6, and pg.7, Lines 1-4) Mr. Kornfeld cited, State V. Culbreth, and State V. Edwards, to distingish the legislative intent of his argument. However, Kornfeld relied on current case authority of State V. Langford to support his argument.

The State position was that (S.C.R. Crim.P.) Rule 3(c) is purely administrative and that the States attorney, Mr. Wallace, was not the Solicitor at the time appellant was indicted and tried previously, it still was not enough to quash the indictments and dismiss the Charges. (Trans. pg.7, Line 7-25, and pg.8, Lines 1-21)

The trial court denied Mr. Homfelds motion Stating that he understood the basis for it's but did not think the rule or case law cited would Warrant quashing or dismissing the indictments at this Stage. (Trans. pg8, Lines 22-25)

LAW ANALYSIS

In Langford the S.C. Supreme Court reluctantly agreed that the prosecutor having exclusive Control over the trial docket unconstitutional and violated the Separation of powers doctrine S.C. Constitution Art. I §8; S.C. Code ann. §14-1-80; S.C. Juris Const. Law §31, and §102; S.C. Jur Assembly §2, Division of Branches of State governments Separation of powers. 33 S.C.L. Rev. 25, August 1981. The degree to which a Legislative body must Specify it's policies and Standards in order that the administrative authority granted may not be an unconstitutional delegation of it's own Legislative power is not capable of precise definition. A Statue which in effect reposes an absolute unregulated and undefined discretion in one administrative body bestows arbitrary powers and is an unlawful delegation of legislative powers. (Constitutional Law Key 2406)

Pursuant to the provisions of S.C. Const. Art. V § 4, and in furtherance of the Supreme Court's decision in State v. Langford, an order was published on February 04, 2013, addressing how cases in General Sessions Court shall proceed. The point within this order directly related to this case reads in relevant part:[9]

> If the Solicitor has not filed a notice of Court docketing in accordance with paragraph (b) (1) above for any case more than (1) one year beyond it's assigned track, it will automatically transfer to the judicial docket which the clerk shall maintain separate and apart from the regular Court docket. The CJAP will administer and supervise the judicial docket. The Solicitor will notify the clerk within (15) fifteen days after expiration of this period of time of all cases that are in this category and furnish the following information; (1) Indictment number; (2) Defendants name (3) Date of arrest; (4) assigned assistant Solicitor; (5) Defense counsel; (6) Date of indictment; (7) Track expiration date; (8) prior request(s) for continuances. The clerk will maintain

the judicial docket which will include this information. (CVU) February 4, 2013.[1]

In this case the prosecution took approximately (304) three hundred and four days after Taylor was arrested to present his indictments to the Grand Jury without seeking any extention pursuant to State procedural rule of criminal process 3(c). Even if Solicitor Wallace avers this issue is an administrative procedure, he failed to produce any waiver orders to meet this requirement. Instead Wallace relied on the Mistrial of February 14, 2014, and him not being the prosecuting attorney in the first trial to justify his position thereby giving the appearance of not having knowledge of the case until he was assigned. Yet the record is silent as to when he came on board with this case as well as whether or not he was within the solicitors office at the time

[1] Appellant will have this court know that Langford was pending in the State Supreme Court when he was arrested on June 04, 2012. And, appellant indictment(s) was True Billed on April 23, 2013, 2 months after this order came into effect.

When the previous solicitor, Mr. Mark Mayer, handled the first case and/or trial. The U.S. Supreme Court has an established rule that the actions of one solicitor in office binds all Solicitors in office. Santobello V. New York. 404 U.S. 257; 92 S.Ct 495.

Moreover, Taylor suffered substantial and actual prejudice of a denial of a fair trial due to pre-indictment delay because before the first trial request were made to obtain and inspect the copy of the MAY 19, 2012, Video(s) from the Cash America pawnshops that investigator MASHAK turned over to the chain of Custody of property and evidence division some(14) fourteen days after obtaining/impounding it. (Trans. pg. 209, Lines 1-3 and 21-23, pg. 211, Lines 4-13.)

There was a question as to the genuineness of the video(s) authenticity and being what the proponent claimed it contained at trial. Investigator Mashak testified and stated that he got a copy of the video(s) from the pawnshops depicting the Co-defendant, Amanda Caldwell, from the time she entered the pawnshop(s) until the time she and Taylor exited the pawnshop.

(Trans. pg. 209, Lines 21-25, pg 210 thru pg 214, and pg 233)
The trial Courts interpretation of Kornfeld's argument concerning whether the genuineness of the video(s) is the original or a doctored-up version that excludes favorable evidence to help appellant rebut the States theory of the case was objectionably unreasonable in Light of the whole record and the evidence before it. The record is clear that the video(s) introduced at trial given to Ms. Bennick a duplicate of the deplicated original. Without this video, Amanda Caldwell's testimony and Ms. Bennick's testimony without knowledge since she never even viewed the video to authenticate it, there is no witnesses or evidence linking appellant to the crime charged. Thus, despite appellants efforts to obtain the original video from the pawnshop before it's destruction before the first trial and the duplicated video(s) that does not show her (Amanda Caldwell) entering the pawnshop, being the only evidence, and what was used at the second trial which was never mentioned at the first trial was

an intentional devise to gain a tactical advantage over the appellant and the unjustifiable reason for the pre-indictment delay which violates "fundamental conceptions of justice" or the communities Sense of fair play and decency. Howell V. Barker, 904 F.2d at 895 (4th Cir. 1990); Citing United States V. Automated Medical Laboratories, 770 F2d 339 (4th Cir. 1985) Hence, the trial court made an error of law for not quashing/dismissing the indictment(s) pursuant to the State Supreme Court order in Langford V. State. The trial decision was made on an unreasonable application of State law and the Supreme Court's order without inquiry into the governments action after a substantial delay of more than (10) ten months before presentment of the indictment(s) and approximately (10) ten months before the first trial and another (11) eleven months delay before second trial. Thus, denying the appellant of a constitutionally guaranteed right to a fast and Speedy trial.

Question

Did the trial court abuse it's discretion for not performing a balancing test on three highly prejudicial pieces of evidence introduced by the government on an improper basis to give a tactical advantage over appellant and deny him due process of law and a fair trial?

I

During pre-trial, Kornfeld moved to exclude prior bad acts. (Trans. pg. 9, Lines 2-5) He avers that the statue itself circumvents the judges ability to do a 403 analysis on whether or not it would be unduly prejudicial to appellant. (Trans. pg. 11, Lines 6-24) Kornfeld renewed his motion at the conclusion of the trial claiming the element of two prior burglary first being known by a jury at any time is in itself prejudicial and it handcuffs the court of it's ability to do a 403 balancing test. (Trans. pg. 268, Lines 3-7; pg. 109 thru 116, Line 14; pg. 117 thru 118, Line 10) The States position was pursuant to State V. James, S.C. court of appeals decision that allowing prior burglary convictions in to prove element of

first degree burglary. (Trans. pg. 9 Lines 7-25, and pg. 10 thru 11, Lines 1-3) The trial Court ruled in favor of the States position relying on the case raised by the State. (Trans. pg 12, Lines 9-13)

At the conclusion of the States presentation of it's case in chief, Mr. Kornfeld moved to have both indictments dismissed because of no Competent evidence. (Trans. pg. 256, Line 10 thru pg. 257, Line 20) The court performed a colloquy with the appellant to ensure he understood his right to testify and how his prior convictions maybe used for impeachment purposes only. (Trans. pg 259 thru pg. 266[1]) Kornfeld objected to

[1] The court expressed unease in relations to the statutory elements of two prior burglary first Convictions probative value already stipulated to outweighing it's prejudicial effect "not by much" because the jury had already heard about prior Convictions without assessing appellants credibility which was highly prejudicial when no 403 analysis or balancing test was done. (Trans. pg 265, Lines 6-25; pg. 266, Lines 1-3) or when the Legislative intent of the statue infringes upon a constitutionally protected right to fundamental fairness. Us. Const. V, XIV, and S.C. Constitution.

allowing any of appellants prior record to be known by the jury and to come into evidence (Trans. pg. 269 Lines 1-4)

Discussion

Is the Statue §16-11-311(A)(2) Constitutional?

In State V. Hamilton, 486 SE2d 512 (1997) The fourth Circuit court of appeals held that the defendant's offer to stipulate to or admit to the prior convictions triggers an obligation of the court to eliminate the "name" and "nature" of the offense from the case. Citing: United States V. Poore, 594 F.2d 39, 40-43 (4th Cir.) The Hamilton court also said that a cogent argument can be made that the Statue §16-11-311(A)(2) contravenes the well established rule that an accused has committed other crimes is not admissible in the prosecution for the crime charged. Rule 404(b) S.C.R.E.; State V. Gregory, 191 S.C. 212; 4 SE2d 1; State V. Williams, 31 S.C. 1 (2 Rich) 418.

The recognition that the prosecution with it's burden of persuasion need evidentiary depth to tell a continuous story has however virtually no application in this case when the point

at issue is a defendant's Legal Status dependant on some judgement rendered wholly independant of concrete events of later criminal behavior Charged against him. Merritt V. Grant, 285 S.E. 150; 328 SE 2d 346.
For the purpose of determining whether Challenged evidence is unduly prejudicial, prejudice that is unfair is distinguished from the legitimate impact all evidence has on the outcome of a case; unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence but rather refers to evidence which tends to suggest a decision on an improper basis. Rule 403 SCRE; State V. Lee 319 S.C. 521; 732 SE 2d 225. Like probative value unfair prejudice should be evaluated in the practical context of the issues at Stake in the trial of the case. 403 SCRE.. The Hamilton Court did not address the Constitutionality of S.C. Code ann. §16-11-311(A)(2) as Stated in State V. James, 583 SE 2d 745. However, the Statue is in direct conflict with rule 403 because proof of another Substantive crime is never admissible unless there is some legal connection between the

two upon which it can be said that one tends to establish the other or some essential fact in issue. State V. Gregory, 191 SC. 212; 4 SE2d 1.

Finally, the trial judge has no discretion as to whether or not to engage in the balancing process since balancing under 403 is an inherent part of admissibility under 404(b) and his duty to weigh the countervailing factors is automatically invoked under rule 403. His refusal to engage in the balancing process because of State statutory language or requirement and/or the ambiguous interpretations there of may subject his decision to reversal. Federal Practice and Procedure §5250. Thus, §16-11-311(A)(2) is unconstitutional.

Argument

There can be no escaping the prosecutions use of appellants prior "burglary first degree" conviction indictments to suggest a decision on an improper basis in this case because there is no legal connection between the prior convictions and the crime charged except the "name" and "nature" of the crime. Which surely may have confused the jury when the trial court

instructed them not to consider his prior convictions in determining guilt or innocence when the jury had already seen evidence that may have excited improper inferences to find appellant guilty. Old Chief V. United States. 519 U.S. 172; 117 S.Ct. 644. It is quiet possible that a sophisticated juror who has above average knowledge of the Legal process may have considered these indictments as positive evidence of appellants bad character and guilt. The sum of this and erroneous bolstering of the prior burglary "first" convictions under the guise of a statutory requirement that circumvents a well established procedural rule in a trial revolving essentially on the credibility of Amanda Caldwell who repeatedly changed her story and investigator Meshak who admitted to turning a duplicate video into property and evidence some (14) fourteen days after taking possession of it is highly prejudicial to the defendant requiring a new trial.

II

During trial the State introduced Ms. Jinny Moran a public safety record manager who

Was Subpeonaed to come to Court and Supply a "Mug Shot" photograph of appellant. (Trans. pg. 139 thru 143, Lines 1-2.) Ms. Moran testified that she pulled appellants "most recent" photo explaining the process of how the forms are dated as well as certification procedure. (Trans. pg. 141, Lines 3 thru pg. 142, Line 21) There is no mention of this "Mug Shot" during any other part of the trial. However, this "Mug Shot" was introduced for identification. (Trans. pg. 142, Line 22 thru pg. 143, Line 2)

LAW ANALYSIS

Photographs pose a danger of unfair prejudice when they have an undue tendency to suggest a decision based on an improper basis, commonly though not necessarily an emotional one. Rule 403; State v. Lee, 319 SC 521; 732 SE 2d 225. The trial Court must exercise it's discretion bearing in mind the purpose of the evidence to rebut improper motivation or bias because it is always possible that a jury might improperly infer from the evidence the guilt of the accused. Reversal is required because of improper Characterization of the burden of proof. State v. Patrick, 345 SE 2d 481; also see State v. Tate,

288 S.C. 104; 341 SE2d 380. Applying test in determining the admissibility of a photograph of the accused.

In the instant case, the introduction of appellant's "Mug Shot" was improper because Ms. Moran made the suggestion that this "Mug Shot" was appellants "most recent", which likely excited the jury to infer that appellant had a criminal history and may have shifted the burden of proof on appellant to rebut this notion. This infringed upon his Constitutional right not to testify and risk Loosing his liberty without the trial Court balancing the prejudicial effect of an unnecessary "Mug Shot" when the testimony of Amanda Caldwell and the video used by the the State to prove that appellant was with Caldwell at the Cash America pawnshop Could have satisfied the identification requirement without encouraging the jury to make improper inferences linking him to the Crime. Especially when no other mention of this "Mug Shot" was made through out the trial. This erroneous bolstering of Amanda Caldwell's and investigator Mashak's credibility in a

trial revolving essentially on credibility is prejudicial to the appellant requiring a new trial.

III

At pre-trial, Kornfeld moved to have the video(s) that was retrieved from Cash America pawnshop(s) by investigator Mashak be excluded because there is footage beneficial to appellant that was not shown pursuant to Kyles V. Whitley (Trans. pg. 39 thru pg. 46, Line 21) A Spoliation (expand) Charge was also requested because appellant believed investigator Mashak intentionally narrowed the video down to exclude the fact that Amanda Caldwell called the appellant there to jump the car off for the man she had came to the pawnshop with.

The States position is that they provided all of the video that was turned over to property and evidence by investigator Mashak depicting Co-defendant, Amanda Caldwell, just prior to her showing up at the counter to

pawn the goods and then her leaving which complied with that discovery request for the extended version. (Trans. pg. 40, Lines 15-25 thru pg. 42, Lines 1-15; pg. 45, Lines 14-25) Mr. Wallace also gave reference to the length of the videos in question to be approximately 16 minutes Long. (Trans. pg 44, Line 5) First Video 6 minutes (line 4)

The trial Court denied Kornfeld's motion Claiming that due to the discovery rule or cases, Kornfeld failed to prove that the State had evidence that is not available due to some bad faith on their part or other improper conduct and the State can not control the retention policy of a third party and Ultimately that there is no proof that the State ever had the longer version of a video. (Trans. pg. 45, Lines 1-8) However, the trial Court informed Kornfeld he could renew the motion if after questioning Mashak regarding the extended video Something transpires. (Trans. pg. 46, Lines 12-21)

During trial, the State attempted to authenticate the chain of custody of the video stating that they were the original and not Copies (Trans. pg 232, Lines 9-14. pg 229, Line 9 thru

pg.230, Line 21)

Defense attorney Kornfeld's argument was that a three-prong test was appropriate pursuant to State V. Ivery and Rule 1003 SCRE, a genuine question was raised as to the authenticity of the original, or in the circumstance it would be unfair to submit the duplicate in lieu of the original. Kornfeld renewed his request for a spoliation charge because he felt "that the complete story is not told due to the fact that what he would consider the video that would exonerate the appellant was not taken (Trans. pg. 231, Lines 19-25 thru pg. 232, Lines 1-8) Kornfeld further explains to the court his reasoning and belief that the video is a copy because there was not only video of Amanda Caldwell. The pawn shops had a video running the entire time. (Trans. pg. 232, Lines 15-18) According to investigator Mashak's testimony, he made a copy of that particular part from the time Ms. Caldwell came in until the time she left. (Trans. pg. 232, Lines 18-21.) And for these reasons it's been deduced down so you do not have three hours

of Video. (Trans. pg 232, Lines 22-24)

The trial Court ruled that the issue is whether Ms. Bennick can testify given she was not on the witness list to which he ruled that the defense can demonstrate no prejudice completely overlooking the rule and whether this video should be authenticated by Ms. Bennick after investigator Mashak's testimony and admission showed that the video was a copy and not the original. (Trans. pg. 232, Line 25 thru pg 233, Lines 1-7)

During the presentation of the video before the jury the following Colloquy transpired;

Q. Ms. Caldwell, I've got here State's exhibit nos. 14 and 15, that are in -- that are admitted as identification items. These are video tapes and they involve your case.

A. Yes, sir.

Q. Have you viewed these videos?

A. Yes, sir.

Q. And do they accurately depict the pawn

Shops you went to that day?
A. Yes, Sir.
Mr. Wallace: Your honor at this time I would like to admit these into evidence as State's exhibits nos. 14 and 15, along with the property and evidence sheets, which are State's exhibits nos. 12 and 13.
Court: Alright is there any objection?
Hornfeld: I object to one of the videos, not the other.
(Trans. pg. 242, Line 22 thru pg. 243, Line 20)
While the video is being played this Colloquy transpires;
(Where upon State's exhibit no. 14 was played in open Court.)
Mr. Wallace;
Q. Ms. Caldwell, do you see yourself on the video?
A. Yes, sir. I'm standing right there.
Q. Can you stand up and just point out to the jury where you are on that screen?
A. Right there in the corner.
Q. The upper right corner.

A. Yes.
Q. What are you wearing in that picture?
A. A white tank top.
Q. Okay. Thank you.
A. There's Mr. Taylor
Q. Okay, We're going to keep playing it.
Witness; Okay, there's Mr. Taylor.
Mr. Wallace; Stop it.
By Mr. Wallace;
Q. Is that Mr. Taylor there?
A. Yes.
Q. What is he wearing?
A. A black hat. You can't really make out the symbol, but that's the black Taylor made hat, and a dark shirt with something on the front, and blue jeans.
Q. Okay Ms. Taylor: We're going to show you another video now so just hold on a second and we'll put it back up there.
(Where upon State exhibit no. 15 played in open court.)
Witness: Okay that's me at the desk.
By Mr. Wallace;

Q. All right. Up there in the right hand corner?
A. Yes.
Q. Okay, wearing the same thing you had in the
A. Yes, a white tank top.
Q. What are you doing there at the camera?
A. I'm pawning a DVD player and some jewelry.
Q. Were they the same items that came from this burglary?
A. Yes
Q. Okay, were going to start again. This is going to take about twice as long. So please pay careful attention.
Witness; Okay, that's Mr. Taylor right there.
By Mr. Wallace;
Q. Do you recognize the clothing he's wearing?
A. Yeah. A green, if I'm not mistake John Deer hat, and then a reddish-orange shirt and blue jeans.
Q. Do you know why it's different clothing than before?
A. Because we got seen at the other-at the robberies, and we stopped - I don't know where

we stopped. But we stopped somewhere so he could change.

Q. Ms. Caldwell, have you ever testified to those videos before?

A. No, Sir.

Q. When was the first time you saw those videos?

A. Last Friday.

(Trans. pg. 248 thru 249, Line 20)

At the conclusion of trial, Kornfeld renewed his motion based on Rule 5 and 901. Citing: State V. Gregory Allen Ivery objecting to the video being admitted. (Trans pg. 268, Lines 1-25)

The trial court reaffirmed his rulings to all motions and objections, and conclusions of Law. (Trans. pg. 269, Lines 5-14)

LAW ANALYSIS

The ultimate goal of the chain of Custody requirements for the admission of evidence is simply to ensure that the item is what it is purported to be. State V. Brockmeyer, 406

S.C. 324; 751 SE2d 645 (S.C. 2013): Crim. Law Key 1043.3; Clark V. Cottrell, 339 S.C. 369; 529 SE2d 528: evidence Key 150. With regard to disclosure of exculpatory evidence it necessarily follows that if the omitted evidence creates a reasonable doubt that did not otherwise exist, Constitutional error has been committed. U.S. V. Agurs, 427 U.S. 97 at 112-113; 96 S.Ct. at 2402. The proper standard of materiality must reflect the overriding concern with the justice of the finding of guilt. Such a finding is permissible only if supported by evidence establishing guilt beyond a reasonable doubt.

This means that the omission must be evaluated in the context of the entire record. If there is no reasonable doubt about guilt whether or not the additional evidence is considered, there is no justification for a new trial. On the other hand, if the verdict is already of questionable validity, additional evidence of relative minor importance might be sufficient to create a reasonable doubt. Reversal of a conviction is required only if

the undisclosed evidence is material and the omission deprived the defendant of a fair trial. U.S. V. Agurs, 427 U.S. 97; 96 S.Ct. 2401; State V. Gathers, 295 S.C. 476; 369 SE2d 140. Obligation to guard and enforce every right secured by Federal Constitution rest on State equally with Federal courts. Const. Art I §5, Art 6 §4. U.S. const. V and XIV. Being subjected to a prosecution because an officer withheld exculpatory evidence from prosecution while urging that prosecution should go forward can work a deprivation of due-process. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 5 and 14; Goodwin V. Metts, 885 F.2d 157: Jean V. Collins, 121 S.Ct 771; 119 S.Ct 2016; 221 F.3d 656; State V. Page, 750 SE2d 623.

The trial court must exercise it's discretion bearing in mind the purpose of the evidence to rebut in appropriate circumstances, the appearance of special treatment and improper motivation or bias. It is always possible however, that the jury might improperly infer that the defendant is the source of the threats. So the possible inflammatory consequences of

of such evidence should be a primary concern. The court must consider whether such evidence was in it's totality excessive and likely to excite the jury, encouraging them to make improper inferences linking the defendant to threats against the witness. U.S.V. Melia 691 F.2d 672.

Thus, viewing the dramatic testimony of investigator Mashak who claimed the Cash America pawnshop video of MAY 19, 2012, State's exhibit 14 and 15 that was played before the jury by prosecutor Wallace was the original video obtained by Mashak after he testified that it was from the time Caldwell entered the pawnshop until the time she left and that he made a copy of the video before turning it in to property and evidence was excessive - an abuse of discretion by the government of it's privilege to utilize this potentially violatile video because Mashak also testified that when he secured the video he requested a specific segment to cut down the time and to get to the meat and potatoes

of what he was looking for. instead of three before hand or three hours afterward which is what he and prosecutor Wallace wanted to see (Trans. pg. 227, Lines 8-25 thru pg. 228, Lines 1-8)

Moreover, Wallace's theory of the case hinged exclusively on the video and the testimony of investigator Mashak and Amanda Caldwell to bolster both caldwells credibility because Caldwell gave different statements implicating people other than the appellant for this crime and due to her current charges of which she had already plead guilty to and in exchange for her testimony at appellant first trial and this trial to receive a lenient sentence And because of investigator Mashak's failure to perform his professional duties and his wilful neglect in retrieving the entire video and promptly turning it over to property and evidence. Where other evidence in the record sheds light on Mashak's involvement on investigating Caldwells other crimes before appellant's name surfaced (Trans. pg 223, Line 6 thru 225, Line 13)

Prosecutor Wallace knew that Mr. David Perry originally stated that he did not see any male at the crime scene that his brother (Tandy Perry) had told him one was there. (See Exhibit B-4; B-7; B-8) But he allowed Mr. David Perry to testify to known lies and even interacted with him on the stand to elicit false testimony from him (Trans. pg. 121 thru pg. 127. Line 5) Furthermore, he never asked him about the first three digits that he claimed to have gotten off the suspect vehicle but earlier in the trial he did ask his brother, Tandy Perry, if he had gotten the tag number (Trans. pg. 95. Lines 16-18) to confuse and murk the water in order to prevent the defense counsel from asking this question of the correct witness. (See Exhibit A-3; A5)

Prosecutor Wallace also knew that the Department of Motor Vehicles report listed the vehicle Caldwell claimed to

have shared with the appellant as in fact white in color (see exhibit B-4) It had also been described as white in color by Russell Draughon, Amanda Caldwell's husband. (see exhibit B-1) Which was different from the discription given to Frank Abella who's report depicts a white and blue 90's Aerostar Mini-Van that was in the drive way of Rena Taylor's residence. Where two eyewitness' individual identification neglected to positively identify the appellant. Yet Wallace allowed Caldwell through conflicting testimony to implicate the appellant and herself as the two people that was at Rena Taylor's house that committed the crimes charged.

Wallace also knew that the description given to Frank Abella of the two people that ran from Rena Taylor's residence did not match the appellant's description.

The original description of the male subject was a full beard and grey hair. (See Exhibit A-1; A-2; A-4) No mention of a ponytail or goatee. Only after talking to investigator Mashak did their discription start changing.

Wallace also knew that Amanda Caldwell previously gave inconsistant statements concerning the events of May 19, 2012, At Rena Taylors residence by implicating Tyler Whitman and Katherine Sasser. (Trans. pg. 169, Lines 12-25) As well as her vastly different testimony from the first trial and this trial. Yet, used Caldwell's testimony and pending sentencing to motivate her to point the finger at the appellant who had prior convictions for similar offenses to bolster her credibility of truthfulness while denying any promises made for this testimony. (Transcript pg. 167, Lines 12-18, pg 169, Lines 1-15)

Wallace also knew that the introduction of a "Most recent" "Mug Shot" by Jinny Moran to establish identity of appellant as the person who committed the crime charged was prejudicial and based on an improper motive to prove beyond a reasonable doubt appellant's guilt. It is quite possible that the jury considered these impressive testimonies as positive evidence of appellant's bad character and guilt. These various trial errors prejudiced appellant's ability to establish his case and present the missing video evidence that was vital to proving both his innocence and guarding against proof that the evidence is what it is purported to be and has not been altered in any material respect. U.S. v. Phillips 640 F. 2d 87 (1997), Hinkle v. City of Clarksburg W.VA., 81 F. 3d 416. The sum of this and the concededly erroneous bolstering of the credibility of investigator

Mashak and Amanda Caldwell in a trial revolving essentially on credibility without any balancing test is prejudicial to the appellant requiring a new trial

Conclusion

Appellant moves to have his Conviction vacated/reversed and remanded back to trial Court based upon the facts and evidence presented.

Respectfully Submitted,

Affidavit of Facts

I, FURMAN Taylor, hereby declare, depose and say under the penalty of perjury that the following is true and correct to the best of knowledge and belief that:

1.) That appellant was denied a Fundamentally fair trial due to the unreasonable delay to indict and try his case which resulted in the loss of video evidence that would have exonerated him of these charges.

2.) That the trial court abused its discretion for failing to perform a 403 analysis to determine whether the introduction of two(2) prior Burglary first "indictments to the jury in order to satisfy the statutory element's probative value outweighed it prejudicial effect to appellant's substantial right to a fair trial.

3.) That the statutory element of S.C. Code ann. § 16-11-311(A)(2) is unconstitutional, which is a constitutional question that needs to be addressed by this court.

4.) That the introduction of the "mug shot" was excessive and highly prejudicial without even so much as a 403 analysis being performed.

5.) That the trial court failed to perform a balancing test on the admissibility of State's exhibit no(s) 14 and 15, videos obtained by investigator Mashak from Cash America pawnshops that was viewed, copied and tailored to the increments of time the State wanted to show - not what they claimed and/or purported to show - excluding the evidence that would exonerated appellant amounting to a denial of fundamental fairness and equal protection.

(B-2)

6.) That the prosecutor's use of conflicting testimony of Amanda Caldwell and conduct which contributed to the wilful negligence of investigator Moshak's failure to perform his official duties upon recieving the videos used in court against appellant constituted "foul blows" by Wallace to obtain a victory rather than justice in the case.

7.) Prosecutor Wallace knowingly misrepresented fact or allowed the misrepresentation of facts to obtain a a conviction.

8.) That appellant is merely a layman of the law and has inadequate access to legal materials to fully develope his claims because the institutional law library fails to give any case law outside this 4th Circuit that hampers his ability to precisely present his claims.

9.) The institution also refuses to make any copies of handwritten or inmate generated Legal briefs and/or documentation that restricts their access to the court system.

10.) That each claim is ripe for review in this court.

Further Affiant sayeth not.

Furman Taylor #198161/Rose

Sworn and Subscribed before me this 21st day of September, 2015.

Nancy C Merchant
notary Public

1-23-2023
My Commission expires:

RECEIVED
SEP 24 2015
SC Court of Appeals

Certificate of Service

I, Furman Taylor, hereby certify that on today's date that I placed a copy of initial Brief/written Memorandum of Law, in appellate case no. 2015-000066, postage prepaid, in the hand of the United State's postmasters here at Perry Correctional institution, 430 OAKlawn Rd., Pelzer, S.C. 29669, and addressed to the following;

1.) Mr. Alan Wilson (esq.)
S.C. Attorney General's Office
Post Office Box 11549
Columbia, S.C. 29221

2.) Ms. Jenny Abbott Kitching, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

Furman Taylor #198161/Pro-se

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SEP 21 2015
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S576

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
SEP 24 2015
SC Court of Appeals

Appeal from Greenville County
Court of General Sessions
D. Garrison Hill, Circuit Court Judge

APPELLANT CASE NO. 2015-000166

THE STATE.....RESPONDENT

V.

FURMAN EUGENE TAYLOR.....APPELLANT.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes that the following be included in the record on appeal;

1) VIDEO(S)/ STATE Exhibit NO(S): S-14 and S-15/ reference no(s): 11273682, and 20120174249.

Designation of Matter (continued)

2.) Officer Frank Abella's Incident report 5/19/12, (Exhibit A-1)

3.) Officer Frank Abella's Supplemental report, page 1 of 2; 5/19/12. (Exhibit A-2)

4) Officer Frank Abella's Supplemental report, page 2 of 2; 5/19/12. (Exhibit A-3)

5.) Officer Frank Abella's Sworn testimony from the first trial, February 11, 2014; (Exhibits A-4 and A-5)

6.) Investigator Brady Mashak's Supplemental report; page 4 of 7; 5/24/12. (Exhibit B-1)

7.) Investigator Brady Mashak's Supplemental report; page 5 of 7; 5/24/12. (Exhibit B-2)

8.) Investigator Brady Mashak's Supplemental report; page 6 of 7; 5/24/12. (Exhibit B-3)

9.) Investigator Brady Mashak's Supplemental report; page 2 of 7; 6/04/12. (Exhibit B-4)

10.) Investigator Brady Mashak's Supplemental report; page 5 of 7; 6/04/12. (Exhibit B-5)

11.) Investigator Brady Mashak's Supplemental report; page 6 of 7; 6/04/12. (Exhibit B-6)

Designation of Matter (continued)

12.) Investigator Brody Mashak's Sworn testimony from First trial, February 11, 2014, (Exhibits B-7; B-8; and B-9)

13.) Testimony of Amanda Caldwell from first trial, February 11, 2014, (Exhibit C-1)

14.) Rule 3(c), S.C.R.Crim.P., (Exhibit D-1)

15.) Written Statement by Tandy Perry, (Exhibit E-1)

Exhibit A-1

Ent: elinen 05/26/2012 19:12:23

EC5 05/25/2012-09:24:04

GREENVILLE COUNTY SHERIFF'S OFFICE

Incident Report

Agency I.D. SC0230000 | RTA | 220C, | Case Number 12000072917 | Adult/Juv

EVENT

INCIDENT TYPE	OFFENSE COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
S011 - Burglary	Y	Y	20 - Residence/Home	0
0480 - Larceny: Petit	Y	Y	20 - Residence/Home	0

TYPE VICTIM: ☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Religious Org. ☐ Soc / Public ☐ Other ☐ Unknown ☐ Police Officer

Incident Location(Subdivision, Mill Village, Apartment & Number, Street Name & Number): [redacted] Travelers Rest SC | Closest Intersection: | ZipCode: 29690

Incident Date	Time	To	Date	Time	Weapon Type	Time Arrived	Time Completed	Patrol District
05/19/2012	13:00		05/19/2012	15:00	95	16:09	17:34	10

VICTIM

Complainants Name (Last, first, Middle)	Resident	Race	Sex	Age	Primary Phone	Business Phone	Patrol District
Perry, Tandy Rice	J	W	M	37	[redacted]		10

[redacted] [redacted] Patrol District: 10

Victim's Name (Last, first, Middle)	Victim Relationship To Subject	Resident	Ethnicity	Race	Sex	Age	Primary Phone	Business Phone	Patrol District
Taylor, Renna	RU	J	N	W	F	66			10

[redacted] City [redacted] State [redacted] Zip Code

Visible Injury (Vict 1) ☐ Yes ☒ No Explain: | Complaint of any Non-Visible Injuries ☐ Yes ☒ No

Victim (No.1) Using Alcohol ☐ Yes ☒ No ☐ Unk Drugs ☐ Yes ☒ No ☐ Unk Type:

Two-Man Veh ☐ One Man Veh ☐ Detective/SPLASMT ☐ Other ☐ | ALONE ☐ ASSISTED ☐ | Jurisdiction: -

SUBJECT

☒ Suspect ☐ Runaway ☐ Wanted ☐ Warrant ☐ Arrest ☐ Missing

Subject's Name (Last, First, Middle)	Ethnicity	Race	Sex	Age	Date of Birth	Height	Weight	Hair	Eyes
UNKNOWN	N	W	M	40 to 50		510 to 600	190 to 215	Gry	XXX

Address | SSN

Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.: SHIRT:Black, TROUSERS:Blue Jeans | City | State | Zip Code | Patrol District

Subject (No.1) Using Alcohol ☐ Yes ☐ No ☒ Unk Drugs ☐ Yes ☐ No ☒ Unk Type | Arrested Near Offense Scene ☐ Yes ☐ No Total Arrested 0 | Date/Time of Offense: 05/19/2012 15:00 | Date of Arrest

Arrestee Armed ☐ Yes ☐ No Weapon Type | ☐ Arrested on Current Offense ☐ Cleared By Arrest on Prior Offense

Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority | ☐ On View Arrest ☐ Summoned ☐ Custody

Charge	Warrant Number	Ticket Number

Arrest Location | Gang Affiliation: NG - Not Gang Related

NARRATIVE

I arrived at the incident location in response to a theft.

Jurisdiction of Theft : Primary Jurisdiction | Jurisdiction of Recovery :

VEHICLE

☐ Towed ☐ Stolen ☐ Recovered ☐ Suspect ☐ Victim

Tag Number	State	Year	V.I.N.	Value

Year	Make	Model	Style	Color

Tag Only ☐ | Additional Vehicle description

PROPERTY

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value
Stol		1	Hewlitt Packard		Laptop		500
Stol	26 - Radios/TVs/VCRs	1	Sony		DVD Player		100
Stol	13 - Firearms	1	Colt		.38 revolver		500
Stol	17 - Jewelery/Precious Metals	1	Toy		Watch		350

ADMIN

Subject Identified	Subject Located				
☐ Yes ☒ No	☐ Yes ☒ No	☒ Active ☐ Unfounded	☐ Admin Closed	☐ Arrested Under 18 ☐ Arrested 18 and Over	☐ Ex-Cleared Under 18 ☐ Ex-Cleared 18 and Over

Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest

Reporting Officer(s)	Date	Units/Stat#	Approving Officer	Date	Units/Stat#
ABELLA, FRANK	05/19/2012	B20 / 01259	RHEA, STEVEN	05/19/2012	B03 / 00712
		/	Follow Up Investigation ☒ Yes ☐ No (Other) CSD - Property Crim		/ CGOCO

580

Exhibit A-2

GREENVILLE COUNTY SHERIFF'S OFFICE

Agency I.D. SC0230000 EC5 05/25/2012-09:24:04

Supplemental Report Ent: allnen 05/26/2012 19:12:23

Case Number 12000072917

☐ Original Report ☐ Status Change ☐ Additional Victims ☐ Additional Stolen Property Incident Type S011 - Burglary

☒ Supplemental Report ☐ Other Report ☒ Additional Defendants ☐ Additional Recovered Property Patrol District 10 Page 1 of 2 Pages

I. D. OVERFLOW

☐ Complainant ☐ Victim ☒ Subject #2 ☐ Runaway ☐ Wanted ☐ Arrest ☐ Missing ☐ Jail ☐ Other

Subject's Name (Last, first, Middle)	Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth
UNKNOWN		N	U	W	F	20 to 30	

Address	City	State	Zip Code	Patrol District	Day Phone	Evening Phone

Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.
502 to 505	130 to 150	Bro	XXX	SHIRT:White, TROUSERS:Gray/Blue

☐ Victim No. ____ Visible Injury ☐ Yes ☐ No Complaint of any Non-Visible Injuries ☐ Yes ☐ No Victim Using Alcohol ☐ Yes ☐ No ☐ Unk Two-Man Veh ☐ One Man Veh ☐ ALONE ☐

Explain: Drugs ☐ No ☐ Yes Type: Detective ☐ Other ☐ ASSISTED ☐

Subject No. 2 Using Alcohol ☐ No ☐ Yes ☒ Unk ☐ Arrested on Current Offense

Using Drugs ☐ No ☐ Yes Type: ☒ Unk ☐ Cleared By Arrest on Prior Offense

Arrestee Armed ☐ Yes ☐ No Weapon Type ☐ On View Arrest ☐ Summoned ☐ Custody

Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority

Arrest Location

NARRATIVE

Overflow:

Burglary Information
ENTRY POINT: Side Door, ENTRY METHOD: Break Glass, Forced Door, INSTRUMENT USED: other/Unknown, VICTIM LOCATION: Out of Town, SUSPECT ACTIONS: Ransacks

---

Perry Tandy Rice:Complainant 1

[redacted]

Taylor Renna:Victim 1

[redacted]

UNKNOWN:Subject 1
Subject Types: Suspect

Physical Description
FACIALHAIR:Full Beard

PECULIARITIES: Black baseball cap

Narrative:
Point of Entry: Side door
Method of Entry: Broken glass to access lock

Items Stolen:

-Hewitt Packard Laptop, Red $500
-Sony DVD Player, Black $100
-Colt .38 cal Revolver, Black $500
-Glass jewelry box , Glass $50
-Toy brand wrist watch, Pink, $350
-Pillow case White, $20

Total Value: $1520

PROPERTY

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value

ADMIN

Subject Identified	Subject Located				
☐ Yes ☒ No	☐ Yes ☒ No	☒ Active ☐ Unfounded	☐ Admin Closed	☐ Arrested Under 18 ☐ Arrested 18 and Over	☐ Ex-Cleared Under 18 ☐ Ex-Cleared 18 and Over

Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest

Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
ABELLA, FRANK	05/19/2012	B20 / 01259	RHEA, STEVEN	05/19/2012	B03 / 00712
		/	Follow Up Investigation ☒ Yes ☐ No (Officer) CSD - Property Crl		/ CO000

Exhibit A-3

Agency I.D. SC0230000 · EC5 05/25/2012-09:24:04

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report

Ent: allnen 05/26/2012 19:12:23

Case Number 12000072917

☐ Original Report ☐ Status Change ☐ Additional Victims ☐ Additional Stolen Property Incident Type S011 - Burglary

☒ Supplemental Report ☐ Other Report ☐ Additional Defendants ☐ Additional Recovered Property Patrol District 10 Page 2 of 2 Pages

I. D. OVERFLOW

☐ Complainant ☐ Victim ☐ Subject ☐ Runaway ☐ Wanted ☐ Arrest ☐ Missing ☐ Jail ☐ Other

Subject's Name (Last, First, Middle)	Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth

Address	City	State	Zip Code	Patrol District	Day Phone	Evening Phone

Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.

☐ Victim No. ___ Visible Injury ☐ Yes ☐ No Explain:

Complaint of any Non-Visible Injuries ☐ Yes ☐ No

Victim Using Alcohol ☐ Yes ☐ No ☐ Unk Drugs ☐ No ☐ Yes Type:

Two-Man Veh ☐ One Man Veh ☐ ALONE ☐ Detective ☐ Other ☐ ASSISTED ☐

Subject No. ___ Using Alcohol ☐ No ☐ Yes ☐ Unk Using Drugs ☐ No ☐ Yes Type:

☐ Arrested on Current Offense ☐ Unk ☐ Cleared By Arrest on Prior Offense

Arrestee Armed ☐ Yes ☒ No Weapon Type ☐ On View Arrest ☐ Summoned ☐ Custody

Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority

Arrest Location

NARRATIVE

On my arrival I was met by the listed complainant who advised that he works for the victim. He stated that the victim called him and asked him to take out her trash since she was in North Carolina visiting family. The complainant advised that when he arrived he saw a two-tone white/blue 90's Aerostar mini van parked next to the house. He states that he thought the van may have belonged to one of the victims friends. The complainants daughter Kayley Perry and his brother David Perry were with him. Kayley went to the front door and rang the doorbell. The complainants states that shortly after the two subjects rapidly walked out the side door with there heads down and went straight to their vehicle and left at a high rate of speed down south on Old White Horse Rd towards Greenville. He also stated that the male subject was carrying a white bag.

The complainants brother David states that he remembers the first three of the subjects tag. He said that is either EZI or E2I.

On the side of the house their is a screen door that leads to a laundry room. Beyond that door is a door with glass windows that leads to the house. One of the door glass sections was broken and the door was open. The front door was also open but did not appear to be damaged. I observed several drawers open and a pillow sitting on a bed without a pillow case. There was a small drawer taken out of a end table and placed on the bed that had two .38 cal bullets inside. The firearm was in that drawer.

I had contacted the victim and she was on her way back from North Carolina. When she arrived she stated that she left at 1300. She stated that her house was burglarized in 2007 with the same method of entry. The victim says that she should be able to locate the model and serial number for the laptop and the firearm. She will provide them on follow up.

Forensics Unit 928 Kretschmar responded and processed to scene for latents. I furnished the victim with a victims assistance form.

PROPERTY

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value

ADMIN

Subject Identified	Subject Located				
☐ Yes ☒ No	☐ Yes ☒ No	☒ Active ☐ Admin Closed ☐ Unfounded	☐ Arrested Under 18 ☐ Arrested 18 and Over	☐ Ex-Cleared Under 18 ☐ Ex-Cleared 18 and Over	

Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest

Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
ABELLA, FRANK	05/19/2012	B20 / 01259	RHEA, STEVEN	05/19/2012	B03 / 00712
		/	Follow Up Investigation ☒ Yes ☐ No (other) CSD - Property Crl		/ 00000

582

Exhibit B-1

Agency I.D. SC0230000 EC6 06/03/2012-10:04:41

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report

Ent: dsaunders 06/05/2012 11:08:45

Case Number 12000071214

☐ Original Report ☐ Status Change ☐ Additional Victims ☐ Additional Stolen Property

Incident Type S011 - Burglary

☒ Supplemental Report ☐ Other Report ☐ Additional Defendants ☐ Additional Recovered Property

Patrol District 07 Page 4 of 7 Pages

I. D. OVERFLOW

☐ Complainant ☐ Victim ☐ Subject ☐ Runaway ☐ Wanted ☐ Arrest ☐ Missing ☐ Jail ☐ Other

Subject's Name (Last, first, Middle)	Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth

Address	City	State	Zip Code	Patrol District	Day Phone	Evening Phone
/						

Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.

☐ Victim No. ___ Visible Injury ☐ Yes ☐ No Complaint of any Non-Visible Injuries ☐ Yes ☐ No Victim Using Alcohol ☐ Yes ☐ No ☐ Unk Two-Man Veh ☐ One Man Veh ☐ ALONE ☐

Explain: Drugs ☐ No ☐ Yes Type: Detective ☐ Other ☐ ASSISTED ☐

Subject No. ___ Using Alcohol ☐ No ☐ Yes ☐ Unk ☐ Arrested on Current Offense

Using Drugs ☐ No ☐ Yes Type: ☐ Unk ☐ Cleared By Arrest on Prior Offense

Arrestee Armed ☐ Yes ☒ No Weapon Type ☐ On View Arrest ☐ Summoned ☐ Custody

Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority

Arrest Location Gang Affiliation: NG - Not Gang Related

NARRATIVE

AT 1545 HOURS I RESPONDED TO THE INCIDENT LOCATION AND ADVISED McCORMICK OF THE SITUATION.

ON 5/21/12 AT 0856 HOURS I RECEIVED AN EMAIL FROM LEADS-ON-LINE ADVISING THAT I HAD "HITS" IN REFERENCE TO MY SAVED SEARCHES. I PULLED THESE UP AND OBSERVED THAT THE SERIAL NUMBER OF THE CAMERA THAT WAS STOLEN WAS PAWNED BY SUBJECT CALDWELL ON 5/19/12 AT 1159 HOURS. THIS WAS SOLD AT CASH AMERICA PAWN OF GREENVILLE #1 LOCATED AT 3 FARRS BRIDGE ROAD. I THEN SEARCHED CALDWELL'S NAME AND OBSERVED OTHER ITEMS WHICH SHE HAS SOLD. ONE ITEM IN PARTICULAR WAS A GOLD SEIKO WATCH WHICH WAS SOLD ON 5/16/12 AT 1411 HOURS. THIS WAS DURING THE INCIDENT DATE AND TIMES. I ALSO RECEIVED A "HIT" FOR RILEY. I PULLED THIS INFORMATION UP AND OBSERVED SHE HAD SOLD 3 RINGS AT FIRST CASH PAWN #107 LOCATED AT 3235 AUGUSTA STREET ON 5/19/12.

I THEN PULLED UP CALDWELL ON AS400 AND FOUND THAT SHE IS WANTED OUT OF THIS AGENCY FOR A BURGLARY. I PULLED THIS CASE UP (GREENVILLE COUNTY CASE #12-067962) AND FOUND THAT THE VICTIM IN THIS CASE WAS HER EX-HUSBAND (RUSSELL DRAUGHON 434-0539). I THEN CONTACTED DRAUGHON AND ADVISED HIM WHO I WAS. HE WAS ASKED IF HE KNEW WHO CALDWELL WAS WITH AND HE STATED A FURMAN EUGENE TAYLOR (W/M 1/27/67). I ASKED HIM TO DESCRIBE TAYLOR AND HE STATED THAT HE HAS LONG HAIR THAT IS USUALLY IN A PONY TAIL. HE WAS ASKED ABOUT VEHICLES THAT HE DROVE AND HE STATED THAT HE DRIVES A FORD AEROSTAR AND A FORD EXPLORER. I ASKED HIM IF HE KNEW THE COLOR OF THE FORD EXPLORER AND HE STATED THAT HE BELIEVES THEY ARE BOTH WHITE. HE WAS ASKED THE WHEREABOUTS OF CALDWELL AND HE STATED THAT HE DID NOT KNOW.

I THEN SEARCHED TAYLOR LEADS-ON-LINE WITH NEGATIVE RESULTS. THIS SEARCH WAS SAVED.

AT 1035 HOURS I RESPONDED TO 3 FARRS BRIDGE ROAD WHERE I CONFIRMED THE SERIAL NUMBER OF THE CAMERA. I THEN TOOK PHOTOGRAPHS OF THE CAMERA AND THE SEIKO WATCH THAT CALDWELL SOLD. THESE ITEMS WERE THEN PLACED ON HOLD.

AT 1113 HOURS I RESPONDED TO 3235 AUGUSTA STREET WHERE I TOOK PHOTOGRAPHS OF THE 3 RINGS RILEY SOLD. THESE ITEMS WERE PLACED ON HOLD.

AT 1150 HOURS I RESPONDED TO 2516 E. NORTH STREET WHERE I TOOK PHOTOGRAPHS OF THE DVD PLAYER, NECKLACE WITH HEART PENDANT, AND "R" CHARM THAT CALDWELL SOLD. THESE ITEMS WERE PLACED ON HOLD.

ON 5/22/12 AT 1230 HOURS I RESPONDED TO THE INCIDENT LOCATION AND MET WITH McCORMICK. I

PROPERTY

Status	Property Type	Quantity	Property Make	Color	Description	Serial #/ OAN	Value

ADMIN

Subject Identified	Subject Located				
☒ Yes ☐ No	☐ Yes ☒ No	☒ Active ☐ Admin Closed ☐ Unfounded	☐ Arrested Under 18 ☐ Arrested 18 and Over	☐ Ex-Cleared Under 18 ☐ Ex-Cleared 18 and Over	

Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest

Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
MASHAK, BRADY	05/24/2012	450 / 01025	SGT SMITH, O S.	05/24/2012	402 / 00313
		/	Follow Up Investigation ☒ Yes ☐ No (Officer) MASHAK, BRADY	05/24/2012	450 / 01025

Exhibit B-2

Agency I.D. SC0230000 EC5 06/03/2012-10:04:41

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report

Ent: dsaunders 06/05/2012 11:08:45

Case Number 12000071214

☐ Original Report ☐ Status Change ☐ Additional Victims ☐ Additional Stolen Property

Incident Type S011 - Burglary

☒ Supplemental Report ☐ Other Report ☐ Additional Defendants ☐ Additional Recovered Property

Patrol District 07 Page 5 of 7 Pages

I. D. OVERFLOW

☐ Complainant ☐ Victim ☐ Subject ☐ Runaway ☐ Wanted ☐ Arrest ☐ Missing ☐ Jail ☐ Other

Subject's Name (Last, First, Middle)	Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth

Address	City	State	Zip Code	Patrol District	Day Phone	Evening Phone

Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.

☐ Victim No. ___ Visible Injury ☐ Yes ☐ No Explain: Complaint of any Non-Visible Injuries ☐ Yes ☐ No

Victim Using Alcohol ☐ Yes ☐ No ☐ Unk Drugs ☐ No ☐ Yes Type:

Two-Man Veh ☐ One Man Veh ☐ ALONE ☐ Detective ☐ Other ☐ ASSISTED ☐

Subject No. ___ Using Alcohol ☐ No ☐ Yes ☐ Unk Using Drugs ☐ No ☐ Yes Type:

☐ Arrested on Current Offense ☐ Unk ☐ Cleared By Arrest on Prior Offense

Arrestee Armed ☐ Yes ☒ No Weapon Type ☐ On View Arrest ☐ Summoned ☐ Custody

Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority

Arrest Location Gang Affiliation: NG - Not Gang Related

NARRATIVE

ADVISED HER THAT I MIGHT HAVE PHOTOGRAPHS OF SOME OF HER STOLEN JEWELRY. I ADVISED HER THAT SHE NEEDED TO BE 100% SURE THAT THE ITEMS WERE HERS IF SHE CLAIMED THEM. SHE STATED THAT SHE UNDERSTOOD. I THEN ASKED HER IF SHE KNEW WHAT THE NAME BRAND OF THE GOLD NUGGET WATCH SHE ORIGINALLY REPORTED STOLEN. SHE STATED THAT HER DAUGHTER HAS ONE JUST LIKE IT AND STATED THAT IT WAS A SEIKO. I THEN SHOWED HER THE PHOTOGRAPHS AND SHE POSITIVELY IDENTIFIED THE SEIKO WATCH, CAMERA, AND GOLD NECKLACE WITH HEART PENDANT AS HERS. SHE ADVISED THAT SHE DID NOT EVEN KNOW THE NECKLACE WAS STOLEN. I THEN SHOWED HER A PHOTOGRAPH OF CALDWELL AND ASKED HER IF SHE KNEW THIS PERSON. SHE ADVISED THAT SHE DOES NOT NOR HAS EVER SEEN HER BEFORE. MCCORMICK THEN GAVE ME A WRITTEN STATEMENT WHICH IS AS FOLLOWS:

On 5/16/12 at around 1 p.m I left my house and went to the Home Depot. I was only gone for about and hour and went back home. When I got home I found one of my doors had been forced open. I then went to my neighbors house and contacted the Sheriff's office. I went inside my house with the deputies and found my jewelry box was stolen with a lot of my jewelry. I then mad a report of this.

On 5/22/12 Inv Mashak showed me several pictures. I positively identified my Gold Seiko watch, Nikon Camera, and gold necklace w/ heart pendant. Inv Mashak asked me if I am sure and I told him that I was positive. Inv Mashak showed me a picture of a white female and asked me if I knew her. I told him that I have never seen her before nor had given permission to take or sell my jewelry.---End of Statement

AFTER OBTAINING THIS STATEMENT MCCORMICK INITIALED AND SIGNED IT AS BEING TRUE. INV PERRON AND I THEN SIGNED AS WITNESSES. SHE WAS THEN GIVEN A COPY OF HER STATEMENT.

AT 1310 HOURS I WENT TO 3 FARRS BRIDGE ROAD WHERE I OBTAINED THE VIDEO SURVEILLANCE. VANA MCCLARY SIGNED A PROPERTY AND EVIDENCE FORM TURNING THEM OVER TO ME.

ONCE AT NORTHERN COMMAND I RESEARCHED FURMAN TAYLOR AND FOUND THAT HE DID INDEED OWN A FORD EXPLORER. THIS IS A 1994 FORD EXPLORER WITH SC TAG OF [redacted].

I THEN VIEWED THE VIDEO SURVIELLANCE AND OBSERVED THE FOLLOWING:

ON 5/16/12 CALDWELL SELLS THE WATCH AND RECEIVES MONEY. SHE WAS BY HERSELF WEARING A BROWN SHIRT.

PROPERTY

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value

ADMIN

Subject Identified	Subject Located				
☒ Yes ☐ No	☐ Yes ☒ No	☒ Active ☐ Admin Closed ☐ Unfounded	☐ Arrested Under 18 ☐ Arrested 18 and Over	☐ Ex-Cleared Under 18 ☐ Ex-Cleared 18 and Over	

Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest

Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
MASHAK, BRADY	05/24/2012	450 / 01025	SGT SMITH, O.B.	05/24/2012	402 / 00313
		/	Follow Up Investigation ☒ Yes ☐ No (Officer) MASHAK, BRADY	05/24/2012	450 / 01025

584

Exhibit B-3

Agency I.D. SC0230000 EC5 06/03/2012-10:04:41

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report

Ent: dsaunders 06/05/2012 11:08:45

Case Number 12000071214

☐ Original Report ☐ Status Change ☐ Additional Victims ☐ Additional Stolen Property

Incident Type S011 - Burglary

☒ Supplemental Report ☐ Other Report ☐ Additional Defendants ☐ Additional Recovered Property

Patrol District 07 Page 6 of 7 Pages

I. D. OVERFLOW

☐ Complainant ☐ Victim ☐ Subject ☐ Runaway ☐ Wanted ☐ Arrest ☐ Missing ☐ Jail ☐ Other

Subject's Name (Last, First, Middle)	Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth

Address	City	State	Zip Code	Patrol District	Day Phone	Evening Phone

Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.

☐ Victim No. ___ Visible Injury ☐ Yes ☐ No Explain:

Complaint of any Non-Visible Injuries ☐ Yes ☐ No

Victim Using Alcohol ☐ Yes ☐ No ☐ Unk Drugs ☐ No ☐ Yes Type:

Two-Man Veh ☐ One Man Veh ☐ ALONE ☐ Detective ☐ Other ☐ ASSISTED ☐

Subject No. ___ Using Alcohol ☐ No ☐ Yes ☐ Unk Using Drugs ☐ No ☐ Yes Type:

☐ Arrested on Current Offense ☐ Unk ☐ Cleared By Arrest on Prior Offense

Arrestee Armed ☐ Yes ☒ No Weapon Type

☐ On View Arrest ☐ Summoned ☐ Custody

Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority

Arrest Location

Gang Affiliation: NG - Not Gang Related

NARRATIVE

ON 5/19/12 CALDWELL SELLS THE CAMERA. WHEN WALKING OUT OF THE STORE TAYLOR IS WITH HER WALKING OUT.

I THEN MADE COPIES OF THE VIDEO SURVEILLANCE AND THEY WERE THEN TURNED OVER TO PROPERTY AND EVIDENCE.

ON 5/23/12 AT 0930 HOURS I CONTACTED FULBRIGHT. I ASKED HIM IF THE DRIVER OF THE SUSPECT VEHICLE WAS MALE OR FEMALE. HE STATED THAT HE ASSUMED HE WAS MALE DO TO THE LONG HAIR JUST LIKE THE SUSPECT HE SAW. FULBRIGHT STATED THAT HE DID NOT SEE THE PERSON'S FACE AND DID NOT KNOW. I ASKED HIM WHAT THAT SUSPECT WAS WEARING IN THE VEHICLE AND HE STATED EITHER TAN OR BROWN. I THEN ASKED HIM ABOUT THE SUSPECT THAT HE OBSERVED OUTSIDE OF THE VEHICLE. HE WAS ASKED IF THE SUSPECT HAD A BEARD OR GOATEE AND HE STATED THAT HE DID NOT REMEMBER. I ASKED HIM IF HE WOULD BE ABLE TO PICK HIM OUT OF A PHOTO LINE-UP AND HE STATED THAT HE WOULD TRY.

AT 0935 HOURS I EMAILED SLED TO OBTAIN A PHOTO LINE-UP OF TAYLOR.

AT 1005 HOURS I RECEIVED AN EMAIL BACK FROM SLED SENDING THE PHOTO LINE-UP.

AT 1100 HOURS I RESPONDED TO [redacted] ROAD AND MET WITH FULBRIGHT. I SHOWED HIM THE PHOTO LINE-UP AND HE STATED THAT HE DID NOT RECOGNIZE ANYONE BUT THE MALE HE SAW COULD POSSIBLY BE ON THE PHOTO LINE-UP. I THEN OBTAINED A WRITTEN STATEMENT FROM FULBRIGHT OF WHAT HE OBSERVED ON THE INCIDENT DATE. HIS STATEMENT IS AS FOLLOWS:

On 5/16/12 at around 1:30 p.m I was sitting on my couch watching t.v. I saw a white Ford Explorer pull into my neighbors house at [redacted]. The driver had dirty blonde hair and I couldn't tell if it was a male or female. The person was wearing a brown shirt though. A white male passenger had a long light colored shirt and long dark or black hair. The male went to the front door and knocked. I then saw him look inside the window next to the door. He then went back to the explorer and said something to the driver. The white male then went to the left side of my neighbor's house to the back. The explorer then left up S. Welcome Rd towards White Horse Rd. That was the last time I saw the explorer or the white male. About 30 minutes later my neighbor Barbara McCormick came to my house and said that she was broken into.

On 5/23/12 Inv Mashak showed me a six photo line-up. I told Inv Mashak that I didn't recognize anyone but the white male could be on it.--End of Statement

PROPERTY

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value

ADMIN

Subject Identified	Subject Located				
☒ Yes ☐ No	☐ Yes ☒ No	☒ Active ☐ Admin Closed ☐ Unfounded	☐ Arrested Under 18 ☐ Arrested 18 and Over	☐ Ex-Cleared Under 18 ☐ Ex-Cleared 18 and Over

Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest

Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
MASHAK, BRADY	05/24/2012	450 / 01025	SGT SMITH, O.B.	05/24/2012	402 / 00313
		/	Follow Up Investigation ☒ Yes ☐ No (officer) MASHAK, BRADY	05/24/2012	450 / 01025

Exhibit B-4

585

Agency I.D. SC0230000 EC5 06/05/2012-09:10:07

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report

Ent: grobertson 06/14/2012 15:11:13

Case Number 12000072917

☐ Original Report ☒ Status Change ☐ Additional Victims ☐ Additional Stolen Property

Incident Type S011 - Burglary

☒ Supplemental Report ☐ Other Report ☐ Additional Defendants ☐ Additional Recovered Property

Patrol District 10 Page 2 of 7 Pages

I. D. OVERFLOW

☐ Complainant ☐ Victim ☒ Subject ☐ Runaway ☐ Wanted ☐ Arrest ☐ Missing ☐ Jail ☐ Other

Subject's Name (Last, First, Middle)	Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth

Address	City	State	Zip Code	Patrol District	Day Phone	Evening Phone

Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.

☐ Victim No. ___ Visible Injury ☐ Yes ☐ No Explain: Complaint of any Non-Visible Injuries ☐ Yes ☐ No Victim Using Alcohol ☐ Yes ☐ No ☐ Unk Drugs ☐ No ☐ Yes Type: Two-Man Veh ☐ One Man Veh ☐ ALONE ☐ Detective ☐ Other ☐ ASSISTED ☐

Subject No. ___ Using Alcohol ☐ No ☐ Yes ☐ Unk Using Drugs ☐ No ☐ Yes Type: ☐ Arrested on Current Offense ☐ Unk ☐ Cleared By Arrest on Prior Offense

Arrestee Armed ☐ Yes ☒ No Weapon Type ☐ On View Arrest ☐ Summoned ☐ Custody

Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority

Arrest Location | Gang Affiliation: NG - Not Gang Related

NARRATIVE

INJURY: No, USING ALCOHOL: Unknown, USING DRUGS: Unknown, ARREST ON CURRENT OFFENSE, ON VIEW ARREST, ARREST LOCATION: SPARTANBURG COUNTY

Charges

CHARGE 1: BURGLARY-1ST DEGREE WARRANT #: N-201214

CHARGE 2: PETIT LARCENY-3RD OR ABOVE WARRANT #: N-201215

Vehicles

Vehicle #1 ✓

COLOR: White, MAKE: Ford, MODEL: AEROSTAR, MAKE: Van-Mini, VEHICLE YEAR: 1993, TAG #: [redacted] TAG STATE: SC, TAG YEAR: 2013, PROPERTY LOSS CODES: Suspect, VIN NUMBER:

Narrative:

ON 5/30/12 I PICKED UP THIS CASE DUE TO INV PHILLIPS BEING OUT ON LEAVE.

AT 1527 HOURS I ATTEMPTED TO CONTACT THE LISTED WITNESS (TANDY PERRY) WITH NEGATIVE RESULTS. I LEFT A MESSAGE FOR HIM TO CONTACT ME.

AT 1532 HOURS I RECEIVED A CALL FROM JENNIFER PERRY (TANDY PERRY'S WIFE) WHO STATED THAT MR. PERRY WAS AT WORK AND DID NOT KNOW WHEN HE COULD VIEW THE PHOTO LINE-UPS. I ADVISED HER THAT I WOULD MEET HIM ANYWHERE IF HE WOULD GIVE ME A TIME. SHE STATED THAT SHE WOULD HAVE HIM CONTACT ME. MRS. PERRY STATED THAT DAVID PERRY (417-2059) ALSO WAS THERE AND POSSIBLY MIGHT BE ABLE TO PICK THEM OUT.

AT 1535 HOURS I CONTACTED DAVID PERRY AND ASKED HIM ABOUT THE INCIDENT. HE STATED THAT HE RODE WITH HIS BROTHER AND WHEN THERE THEY OBSERVED A WHITE AND BLUE FORD AEROSTAR VAN. PERRY STATED THAT HE THEN OBSERVED A WHITE FEMALE GO INTO THE VAN AND THEN OBSERVED IT LEAVE AT A HIGH RATE OF SPEED. HE STATED THAT HIS BROTHER TOLD HIM THAT THERE WAS A MALE AS WELL, BUT HE DID NOT OBSERVE HIM. I ASKED HIM IF HE WOULD BE ABLE TO PICK THE FEMALE OUT OF A PHOTO LINE-UP AND HE STATED THAT HE MIGHT BE ABLE TO. HE WAS ADVISED THAT I WOULD CONTACT HIM AT A LATER DATE TO SHOW IT TO HIM. HE STATED THAT HE UNDERSTOOD.

ON 6/1/12 AT 0830 I OBSERVED SUBJECT #1 (CALDWELL) HAD BEEN ARRESTED.

AT 1045 HOURS I RESPONDED TO THE DETENTION CENTER WHERE INV PERRON AND I SPOKE WITH CALDWELL. I ADVISED HER WHO I WAS AND ASKED HER IF SHE WANTED TO SPEAK WITH ME ABOUT THE

PROPERTY

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value

ADMIN

Subject Identified	Subject Located				
☒ Yes ☐ No	☒ Yes ☐ No	☐ Active ☐ Admin Closed ☐ Unfounded	☐ Arrested Under 18 ☒ Arrested 18 and Over	☐ Ex-Cleared Under 18 ☐ Ex-Cleared 18 and Over

Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest

Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
MASHAK BRADY	06/04/2012	450 / 01025	SGT SMITH, O.B	06/04/2012	402 / 00313
		/	Follow Up Investigation ☐ Yes ☒ No (Officer) MASHAK, BRADY	06/04/2012	450 / 01025

Exhibit B-5

GREENVILLE COUNTY SHERIFF'S OFFICE

Agency I.D. SC0230000 | EC5 06/05/2012-09:10:07 | Supplemental Report Ent: grobertson 06/14/2012 15:11:13 | Case Number 12000072917

☐ Original Report ☒ Status Change ☐ Additional Victims ☐ Additional Stolen Property — Incident Type S011 - Burglary

☒ Supplemental Report ☐ Other Report ☐ Additional Defendants ☐ Additonal Recovered Property — Patrol District 10 — Page 5 of 7 Pages

I. D. OVERFLOW

☐ Complainant ☐ Victim ☐ Subject ☐ Runaway ☐ Wanted ☐ Arrest ☐ Missing ☐ Jail ☐ Other

Subject's Name (Last, first, Middle)	Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth

Address	City	State	Zip Code	Patrol District	Day Phone	Evening Phone

Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.

☐ Victim No. ___ Visible Injury ☐ Yes ☐ No — Complaint of any Non-Visible Injuries ☐ Yes ☐ No — Victim Using Alcohol ☐ Yes ☐ No ☐ Unk — Drugs ☐ No ☐ Yes Type: — Two-Man Veh ☐ One Man Veh ☐ ALONE ☐ — Detective ☐ Other ☐ ASSISTED ☐

Explain:

Subject No. ___ Using Alcohol ☐ No ☐ Yes ☐ Unk — Using Drugs ☐ No ☐ Yes Type: — ☐ Arrested on Current Offense ☐ Unk ☐ Cleared By Arrest on Prior Offense

Arrestee Armed ☐ Yes ☒ No Weapon Type — ☐ On View Arrest ☐ Summoned ☐ Custody

Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority

Arrest Location — Gang Affiliation: NG - Not Gang Related

NARRATIVE

PHOTO #3: SASSER, KATHERINE (BOOKING #33001110); PHOTO #4: SNIDER, RHONDA (BOOKING #32005828); PHOTO #5: MCCONELL, CARRIE (BOOKING #32007105); PHOTO #6: HAYNES, LAURA (BOOKING #32010316)

AT 1500 HOURS I RESPONDED TO 6 BUBBLING CREEK DRIVE AND MET WITH DAVID PERRY. I SHOWED HIM THE PHOTO LINE-UPS CONTAINING CALDWELL AND SASSER. HE STATED THAT HE DID NOT GET A GOOD LOOK AT THE FEMALE DUE TO HER TURNING HER FACE WHEN SHE WALKED TO THE AEROSTAR. PERRY THEN STATED THAT HE WAS UNABLE TO IDENTIFY THE FEMALE HE SAW THAT DAY AND PUT THIS ON THE LINE-UP. WHILE SPEAKING WITH PERRY TANDY PERRY CONTACTED HIM. I ASKED HIM IF HE WOULD BE ABLE TO VIEW THE PHOTO LINE-UPS AND HE STATED THAT HE WOULD. HE THEN STATED THAT HE WAS AT "GRAYTHORNE" SUBDIVISION OFF OF W. GEORGIA ROAD. I THEN ADVISED HIM THAT I WOULD MEET WITH HIM THERE.

AT 1600 HOURS I MET WITH TANDY PERRY. HE WAS SHOWN ALL THREE PHOTO LINE-UPS AND STATED THAT HE COULD NOT PICK THE MALE OR FEMALE THAT HE OBSERVED THAT DAY. PERRY STATED THAT BOTH SUBJECTS TURNED THEIR FACES AWAY AND HE REALLY DID NOT SEE THEM. I THEN ASKED HIM ABOUT A CLOTHING DESCRIPTION AND HE THEN GAVE IT IN THE FOLLOWING WRITTEN STATEMENT:

On 5/19/12 I received a call from my friend Renna Taylor. She asked me if I would go to her house and take her garbage out. My brother, David Perry, my daughter, and I then went to Renna's house. Once there I saw a white and blue Ford Aerostar Van in her driveway. I called Renna and asked her about the van and she said that it shouldn't be there. I then saw a white female wearing blue jeans that looked rolled up. She also had brown hair. She walked really fast to the van and got in the driver's side. I then saw a white male wearing a black shirt and black hat. He had black hair that was in a ponytail and a goattee. He was carrying a bag and went into the passenger's side. I didn't get a good look at either of them because they were looking away. I then called the Sheriff's Office.

On 6/1/12 I met with Inv Mashak and he showed me 3 photo line-ups. I couldn't pick anyone out but the people that broke into Renna's house could be on them. I also told Inv Mashak that I think the female had a white shirt on--End of Statement

AFTER OBTAINING THIS STATEMENT PERRY INITIALED AND SIGNED IT AS BEING TRUE. I THEN SIGNED AS A WITNESS AND HE WAS THEN GIVEN A COPY OF HIS STATEMENT.

ON 6/4/12 AT 0830 HOURS I RECEIVED A CALL FROM CALDWELL. SHE ASKED ME IF I WOULD COME AND

PROPERTY

Status	Property Type	Quantity	Property Make	Color	Description	Serial #/OAN	Value

ADMIN

Subject Identified	Subject Located	☐ Active ☐ Admin Closed ☐ Unfounded	☐ Arrested Under 18 ☒ Arrested 18 and Over	☐ Ex-Cleared Under 18 ☐ Ex-Cleared 18 and Over
☒ Yes ☐ No	☒ Yes ☐ No			

Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest

Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
MASHAK, BRADY	06/04/2012	450 / 01025	SGT SMITH, O.B.	06/04/2012	402 / 00313
		/	Follow Up Investigation ☐ Yes ☒ No (Initiated) MASHAK, BRADY	06/04/2012	450 / 01025

Exhibit B-6

Agency I.D. SC0230000 EC5 06/05/2012-09:10:07

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report

Ent: grobertson 06/14/2012 15:11:13

Case Number 12000072917

☐ Original Report ☒ Status Change ☐ Additional Victims ☐ Additional Stolen Property

Incident Type S011 - Burglary

☒ Supplemental Report ☐ Other Report ☐ Additional Defendants ☐ Additonal Recovered Property

Patrol District 10 Page 6 of 7 Pages

I. D. OVERFLOW

☐ Complainant ☐ Victim ☐ Subject ☐ Runaway ☐ Wanted ☐ Arrest ☐ Missing ☐ Jail ☐ Other

Subject's Name (Last, first, Middle)	Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth

Address	City	State	Zip Code	Patrol District	Day Phone	Evening Phone

Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.

☐ Victim No. ___ Visible Injury ☐ Yes ☐ No Complaint of any Non-Visible Injuries ☐ Yes ☐ No Victim Using Alcohol ☐ Yes ☐ No ☐ Unk Two-Man Veh ☐ One Man Veh ☐ ALONE ☐

Explain: Drugs ☐ No ☐ Yes Type: Detective ☐ Other ☐ ASSISTED ☐

Subject No. ___ Using Alcohol ☐ No ☐ Yes ☐ Unk ☐ Arrested on Current Offense

Using Drugs ☐ No ☐ Yes Type: ☐ Unk ☐ Cleared By Arrest on Prior Offense

Arrestee Armed ☐ Yes ☒ No Weapon Type ☐ On View Arrest ☐ Summoned ☐ Custody

Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority

Arrest Location Gang Affiliation: NG - Not Gang Related

NARRATIVE

TALK WITH HER. I ADVISED HER THAT I WOULD HAVE HER PULLED OUT.

AT 1000 HOURS I PULLED OUT CALDWELL AND BROUGHT HER TO THE LAW ENFORCEMENT CENTER. I READ HER A WAIVER OF RIGHTS FORM AND SHE STATED THAT SHE UNDERSTOOD IT. SHE WAS ASKED IF SHE UNDERSTOOD WHAT THE WORD COERCION MEANT AND SHE STATED THAT SHE DID. CALDWELL THEN ADVISED ME WHAT IT MEANT. SHE THEN INITIALED AND SIGNED THE FORM. CALDWELL THEN STATED THAT SHE HAD LIED TO ME ABOUT THIS INCIDENT AND STATED THAT SHE WANTED TO TELL ME THE TRUTH. SHE THEN GAVE ME THE FOLLOWING WRITTEN STATEMENT:

On today's date I contacted Inv Mashak on his office phone and told him that I wanted to speak with him. Inv Mashak came to the jail and I told him that I wanted to be completely honest to him because I had told him some lies. He then took me to the Law Enforcement Center where he read me a Waiver of Rights form. Inv Mashak asked me if I understood the form and I told him that I did. He then asked me if I understood what the word coercion meant and I told him that I did. I then explained the word to him. I then initialed and signed the form. I am not under the influence of any drugs/alcohol. I have allowed Inv Mashak to type my statement.

On 6/1/12 I had given Inv Mashak a false statement about a burglary that happened on Old White Horse Road. I was afraid of getting more charges and after thinking about it all I wanted to be honest and to cooperate with the investigation.

I don't know what the date or day was but Furman Taylor and I were riding around in his white and blue Ford Aerostar van. We past a house and he told me to turn around and stop. I turned the car around and pulled into the driveway. Furman went and broke one of the back doors down. He was in there for about 15 minutes and I finally went inside and told him to come on. All of a sudden a black truck pulled up and I then went straight to the driver's seat. He then came out carrying a pillowcase and went straight to the passenger side. We then took off. A little bit later in the day we went to the Cash America Pawn on E. North Street where I pawned a DVD player, necklace with a heart shape pendant, and a pendant with an "R" on it. I think I got around $30-$40 for the stuff and handed it to Furman outside. Furman then took me to McDonalds and got something to eat. He then took me to White Horse Road and dropped me off.

I am very sorry for what I did and apologize to all the people that I affected. I know I shouldn't have done it and would like to make it up to them. I am willing to cooperate by

PROPERTY

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value

ADMIN

Subject Identified	Subject Located				
☒ Yes ☐ No	☒ Yes ☐ No	☐ Active ☐ Admin Closed ☐ Unfounded	☐ Arrested Under 18 ☒ Arrested 18 and Over	☐ Ex-Cleared Under 18 ☐ Ex-Cleared 18 and Over

Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest

Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
MASHAK, BRADY	06/04/2012	450 / 01025	SGT SMITH, O B	06/04/2012	402 / 00313
		/	Follow Up Investigation ☐ Yes ☒ No (Typed) MASHAK, BRADY	06/04/2012	450 / 01025

Exhibit A-4

first appeared at the scene of the suspects?

A. Female or male or both?

Q. Let's start with the female.

A. All right. Female, white female, twenty to thirty years old, five two to five five, a hundred thirty to a hundred fifty pounds, brown hair, white shirt, gray or blue pants.

Q. Okay. And what was the description that you had for the male?

A. The male was white male, forty to fifty years old, five ten to six feet, one ninety to two fifteen and gray hair, black shirt, blue jeans.

Q. Okay. And then in your report you also note a full beard; is that correct?

A. Let me -- yes. In that section that shows the drop-down portions of our report. It shows a physical description and facial hair, full beard and then black baseball cap.

Q. Okay. And what other information did you receive about the suspects and/or their vehicle?

A. As far as the suspects, he said they were in a hurry; they walked out quickly out of the residence. Mentioned he had a bag with him. They got in the vehicle and left abruptly. And they also said about the vehicle that there was -- they believed they knew the first three

Exhibit A-5

of the tag, and this was -- I believe it was David, he remembered the first three and it was either EZI or EZT, the first three of the tag.

Q. Okay. And did they indicate that was a South Carolina license plate?

A. I think they were unsure.

Q. Okay. And did you observe anything unusual in the perimeter of the residence, footprints in a flower bed, anything--

A. Not that I recall.

Q. Nothing further.

THE COURT: Redirect?

MR. MOYER: No redirect, Your Honor.

THE COURT: Thank you very much, Officer. You may step down.

MR. MOYER: State calls Dustin Kretschmar to the stand.

THE COURT: All right. If you'll come around and be sworn for us, please.

THE CLERK: Please place your left hand on the bible and raise your right.

Do you swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

Exhibit B-7

get in touch with him. Talked to his wife. She said he was at work. So I said I'd, you know, get in touch with him later. Talked to David Perry and talked to him for a little bit. Asked him what he saw. He said he just saw a female and didn't see the male. And said they were in a white and blue Ford Aerostar van.

Q. Okay. And then did you at any point decide to show photo ---

A. I did. It was ---

Q. What led to that?

A. I'm sorry?

Q. What led to you doing that and when did you do it?

A. Whenever I got involved with the other -- I believe it was after I got this, I talked to Russell Droughten (phonics), her ex-husband or you know, I guess it was future ex-husband. I talked to him and said, hey, can you tell me where Amanda is? And he said, I have no idea. I said, can you tell me who she's with? And he said, yeah, Furman Taylor. I said, well, can you describe him? Because in the report they said something about a goatee and long hair. And I said, well, can you describe him? He said, yeah, he has a goatee and long hair. I said, well any chance you can tell me about the vehicle because they obviously saw the Ford Aerostar. And he said, he drives a Ford Explorer and a Ford

Exhibit B-8

Aerostar van. So that's what, you know, matched the description vehicle-wise and suspect-wise.

Q. Okay. And did you take and -- who did you make photo line-ups of? How many different photo line-ups and ---

A. I did three, because the first time when Ms. Caldwell said about Catherine, I found out about her. She said that was the other person that she was talking with -- or about. So I did three different line-ups.

Q. Okay. And who did you show these line-ups to?

A. David and T.R.

Q. Now, did you show the male -- the photo line-ups of Furman ---

A. No. Because he said he never even saw a male. T.R. did.

Q. So you just showed the -- of the two females to David then?

A. Yes, because he never even saw a male.

Q. And he wasn't able to ---

A. They both weren't. They both pretty much gave the same description of the van and stuff they saw. Besides David saying he didn't see the male, they said they sort of turned their heads so they couldn't see. So basically the photo line-up wasn't good because they hadn't seen a face.

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Exhibit B-9

A. It says, I then saw a white male wearing a black shirt and black hat. He had black hair that was in a ponytail and a goatee. He was carrying a bag and went into the passenger side. And it says, so I didn't get a good look at either of them. They were looking away.

Q. Okay. But he did describe him with black ponytail and ---

A. And goatee.

Q. Now, is it generally the case when there's a case like this when a uniform officer goes to the scene that the detailed statement is taken later by an investigator like you?

A. Unless we catch them on scene, I mean, that's really the only time as far as a statement from uniform patrol or that night if someone's arrested, you know, in the house or something like that. But usually it's later on.

Q. And it's left with a follow-up?

A. Yes, sir.

Q. So the uniform officer, what's his job as far as identity goes?

A. Basically get the descriptions and give it to our dispatch, so if you're my B partner, if I'm on this, they know, hey, I'm looking for a black and blue Ford Aerostar van. They BOLO it and you know what to look for.

Exhibit C-1

BY MR. MOYER:

Q. Ms. Caldwell, how old are you?

A. I'm twenty-four.

Q. Okay. Now, let me ask you this question. You were charged also in the case that's currently before the court; isn't that right?

A. Yes, sir.

Q. And you pled guilty to a burglary, a charge of burglary second degree?

A. Yes, sir.

Q. And you also pled guilty to another related burglary second degree; isn't that correct?

A. Yes, sir.

Q. And also obtaining money by false pretenses for pawning the stolen property; isn't that correct?

A. Yes, sir.

Q. Have you been sentenced yet?

A. No, sir.

Q. Did anyone promise you anything about what your sentence would be?

A. No, sir.

Q. So you received no promises from the prosecutor's office or from law enforcement?

A. No, sir.

Q. Have you been asked to do anything with regard to

Exhibit D-1

RULE 3
DISPOSITION OF ARREST WARRANTS

(a) Transmittal to Clerk. Magistrates, municipal judges, and other officials authorized to issue warrants sha in all cases within the jurisdiction of the Court of General Sessions, forward to the Clerk of the Court of Gen Sessions all documents pertaining to the case including, but not limited to, the arrest warrant and bond, with fifteen (15) days from the date of arrest in the case of an arrest warrant and date of issuance in the case of other documents. Transmittal shall be pursuant to procedures now or hereafter promulgated by the Office o South Carolina Court Administration.

(b) Transmittal to Solicitor. The Clerk of the Court of General Sessions shall forward a copy of any arrest warrant received pursuant to paragraph (a) above to the solicitor within two (2) business days from date of receipt from the issuing official.

(c) Action on Warrant. Within ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the grand jury, wh indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the Gra Jury; (2) formally dismissing the warrant, noting on the face of the warrant the action taken; or (3) making otl affirmative disposition in writing and filing such action with the Clerk of Court.

(d) Extensions of Time. The solicitor may petition the circuit court for an order delaying action on the warra as set forth above, for successive ninety (90) day periods if the circuit court specifically finds good cause for such delay for each successive ninety day period.

(e) Record of Proceedings. Any action taken pursuant to paragraphs (a), (b), and (c) above shall be entere in the records of the Clerk of Court pursuant to procedures now or hereafter promulgated by the Office of South Carolina Court Administration.

whit

Rule 3 is the language of Criminal Practice Rule 6.

Note: Rule 5 (Discovery Materials S.C. rules of Criminal procedur

Exhibit E-1

Greenville County Sheriff's Office

4 McGee St.
Greenville, South Carolina 29601

VICTIM/WITNESS STATEMENT

Field Statement

Case Number 12-072917

Date 6/1/12

I, Tandy Rice Perry, do hereby give freely and voluntarily this statement to Inv. Mashak #1085/450 and _____ who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina.

I am 37 years old and I reside at [redacted]

TRP On 5/19/12 I received a call from my friend Kenna Taylor. She asked me if I would go to her house and take her garbage out. My brother, David Perry, my daughter, and I then went to Kenna's house. Once there I saw a white and blue Ford Aerostar Van in her driveway. I called Kenna and asked her about the van and she said that it shouldn't be there. I then saw a white female wearing blue jeans that looked rolled up, [redacted] She also had brown hair. She walked really fast to the van and got in the driver's side. I then saw a white male wearing a black shirt and black hat. He had black hair that was in a ponytail and a goatee. He was carrying a bag and went into the passenger's side. I didn't get a good look at either of them because they were looking away. I then called the Sheriff's Office. TRP

TRP On 6/1/12 I met with Inv Mashak and he showed me 3 photo line-ups. I couldn't pick anyone out but the people that broke into Kenna's house could be on them. I also told Inv Mashak that I think the female had a white shirt on. -- End of Statement TRP

I have read the above statement of 1 | 1 pages and it is true and correct as best as I recall.

Tandy Rice Perry

WITNESS: [signature] 1085/450

I have received a copy of this statement.

Tandy Rice Perry

Sworn before me this _____ day of _____, _____

NOTARY PUBLIC FOR SOUTH CAROLINA

GSO 00019

Furman Taylor; SCDC 198161
Perry Corr. Inst. / 04A
430 Oaklawn Road
Pelzer, S.C. 29669

(Page 1 of 2)

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SEP 24 2015
SC Court of Appeals

Ms. Jenny A. Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

September 21, 2015

In Re; State V. Taylor Indict. Nos: 2012-GS-23-6511 and 6513 / Initial Brief of Appellant

Dear Ms. Kitchings,

I am writing in concern of the above referenced matter.

In which, please find enclosed one(1) original copy appellant inital brief with affidavit in the above case. Due to time restraints and the administration of S.C.D.C. and their policy and procedure, GA 01.03, sec. 13. I am unable to provide the specified number of copies required by rule 240 S.C.A.C.R. (Please see affidavit of facts). If these reasons cause me to be time barred or prohibit my claims from being heard Let the record include these reason in the order.

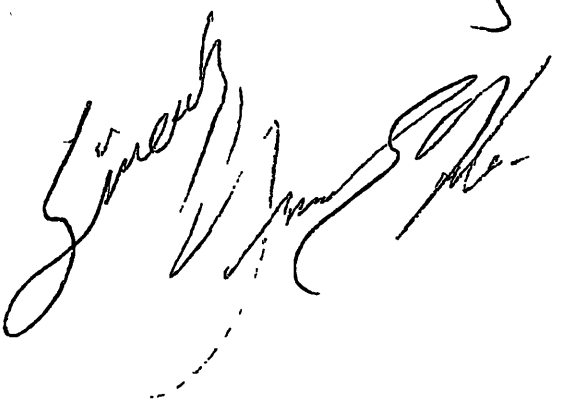
I have served the Attorney General a copy of this brief.

(Cont.)

Furthermore, I would like for you to know that all of your time, help, and consideration in my behalf is greatly appreciated by me!

I look forward to hearing from you soon!

Sincerely,



STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
OCT 16 2015
SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
D. Garrison Hill, Circuit Court Judge
Appellate Case No. 2015-000066

THE STATE,

RESPONDENT,

vs.

FURMAN EUGENE TAYLOR,

APPELLANT.

MOTION TO STRIKE MATTER FROM APPELLANT'S *PRO SE* DESIGNATION OF MATTER AND *PRO SE* BRIEF

Respondent, by and through undersigned counsel, moving to strike portions of Appellant's *pro se* Designation of Matter and *pro se* brief, would respectfully show unto this Court:

I.

Appellant was convicted in Greenville County of burglary in the first degree and petit larceny after a jury trial held before the Honorable D. Garrison Hill on January 5 – 7, 2015. Appellant was sentenced to life imprisonment for burglary and thirty (30) days for petit larceny. Appellant filed and served notice of appeal. On July 1, 2015, Appellate Defender Robert M. Pachak submitted an Anders Brief of Appellant, Petition to be Relieved, and Record on Appeal. Appellant thereafter filed and served a *pro se* Designation of Matter and *pro se* Brief of

Appellant. Appellant attached the documents he listed in his Designation of Matter to his *pro se* designation. (See documents compiled in Appellant's Written Memorandum of Law).

II.

In reviewing Appellant's *pro se* Designation of Matter, *pro se* brief, and attached documents, it appears that, with the exception of State's exhibits 14, State's Exhibit 15, and Rule 3, SCRCrimP, none of the items were presented to the lower court during the trial from which Appellant appeals. The documents, therefore, cannot properly be included in a *pro se* designation of matter and Record on Appeal or referred to in Appellant's *pro se* brief. With the exception of State's Exhibits 14 and 15 (DVDs) and Rule 3 (c), SCRCrimP, this Court must strike the designation of matter, the documents attached to the designation and/or brief, and all references to the documents in Appellant's *pro se* brief. Alternatively, this Court should refuse to consider the improperly designated items and any arguments referencing the items.

III.

Rule 209, SCACR, provides that the "Designation of Matter to be Included in the Record on Appeal . . . shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which (a party) proposes to include in the record on appeal." Rule 209(a), SCACR. Rule 209, SCACR, also states that the "[d]esignation must clearly identify what the party desires to have included in the Record on Appeal" and may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal. Rule 209 (b), SCACR. Rule 210(c), SCACR, prohibits including portions of transcripts, pleadings, orders, exhibits, materials or matter which were not presented to the lower court. This appeal arises from the circuit court and only the documents, transcripts, material or matter presented to the circuit court judge during the trial

resulting in the convictions on appeal may be included in Appellant's designation of matter and the record on appeal. See State v. White, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007) ("Morris' statement was not presented to the lower court and cannot properly be included in the Record on Appeal."); South Carolina State Highway Dep't v. Meredith, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) ("[C]ounsel is prohibited from embodying in their briefs any fact which does not appear in the record."); Morris v. Tidewater Land & Timber, Inc., 388 S.C. 317, 333, n. 16, 696 S.E.2d 599, 608 (Ct. App. 2010) ("Under our appellate court rules, we may not consider any fact that does not appear in the record."); see also Rule 210(h), SCACR ("[T]he appellate court will not consider any fact which does not appear in the Record on Appeal.") The circuit court was not presented with the numerous incident reports, testimony of various individuals from another trial, or Tandy Perry's statement. Because the documents were not presented during the trial from which this appeal arises, the documents may not be presented to this Court on appeal. Additionally, Appellant improperly presents the documents with his own highlighting and markings. Further, this Court should strike or refuse to consider the portions of Appellant's *pro se* brief which relies upon or references the improperly designated documents.

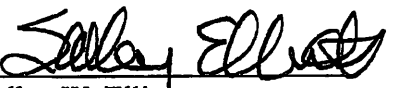
WHEREFORE, the State respectfully asks this Court to strike or to refuse to consider all of the items listed in Appellant's pro se Designation of Matter and attachments **except** Appellant's *pro se* designation No. 1 - Videos (State's Exhibits No. S-14 and S-15 [DVD]) and Appellant's *pro se* designation No. 14 (Rule 3(c), SCRCrimP), as well as any portions of Appellant's *pro se* brief referencing the improperly designated items.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

BY: 
Salley W. Elliott
S.C. Bar No: 1871

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 16, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
OCT 16 2015
SC Court of Appeals

Appeal from Greenville County
D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2014-000066

THE STATE,

Respondent,

vs.

FURMAN EUGENE TAYLOR,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Motion to Strike by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
P. O. Box 11589
Columbia, S.C. 29211-1580
and
Furman Eugene Taylor, 198161
Perry Correctional Institution, Q4A
Pelzer, S.C. 29669

I further certify that all parties required by Rule to be served have been served.
This 16th day of October, 2015.

Angela Bennett

ANGELA BENNET
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
D. Garrison Hill, Circuit Court Judge
Appellate Case No. 2015-000066

FURMAN EUGENE TAYLOR, APPELLANT.

Vs.

THE STATE, RESPONDENT.

APPELLANTS' OBJECTION TO RESPONDENTS MOTION TO STRIKE MATTER FROM APPELLANTS' PRO-SE DESIGNATION OF MATTER AND PRO-SE BRIEF.

Appellant, proceeding pro-se hereby objects to respondents motion to Strike matter from Appellants' pro-se designation of matter and pro-se brief. I would respectfully show this Court:

I

According to appellate Court Rule 28(b)(4), a brief must reference the record on appeal to support the facts alleged. "The record shall not, however, include matter which was not presented to the lower court or tribunal." Rule 21(c). State v. White, 372 S.C. 364, 387; 642 S.E. 2d 607. (Ct. App. 2007).

In the instant case, the lower court was presented with the numerous documents the respondent moves to strike[1]. Hence, facts do appear in the record of a previous trial in this case

[1] Appellant will have this court take "Judicial Notice" of the fact that both the February, 2014, and January, 205, trials arise from the same indictment for which a mistrial resulted under assistant Solicitor Mark Moyer, and a conviction after a subsequent trial under Matthew Wallace. Wallace informed the trial court that appellants' first trial resulted in a mistrial and that he was not the solicitor in charge back when it was initially tried. (See transcript page 8, Lines 1-21)

Which gives this court the authority to Consider any facts now raised in relations to the record on appeal. Rule 210(a) SCACR. ("[T]he appellate court will not consider any facts which does not appear in the record on appeal.") Morris V. Tidewater land & Timber Inc., 388 SC. 317, 333 N16; 696 SE 2d 599 (ct. app. 2012) (Under our appellate court rules, we may not consider any fact that does not appear in the record)

Unlike White, appellants' first trial resulted in a hung jury subsequently leading to the re-trial and conviction being appealed that is now before this court. Moreover, the record is silent as to what evidence presented to the lower court in the first trial that demonstrates the jurys' reasons for not convicting appellant initially nor does the record explain or justify assistant Solicitor Wallaces' misconduct when he used testimony that is now known to be false, untrue, or that is prejudicial to the administration of justice which involved dishonesty, deceit, or misrepresentation of facts to obtain a conviction of Appellant. (See Rule 407, Sec. 8.4 SCACR)

Appellant has attempted through reasonable deligence to present these facts and develope these newly/after discovered evidence by requesting leave of this court, but his motion for leave was not granted and merely time to submit his pro-se brief extended. (see order dated August 14, 2015). Appellant discovered these facts after appointed Counsel, Robert M. Pachak, wrote him and included both trial transcripts before submitting his Anders' brief Claiming them to be relevant to appellants' case. (see letter dated May 28, 2015).

Thus, appellants' case is distinguishable from White and the States' erroneous interpretation of White and appellate Court Rule 209 through 210 will amount to an unreasonable application of Law and procedure that would cause a fundamental miscarriage of justice if this court refuses to exercise its discretionary authority to either (1) allow appellant to supplement the record with the numerous documents Complained of to be included in his designation of matter, or (2) grant appellant leave so that he may return to the lower court to

Correct and complete the record so that meaningful appellate review may be done both correctly and fairly as deemed by this court.

Wherefore, appellant would ask this Court to deny the States' motion to strike, or to refuse to consider any of the items listed in appellants' pro-se designation of matter and attachments as well as any parts or portions of appellants' pro-se brief referencing these designated items so that a grave miscarriage of justice may be prevented.

Respectfully Submitted,

Furman E. Taylor #198161 / Pro-se

October 28, 2015
Pelzer, S.C.

Certificate of Service

I, Furman E. Taylor, hereby certify that a Objection to respondents' motion to Strike, in appellate Case No. 2015-000066, was this day, postage pre-paid, placed in the United States postmasters hands here at the Perry Correctional Institution, located at; 430 Oaklawn Road, Pelzer, S.C. 29669, and addressed to the following;

(1) Ms. Jenny A. Kitchings, clerk
S.C. Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

RECEIVED
NOV 04 2015
SC Court of Appeals

(2) Mr. Alan Wilson (esq.) Att. Gen.
Office of the attorney General for S.C.
Post Office Box 11549
Columbia, S.C. 29211

Furman E. Taylor #98161/Pro-se

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P.C.I. MAILROOM

(3) That this courts refusal to exercise its authority to grant leave or allow appellants designation of matter and supplementation of the record on appeal will result in a manifest constitutional error or clearly wrong rule.

(4.) Appellant has served respondent with a true copy of his objection and affidavit.

Further Affiant saith not.

Furman E. Taylor #198161/Pro-se

Sworn and Subscribed before me this 29th day of October, 2015.

Tamara Conwell
Notary Public

My Commission Expires September 25, 2023
my Commission expires:

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The South Carolina Court of Appeals

The State, Respondent,

v.

Furman Eugene Taylor, Jr., Appellant.

Appellate Case No. 2015-000066

ORDER

The State has filed a motion to strike certain matters from Appellant's record on appeal and any references to those matters in Appellant's pro se brief. The motion is granted, and the court will only consider State's Exhibit 14, State's Exhibit 15, and Rule 3(c), SCRCrimP. This court will not consider the remaining matters because they were not presented to the trial court. *See* Rule 210(c), SCACR ("The Record shall not . . . include matter which was not presented to the lower court or tribunal.").

Appellant's motion to substitute counsel is denied.

FOR THE COURT

Columbia, South Carolina

cc:
Furman Eugene Taylor, Jr., 198161
Alan McCrory Wilson, Esquire
Robert M. Pachak, Esquire
William Walter Wilkins, III, Esquire
John Benjamin Aplin, Esquire



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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Furman Eugene Taylor, Jr., Appellant.

Appellate Case No. 2015-000066

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

Unpublished Opinion No. 2016-UP-390
Submitted April 1, 2016 – Filed August 3, 2016

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia; and Furman Eugene Taylor, Jr., pro se, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General John Benjamin Aplin, both of Columbia; and Solicitor William Walter Wilkins, III, of Greenville, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.[1]

APPEAL DISMISSED.

LOCKEMY, C.J., and WILLIAMS and MCDONALD, JJ., concur.

---

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

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AUG 22 2016
ATTORNEY GENERALS OFFICE

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 19, 2016

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Furman E. Taylor, Jr.
Lower Court Case No. 2012GS2306511, 2012GS2306513
Appellate Case No. 2015-000066

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

cc: Furman Eugene Taylor, Jr., 198161
Alan McCrory Wilson, Esquire
Robert M. Pachak, Esquire
William Walter Wilkins, III, Esquire
John Benjamin Aplin, Esquire

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FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
County of Greenville)

Furman E. Taylor #198161)
Full name and prison number (if any) of Applicant)

v.)

APPLICATION FOR)

State of South Carolina) POST-CONVICTION RELIEF

2016-CP-23- 05673

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution

2. Name and location of Court which imposed sentence General Sessions, 305 East North Street, Greenville S.C. 29601

3. Name(s) of co-defendant(s) (if any) Amanda A. Caldwell

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

(a) 2012-GS-23-06511

(b) 2012-GS-23-06513

(c) _____

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

(a) January 07, 2015; Life imprison (17-25-45)

(b) January 07, 2015; 30 days concurrent

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. Submitted April 01, 2016 - Filed August 3, 2016

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2016-UP-390

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Newly After discovered evidence / Alibi witness

(b) Ineffective assistance of Counsel, original, re-trial, appeal

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) (See Attached pages) page 1

(b) (See Attached pages) page 1 thru 3

(c) (See Attached pages)

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Direct Appeal

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. Court of Appeals, SC., Columbia, 29211, P.O Box 11629

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Appeal dismissed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. August 03, 2016

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Unpublished opinion No. 2016-UP-390

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) (See Attached pages) (see) page 3

(b) (See Attached pages) (see) page 3

(c) (See Attached pages)

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

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Robert Ianuario; 419 Vardry Street, Greenville, S.C., 29601

ii. Alex Kornfeld; 16 Whitsett Street, Greenville, S.C. 29601

iii. Robert M. Pachak, S.C.C.I.D., Div. of Appellate defense; PO Box 11589, Columbia, S.C., 29211-1589

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

i. Robert Ianuario; (a), (b), (e), First (original) trial on these charges that ended in hung jury.

ii. Alex Kornfeld; (B), (C), (e), Second trial that ended in conviction

iii. Robert Pachak; (d), (e), in Direct appeal

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

Vacate Sentence and remand for further proceedings

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

NO

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Greenville)

I, Furman Taylor, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 22nd day of September, 2016.

Mary C Mushat (L.S.)
Notary Public

My Commission Expires: 1-23-2022

620

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Furman Taylor, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this 23rd day of September, 2016.

Mary C Musheff
Notary Public

My Commission Expires: 1-23-2023

Revised 3/2003

11.(a) Affidavit of alibi witness; Actual innocents claim.

(b)(1) Original counsel (Robert Ianuario) failed to formally request/motion for a fast and speedy trial.
(2) Original counsel failed to request and obtain a complete/entire original video even after the defendant advised that he had been approached by a second potential suspect that had made contact with the co-defendant that fit the description perfectly; Actual innocents claim.
(3.) Original counsel failed to object to the "nature" not being removed when the stipulation was entered into by the parties at original trial.

(4) Re-trial counsel (Alex Hornfeld) failed to object to and/or request a pre-trial evidentiary hearing to discover admissible/inadmissible evidence.
(5.) Re-trial Counsel failed to object to the court not doing a balancing test on evidence introduced at trial.
(6) Re-trial counsel failed to require that the stipulation entered into between the parties at the first trial remain binding at this subsequent trial when evidentiary stipulations may provide sufficient evidence of elements of charged (offenses)

(cont.)

and protect the constitutional rights of the defendant when weighing the probative value of the "name" and "nature" of qualifying prior acts against their prejudicial impact when they were similar to the current charges against the defendant was highly and unduly prejudicial to the defendant.

(7.) Re-trial counsel failed to properly object to the application of §16-11-311(a)(2). and it's constitutionality.

(8.) Retrial counsel failed to object to purjured testimony and/or move to impeach witness(es).

(9.) Re-trial counsel failed to object to Ms. Kara Bennick being allowed to authenticate the video(s) without ever viewing them and/or any first hand knowledge.

(10.) Re-trial counsel failed to object to the video's content not being what it was purported to contain by the impounding officer. Investigator Mashak.

(11.) Re-trial counsel failed to object to the admission of the mug shot photo (most recent)

(12.) Appellate Counsel (Robert M. Pachak) failed to designate the entire record on appeal.

(13.) Appellate Counsel failed to re-brief meritorious issues at the request of the appellant/client.
(14.) Appellate Counsel did not communicate in any meaningful manner with appellant/client.

16.) (a) Newly After discovered evidence that was discovered only after the notice of appeal (direct) was perfected and the appeals court having exclusive control would not grant leave for appellant to have this evidence reviewed by the circuit court. Thus, this would now be the first proper avenue for review and/or consideration.

(b) (1 thru 14) Ineffective assistance of counsel; This is the only venue I am aware of for these type(s) of claims.

Certificate of Service

I, Furman E. Taylor, hereby certify that a Post Conviction relief application on indictment No.(s): 2012-GS-23-06511 and 2012-GS-23-06513, was this day, postage pre-paid, placed in the United States Postmaster's hand here at Perry Correctional Institution and addressed as follows;

Mr. Paul B. Wickensimer, (esq.)
Greenville County Clerk of Court
305 East North Street
Greenville, SC. 29601

Furman E. Taylor #198161

RECEIVED
SEP 23 2016
P.C.I. MAILROOM

Furman E. Taylor Id.# 198161
Perry Corr. Inst./ 62B-206
430 Oaklawn Road
Pelzer, S.C. 29669

(Page 1 of 1)

Mr. Paul B. Wickensimer (Esq.)
Greenville County Clerk of Court
305 East North Street
Greenville, S.C. 29601

September 23, 2016

In Re; Furman E. Taylor V. State, Ind. Nos; 2012-GS-23-06511, 2012-GS-23-06513.

Dear Mr. Wickensimer,

I am writing in concern of the above referenced matter.

In which, please find enclosed my application for post-conviction relief, that I would like for you to clock-stamp and file in the courts, as well as send me a clock-stamped copy for my records. This request return service on my behalf would be of a tremendous assistance to me.

Furthermore, I would like to "Thank You" in advance for all of your time, help, and consideration in these endeavors.

I look forward to hearing from you soon!

Sincerely,

Furman E. Taylor

626

STATE OF SOUTH CAROLINA
County of Greenville
Furman E. Taylor, #198161,
Petitioner,
Vs.
THE STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS
C/A. NO. _____

SUMMONS

TO: ATTORNEY GENERAL for SOUTH CAROLINA,
ALAN WILSON:

YOU ARE Hereby Served Notice of Petitioners P.C.R. application which is served upon you. Failure to answer this application within 90 days of service of such would subject you to be in default and Grant the relief requested by Petitioner.

Furman E. Taylor #198161

RECEIVED
SEP 23 2016
P.C.I. MAILROOM

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Furman E. Taylor, #198161, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT 2016-CP-23-5673 **RETURN AND PARTIAL MOTION TO DISMISS**

FILED-CLERK OF COURT
PAUL B. MORRISON
GREENVILLE CO., S.C.
2017 MAR -7 AM 11:57

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on October 3, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. Applicant was indicted by the April 2013 term of the Grand Jury for Greenville County for one of Burglary – 1st degree (2012-GS-23-6511) and one of Petit Larceny – Sentencing pursuant to § 16-1-0057 (2012-GS-23-6513). Applicant was represented by Robert E. Ianuario, Esquire during a trial which occurred in February of 2014 which resulted in a mistrial due to a hung jury. On January 5, 2015, Applicant proceeded to a new trial represented by Alex Kornfeld, Esquire On January 7, 2015, Applicant was convicted as indicted of Burglary – 1st degree (2012-GS-23-6511) and Petit Larceny – Sentencing pursuant to § 16-1-0057 (2012-GS-23-6513). Applicant was sentenced on January 7, 2015, by the Honorable D. Garrison Hill to life in prison for Burglary, 1st degree, pursuant to § 17-25-45, and thirty days for Petit Larceny, to be served concurrently.

Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire was later retained to represent Applicant, and also filed an Anders brief. The South Carolina Court of Appeals

dismissed Applicant's appeal and granted counsel's motion to be relieved in an unpublished opinion filed August 3, 2016. State v. Taylor, Op. No. 2016-UP-390 (S.C. Ct. App. 2016). The Remittitur was returned on August 19, 2016.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Newly Discovered Evidence
   a. "Affidavit of alibi witness."
   b. "Newly after [*sic*] discovered evidence that was discovered only after the notice of appeal was perfected and the appeals court, having exclusive control, would not grant leave for [Applicant] to have this evidence reviewed by the circuit court."

2. Ineffective Assistance of Trial Counsel (pertaining to counsel during 2014 mistrial)
   a. "Failed to formally request motion for speedy trial."
   b. Failed to obtain relevant evidence
   c. Failed to make appropriate objections

3. Ineffective Assistance of Trial Counsel (pertaining to the trial resulting in Applicant's conviction in January of 2015)
   a. "Failed to request a pre-trial evidentiary hearing discover admissible/inadmissible evidence."
   b. Failed to make appropriate objections

4. Ineffective Assistance of Appellate Counsel
   a. "Failed to designate the entire record on appeal."

b. "Failed to re-brief meritorious issues at the request of [Applicant]."
c. "Appellant counsel did not communicate in any meaningful manner with [Applicant]."

III.

Applicant seeks relief on the basis of newly discovered evidence. A party making a motion for a new trial or for relief from judgment based on newly-discovered evidence must show that the evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005). Before the Court will hold an evidentiary hearing, the Applicant must make a prima facie showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). While under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained, Applicant has failed to set forth with any specificity how it would have affected the outcome if used at trial or why such alleged evidence was not readily discoverable at the time of trial. Respondent submits that Applicant's claim of newly discovered evidence fails to make a prima facie showing that he is in actual possession of such evidence or that evidence would likely change the result if a new trial were to be granted.

Applicant has failed to make such a prima facie showing that he is entitled to relief based on the information set forth and, therefore, Respondent submits Applicant is not entitled to an evidentiary hearing in the matter. Accordingly, Respondent submits that this allegation should be summarily dismissed.

IV.

Applicant alleges ineffective assistance by the counsel representing him during the 2014 mistrial. The mistrial was a result of a hung jury. Respondent submits this allegation 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....

S.C. Code Ann. § 17-27-20.

Ineffective assistance of counsel during a preceding mistrial is not a claim cognizable under the act. Applicant is not collaterally attacking his conviction or sentence, but rather the result of a trial which resulted in neither conviction nor sentence. Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds.

Respondent therefore moves for summary dismissal of this allegation pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

V.

Notwithstanding Respondent's submission that ineffective assistance of the preceding trial counsel's conduct is not a ground for post-conviction relief, Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged 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, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have

prejudiced 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.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test.

VI.

Applicant claims ineffective assistance of his second trial counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

VII.

Applicant alleges ineffective assistance of appellate counsel in his application. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose

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

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate counsel rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent therefore requests an evidentiary hearing on this allegation.

VIII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

IX.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

X.

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

[Signature block to follow]

XI.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

By: _____
ATTORNEYS FOR RESPONDENT

February 24, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2016-CP-23-5673
	)	
FURMAN E. TAYLOR, 198161	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

FILED-CLERK OF COURT
PAUL D. MOORE/SHERIFF
GREENVILLE, S.C.
2017 MAR -7 AM 11:57

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 and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville SC 29601

DATED this 24th day of February, 2017.

Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
	2016-CP-23-5673
COUNTY OF GREENVILLE	
FURMAN E. TAYLOR, APPLICANT,	
vs.	TRANSCRIPT OF RECORD
THE STATE OF SOUTH CAROLINA, RESPONDENT.	

October 27, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE LETITIA H. VERDIN, JUDGE

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

SUSANNAH C. ROSS, ESQ.
Attorney for the Applicant

DeSHAWN MITCHELL, ESQ.
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITS

NO	DESCRIPTION	ID	EVD
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PROCEEDINGS

(WHEREUPON, proceedings commenced at 11:34 a.m.)

MR. MITCHELL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. MITCHELL: This is 2016-CP-23-5673, Furman E. Taylor vs. The State of South Carolina. The applicant is presently confined to the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court of Greenville County. The applicant was indicted by the April 2013 term of the grand jury for Greenville County for one count of burglary first degree and one count of petit larceny.

The applicant was represented by Mr. Robert Ianuario during a trial which occurred in February of 2014 which resulted in a mistrial due to a hung jury. On January 5, 2015, the applicant received a new trial represented by Mr. Alex Kornfeld. On January 7, 2015, applicant was convicted of burglary first degree and petit larceny. The applicant was sentenced on the same date by the Honorable D. Garrison Hill to life imprisonment for burglary first degree pursuant to Statute 17-25-45, and 30 days for petit larceny.

The applicant filed a timely notice of appeal. Mr. Robert Pachak was later retained -- or, I should say,

appointed to represent the applicant, and also filed an Anders brief in this case.

The South Carolina Court of Appeals affirmed the applicant's conviction and granted counsel's motion to be relieved in an unpublished opinion. The remittitur was returned on August 19, 2016.

And in this particular case, Your Honor, the applicant has made an allegation of ineffective assistance of counsel -- of trial counsel for his first trial which resulted in a mistrial. And initially, the State would summarily move for a dismissal of the allegation seeing as that trial didn't result in a conviction.

THE COURT: All right. Anything from the applicant on that one?

MS. ROSS: He would respond that, first, the allegation of the initial trial counsel was failure to request a speedy trial, which was something that carries over to potential prejudice after the second trial, which I believe was four years after the original incident. Witnesses changed their stories. And that's part of that.

And also, there was a videotape that was kind of crucial to this case that came from a pawnshop, and Mr. Taylor's position from the beginning was this is only part of the videotape. It's not showing the complete tape which would help exonerate him, and Mr. Ianuario failed to

subpoena or attempt to go get that full videotape during that first trial.

THE COURT: All right. Well, I'll tell you what. I'll allow you to ask those questions just as they bear on his second trial.

So all right. You ready to proceed?

MS. ROSS: Yes.

Just to give a brief summary, we heard the background. Those were the allegations against Mr. Ianuario.

Mr. Kornfeld represented Mr. Taylor in the second trial, and he's got some allegations there. He has done a lot of his own work. He's serving a life sentence. But my sort of overview, and I may have skipped some of the things that are in his application, was that Mr. Kornfeld didn't effectively exclude the prior bad acts. This was a burglary first trial.

THE COURT: Okay.

MS. ROSS: That basically, they brought in two prior burglary firsts that were introduced in front of the jury. There was no 403 analysis of the prejudice versus probative value of those. Mr. Kornfeld -- I believe on page 11, the solicitor cited State v. James, and he cited it as an Appellate Court opinion. And in the interim, that was overruled by the Supreme Court. And I've got

that case right here.

THE COURT: Okay.

MS. ROSS: So it was sort of the wrong State v. James that was relied upon, and Mr. Kornfeld did not bring that out at the time resulting in prejudice of having two prior burglaries in front of the jury when Mr. Taylor was being tried for burglary.

He failed to effectively move to exclude the video. And that's around page 39 through 45. And then 210, it comes in.

So essentially, this video, Mr. Taylor is saying that it wasn't the complete video and so -- under completeness, and the fact that the video was never turned over until right before the second trial, I believe, that there was sort of a Cheeseboro issue about whether that should have been produced before and whether there was some prejudice from that.

And then he alleged failed to properly impeach, and he's got some parts on that.

There are also due process violations in the delay about producing the entire video, also, the use of priors under the burglary first, 16-11-311.

And he argues life without parole, notice was not properly served because it was served, I guess, prior to the first trial, but Mr. Kornfeld didn't get the notice.

I will call Mr. Furman to the stand -- I mean Mr. Taylor to the stand at this point.

THE COURT: All right.

THE CLERK: Mr. Taylor, please step around to the witness booth. Place your left hand on the Bible and raise your right hand.

WHEREUPON,

FURMAN TAYLOR

After having been duly sworn, testified as follows:

THE CLERK: Thank you. You may be seated.

Please state your full name for the record.

THE WITNESS: Furman Eugene Taylor, Junior.

DIRECT EXAMINATION

BY MS. ROSS:

Q Okay. Mr. Taylor, you filed for a PCR, and you've prepared amended applications and done a lot of paperwork on this. Can you just tell the Court, basically go through your issues of ineffective assistance of counsel and why your case merits postconvention relief.

A Well, I don't know. The judge probably remembers me. I actually came before her to get rid of the first attorney because he would not go get the video. That was our problem from the beginning because I knew there was someone else there that was exactly who they were describing. And in my second attorney's defense, by the

time he actually got to go get it, they had already gotten rid of it and wanted him to rely on the video that they had produced, which was only half of what the impounding officer, Officer Mashak, had said he had.

He had -- because the defendant in this case was actually Amanda Caldwell. He said he had from the time she came in till the time she left. However, when viewing the video, it's only from the time she stands at the counter till she leaves. He also testified at the second trial the very same thing saying that he had from the time they come in till the time they leave. He said that on several occasions. He was even requestioned, re -- well, what would you call it when they call them back? Redirect by the prosecution, and he also told him the exact same thing. He had that video from that point to the other point, but he did not.

Q Now, you said he did not. He testified that he had it from this point to this point, but the video that was shown to the jury did not show all that; is that what you're saying?

A That's right, ma'am. It's only from the time she was at the counter till the time she left, because the individual that they are describing was on the first part of that video. He came there with her. I went there to jump-start his vehicle.

Q Okay.
A And I allowed her to borrow mine because I went somewhere else, which I had an alibi witness who I could never get in contact with. I've tried on several occasions to do just that.
But, however, another thing that I was going to say on ---
Q Let's leave Mr. Ianuario with the video and the prejudice of not subpoenaing that and then talk about Mr. Kornfeld. Just while we're on the topic of video, let's just talk about the video throughout.
So the first trial, the video didn't come in at all because it was never subpoenaed.
A Yes, ma'am. That's right.
Q Okay. And the second trial, Mr. Kornfeld subpoenaed the video.
A Yes, ma'am. He said that he had actually went and tried to get it from the pawnshop, and they never would respond to his subpoenas. And so he eventually, once he did get one December 30th, which was like 30 months later, they said that they did not have those records any longer.
So he went and talked to the investigator, I think his name was Mitchell, and Mitchell said that -- and I guess, from what I'm understanding is he said that Investigator Mashak had the same limited amounts of time,

and it was like I thought they were supposed to turn everything in to the prosecution. If he still had that video, I would say that maybe, if he said from the time they come in till the time they left, it might have been on that video.

Q Okay. Just let me slow you down there.

So prior to the first trial, you did not have the video in discovery and did not even know about it.

A No, ma'am. I tried to get it several times from Mr. Ianuario.

Q Okay. And then, at the second trial, this video comes in, correct?

A Yes, ma'am. Because I sought out, because I knew it had exculpatory evidence in my favor on it.

Q And on page 210 of the transcript, they address the chain of custody of that video.

A Yes.

Q And I'll show it to you. Is that your recollection of your trial? I know you've reviewed this inside and out. Didn't they talk about chain of custody of that video?

A Yes, ma'am. They did. And in that chain of custody, when he's speaking, they ask him, you know, Can you explain to the jury what that chain of custody was?

He says, Yeah.

He -- it starts off with him going to the manager of the pawnshop. They sign the paperwork saying they gave this to me, these DVDs, and then I sign saying I obtained them. And then I got to Property and Evidence. They sign, I sign. And it goes back and forth like that. However, when asked on page 209, What did you do with the videos, he says, I brought them to my office, viewed them, basically, burned a copy of them and then placed them in Property and Evidence, which means he had an opportunity to distort those videos hisself.

Q Okay.

A That's why I don't understand why they allowed those videos in to begin with because the chain of custody was broken at that point by his own testimony.

Q And it also means he had the video in his possession under Kyles vs. Whitley back at the first trial, correct?

A Yes, ma'am. It had to mean that.

Q And then that was not produced at the first trial.

A Yes, ma'am. That's right. They was afraid I would probably be able to go get it still if I subpoenaed it from the pawnshop, so they went ahead and held that off till I got to the second trial knowing I was going to go for it, and it would be evidence against me at that point. So since the whole story wasn't being told, they wanted it to happen just that way.

Q And you feel that delay in getting the video prejudiced your case.

A Yes, ma'am. Tremendously so because it would have exonerated me if I showed a second suspect dressed exactly as they described. Yes. It would have.

Q And so finally, when your lawyer Alex Kornfeld went and tried to subpoena the stuff from the pawnshop, it was well too late then ---

A Yes, ma'am.

Q --- four years later or five years later. Okay.

Now, as far as going back to the video, on page 39, Mr. Kornfeld did move to exclude the video, correct?

A Yes, ma'am. Under Kyles vs. Whitley. And that would have also been, when reading that case, is that it's something withheld, it's exculpatory by the prosecution, which is what exactly that case deals with.

Q Okay. Did Mr. Kornfeld argue that on your behalf?

A Yes, ma'am. He did argue that on my behalf. It was overruled. And one of the complaints I had is, you know, being as that was the case and it wasn't a whole video and he brought up Rule 1003, Rule 1003 says it has to be the original. They kept screaming it's the original, but it could not have been original when he admitted the manager burns a copy from the beginning. So it was never the original video from the beginning. And then him going to

his office and making another video, there's no telling what he distorted or changed in the video before it was used at trial.

Q Okay. So there was an argument, then there was also did he make an argument that it wasn't -- so he argued that it wasn't the original.

A My attorney did.

Q Right.

A But the prosecution argued that it was the original.

And finally, at one point in the -- in that right before, the judge jumped and said, Well, that's not the threshold issue. The threshold issue is whether Ms. Bennick can testify. He had already brought up the Rule 1003 and had brought up admissibility, but yet when they came back to it and he said, So, what's your objection? After they took the jury out, he said, What's your objection? Your objection is relevance? He made the mistake by saying, Yes, it is, when in actuality, it was not.

Q So he did an improper contemporaneous objection when before he'd done the proper argument.

A Correct one, yes.

Q Okay. Now, is there anything else that Mr. Kornfeld did, or did he ask for any jury instructions regarding the video or destruction of evidence?

A No, ma'am. The only thing that I'm aware of that he actually asked for an instruction on was prior bad acts, which is a whole different situation.

Q Okay. Now let's go back to the video. Anything else about the video that you want to put on the record?

A It was extremely unduly and unfairly prejudicial to me in my defense.

Q Okay. And did you believe more of an objection should have been made to the chain of custody? You said a little bit about that.

A Yes. I do believe so. I believe, actually ---

Q There was no specific objection to the chain of custody made, was there?

A No, ma'am. There wasn't. But he did not stipulate to the chain of custody. I do give him that.

Q All right.

A But they put Kara Bennick on there.

Q Okay. I believe that's all that I remembered you having about the video.

A Excuse me, ma'am?

Q I think that's all I remember that you had about the video; is that right?

A Well, I don't understand something else that happened with that video, them saying that Kara Bennick could testify to the authenticity of the video when she'd never

seen it, she had no firsthand knowledge, merely that that was the video that was turned in. But he'd already done distorted it and had it for a period of time. So I don't understand why she testified and they said, Well, she'll complete the chain. She couldn't complete the chain. It was already broken.

Q Okay. She was the Property and Evidence witness?

A Yes, ma'am.

Q So she's testifying to whether she received it or not. Okay.

A Pretty much, yeah.

Q Okay. Now, as far as let's move on to the whole issue of bringing in the two priors. This was a burglary first charge.

A Yes, ma'am.

Q Mr. Kornfeld moved to exclude the prior bad acts.

A Yes, ma'am. He did.

Q And they ended up coming in. Where is your argument that he was ineffective in his argument attempting to exclude the ---

A Well, in the beginning on page 9, Lines 2 through 5, when he brought up originally that he wanted to make a 404(b) to exclude prior bad acts, and knowing that this is an element of the crime, he should have interlocutory stipulated under Hamilton vs. State or even Old Chief and

said, listen, being that that's the case, it would have triggered an obligation of the Court to eliminate the name and nature from it so it would have been exactly the same thing as getting a 404 motion done. But it would have been interlocutory because the stipulation would have actually did it under those two cites.

Q Did he offer -- and he did not offer to stipulate that there was a gun involved or that it occurred at night, did he?

A No, ma'am. He did not.

Q And did -- the judge did not weigh factors of probative value versus prejudice under 403.

A On none of the evidence that came into play. No, ma'am. He did not.

Q All right. Now, did he make any constitutional arguments against just the statute itself?

A No, ma'am. He did not.

I do know that on page 11, Mr. Kornfeld made the argument of the statute itself, but he did not go on to say it was unconstitutional. He didn't include that. And he said if the two prior burglaries get in, which is an element of defense, it circumvents the judge's ability to actually do a 403 analysis when, in actuality, Rule 403 invokes the judge. There isn't really, I don't think, any discretion in that. But the judge never offered to do it

at any time, and I'm saying there were several points where Mr. Kornfeld brought that fact up, that he felt that it circumvented, handcuffed or overall kept the judge from being able to do a 403, which was wrong. And I think it prejudiced me by him saying that to the judge because the judge must have felt that he was -- knew what he was talking about. Otherwise, he would have knew Rule 403 invoked him to do that.

Q Okay.

A Because the name and nature of it was all the same, so it would have been no way you could escape prejudice from it.

Q All right. And you believe the outcome of the trial would have been different if they -- the jury hadn't heard about two prior burglary firsts when you were on trial?

A Yes, ma'am. I do.

Q Okay. Now let's talk about the failure to properly impeach in witness testimony between the first trial and second trial. What did you want to put on your record about that?

A Okay. There is several things I would like to say about that. And his failure to impeach would have came in where, first of all, the investigator himself in the case had made the statement at the first trial that David Perry had never seen a male suspect at all, period, and had been

advised and testified to it at open trial. However, at the second trial, he said that he had showed him a photo lineup and to see if he could identify the person, insinuating that he did, in fact, see a male. And then they put Mr. Perry on the stand to testify to something he had said he had not seen. And at that point, I think they should have moved to impeach and took him off the stand because, obviously, his word was not credible.

Q Okay. So you think he should have used the testimony from the prior trial to impeach that witness at this trial?

A Yes, ma'am. Because it was even part of a supplemental that the officer wrote and everything, everything he said up until the second trial.

Q And you'd also argued that that was improper of the State to not correct or allow that testimony that they knew was contrary to the prior testimony and the statements of that witness.

A Right. It would have been ---

Q Okay.

A --- because that would have changed the face of how they viewed what was being said by Ms. Caldwell. They was bolstering her testimony by changing theirs. But him being an agent, an investigator, he should not have been allowed to make that kind of a statement, a lie, knowing

it's a known lie. And the prosecutor should have known that it was a lie because he, obviously, had done the history of the case. And that being the case, he already knew the man had testified that he didn't see nobody.

Q All right. Okay.

A So how could you put him on the stand and then elicit testimony from him knowing he said he didn't see nobody?

Q And Perry was just sort of a witness who kind of came onto the scene and couldn't point to you or identify you ---

A That's right, ma'am.

Q --- in court. Okay.

Now, but going back to the codefendant, Ms. Caldwell, was there impeaching of her that you feel should have been done?

A Yes, ma'am. There's quite a bit of it. I think most of that paperwork is probably sitting down there where you're at at this time. Because Amanda made a bunch of different statements, I mean, everything from what she viewed or she said she viewed, because she said at the first trial that she watched the individual break the door down and enter the home. At the second trial, she didn't say that. She said, I couldn't see the individual. I just heard glass break.

She said a black truck pulled up at the first -- in

the beginning statements that she made. At the second trial, she said it was a -- at the first trial it was a white truck, at the second trial, she said that she didn't remember the color of the vehicle, only that it was a darker color.

Q All right. So there were a number of issues, discrepancies between her testimony?

A A whole bunch of different ---

Q And she gave three statements to law enforcement initially right after her arrest; is that correct?

A Yes, ma'am. Plus several others during the two different trials.

Q Okay. And then how did your name come up?

A Well, my name came up because the investigator, she said someone named Tyler Whitman had actually been the one who gave her the stuff, and the investigator said, You're lying. It was Furman Taylor. And then she said, Oh, well, basically, i.e., this is who we want.

And she was, Okay. Well, I'll tell the truth. It was Furman Taylor then.

And it was like from that aspect, it makes me think that he never gave her the opportunity because she already said it was someone else. He wanted me. And ---

Q So she never -- she didn't bring you up first. The investigator did, and she was responding to that.

A Yes, ma'am.
Q And did your lawyer cross-examine her on that?
A When you say did he cross-examine her on ---
Q Did he ask her or the investigator about who brought up the name Furman Taylor?
A He did bring that up, ma'am.
Q Okay.
A However, when he asked her that, she's saying that she remembers saying it was someone else, me, I think, and a girl named Katherine Sasser, which would have been her second statement, not her first one, that her first statement was not -- didn't have my name in it anywhere. The investigator made that happen. But he had talked to her husband on the 21st of the month before, so he said he didn't take the case till the 30th of the following month. So he said when he talked to her husband, he had asked him who she might have been hanging out with and a description.
Q I'm having trouble following you. You've got to give me -- just get to your point there.
A Well, my point is is that he had already heard of the person he wanted to make the right person, if it makes any sense. If he didn't take the case till the 30th, how did he talk to her husband on the 21st? Not only that, when he said the report said something about long hair and a

goatee, can you describe him for me, there was no report at that time. That was well before the 6/1 incident. And the prior one of the actual crime date, the first officer said that it was a gray-haired man with a full beard, which was obviously not me.

Q Okay. Now -- and so these stories are sort of changing along and it's starting to being like the investigator is the one bringing you in ---

A Yes.

Q --- not the witnesses.

A Driving it.

Q Okay. I want to just turn, and there's some things I just noticed about failing to properly impeach. On page 219 you had pointed out something at Line 17 that Mr. Kornfeld elicited in reference to another incident. And my notes could be wrong here, but ---

A When you say ---

Q 209, 17 -- 219, Line 17.

A That must be 217 must be the page number.

Q Yeah. 217 -- 219.

A 219. Okay. He said it was a different case number. Yeah. And he took over on the 30th, but he's talking about there was another case that he was working when he actually talked to her husband, is what he was saying.

Q So I think your point in the notes to me were that

your attorney elicited reference to another case about you, and the jury got to hear about that.

A Yes, ma'am. It did. Exactly.

Q And you feel like that was improper?

A I do because it brings up -- it's -- it's showing them that I have some kind of propensity to do these things when in all actuality, it was just because I knew this female, and she was doing whatever she was doing. It had nothing to do with me, per se. There's not another way to put that other than he is the one who actually got a name from her husband. That was what I was bringing out. But the fact that he brought up this other case here and he said, Well, I thought that was on the 17th, and he said, No, I took it over on the 30th, but if you actually read in the supplemental reports, on the 21st, he talked to her husband about a different case all together. That was where I had tied those together and found out that's where he got the description from, and that's where, when he said they said something in the report, it had nothing to do with the report. That's what he had heard from her husband about a different case.

Q Okay. And I'd refer you to page 190 -- 190.

A Oh, I thought you said 290. My bad. On the redirect?

Q Yeah. That's the part, the page I believe where your

lawyer never crossed that investigator, Furman, you know, the investigator Mashak brought you up as the case. Is that the page? I apologize. That was my note that that was the page where Mr. Kornfeld began to cross-examine on that issue and didn't bring that up.

A I'm sure I have it in my notes down there.

Q But if it's around there, that's your recollection of the trial, and you believe that was improper of Mr. Kornfeld not to bring that in?

A Well, I'm saying, basically, even when he talked to the man and caught him in a known lie, he said, Well, I understand it's been a long time, that kind of circumvented the adversarial process circumventing it.

As far as to her husband, I'm not sure what you're saying there ---

Q Okay.

A --- other than the fact that he had talked to her husband prior to taking the case, which was something I don't understand because he's talking about a report. There was no report at that time. So he actually told a lie that he asked her husband that question because he had heard a report of a description when in all actuality, her husband is the one who gave that description.

Q All right. Now, are there any other allegations that you have of ineffective assistance of counsel against --

well, let's go back. Let's go back to Rob Ianuario. Did he request a speedy trial on your behalf?

A No, ma'am. He did not.

Q Did you feel that he should have?

A Yes, ma'am. I do think he should because it took so long. It took over 20 months to get to the first trial, and then after that being the case, it took 30 months -- 31 months before the second trial. And by that time, so much evidence had been lost and witnesses' memories had been so jaded and changed that there was no way I could have built a defense at that point.

Q So you feel it prejudiced your case?

A Yes, ma'am. I do.

Q Now, is there any other allegations against Mr. Ianuario?

A Well, you know, I'm going to say this. Brady Mashak in the beginning had made a statement that the only thing that she had said in her first testimony was on page 217, Lines 3 through 9 is he says, you know, Did She implicate the defendant in the first statement?

He said, No, sir. She based it -- all she stated in the first statement is she got the items from the defendant, but she put herself away from it.

And he said, She got the items from what defendant?

He said, Furman Taylor.

Well, in her first statement, she said she got them from Tyler Whitman. So actually, they got that wrong all together. And I think that was prejudicial, too, because he said -- the actual investigator himself said that this is what she said when he is the one who actually changed and said, You're lying. You were with someone else. So he's trying to say after he said that was her first statement.

Q Too many pronouns. Who's "he"?

A I'm talking about Investigator Mashak in this particular instance.

Q So you feel that that should have been clarified that the investigator was the one who brought your name into the whole thing. She did not bring your name up independently. It was only after the investigator said, It was Furman Taylor, wasn't it? It was Furman Taylor, correct?

A And I believe maybe it should have been brought up that maybe Mashak's willingness to tell a lie in order to get a conviction rather than see justice done should have been said something to or spoken to in that actual proceeding.

Q Okay. Now, you've got your notes there. Are there any other allegations that you'd like to clarify for the Court?

A Well, I think that maybe he should have moved for prosecutorial misconduct and a mistrial for putting David Perry on that stand. I do believe that.

Other than that, I think we pretty much have covered most of it because the chain of custody and everything is we've already done spoke on. We've talked about the 403, we've also talked about chain of custody authenticity and it not being what it was purported to be. Even the prejudice by objecting to the wrong issue, which was relevance rather than admission or it not being the whole story or it being a copy, that was actually what the objection should have been about.

Q Okay. Now, as far as appellate issues, what's your allegation of ineffective assistance of appellate counsel?

A You're talking about the direct appeal?

Q Yes.

A Well, he never even made contact with me in any kind of way. He said, Look, you know, this is my decision, all of it. Basically, you sit tight. I've got this, is basically what he told me. So I'm thinking in every single aspect of it, I should at least have an ability to have input in to show where we needed to do what we needed to do, and he did not feel that way.

And I would say one other following thing about an objection is I believe that probably when she -- when that

-- when she brought up the mug shot photo, that she said most recent. That led the jury to believe that I had a criminal background, and I think there should have been an objection to that. That was on page 144 on Line 22. And on 142, Line 25 he said, No objections, Your Honor, to everything she said. I feel that that was also something that I would have spoke about to ineffective assistance in this particular instance as far as the second trial.

Q All right. So suggesting that there was a more recent event and that arrest, and that was from, I guess, Dana Lewis at the jail? Or was that the witness?

A The witness at that point, I think, was -- let me give you an exact name because it wasn't Bennick. It was ---

Q It doesn't matter.

Well, was it the jail custodian or the person who did the mug shots?

A Yes, ma'am. It was.

MS. ROSS: Okay.

THE COURT: If you don't mind, as you're looking for that, let's take a short break. I need to -- I've just gotten an e-mail that I've got a motion hearing in my office. They're waiting on me. I'll be back very shortly. It shouldn't take more than two or three minutes, I wouldn't think.

MS. ROSS: Okay.

(WHEREUPON, a recess was taken at 12:06 p.m.)

(WHEREUPON, proceedings reconvened at 12:20 p.m.)

BY MS. ROSS:

Q Mr. Taylor, getting back on the record, you have -- I'm trying to think. With appeal issues, just going back to the appeal issues with Mr. Pachak, is there a meritorious issue that you think he should have briefed that he did not?

A When you're talking about the second trial?

Q No. The appeal.

A Oh, yeah. There was several of them.

Q You said that he didn't communicate with you enough. And then was there an issue that you thought that could have -- that you would have won on that he did not brief for you?

A Yeah. There were several issues where he objected, just like when we're talking about to -- he objected and said, you know, that he wanted a 403 and that it was wrong, it shouldn't be brought up. Even though he didn't do it necessarily the right way, the fact that he did object and it was ruled on by the judge, it should have been actually briefed in my case. And even though I don't have that case before me, there was a bunch of things that he did object to that he should have actually put on but

he refused to do that.

And he did a Anders brief and said there was no merit, did one that was all he was required to do and got out of the way. Pretty much without pay, that's probably all he wanted to do. But I even wrote him back and told him that I wanted him to rebrief, and he refused to do that as well.

Q Okay. Do you need to have that brief in front of you? I've got it here as part of the record. Or do you feel like that ---

A That might be just the record. I actually have my own brief.

Q Okay.

A Do you have the -- you have the 32 page one, don't you? Because I think that's where I actually told him each of the issues that I had. Because had he did so, it would have probably helped. There were some things that weren't ruled on that he did object to that was never ruled upon that I could not bring as well.

MS. ROSS: Okay. I don't believe that I've got that. If I can approach.

THE COURT: Certainly.

MS. ROSS: Thank you, Judge.

BY MS. ROSS:

Q Okay. Is this what you're talking about?

A Well, I had actually -- that was my actual one that I filed for an Anders brief. This is the one that I brought these issues that I thought he should bring. But he wouldn't do them, so they gave me a chance through an Anders to file my own, and that's what I did here.

Q And you did that, and you filed that in the case?

A Yes, ma'am. I did.

Q Okay.

A And then they said that -- they actually didn't publish an opinion, and I don't think they really could because it was pretty much on point.

Q Okay. Now, anything else that you'd like to present?

A Well, I do have some of those transcript page numbers and stuff, just like where a lot of these things that we brought up that I didn't actually give you those page numbers. If you would like to have the page numbers and lines that they came from . . .

Q If you feel like you want to put that on the record, then please do.

A Well, I would say that Officer Joseph Loveless, when he pulled up on scene, he said in his first -- at the first time that it was a white and blue van, but on his second one, he said it was a blue Ford Aerostar van. And he -- at that second trial, he changed the color of the van all together, just as Tandy Perry did and said it was

two tones of blue. My van was white. The DMV report gives that and everything. As a matter of fact, on page 207, the DMV report that Mashak gave, it gave the color of the van as white.

Q All right.

A So it's like how they're getting two tones of blue, plus, at the first trial, it was brought up as to the tag number. The tag number did not match my tag number. It was never brought up at the second one. The prosecutor asked Tandy if he got it, knowing David is the only one that said he got a tag number. So ---

Q And you're saying your lawyer didn't impeach between the first and second trial properly?

A That's also what I would say.

Q Okay.

A If there's any of these that you want to know where the page lines are, I have it all wrote down on it.

Q I think your testimony just makes the point.

Do you have a copy of the first transcript? You want to make that a court exhibit?

A I don't have a copy of it to make an exhibit with. I have one, but it's the original one. I have no copy to give unless you would like to make a copy of it for the court exhibit.

Q Do you want to make the original one the court

exhibit? Do you want the judge to be able to review that?
A I would love for her to.
Q Is it in here?
A Yes, ma'am. It's in the white envelope. There should be two transcripts in there. One of them is marked. The one that's marked is the second transcript. The one that's unmarked is the first transcript. Yes, ma'am. That envelope.
This is the first trial transcript.
Q Okay. Do you want to make that an exhibit?
A Is there any way that I can get that back when it's over? Because I need that if -- in any case that I have to go to a written.
Q Okay.
THE CLERK: Do you want me to make a copy of it?
MS. ROSS: I was going to ask, if I could . . .
BY MS. ROSS:
Q Okay. Does this look like a copy of your first transcript so you don't have to make a copy or use your original?
A Yes, ma'am. This is it. It looks a little bigger. This must be both of them, first and second, because you see how much thicker it is than this one.
THE COURT: I think it's not bound, too. That might make it ---

MS. ROSS: It might make a little bit of a difference.

THE COURT: Yeah. Maybe loose and thicker.

MS. ROSS: Do you have any objection?

MR. MITCHELL: No objection, Your Honor.

MS. ROSS: I'd like to have this marked and entered into evidence as, I guess, Applicant's Exhibit 1. Or I'd be happy to make it a court exhibit since ---

THE COURT: Let's just do it as Applicant's 1 to show that he actually proffered that to the Court.

(WHEREUPON, Applicant's Exhibit Number 1 was marked for identification.)

THE WITNESS: Okay. Thank you, ma'am.

BY MS. ROSS:

Q All right. So I believe you're protected on the record with the discrepancies between the first and second transcript ---

A Yes, ma'am.

Q --- that you testified about.

A Yes, ma'am.

Q Okay. You also had -- did you feel like there were due process violations like in the State's failure to produce the video in the first place?

A Yes, ma'am. I do. I believe that is true because they should have done that.

I felt like in the beginning, which I know he may have felt that it was some kind of trial strategy, but when I knew at the first trial that I needed that video because it had a second suspect that was dressed as they described, I felt I needed that. My attorney, Mr. Ianuario, felt that I did not and that if I had any chance, it would be that they didn't find any video. Personally, I didn't care what other videos they produced. I wanted the one with the second suspect on it so that I could show them there's the guy you're talking about, rather than them saying it was me.

Q And did you have any issues with the service of life without parole? Were you served prior to your second trial?

A Ma'am, I do not recall ever being served that second time. The first time, I was served. I remember the guy coming to professional visiting serving me, but at the second one, I never received -- I never remember receiving any such documentation.

Q All right. And -- okay. Well, that's all the questions I have for you. Is there anything else you'd like me to put on the record at this time?

A I think we've covered it, ma'am.

MS. ROSS: All right.

MR. MITCHELL: Thank you, Your Honor, I'll try to be

brief.

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Good afternoon, Mr. Taylor. How are you?

A Very good. I've had better days, but I'm alive.

Q I can understand that.

Let me ask you, how many times did you meet with Mr. Kornfeld before you guys went to trial?

A Maybe three.

Q Three or four.

I should go back since you brought up your first trial. Do you recall how many times you met with Mr. Ianuario?

A I'm not dead sure. Like I said, maybe three, four times. Something like that. He even sent someone to me who was supposed to have been an investigator, which even the questions I asked him about getting a picture of the van and things of that nature so that we could use them as evidence, he said, Well, you don't pay me. Someone else does. I'm going to get what he wants me to get.

I didn't really see the reasoning in going to someone who has already said they're going to testify against me to ask how they're going to testify.

Q Okay. Did Mr. Ianuario go over the discovery in the case and the evidence?

A Well, he didn't go over the video at all. I had to wait till the day of court to even get a glimpse of that, and that's when I discovered, hey, it's not all there. That's why I needed it.

Q So was the video the only evidence in the case?

A Oh, no, sir. I mean, there was other parts of evidence that we needed to produce such as witnesses that had -- but I'm in -- I'm in custody, so there was no way I could go find the people. I know their names, and if I was out there, I could have went and got them. Without me being there, alls I can do is give their names and say, Listen, this is generally how you go about finding them. I would -- I was not at liberty to go find them. I would have had to depend on him to do that.

Q And the questions I'm asking you is did Mr. Ianuario do these things, not if you went to go do them or not, just for point of clarification. But did you give your attorney any leads or any witnesses that you wanted him to go out and talk to?

A Yeah. I gave him names. Yes, sir. I did.

Q Okay. And did he go out -- and do you know if he went out and talked to these folks at all?

A As far as I know, he did not.

Q Okay. Do you recall if he discussed with you during your trial if you wanted to testify at all at the trial?

A Oh, he asked me if I wanted to testify at the trial, but he also wanted the last say. And I said, Well, that being the case, I can understand that, plus due to the fact I can kind of understand the strategy of you saying, without testimony, the other crimes couldn't be brought in. I understood that as well. So I said, Okay. I concede to that.

Q Did you ask Mr. Ianuario to file a motion for a speedy trial?

A Yes, sir. I asked his -- he sent a lady there to talk to me who was someone who worked for him, and I asked her about the very -- that very item, because this was like the second person that came and seen me when I was in jail. And I told her we needed to file a fast and speedy trial so that we could get it before hearing so that we can get the evidence we need.

And she had basically said, It ain't going to do us no good to file it. They're going to take their time. When we get there, we get there. That's basically what I got from her.

Q Okay. Now, in regards to Mr. Kornfeld, the second trial, you said you met with him a couple times?

A Yes, sir. I did.

Q Did he go over the evidence with you in the case?

A Well, as far as transcript and stuff of that nature,

I never seen him produce a transcript as far as talking to me about it. However, he did ask me certain questions about witnesses and things that we could get, and I gave him the best leads I could possibly give him, which I think out of all of them, he did find Kacy [phonetic] which did change testimony of the -- Amanda Caldwell when she seen her. At that point, she came forth with a little more information, but her testimony had changed so many times anyway, I'm not sure that did any good without having my alibi witness there. And at that time, I didn't have no way to make contact with him.

Q Did Mr. Kornfeld talk to you about any possible defenses in the case?

A You know, as far as defenses go, he had a couple, but here again, I sent him for what I thought was best and I told him I needed the video and things of that nature, which, like I said, right before trial after 30 months they wrote him back and said that we can't produce those records, which was actual prejudice because had I been able to get that entire video, I could have better defended myself by showing him that second suspect, and that would have kept them from thinking that it was me because the dress, attire that the individual had on.

Q And you were at that second trial. Did Mr. Kornfeld cross-examine the witness, Mr. Perry, and then also

Ms. Caldwell? Did he cross-examine those folks?

A He did.

Q Okay. And all of the State's witnesses, in fact, Mr. -- well, the majority of them he cross-examined, correct?

A Majority, yes.

MR. MITCHELL: Okay. All right. Judge, I think that's all the questions I have.

THE COURT: Any other questions?

MS. ROSS: No, Your Honor.

THE COURT: Sir, you can step down. Take your time, get your things together. Don't rush.

MS. ROSS: I have no further witnesses for the applicant.

THE COURT: All right.

MR. MITCHELL: At this time, the State would call Mr. Robert Ianuario.

THE CLERK: Mr. Ianuario, please place your left hand on the Bible and raise your right hand.

WHEREUPON,

ROBERT IANUARIO

After having been duly sworn, testified as follows:

THE CLERK: Thank you. You may be seated. And please state your full name for the record.

THE WITNESS: My name is Robert Eugene Ianuario.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Mr. Ianuario, how are you today?

A I'm good. How are you?

Q I'm doing well.

I'm just going to ask you a few questions. How long have you practiced law here in South Carolina?

A I was admitted to the bar I think December of 2008, and I've been practicing almost immediately thereafter.

Q Okay. How many of those years have been, I guess, related to criminal law?

A Just about every one of them.

Q Every one of them. Okay.

And you were appointed in this case or were you retained?

A I was appointed.

Q You were appointed. Okay.

Can you tell me a little bit about how the charges arose?

A Well, what do you mean by how the charges arose? Like how the investigation got to him or how they got to my office?

Q I guess to be more pointed, the factual underpinning of the case, the facts of the case.

A There was a burglary. Some neighbors stopped by to take out the homeowner's trash while she was out of town. They noticed a strange vehicle in the driveway. They called her, asked if there was supposed to be somebody else there. She said no. During that point in time, a male and female suspect walked out, got in the van and pulled off.

There was -- I believe that some of the stolen property turned up at a pawnshop and was reported LeadsOnline. There was actually two independent pawnshops, if I recall correctly. And the homeowner did identify those as the items that were stolen.

Also, around that point in time, this is five years or so so I'm a little fuzzy, but I think the police made an arrest on Ms. Caldwell when she was with Mr. Taylor. I think it was at a Waffle House or McDonald's or something out in TR. They arrested her at that point in time and they let him go on the way. They did note the type of vehicle he was driving, and I believe they determined it was similar to the vehicle that was used in the robbery, used in the burglary.

Q And just for the record's sake, the trial that you represented the applicant at, it resulted in a hung jury, correct?

A Correct.

Q So there was no conviction.
A Correct.
Q However, for the record's sake, the applicant has made two allegations against you in regards to a speedy trial and then also failing to subpoena for a video. Did the applicant ever ask you to file a motion for a speedy trial?
A I do not recall. I want to say he didn't ask me for one. I do know that with the speed with which this case moved going from the initial appointment to the trial in about 20 months, even had he asked for one, I probably would have said not enough time has gone by. Let's stay the course. Because overall, 20 months is slow, but for the legal system, it's moving pretty productively.
Q In your opinion, you've seen cases drag on far longer than 20 months before they go to trial?
A I've had plenty drag on much longer than 20 months.
Q And in regards to the second allegation about failure to subpoena the video, did you ever issue a subpoena for the video?
A I did not issue a subpoena for the video. I went back and looked at the records I do have, so this is speaking from record and not specific clear memory, this what I'm looking at is the activity log for the billing I did for Indigent Defense. I received the appointment on

June the 8th of 2012. I received the initial discovery on July the 17th of 2012. That discovery did not include any videos or anything.

I met with the client. We reviewed it, it looks like, July 19th of 2012. And then there's a few other events, but in September, on September 17th of 2012, the note is: Talked with Cash Pawn. Video does not go back that far. Sent letter to solicitor. Called other pawnshops in the area.

And then what I received after the fact on November the 13th of 2012 and again on December the 19th of 2012, I actually received the videos from the store through the Solicitor's Office.

So I can't say that I filed a subpoena, but according to the notes, it looks like in mid-September I'd already spoken with the pawnshop and they said the videos didn't exist going back that far.

Q And it sounds like, I mean, based on your testimony, that you made initial inquiries into the video prior to the Solicitor's Office doing so.

A Yes, sir.

Q Okay. And just one last question for you. Did you receive an LWOP notice?

A Yes, I did. And hold on. It's a thick file. That is dated July 15th of 2013, and I believe it was served

about the same point in time. And it was served on me at my office.

MR. MITCHELL: Thank you, sir. Please answer any questions Ms. Ross may have for you.

THE COURT: Ms. Ross?

MS. ROSS: Thank you.

CROSS EXAMINATION

BY MS. ROSS:

Q So the LWOP notice was served on you and it's still in your file. Did you provide a copy of it to Mr. Kornfeld?

A I do a lot of electronic documentation, my office also. I scan everything into Dropbox. It's actually easier to keep things more organized in Dropbox than stacks of paperwork.

So I provided Mr. Kornfeld with a link to the Dropbox file which contained everything that was in there. I don't have it in front of me, but I believe that would have certainly included the life without parole notice.

Q Okay. But everything that you had in your file, is what you're saying?

A Correct.

Q You provided that. Okay.

And just, again, on the dates, what were the dates that the videos were produced to you?

A The discovery I received from the Solicitor's Office, it was November the 13th of 2012 I received it looks to be two DVDs, and on December the 19th of 2012, I received a third DVD. It was from two pawnshops in question, and the third one was, I think, some other evidence and stills.

Q So it was about a month prior to your trial. I guess the trial was January 2015?

A It was January of 2014, I believe, and Mr. Kornfeld's was 2015.

Q I'm sorry. I'm looking at the second trial.

A So I received those about 13 months before the trial, if I'm doing my math properly.

Q Okay. And in your trial, the video wasn't entered into evidence and before the jury, was it?

A Correct.

MS. ROSS: All right. I've got no further questions.

MR. MITCHELL: No further questions from the State.

THE COURT: Mr. Ianuario, you can step down.

THE WITNESS: Thank you.

THE COURT: Thank you.

MR. MITCHELL: The State would call Mr. Alex Kornfeld.

THE CLERK: Mr. Kornfeld, please place your left hand on the Bible and raise your right hand.

WHEREUPON,

ALEXANDER KORNFELD

After having been duly sworn, testified as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: My name is Alexander Kornfeld.

THE CLERK: Thank you very much.

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Good afternoon, Mr. Kornfeld. How are you?

A Good. How are you?

Q I'm doing well.

How long have you practiced law here in South Carolina?

A Since November of 2009.

Q How much of that time has been devoted to criminal law?

A About 65 percent of it.

Q Okay. And you've heard the testimony from Mr. Ianuario with regards to the facts of the case. Would you agree with his assessment?

A I would, yes.

Q Okay. Do you recall your initial meeting with the applicant in this particular case?

A I do, yeah.

Q Okay. And during that meeting or any subsequent meetings, did you discuss with him about potential charges that he was facing and the sentences?

A Yes. Mr. Taylor is very well informed about the law for someone that is not a lawyer, and we talked about those charges in depth. He actually had another pending burglary as well as the petit larceny with that charge. And he was very clear that he was not going to plea to these charges because he was not guilty of them.

Q And let me ask you, did he ever seem to not understand anything that you guys were discussing when you were meeting with him, based on your opinion?

A Well, I mean, he doesn't understand everything I think as clearly as like a lawyer would understand things. But yes, generally, he knew what was going on, he knew the charges against him. And Furman, more so than most clients, was more active in his case, would like to know about the case law. He was very aware about speedy trials and rules to request.

One of the reasons that although rules that were administrative or they'd been deemed administrative in the past for, you know, a speedy trial or not indicting cases, I told Furman, Look, I'll make this motion, but in the past, it's been deemed purely administrative. It's not going to get it dismissed, although this -- you know,

there were some case, it was like 450 days that they waited to indict it. But I still made the motion, and we brought up the fact that State v. Langford may have changed the analysis that a court may look at concerning any delay of indicting or bringing a case to trial, unfortunately. But, I mean, that was, I guess, what we thought was going to happen, you know. My motion was denied.

Q And to that point, you made a motion to dismiss the indictment for the petit larceny, you made a motion to exclude the prior bad acts, and you also made a motion to exclude the video coming into this trial.

A That's correct, yes. And one of the reasons for that is because when I -- look, Furman was adamant, just as he is today, that if that video would have been completely there, it would have showed and exonerated him as he had just testified. I was concerned because of how long had gone by to get the video. Also, I didn't necessarily think the video helped us. I thought it would be better if we didn't have the video. But I subpoenaed Cash Pawn anyway. They went quite some time without responding, but I did get ahold of them. They both sent a letter, and I think I talked to somebody at Cash Pawn that said, We don't have that video anymore. We can't provide the video.

So in my motion before the Court, I asked for that video to be suppressed or, in the alternative, for a spoliation charge, and that was denied. I believe the analysis was that I could not show -- I couldn't show any prejudice, according to the Court.

Q Okay. And also, in addition to the motion to exclude prior bad acts, could you testify a little bit today?

A Yeah. So they -- I tried to at least, I don't know, narrow the issue on how they were going to charge him with the burglary first. Was it going to be because it was night? Because the way that the indictment was written, it could have been seen night, weapon, or because of the two previous burglaries. And they probably smartly said, We'll just go forward on the two previous burglaries.

And so my argument then was it is an element of the offense of burglary first at that point. But -- so the fact that it's an element of the offense, what that does to a court is it keeps them from doing an analysis, an evidentiary analysis that they would normally do, a 608 or a 403, to say, hey, is this unduly prejudicial? And the cases I cited, I think it's like -- I've got them in there, it's Old Chief vs. United States, and there's actually a South Carolina State, State vs. Broadnax, which said, look, if there are previous robberies, don't bring those robberies in because it would be unduly prejudicial.

But in this case, the judge had to follow the statute. He can't say, hey, I like your argument. Even if he did, which he didn't say that, but even if he did, he can't say we're not going to follow the statute. I thought that that would be an issue for appeal where a judge -- a Court of Appeals could say you can't legislate prejudicial prior bad acts into a law and force the judge to follow it or otherwise handcuff the judge, because, in my opinion as a defense attorney, I feel like that's what those types of -- those types of statutes do.

Q Now, turning our attention to the investigation in this type of case, what type of investigation did you do?

A Well, we called -- he wanted me to find several witnesses. I found I think her name is Katherine Sasser. And he -- we ended up deciding not -- she came and we subpoenaed her. But after talking with Furman and how the case was going, it didn't make sense to call her, so we did not call her at that time. I can't remember all the other ones.

I know that our strategy was that Amanda Caldwell was not being truthful and that Tyler Whitman, who she originally stated was with her, was the actual one that did the crime.

Q So, I guess, the overall theory of the trial strategy was that the codefendant in this case -- she was a

codefendant, correct?

A That's correct. And she pled, so it wasn't -- but yes. She was the codefendant.

Q So besides her statements or her coming to testify, was that the only evidence against the defendant in this case -- or the applicant, I should say, in this case?

A No. I mean, that was not the only -- and sadly, I mean, the most damning evidence was the video. Without the video, there was nobody other than Amanda Caldwell that positively identifies Furman Taylor as being with her during the commission of this crime and being a part of it.

Q Is it fair to say that you cross-examined her extensively about her prior statements?

A Yes. And she admitted that she had changed her story in the past. And I -- you know, she did not seem to be credible, in my opinion, about the fact that she lied or anything. I just think that the video was so damning to our case.

Q And also, you had an opportunity to cross-examine several of the other witness in the case, in particular, David Perry, one of the brothers.

A Uh-huh.

Q You had the opportunity to cross-examine him, too, correct?

A That's correct. Yeah.
Q Okay. And also, the investigator in the case as well, too, correct?
A Brady Mashak. That's correct. Yeah.
Q Okay. Did you ever have a discussion with the applicant about him testifying at trial at all?
A Yes, we did.
Q And ultimately, it was his decision to not testify, right?
A Right. And that might even be on the record, if I remember correctly, that he came out and said, but in this case, I thought last argument was more important than he testifying as well as he had prior -- he had a prior record that could possibly get in.
Q And we heard testimony about your not receiving an LWOP notice prior to trial. Can you tell me about that?
A That -- that is not -- that's half of it. This is what the motion was. I had the LWOP notice in my file, and I told the Court that I had it in my file. When the case and the gravity of it was that it was an LWOP case, my motion to the Court was I did not specifically or my client did not specifically get served with an LWOP notice for this specific trial. So my argument in defense of my client was if you're going to put this guy away for life, serve us before every trial so that we know the gravity of

it, but not that I didn't have the notice of the LWOP. That's a pretty important distinction, I think, probably.

Q There's no question that you made that argument to the Court.

A That's right. And I don't -- I believe, and I'd have to look at that part, but I believe the judge asked me, Well, did you have -- did you actually have it in your file? And I believe I said, Yes. We've had it. I just wasn't served with it personally for this trial, nor was my client.

Q Just a point of clarification, were there ever any issues with the Solicitor's Office not giving you any discovery?

A I did not receive these videos of the pawnshop until -- I've got them here because I was wondering what that was. They say December 30th. Our trial was January 5th. So the policy here is that I go up to get them at the Solicitor's Office. I didn't get them until, I believe, the week of trial or possibly the Friday before. This trial started on a Monday. It was the first week of trials for that year.

Q But you did say that you believe that keeping the videos out probably would have been more beneficial to your client in this case?

A Oh, yeah. Absolutely. Especially when I didn't get

the spoliation charge. But I couldn't prove -- I think Furman's big issue was I couldn't prove that Officer Mashak did anything intentionally or wrongfully disclosed the video from us.

As far as the chain of custody, I mean, State v. Hatcher says, you know, as long as there are some links, it can come in. I felt like -- I felt like I explained that in the case, but I guess I just disagree with Furman's analysis of that rule, respectfully. That's all.

MR. MITCHELL: Thank you, Mr. Kornfeld. Please answer any questions Ms. Ross may have for you.

THE COURT: Ms. Ross?

MS. ROSS: Thank you.

CROSS EXAMINATION

BY MS. ROSS:

Q Were you retained on this or appointed?

A I was appointed.

Q And after the initial hung jury, was there another plea offer?

A I don't believe that there was another plea offer actually written out or anything. Furman and I had talked about it, and I think we probably could have got him -- or maybe could have persuaded it at 15. And I think I talked to Furman about that before, but there was no doubt in my mind that Furman was not going to plea to this case, and

we had talked about that. He said, I'm not going to plea to something that I didn't do.

Q Well, after being noticed with life, did you give him an opportunity -- did you ever come back and say, look, the solicitor is willing to come off life? We can make that go away if you want to plea.

A Yes. I did talk to Furman about that, but it really -- I full-heartedly believe today and then that I needed to focus on this trial the best I could. He was not going to do that no matter how many times I asked him or told him that they would possibly come off the life.

Q But I guess my question is, did you ever approach the solicitor and say give me an offer that doesn't include life without parole, and extend that to Mr. Taylor?

A Yes. I did the morning of. And then also, even when we were going to sentencing, I asked him if he would withdraw it, the prosecutor, if they would withdraw it.

Q Okay. Now ---

A I tried to make the argument to the judge that, hey, don't follow this. Don't give him life without parole because I wasn't personally served or he wasn't served even at that time.

Q All right. And we just put a transcript into evidence. That was the prior trial transcripts. So you were familiar with that?

A Yes, yes.
Q And did you -- just hearing Mr. Taylor's prior testimony, were there some issues that maybe you could have impeached in differences in statements from the first and second trial?
A Yeah. I mean, I think I did impeach in some of those things. And Furman and I were talking during the trial a good bit, and I felt like I did impeach. But, sure, in retrospect, I feel like there's always things that you can do and do a better job if you have another chance at it, and this case was no different.
Q All right. And did you do any independent research of Mr. Taylor's prior record that was listed in the motion, the life without parole notice?
A Yes. To see if he -- if it qualified?
Q Yes.
A Yeah.
Q Had you independently confirmed those priors that were listed there?
A Yes.
Q Okay. Now, you heard the testimony before. When you moved to exclude the video, did you specifically go into detail about the problems in the chain of custody and how it wasn't turned over immediately in discovery or any points like that to the judge?

A I believe I had told him that I got the video at a very late notice or just before the trial. And I think my other issue was the fact that not only did I get the late notice, but I couldn't get the full video, which is what Mr. Taylor had been telling me the entire time I was representing him.

Q And did you request a jury -- then you didn't request a jury instruction on any kind of inference about losing parts of the video.

A I just asked for a spoliation clause. I mean, I didn't specifically say, hey, this is what I wanted, but I asked for -- I asked for a clause from the judge to let them know that that wasn't the full video. I also, when I tried to cross Ms. Bennick ---

Q Well, I was talking about ask the judge to tell the jury about that, tell the jury that if there's any missing parts to the video, you can hold that against the State or assume that that was not in their favor. Did you request anything like that?

A Not -- not specifically. I just asked for a spoliation. I thought the judge understood that. I assume that if he wasn't going to -- if he was going to deny that, if he was going to deny that charge -- after I lost the motion to keep the video out, if he was going to deny that charge, I thought that, in my opinion, that

covered it.
Q Okay. So when you were cross-examining witnesses, like especially Ms. Caldwell, when she would give responses, you would say, I understand. You wouldn't come back and impeach her with her prior testimony in the prior trial. You did not do that during the second trial that you had, did you? You know, the ---
A Well, I think I -- I think I did. I explained at least at times that she had lied or had previous inconsistent statements.
Q Okay. Did you ever take the transcript of the prior trial and turn to a page and say ---
A No.
Q --- I'd like to -- is this what you said?
So you never did any impeachment using the transcript of the prior trial at the trial you had?
A No, ma'am. She admitted to lying or changing her story, though.
MS. ROSS: Okay. All right. I've got no further questions.
THE COURT: All right.
MR. MITCHELL: Nothing further for this witness, Your Honor.
THE COURT: Mr. Kornfeld, you can step down.
MR. MITCHELL: I have one last witness, Your Honor.

Since the applicant has made allegations of ineffective assistance of appellate counsel, I'm going to have Mr. Pachak by telephone.

THE COURT: All right. Very well.

(Pause in proceedings.)

MR. MITCHELL: Mr. Pachak, this is Jan. Ms. Jan is going to swear you in, okay? If you'll tell her your name, full name.

WHEREUPON,

ROBERT PACHAK

Appearing by telephone, after first having been duly sworn, testified as follows:

THE CLERK: Please state your full name for the record.

THE WITNESS: It's Robert M. Pachak. P-A-C-H-A-K is the spelling on my last name.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. MITCHELL:

Q All right. Mr. Pachak, this is Mr. Mitchell again. My first question for you is how long have you practiced law here in South Carolina?

A About -- I've been an appellate attorney for 28 years, and before that, I was in a family business for ten years. But I was a lawyer then, too.

Q Okay. And your current position is at appellate defense, correct?
A Yes.
Q Okay. And how do you keep abreast of current issues in criminal law?
A I read the cases when they come out.
Q Fair enough. Can you tell me the process of what normally happens when a new appeal is received in your office or how it's dispersed to various parties?
A Yeah. I go through the file, see if I've got everything, which usually means the indictments and the full trial transcript. I then read the trial transcript to try to find out what good issues there may be to raise for the appeal. And then once I make that decision, I would write a brief.
Q Okay. And in this particular case, did you have a specific appellate strategy after reading the case?
A I decided the case really didn't have that much merit as far as issues went, and so I did an Anders brief on the case.
Q Okay. And let me ask you this. Were there any issues that you thought about or researched but decided not to raise?
A I would have to read that whole transcript all over again to answer that question.

Q Okay. Well, let me ask you this. The applicant has made the allegation that you didn't make contact with him or at least did not maintain contact with him. What would be your response?

A Well, everything I go by is in the transcript.

Q Okay.

A I really don't need to talk to my clients unless it's absolutely necessary because I can't bring up things that are not in the transcript. I have to go by what's in the transcript.

Q Okay. And he also has made an allegation that there were objections in the trial transcript that were not raised. What's your, I guess, position on that, or what's your position when reading through any transcript and about appealing different objections that were raised at trial?

A If there were some objections that were raised and I didn't think they had any merit, then I wouldn't brief them.

Q Okay. And you said you've been doing this for about 28, almost 30 years, correct?

A Yes.

MR. MITCHELL: Okay. Please answer any questions PCR counsel, Ms. Ross, may have for you.

THE WITNESS: Okay.

CROSS EXAMINATION

BY MS. ROSS:

Q Hi there. I'm Susannah Ross on behalf of the applicant, Mr. Taylor.

A Yes.

Q So one thing he alleged that you did not brief the issue of this was a burglary first, and his attorney objected to prior convictions coming in to prove that element of burglary first. What was your basis for not objecting -- I mean not briefing that issue?

A Because basically, if it's a second or third burglary charge, the State is allowed, from what I know, to bring in the prior burglaries so they can enhance the future burglary -- or the current burglary.

Q All right. And in the transcript, you didn't see anything presented in the transcript that would allow you to make a constitutional argument against the makeup of the burglary first statute?

A No. I mean, I haven't read that transcript in probably two years, so I wouldn't know.

Q All right. And there was also an issue that the video was used and it wasn't a complete version of that video that was brought in. I guess you've sort of answered the question, but you didn't brief that as well because you didn't see any strength in that argument; is

that your testimony?
A I would assume I didn't see any strength in it. I can't tell you from memory right now, but I would just assume that would be the case.
Q All right. And as far as do you recall how many letters or do you respond to correspondence from your clients?
A I try to if I think there's some serious merit in the correspondence. I've spent most of this morning writing to my clients.
Q All right. Okay. Do you independently recall any conversations with Mr. Taylor in this case?
A No, I don't.
MS. ROSS: All right. I've got no further questions.
MR. MITCHELL: Mr. Pachak, that's all the questions I think that we have for you. Thank you so much for joining us via phone. We hope your drive was good.
THE WITNESS: Thank you.
MR. MITCHELL: Bye-bye.
THE WITNESS: Bye.
THE COURT: Thanks for doing that.
MR. MITCHELL: Thank you for allowing it, Your Honor.
THE COURT: Certainly.
MR. MITCHELL: That's all the witnesses I have, Your Honor.

THE COURT: All right then.

Well, you all have presented a great deal of information to me here today. I've got two full transcripts I'm going to need to go through along with the other information and my notes that I've taken throughout this hearing here today. And I will just say to you, Mr. Taylor, I would think -- I'm trying to sort of think about the ones that I've taken under advisement this week. If you'll indulge me, I think it's going to probably take me at least a month to go through everything I need to go through and make a decision on this matter because I want to give it all the attention that it deserves. I know that -- and like I said, you've raised some interesting points here today, and I want to follow those up. So I would not anticipate hearing anything from me for at least a month, all right?

If there's nothing else, then I'll take this matter under advisement. And, of course, Ms. Ross, I'll let you know just as soon as I've made a decision, Mr. Mitchell as well.

MR. MITCHELL: Thank you, Your Honor.

THE COURT: Thank you.

(WHEREUPON, proceedings were concluded at 1:11 p.m.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 27th day of October, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 31, 2018

Cheryl A. Smith

Cheryl A. Smith, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

FURMAN EUGENE TAYLOR,

DEFENDANT.

2012-GS-23-6511 AND 6513

FEBRUARY 11 AND 14, 2014

TRANSCRIPT OF RECORD

BEFORE:

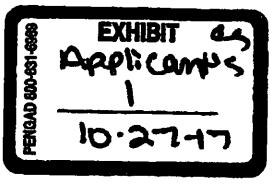
THE HONORABLE R. KNOX MCMAHON, JUDGE

APPEARANCES:

MARK MOYER, ESQUIRE
ATTORNEY FOR THE STATE

ROB IANUARIO, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER



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JURY VOIR DIRE

Juror #	Name	Race	Sex	Strikes Court	Strikes Plaintiff	Strikes Def.	Accept
5	Baker, Joan	W	F			x	
151	Traurig, Nancy D	W	F				x
33	Easterling, John M	W	M			x	
148	Smith, Tiffany E	W	F		x		
11	Bostick, Britni Lyn V	W	F			x	
102	Pratt, Tracey M	W	F		x		
70	Kreisman, Melinda S	W	F			x	
104	Pruitt, Mary E	W	F		x		
146	Miller, Kimberly S	W	F			x	
61	Jenkins, Allen	W	M				x
90	Morgan, Derrick	B	M				x
110	Roth, Carey C	W	F				x
76	Leslie, Harold G Jr	W	M				x
45	Grayson, Neil E	W	M			x	
36	Fadler, Randall L	W	M				x
29	Decouto, Jo Ellen	W	F			x	
71	Kurek, Maciej H	W	M				x
103	Presher, Susan T	W	F			x	
7	Barnes, Melinda J	W	F				x
54	Hicks, Laura S	W	F				x
52	Hatherlee, Cheryl M	W	F			x	
75	Leonard, Tim M	W	M				x
12	Brackett, Brooks A	B	M				x
93	Nelson, Phillip M	W	M				x
86	Meismer, Jerry J	W	M			x	
123	Stover, G Jean C	W	F			x	

95	**Nichols, John B**	**W**	**M**				**x**
147	**Mitchell, Holly D**	**W**	**F**				**x**

FEBRUARY 11, 2014

(WHEREUPON, Court convened with all parties present and the following proceedings were had.)

(WHEREUPON, State Exhibit Numbers 1 through 4 were marked for identification.)

JURY VOIR DIRE AND SELECTION

NOT TRANSCRIBED PER MR. IANUARIO

(WHEREUPON, the jury exited the open court at approximately 11:02 a.m.)

THE COURT: All right. Ladies and gentlemen of the jury panel, momentarily I'm going to release you from your jury service for the remainder of the morning and the remainder of the day. I would ask you, please, to call your juror information number, your juror information hotline after six o'clock tonight. It will prompt you and give you instructions concerning your jury service for the remainder of the week. If you do not get to sit on a panel this week, perhaps you will be selected again as the year goes by or the next year and such like that. I apologize that you were not selected to sit on this panel this week. But be that as it may, it's been my pleasure and privilege to be with y'all this morning.

Again, you're now excused. Please call back after six o'clock tonight. Any questions? Thank you very much.

(WHEREUPON, the jury panel exited the open court at approximately 11:04 a.m.)

THE COURT: All right. We'll be in recess about ten minutes. Thank you very much.

(WHEREUPON, the court stood in recess for a short break.)

THE COURT: Anything before we bring in our jury from the state, Solicitor?

MR. MOYER: No, Your Honor.

THE COURT: From the defense?

MR. IANUARIO: No, Your Honor.

THE COURT: Since I haven't tried cases with either of you gentlemen in the past, just so you know, I generally give about a, I don't know, eight page -- but it's real large print so I can read it -- about an eight page intro to the procedure we use in the trial of the case and then go right into openings.

As far as objections, no speaking objections. You know, if it's a Rule, if it's hearsay, 803, or if it's authentication, one of the 900 rules or whatever. I mean, just go by rule number. I don't object to you asking to approach the bench. If an issue comes up, you want to be heard outside the presence of the jury, just let me know that you have a matter of law and I'll certainly send the jury out.

All right. Bring us our jury, please.

(WHEREUPON, the jury entered the open court at approximately 11:12 a.m.)

THE COURT: All right. Madam Clerk, would you swear our jury, please?

THE CLERK: Yes, sir, Your Honor.

Now would you please stand and raise your right hand. The response to the oath is I will.

You shall well and truly try case 2012-GS-23-6511, the State versus Furman Eugene Taylor, Jr., indicated for burglary first degree, and 6513 for petit larceny, and a true verdict render according to the law and the evidence, so help you God?

(WHEREUPON, all jurors answered I will and were duly sworn.)

THE CLERK: Thank you. You may be seated.

THE COURT: Was there any member of the jury panel unable to take the oath? If so, please stand. Thank you very much.

Ladies and gentlemen of the jury panel, the case we are about to try is the case of the State versus Furman Eugene Taylor, Jr., to my front left. What I will now say is intended to serve as an introduction to the trial of this case. These remarks are not a charge or instruction on the law in the case. I'll instruct you on

the law that applies to this case at the end of the trial before you retire to consider your verdicts. This is merely an explanation of the procedure that we will follow in the trial so that you may better understand what may be happening.

The defendant, as you have heard is charged by two indictments filed in this court with the crimes of burglary first degree and larceny less than two thousand dollars, the elements of which will be explained to you later.

Again, ladies and gentlemen, these indictments are simply the charges by which the case is brought into court. They are the formal charging documents and are not, in any sense, evidence of any of the allegations they contain.

The defendant has pled not guilty to these indictments. The state, therefore, the party to my front right, has the burden of proving each of the elements of the indictments beyond a reasonable doubt. And it will be your duty, ladies and gentlemen, to determine whether the state has met that burden.

Your purpose as jurors is to find and determine the facts. You are the sole judges of the facts in this case. If at any time I make any comment regarding the facts, you must disregard it. You are to determine the

facts from the testimony you hear and the other evidence introduced in court. It is up to you to determine the inferences which you feel may properly be drawn from the evidence. It is especially important that you perform your duties of determining the facts diligently and conscientiously, because ordinarily there's no way to correct an erroneous determination of the facts by a jury.

On the other hand, and with equal emphasis, the same law that makes you the judges of the facts, make me the judge of the law. The law as given by the court is the only law you may consider. You must accept it and follow it, even though you may disagree with it. I cannot tell you what the facts are, and you cannot disagree with me about what the law is or should be. Your job is to take the law as I give it to you, apply it to the facts as you find them to be from the testimony of the witnesses and any other evidence that is introduced. After doing that, you will render your verdicts, true and just verdicts, under the solemn oath that you have just taken as jurors.

Until I advise you to begin your deliberations, you must not discuss this case with anyone, including your fellow jurors, friends, families or anyone else. After the case is submitted to you, you must discuss it only in the jury room with your fellow jurors.

During the trial, do not read, listen to or watch any news reports about the case. This includes anything that may be in the newspapers or on the internet, radio, television; should there be any. You must not consider anything you may have read or heard about the case outside the courtroom whether before or during the trial. It is important that you keep an open mind and not decide any issue in the case until all of the evidence has been presented, the parties have made their closing arguments to you and I have instructed you on the law in this case. It is your solemn responsibility to determine the guilt or innocence of the defendant. And your verdict must be based solely on the evidence as it is presented to you in this trial and on the law that I instruct you during and at the close of the trial.

Now, in just a few moments, the solicitor will make what is called an opening statement, in which the solicitor will explain to you the issues in the case, or at least what the solicitor thinks the issues are in the case. Mr. Ianuario, the attorney for the defendant, may also make an opening statement; although he is not required to do so. A criminal defendant in South Carolina is always presumed to be innocent regardless of the seriousness of the charges. A criminal defendant does not have to prove himself innocent. The burden of

proof, as I have told you, is on the state to prove its case, each and every element of the offenses, beyond a reasonable doubt.

Now, what the attorneys tell you during their opening statements is not evidence in the case. It is only their contention as to what the issues are. What the attorneys tell you during their closing arguments is not evidence. The questioning by the attorneys, the questions themselves, are not evidence. It's the responses of the witnesses that's evidence. That's the credibility that you focus on, that you test. The questioning is the procedure by which the evidence, the testimonial evidence, is extracted from the witnesses testifying under oath. That is how it will be presented to you; and/or by any exhibits that may be introduced into evidence.

From time to time during the trial you may hear one of the lawyers say something like, Your Honor, I believe we have a question of law or a matter of law to discuss with you. Or, Your Honor, may we approach the bench. And sometimes I, myself, might find it necessary to excuse you from the courtroom for a short while so the attorneys and I can discuss a matter of law. The reason for this is not to hide anything from you, because you are the judges of the facts in the case, and sometime

when I am discussing matters of law with the attorneys, it may be necessary for me to make some comment as to the facts in connection with ruling whether or not a particular law applies. I am not supposed to tell you what I think the facts are, so I will excuse you from the courtroom while these discussions take place so that in no way will you be influence by anything that I might say or do in connection with the facts.

In determining what the true facts are in the case, you must decide whether or not the testimony of the witnesses is believable in using your individual and collective good judgment and common sense, in determining the credibility and believability of the witnesses testifying before you.

It will be my responsibility to rule as a matter of law whether or not certain testimony is admissible at all or not. In other words, whether you hear it or not. But once the testimony is admitted, it will be -- whether you believe it or not, it will be solely your responsibility to determine.

In deciding whether to believe a witness, you have a right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen the matters and things about which the witness may testify and the way or

the manner or the demeanor the witness exhibits to you while on the witness stand. You have a right to consider anything that is in the record that will help you evaluate the testimony of the witnesses.

That means it will be your duty to pay close attention to the witnesses, to observe, to listen to them. To pay close attention to the attorneys and to the court. Don't let your thoughts wander, but give strict attention to the testimony in this case so that at the end of all the testimony, after the closing arguments by the attorneys and the instruction on the law by the court, you will then be in that position to determine what the true facts are and to apply the law to those facts and thus render your true and just verdicts.

Mr. Foreman, it will be your duty to preside in the jury room and be the jury spokesperson here in court. It will also be your duty to write the verdicts, but I will give you further instructions about that at the conclusion of the case.

Just a few administrative issues. I need to keep up with fourteen people. With our foreperson, if you would always maintain that seat. And our two alternates, the first and second seat on the second row. The others, y'all may sit wherever you would like to sit in the, in the jury box. I have studied jurors over the years and

it has been my observations that many jurors are very territorial. That they always like to sit in the same place each and every time and have the same view of the witness stand and the courtroom itself. And that is fine. That is fine. Wherever you want to sit. But again, I do need our foreperson and our alternate to always maintain those seats.

Evidence. If there -- and I don't know what evidence may be. But if there are charts, exhibits, diagrams, photographs and the like, well, now in the days of technology, sometime they're shown on screen, sometime they may be handed to the foreperson while you're in here in your jury box and passed among members of the jury. You may look at those items as long as you wish in the courtroom. Please keep in mind, if I allow it into evidence, you will have it with you in your jury room at the time of your deliberations. So that will not be the only opportunity or the last opportunity you will get to view any items that are introduced into evidence for you.

If you cannot hear or see a witness, just please get my attention, the attention of the clerk or one of our fine bailiffs, and we'll have them speak up or move in such a position to where you can hear and see.

From time to time you may see me on my computer. These are good trial lawyers. Sometime I might see what

I think may be a legal issue around the bend, you know. The road can sometime be kind of bumpy and dusty, so I'll do some minor research. I don't peek, repeat, tweet, email. My focus is entirely on the case, so I don't want you to think that. If it's any heavy lifting as far as research, Mr. Hunter handles that. But if you see that -- a juror complained to me one time. Imagine, complaining on me, I was just taken aback. But anyway, I do stay focused on the case and you may see me from time to time on the computer.

And finally, what am I really in charge of? Well, I'm in charge of taking breaks. And I have kind of an easy pattern of doing that. When I want a break, we take a break. And I figure everybody's happy right then. This is not a judicial marathon. This is an important case. It's important to Mr. Taylor. It's important to the State of South Carolina. If you sit out here too long, if you need a break, your thoughts start to wander, please, raise your hand. Y'all will take your break, we will take our break. At any time don't hesitate to do that. As I say, this is not a judicial marathon in any way, shape or form.

All right. Any objections to anything I've told the jury from the state?

MR. MOYER: No, Your Honor.

THE COURT: From the defense?

MR. IANUARIO: No, Your Honor.

THE COURT: All right. Solicitor, you may address the -- you said something about notes, Mr. Bailiff?

THE BAILIFF: Yes, sir.

THE COURT: Did any of them want to take notes?

THE BAILIFF: I did not ask the question, sir.

THE COURT: All right. Anybody want to take notes? If so ---

THE JUROR: I would, but I don't have anything to write on.

THE COURT: All right. Let me take care of that. I'll have to give you a charge, just a very brief charge. Anyone else want a pad, a pen or anything?

All right. There's absolutely nothing wrong with taking notes. Notes are allowed. I do allow jurors to take notes. I would remind those note-takers, please remember that some people are better note-takers than others. Jurors' notes should not be given any greater weight than the independent recollection of other jurors. The recollection of individual jurors should be considered as reliable as notes taken by any other juror. I would also advise the note-takers, when you're taking notes, you may not notice the body language or the

demeanor of a witness, which could be used by you in deciding the witness's credibility. And also on each break or over our lunch and recess, I would ask you to leave your note upside down on your -- maybe write your juror number, and leave it upside down on your chair. Our clerk, Madam Clerk, will secure it during those times. So you can't have it with you in the jury room, your notes, until jury deliberations.

All right. Thank you, Solicitor. Solicitor, you may proceed.

MR. MOYER: Thank you, Your Honor. May it please the court.

THE COURT: Yes, sir.

OPENING STATEMENT

BY MR. MOYER:

Mr. Foreman, ladies and gentlemen of the jury, good morning. I am going to take just a few moments to talk to you and give you a little bit of a preview of what the evidence is going to be. Sort of a little bit of an introduction about the case. And just going to take up a few minutes of your time before we start into the trial.

And when we do start into the trial, you're going to hear right off the bat from a woman by the name of Renna Taylor. She's seated here on the front row here behind our table. And I will first note that the fact that she

shares a last name with the defendant is just a coincidence. They are not related.

You're going to hear that on May the 19th of 2012, she left her home on Old White Horse Road here in Greenville to go visit some friends up in the mountains of North Carolina. And when she left, she left with the belief that -- as we all do -- that her home was safe and sound, that nothing was wrong, nothing was amiss. There's the expression, our home is our castle, and I think we all instinctively feel that our home is that way. That it's safe and secure and impregnable. But what Ms. Taylor did not know when she left on the afternoon of May the 19th of 2012, was that a little while after she left, a car would come driving by her house containing two people; this defendant, Furman Taylor, and a woman by the name of Amanda Caldwell, who was driving. And you're going to hear that they drove by her house and that they were looking for trouble. They were looking for a place to break into. And this place fit the spot. It was, by all appearances, empty, or no one home, and it was a bit of an isolated house. Not a lot of other houses areound. A bit of a rural area.

You're going to hear that they drive up into Ms. Taylor's driveway and park. They're in a blue and white Ford Aerostar van. You're going to hear this defendant

gets out of the van and he walks up to the front door and he knocks on the door, just to make sure that no one is home. If by chance someone would happen to come to the door, he would say something innocuous like, you know, ask for directions or something like that.

Well, he knocks and no one comes to the door. No one else is there. He then came back, the testimony will show, and comes to the vehicle and he gets a pair of gloves and he gets a ply bar and he goes back to the house this time to a side door. You're going to hear testimony that he, at this time, breaks into the house and goes inside. You're going to hear testimony that Ms. Caldwell is -- stays in the vehicle. And she stays there, she's nervous, time goes by, she gets more nervous. And you'll hear that she goes into the house to try to hurry the defendant up. And when she does so, she tells him, let's get going. She sees him rummaging around through the house, in the bedroom.

As she turns to go back to the van, she sees through the windows another vehicle pull up; a black truck. Testimony is going to be that this truck actually had a legitimate reason to be there. And you're going to hear that two men, a man named T.R. Perry and his brother David Perry, had come by the house because Ms. Taylor had asked them to come by and take our some garage. These

men used to do some odd jobs around the house and work for her.

Well, you're going to hear testimony that as they were standing -- or as they pulled into the driveway they see this vehicle that they don't recognize and Mr. Perry gets on the phone and he calls Ms. Taylor and says, do you know anything about this blue and white van that's here in your driveway? He knows that sometimes a friend will come by and take care of Ms. Taylor's cats while she's not there.

Well, he gets Ms. Taylor on the phone and she said, no, shouldn't be another vehicle there. And as he's on the phone with her, you will hear that the two people walk out of the house. And now Mr. Perry knows something is wrong. Because as they walk out, they don't speak to him. They walk fast, covering their faces. The defendant, you will hear testimony, is holding what appears to be a bag, and what we later learn is a pillow case from the house. And that they go to the vehicle and drive away.

Well, the police become involved. And as you would expect, there's not really forensic evidence found in the house due to the fact that the defendant was wearing gloves. However, they do get some clues. You will hear testimony that the officers know what property has been

stolen from the house. That there's a laptop, that there's a DVD player, there's a pistol that had been by Ms. Taylor's bed, some jewelry, some other items like that. You're going to hear also that although the Perrys did not get a good enough look at these people's faces to be able to identify them in photographs later due to the fact that they were covering up, they do get general descriptions. And they both tell that there's a white female with brown hair. And that there's also a white male who has long dark hair and a ponytail and a goatee. They get this description and closing descriptions and general height and weight and age descriptions. So the officers are armed with this information.

Well, within about a week, the officers are able to develop Amanda Caldwell as a suspect in the case due to the fact that she pawned some of the items. You're going to hear that officers get a tip about where she is and that an officer goes to arrest her on May the 31st of 2012. You're going to hear that she is in a vehicle, a blue and white Ford Aerostar Van, and that this defendant is also in the vehicle. However, he is not a suspect at this point, so Ms. Taylor -- I'm sorry, Ms. Caldwell is arrested by herself. You will hear testimony that she gives a statement to police. She initially attempts to minimize her own involvement in the case; although she

does implicate this defendant Furman Taylor. You'll hear that just a couple of days later that she calls the investigator back and says, I want to tell you what really happened. I was involved in this burglary and so was this defendant and let me tell you how and why and what happened.

That's a general summary of the testimony that you're going to hear in this case. As His Honor has instructed you early on, it's not going to be a long case. It's notoriously difficult to anticipate how long cases go, but I hope that we'll be able to get all the evidence to you today. If not, it will be shortly after we convene again, whenever that will be. Hopefully tomorrow.

But at this time all I ask you to do is just listen closely to all the testimony. Pay attention to the evidence, the few items of evidence that are admitted, use your common sense and your good judgment to weigh the evidence and the testimony. And then at the end of this case, do justice. Thank you.

THE COURT: Thank you, sir. Mr. Ianuario.

MR. IANUARIO: Thank you, Your Honor.

OPENING STATEMENT

BY MR. IANUARIO:

Thank you, ladies and gentlemen. I'd like to thank

you for your service. Part of your jury duty is your chance to make a difference in the community that you live in. I know that right now the community that you live in is about to be whited out, so I'm going to try to make this quick. We don't need a restatement of the evidence or anything. But I want to tell you a little bit and kind of set a tone for this as well.

First off, about myself, twelve years ago I was a mechanic. I didn't come from a lawyer's family. I just decided I didn't like turning wrenches and I wanted to try something else. But I kind of have an interesting approach and interesting style of looking at a problem as a mechanic does. If you need a tune-up there's no reason to go and replace the whole engine. You track down the problem. Is it a spark plug? Is it a converter? Is it the ignition? You look for what the problem might be and can it be fixed or can it not be? Now, we're missing a lot of the little tiny pieces of information. We'll get into all that later. All I know right now is the engine is not running right. But does it need to be replaced or can it be fixed?

So you're going to hear a bunch of different evidence. You decision can be based upon the evidence. It can be based upon the solicitor's opinion, my opinion. You can form your own opinion if you want. We can both

be wrong. That's the power of the jury.

Now, when you're making these decisions, keep in mind that this isn't just make a quick decision and let's go on home and beat the snow. Somebody in the community is going to have their life affected by this decision. So give it full weight and full attention and see if you think that Furman Taylor is guilty of these crimes beyond a reasonable doubt.

The judge will give you instructions as to different levels of doubt, but I'd like to give you kind of a quick summary. The first type of doubt you hear -- the first type of evidence will be the preponderance of the evidence. If your neighbor's tree falls in your yard and you want to sue them for knocking down your fence, fifty-one percent of the evidence is in your favor, you're probably going to win.

The next level of evidence is clear and convincing. And there's no statistical number with that. Clear and convincing evidence means pretty certain, but not beyond a reasonable doubt. Clear and convincing evidence is what's used to determine child custody, to determine whether or not you're fit to maintain your children. If you've ever gone through a custody battle, you understand that sometimes those things can be pretty serious.

And this matter is even more serious than the

custody of a child, because that requires beyond a reasonable doubt. Now, when we break for lunch and we all go away for lunch, let's say we put a cat and mouse in the courtroom. And we come back in after lunch and there's no mouse but there's a cat. It's quick and easy to assume that the cat ate the mouse. But we can't assume that. We have to check the entire courtroom. Is there a gap under that door? Is there a hole behind that bench? We don't know. If we do a thorough investigation of the courtroom and we determine there's no holes, we can still surmise that the cat probably ate the mouse. Without a thorough investigation and without checking the gaps behind the doors, looking for little holes in the wall, the mouse lives. So the mouse gets away and there maintains a reasonable doubt.

So when you're looking at this case and you're looking at the evidence, see if you believe that there's no holes in the wall. If so, then your decision should be guilty. If you think there's a hole and plausible explanation, come back not guilty.

Again, please give us your full attention. And when you're deliberating on this -- I know the weather is bad. I've got a small one at home. I'd like to be home, too. But please keep in mind, this decision will impact the member -- the life of a member of our community. Thank

you.

THE COURT: Thank you, Mr. Ianuario.

Solicitor, you may call your first witness.

MR. MOYER: Thank you, Your Honor. May it please the court. State calls Renna Taylor to the stand.

THE COURT: All right. Ms. Taylor, if you would come around and be sworn, please.

THE CLERK: If you would place your left hand on the bible and raise your right.

Do you swear or affirm that the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE CLERK: You may be seated. Would you please state your name for the record?

THE WITNESS: Renna Taylor.

THE CLERK: Thank you.

RENNA TAYLOR,

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MOYER:

Q. All right. Ms. Taylor, let me ask you if you would move your chair around a little bit towards me and make sure the microphone is up close to you so we can make sure we hear you. The first thing I want to ask you is

we notice that your last name is the same as the last name of the defendant in this case. Are you related to him?

A. No, sir.

Q. Okay. Do you know him at all? Have you ever met him?

A. No.

THE COURT: Could I get you to speak up a little bit more for them.

THE WITNESS: No, sir.

THE COURT: I know you will for me. Thank you.

A. No.

Q. Okay. And Amanda Caldwell, are you related to her or know her in anyway?

A. No.

Q. Okay. Now, you have children?

A. I have two adult children that live in California.

Q. Okay. And they're adult children, you said. And you live here in Greenville County now?

A. I do.

Q. Where did you live in May of 2012?

A. You want me to give you the address?

Q. Yes. What was the address?

A. [redacted], Travelers Rest.

Q. Okay. And that is in Greenville County?

A. Yes, it is.
Q. Okay. When did you move into that residence?
A. I've been there since 2000.
Q. Okay. Now, you're actually not employed at this time; is that correct?
A. As of a week ago, yes, sir, that's correct.
Q. Where were you working at that time?
A. I was working briefly at Greenville County, a part-time job. Before that I worked for ten years for Ford Motor Credit in Mauldin.
Q. Okay. And I think your position was just eliminated; is that right, about a week ago?
A. Yes.
Q. Okay. Now, let me show you what has been marked as State's Exhibit Number 4. Take a look at what I'm showing you right now. Do you recognize what is ---
A. Absolutely.
Q. Okay. You've had a chance to take a look at that before today?
A. Uh-huh (affirmative).
Q. Okay. What is depicted in that photograph?
A. That is my home and my property.
Q. Okay. And from what view is that home being shown? From the side? From aerial view?
A. Yes. It's an aerial view.

Q. Okay. It's an aerial view kind of looking down on your house?
A. Yes.
Q. And is it a true and accurate representation of the layout of your house and the roads around your house?
A. Absolutely.
Q. And that's the way it looked back in May of 2012?
A. With the exception of my garden. My garden wasn't there until last summer.
Q. Okay. With the exception of that, is it a true and accurate representation?
A. Yes.
Q. Okay.

MR. MOYER: At this time I'd move State's Exhibit Number 4 into evidence.

MR. IANUARIO: No objection, Your Honor.

THE COURT: State's 4 is in evidence without objection.

(WHEREUPON, State Exhibit Number 4 was admitted into evidence.)

Q. I'm going to ask you to step down for one moment.
A. Okay. Sure.
Q. So we can give the jury a little bit of an understanding of what we're looking at, would you first point out your house?

THE COURT: You might want to get on the other side so your voice travels back to our court reporter, Ms. Taylor.

A. This is my house.

Q. Okay. That is your house there. And can you kind of outline with your finger the four walls of the house?

A. Yeah. It's a rather small house.

Q. Okay. And we see two roads at the house. What are the two roads?

A. Yes. This is McElhaney and this is Old White Horse.

Q. And you have a driveway?

A. Yes. My driveway is here. It's kind of a horseshoe.

Q. Okay.

A. Blacktop driveway.

Q. Okay. So it is a horseshoe. You can enter one side of it and exit the other?

A. Yes, sir.

Q. Okay. What door do you -- well, point out doors in your house.

A. There's -- the front door is right in here. And this is, this is like a screened-in porch and there's a door here, as well. There's a door that leads into a small utility porch and then into the kitchen. And then

there's patio doors over here.

Q. Okay. What door do you normally use?

A. I usually go in the kitchen door.

Q. Okay. I think that's all for now. You can take your seat back. All right. Now, tell us a little bit about the area around the house back then in May of 2012. Were there a lot of other houses?

A. No, sir. The house was rather isolated. There probably wasn't another home for maybe like a quarter of a mile. They are developing across the road at this time, but at that time there was no houses across the street from me.

Q. Across what, Old White Horse Road?

A. Yes, sir.

Q. But at the time there wasn't?

A. No, there wasn't.

Q. Okay. Now, let me take you back to May the 19th of 2012. Do you remember that day?

A. Yes, sir.

Q. Do you remember what day of the week it was?

A. It was a Saturday.

Q. Okay. Did you stay around your house all of that day?

A. No, I did not. I had plans to go to North Carolina to visit a friend and I had planned to spend the weekend.

Q. Okay. And so you -- and this was -- you were going to leave around what time of day on that Saturday?
A. I left around approximable one o'clock.
Q. And your plans were to come back the following day?
A. Uh-huh (affirmative).
Q. Okay. Did you make any arrangements for anyone to come to your house?
A. Yes, sir.
Q. For what purpose?
A. T.R., Mr. Perry, he helps me with my yard and odd jobs, so sometimes I let my trash get out of hand and I can't lift it. So I had asked them if they, you know, if they would come by and take it off for me. And they agreed to do that. And then I left.
Q. Okay. And so what was the man's name again?
A. I know him as T.R.
Q. T.R. What's his last name?
A. Perry.
Q. This gentleman seated here?
A. Yes.
Q. Back here in the second row? Okay. And do you know his brother David?
A. Yes, I do.
Q. Okay. And they've done odd jobs around your house for a while?

A. Yes. They usually come together.
Q. Now, was he at your house by the time you left?
A. No. He was not.
Q. Was anyone at your house when you left?
A. No.
Q. All right. Now, so you started driving to North Carolina, as you told us. How long, roughly, does it take you to get to your destination there?
A. It's roughly an hour and a half. And I don't know if I stopped anywhere that day. I can't really recall. But it's about an hour and a half.
Q. All right. Now, did you receive a phone call at any point after you left your house?
A. Yes, I did. I no sooner got to my destination and my phone was ringing and it was T.R.
Q. Okay. And so you were actually at the destination?
A. Yes.
Q. Were you inside the house? Do you remember?
A. No, not yet.
Q. You had just pulled up?
A. Yes.
Q. All right. Now, what -- so who was on the phone?
A. It was T.R.
Q. And tell us what the -- your conversation was with him?

A. He asked me if I knew anybody in a blue and white van or that owned one. And I said, no, I did not. And I told him that nobody should be at the house.

Q. Okay. Do you sometimes have somebody else come by your house?

A. Yes. And the reason he called me, because he wasn't -- I have a lady that comes to feed my cat occasionally and he wanted to make sure that that wasn't her before, you know, ---

Q. Sure.

A. --- he caused a big ruckus for nothing. And about the next breath he said, there's a man and woman coming out your front door. And that's when, you know, I asked him if he would call the sheriff.

Q. Okay. Well, let me stop you right there. Did he say anything else about the man, woman or anything?

A. He said it was a man and a woman carrying, he said a bag, but ...

Q. All right. And so you called the police?

A. I did. I called the sheriff's office.

Q. Okay. And after calling the sheriff's office, what did you do?

A. I turned around immediately and came back home.

Q. So again you had another hour and a half or so drive back to Greenville?

A. Yes.
Q. When you arrived back to your home, who was there at your house?
A. T.R. and his brother and a police officer.
Q. Okay. Did the officer ask you to do anything when you arrived?
A. They -- he asked me to go into the house with him.
Q. And did you accompany the officer into the house?
A. Yes.
Q. What did you notice about your house? Let's start off with the outside of your house. Did you notice anything different about your house, about the outside of your house, the structure or anything like that?
A. Well, the kitchen door where they had entered was -- the locks and the knob were pried. And then the -- it has glass in the top and one of the panes was broken out. That's ---
Q. Okay. So it's kind of a door that has like glass panes and then like a solid bottom?
A. Yes, sir.
Q. Okay. And can you give us an idea where on that the glass was broken?
A. Right by the door knob.
Q. Right by the door knob?
A. Yes. The very last pane by the door knob.

Q. Okay. And you also said you noticed some pry marks or some damage to the door, as well?
A. Yes. The door knob and the lock, that was all damaged because it was -- I think ---
Q. Well, just describe what you saw?
A. Yeah, it was pried and damaged and the window, the glass in it was broken, as well.
Q. All right. And could you step down and just point out to the jury which -- what area, what door it was that you noticed this damage?
A. It's this part of it, but it's the back -- there's a small utility porch with a storm door and I had my washer and dryer there. And then there's a door that leads into the kitchen, which is -- once you get inside that little porch you can't be seen, so you know, you can -- that goes into the kitchen. And it's at the back of the house.
Q. Okay. And so in order to get to the door that was broken, you have to enter another door?
A. Yeah. A little storm door. And that was pried, as well.
Q. Okay. It ---
A. It's not a stable lock. It was just ...
Q. Okay. All right. You can have a seat. Okay. Then after observing that damage to the door, did you

enter the house with the officer?
A. Yes, sir.
Q. Okay. And did you notice anything different about the inside of your house compared to when you left?
A. Yeah. It was tossed a little.
Q. I'm sorry.
A. Tossed a little.
Q. It was tossed a little bit?
A. Yeah, the bedroom. And ---
Q. What do you mean by tossed? Can you ---
A. Well, you know, things strewn around a little. I mean I don't recall exactly, but it wasn't the way I had left it.
Q. Okay. So there were some things strewn around?
A. Yes.
Q. Did you notice anything about any drawer or anything like that?
A. Yes. There's a small night stand and the drawer was pulled out and was laying on the bed. And that was where I normally keep my pistol and it was gone.
Q. Okay. We'll get to that in just a minute. So the -- there was a little bedside table by your bed?
A. Yes, sir.
Q. And that's where a drawer had been pulled out?
A. Uh-huh (affirmative).

Q. And the drawer was on your bed?
A. It was on the bed.
Q. Okay. Now, tell us what all you noticed missing from your house? Any sort of property that you had that was gone?
A. There was a small glass jewelry box that was missing and a Toy -- it's called a Toy watch. It's a pink wrist watch that was missing. And actually there was an item that I didn't know was missing. It was probably in that little jewelry box. The police returned it to me from the pawn shop, and I have that if you want to see it.
Q. Okay. We'll get to that in just a minute. But describe it, describe it to us?
A. It's a little initial that has an R on it for Renna, of course.
Q. Okay.
A. And it's so tiny, it's not something you wear all the time, so I didn't really realize it was missing until the sheriff's office returned it to me.
Q. Okay. And it's a piece of jewelry?
A. Yeah.
Q. Okay. And where would it be displayed? It's like a little pendant?
A. Yeah. It had a small gold chain on it, but when it

was returned back to me the gold chain was no longer on it.

Q. Okay. The little pendant was there?

A. Yes.

Q. Okay. So you talked about the jewelry box, the wrist watch and this pendant. What else was missing?

A. There was actually a sweater missing from the closet, but I don't -- I didn't report that or anything.

Q. Okay. Now, how about from your -- you have a desk in your living room?

A. I do have a desk in my living room and my laptop was missing.

Q. Okay. What did your laptop look like?

A. It was red.

Q. And was there anything else from that same area missing?

A. Yes. The DVD player was missing, Sony DVD player.

Q. Okay. And then you referred to something on your bed. You said there was the -- the drawer had been pulled out and put on your bed. Was anything missing from that drawer?

A. A 38 revolver.

Q. A 38 revolver. A pistol?

A. Yes.

Q. Okay. And was there anything else missing from the

bed? Did you have any linens or anything like that?
A. Yes. The pillow case was missing from one of the pillows.
Q. Okay. One pillow case?
A. Yes, sir.
Q. All right. Now, let me ask you a few questions about this pistol. What kind of pistol was it again?
A. It was a Colt 38 revolver.
Q. Okay. Where had you gotten the pistol? I'm sorry?
A. It was given to by my son many years ago. It's what they call a Saturday Night Special.
Q. Okay. And why did you own a pistol?
A. My son thought I needed it for protection, but I've had it many, many years.
Q. Okay. And you kept it by your bedside?
A. I did.
Q. Now, did the officers at that time ask you for serial numbers for any of your property?
A. They did, and I later called that information into the sheriff's office. When I arrived back home, the police officer and T.R. and his brother, were -- had been waiting all that time for me. And the police officer had other things to do rather than ... So after he walked through the house with me, then he left because he had been there for a while.

Q. Sure.
A. So I got this information and called it into the sheriff's office.
Q. Okay. And do you remember what items of your property you had serial numbers for?
A. I did. I actually had the serial numbers for the DVD player.
Q. Okay. Any other property?
A. You know, I didn't have them on the laptop, but I had them on the DVD player. And I don't know why.
Q. What about the pistol?
A. I have everything on that, all of the serial numbers and everything.
Q. Okay. So when you called in you gave the serial numbers for the DVD player and the pistol?
A. Yes, I did.
Q. Okay. Now, did you get any of the stolen property that you mentioned back?
A. Yes, sir. I got back the DVD player and that little pendant from the necklace.
Q. Okay. Were you reimbursed by your insurance company for any of the other items?
A. Yes, sir.
Q. And for like the pistol, the laptop, the watch and the pillow case. Do you remember about roughly how much

money?
A. Yes, sir. It was approximately thirteen hundred dollars for those items.
Q. Okay. Now, did you have any property damage to the house that needed to be fixed?
A. Yes, sir. The storm door and the kitchen door had to both be replaced. And there was -- it was approximately seven hundred dollars in property damage to the doors.
Q. Did your insurance premiums go up after this?
A. Yes, sir, they did. In fact, my insurance company canceled me.
Q. Okay. Did you do anything else to the house to try to make you feel safer?
A. I had to install an alarm system.
Q. How much does that cost you?
A. That's forty dollars a month.
Q. Now, you mentioned you got two of the items back?
A. Yes, sir.
Q. Do you remember where you went to get those items back?
A. Yes, sir. I call it -- where the Publix shopping center is there below Furman, the sheriff's office is -- and I'm not sure what that ---
Q. Okay.

A. It's right behind the Publix shopping center there.
Q. Okay. And it's one of the sheriff's offices ---
A. Yes. I went to the sheriff's office.
Q. Okay. And you met with one of the investigators?
A. Yes, sir.
Q. How were you able to identify those two items that you got back?
A. Well, the pendant I recognized right away.
Q. Okay.
A. And the DVD player still had my DVD in it, which was a workout tape, and it was in there when it was missing and it was in there when it was returned. So ...
Q. And also you had given the serial number for it, as well; isn't that correct?
A. Yes, sir. Yes, sir.
Q. Okay. And I don't think we need to -- so you brought the pendant with you; correct?
A. I did.
Q. I don't think we need that because we have some photographs. Do you remember having a chance to look at some photographs of these items? Let me start off by showing you State's Exhibit Number 3. Do you recognize that?
A. Absolutely.
Q. What is that?

A. That's the pendant.
Q. Okay. That's a photograph of the pendant?
A. Yes, it is.
Q. And is that the way it looked on -- back in March of 2012 when you received it back?
A. Yes, sir.
Q. And let me show you State's Exhibit Number 1. Do you recognize what that is?
A. Yes, sir, the DVD player.
Q. Okay. And the DVD player you just described?
A. Yes, sir.
Q. Is that a true and accurate representation of the way it looked when you ---
A. Yes, sir.
Q. --- got it back? And State's Exhibit Number 2?
A. Yes, sir.
Q. Okay. You recognize that as a closeup of the back of the DVD player? Is that what it appears to be?
A. Yes, sir.
Q. Okay. One moment, please.

MR. IANUARIO: No objection, Your Honor.

MR. MOYER: I move to have State's Exhibits Number 1 through 3 entered into evidence.

THE COURT: Into evidence without objection.

(WHEREUPON, State Exhibit Numbers 1, 2 and 3 were

admitted into evidence.)

Q. All right. Now, do you know anyone who has a blue and white Aerostar van?

A. No, sir, I do not.

Q. And you've already -- I've already asked you this. But do you know either one of the people that have been named as defendants in this case?

A. No, sir.

Q. Amanda Caldwell or Furman Taylor?

A. No, sir.

Q. Did either one of those individuals have a right or your permission to be in your house on May the 19th of 2012?

A. No.

Q. All right. Please answer any questions that the defense may have.

THE COURT: Thank you, Solicitor. Mr. Ianuario.

MR. IANUARIO: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. IANUARIO:

Q. You said that you had a woman to come by and feed your cats whenever you left town?

A. Yes.

Q. About how often would you leave town, generally?

A. Well, sometimes I go to California to visit. And I often go to North Carolina for the weekend. My family lives there and I have friends there.

Q. Okay. And do you have any social media accounts like FaceBook or Twitter?

A. I don't.

Q. Okay. And this cat lady, so to speak, did you have her arranged to come by and take care of your cats this weekend?

A. I'm sorry. I can't -- can you speak up a little bit?

Q. I'm sorry. I've got a little bit of a cold and a cough drop in. The woman that came by to take care of your cats, did you arrange for her to come by on this weekend?

A. No. She wasn't feeding my cat that weekend. My cat can stay a day or so by herself. I usually only have her come when I'm going to be gone for more than a couple of days. But T.R. and them were aware that she came by, you know, that I had a person to care for my cat occasionally when I'm away.

Q. Okay. Now, going into the back door, you said that the glass pane was knocked out of the door?

A. Uh-huh (affirmative).

Q. Where was that in relation to the door lock?

A. It's -- they're small panes, like, I don't know, maybe six by six, whatever they are. And the door handle, it's right there. You know, knock out the glass and you could stick your hand in there. The door knob was right there.

Q. Okay. And you said you saw pry marks on the ---

A. Yes, sir. The locks were damaged. The door actually had to be replaced. The glass was broken out and the locks were damaged beyond repair.

Q. Okay. And you weren't able to provide that serial number right away for the DVD player; did you? Or how were you able to locate that serial number?

A. I had it in a file folder. And ...

Q. That's all I have.

THE COURT: Thank you, Mr. Ianuario. Redirect, Solicitor?

MR. MOYER: No redirect, Your Honor.

THE COURT: Thank you so much, Ms. Taylor. You may step down.

MR. MOYER: State calls T.R. Perry.

THE COURT: All right. Mr. Perry if you'll come around and be sworn for us, please.

THE CLERK: Sir, please come forward. Place your left hand on the bible and raise your right, please.

THE WITNESS: What's that, ma'am?

THE CLERK: Place your left hand on the bible and raise your right. Thank you.

Do you swear or affirm that the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. You may be seated. Would you please state your name for the record.

THE WITNESS: T.R. Perry.

T.R. PERRY,

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MOYER:

Q. Hey, Mr. Perry. Let me ask you also to move up just a little bit closer to the microphone so we can make sure everybody hears you real well. You a little nervous today? Have you ever had to do anything like this?

A. No, sir.

Q. So you're a little bit nervous here today?

A. Yeah, a little.

Q. Okay. Tell us a little bit about yourself. How old are you?

A. I'm about Thirty-nine.

Q. Can you get a little bit -- maybe pull that microphone a little bit closer.

A. Thirty-nine.
Q. Thirty-nine. Okay. And you live up near Travelers Rest?
A. Yes, sir.
Q. Okay. And where do you work?
A. Tucker Material.
Q. How long have you worked at Tucker Material?
A. Almost fifteen years.
Q. What do you do for Tucker Material?
A. Deliver Sheetrock.
Q. Okay. Now, do you know Ms. Taylor who just testified a few minutes ago?
A. Yes, sir.
Q. How long have you known Ms. Taylor?
A. Couple of years. Probably about 2002, something like that.
Q. Okay. And you do some odd jobs around her house?
A. Yes, sir.
Q. What sort of things do you do?
A. Cut grass, rake leaves, take off trash; stuff like that.
Q. Okay. Now, let me take you back to May the 19th of 2012. Okay. Do you remember going over to her house that day?
A. Uh-huh (affirmative). Yes, sir.

THE COURT: Would you say yes or no for me. Thank you.

Q. That was a yes?

A. Yes, sir.

Q. Okay. Thank you. What was your reason for going over to her house that day?

A. She asked me to take off her garbage because she was going out of town for the weekend.

Q. And what kind of vehicle were you driving?

A. Dodge pickup truck.

Q. And your brother went with you; is that right?

A. Yeah. Yes, sir.

Q. Very good. Do you remember around what time of day it was when you were over there?

A. Afternoon, I guess, oneish, something like that.

Q. Sometime in the afternoon?

A. Yeah.

Q. Now, who was driving that day?

A. I was.

Q. Now, can you show us on this map over here, the map that Ms. Taylor was using -- let me ask you to step down.

A. Okay.

Q. And would you show us where you drove and where you parked when you went over to her house that day?

THE COURT: Would you step on the other side so

your voice travels back ---

THE WITNESS: Okay.

THE COURT: --- to our court reporter. Thank you, Mr. Perry.

Q. Now, this here has already been described as her U-shape driveway? Do you sort of recognize it from ---

A. Yeah.

Q. Okay. Can you kind of show us where you drove that day?

A. I come up McElhaney, come up McElhaney, took a right like you're going on White Horse Road Extension. I come back up here. I took a right in her driveway. I come around right here beside her house and come up and the van was sitting right here.

Q. Okay. So you parked -- I'm going to point -- right about here where my pen is? Pretty close to where the -- close to the door?

A. Yes, sir. I come up this driveway and come up behind it.

Q. Okay. You can have a seat again, please. Thank you. Now, when you drove into her driveway on this date, what did you observe?

A. I noticed a blue and white Ford Aerostar van.

Q. Had you ever seen that van there before?

A. No, sir.

Q. Okay. So what did you do when you saw that van there?

A. Really, I didn't think nothing. I just looked at it. It was just kind of strange, she had told me she was going out of town. So I called her and asked her. She was like, no, nobody's supposed to be there because I know by what she said ---

Q. What did you ask her when you called her?

A. I asked her was anybody supposed to be at your house and she said no.

Q. Okay. And while you were on the phone with her, what did you observe?

A. I was on the phone, whatever, knocked on the door to see was anybody there. And when we knocked on the door, two people ran out.

Q. Okay. Tell us a little bit about what you remember about these two people? Were they men, women?

A. It was a female and a male.

Q. What did you -- start with the female. What do you remember about her?

A. She had like blondish brown hair.

Q. All right. And was she black, white, Hispanic?

A. White.

Q. White woman. Okay. Now, what about the man?

A. He was white. He had -- I think he had a black

jacket on, black hat.

Q. Black hat?

A. Yeah, black hat. And had a goatee and a ponytail.

Q. Okay. What color was his hair; light or dark or ---

A. Like a brownish black.

Q. Okay. So let's start with his face. You said he had facial hair?

A. Yeah. He had like a goatee.

Q. And what about his -- what about the length of his hair?

A. He had it like up in a ponytail.

Q. Okay. And was it fairly long? Did it come down his back?

A. Yeah, it was fairly long. Pretty long.

Q. Okay. Could you tell roughly, just a rough estimate on age of this person?

A. I'd -- age, he looked like he was about forty or fifty years old, I guess. He looked like he was older than me. I'm almost forty, so, he looked about my age or older.

Q. Okay. Do you remember anything about his size?

A. He looked like about two hundred pounds probably, two fifteen.

Q. Okay. And how about, was he a short guy or tall

guy or in between or ---
A. He looked like he was about my height or a little bit shorter than me.
Q. How tall are you?
A. It says six foot on my license, but ...
Q. Okay. Now, were you able to get a really good look at these two people's faces?
A. Not face to face, no.
Q. Okay. And why is that?
A. Because they was running out.
Q. Okay. Did they talk to you when they came out?
A. No.
Q. Did they look you in the face?
A. No.
Q. Did they do anything to hide away from you?
A. Yeah. I only saw the girl just run out and just -- like I said, from where I was set up, I was like -- we was there, I was like -- where Renna's back door was, I was going to her door where she keeps her garage and the next thing I saw somebody run out. I looked up like that and I saw her run out and jump in the driver's seat.
Q. Okay.
A. And the guy come out and he was like this a little bit. But before he did that, I saw like the side of his face. I can't say I saw him face to face. He went like

this and I saw something against him arm when he jumped in the passenger side and they left.

Q. You said he did like this and you kind of -- you sort of showed us with your body. Is that fair to say, you lifted your collar up and sort of covered your face a little bit?

A. Yeah. That's basically what he was doing.

Q. Okay. And so he got in the passenger side of the vehicle?

A. Yes, sir.

Q. Okay. And did the vehicle stick around or did it leave?

A. No. They was gone.

Q. Pretty quickly or did ---

A. They wasn't playing. They was gone.

Q. Okay. Now, did you notice either of the two individuals carrying anything when they came out?

A. It looked like had a -- at that time it looked like a bag underneath his arm.

Q. Okay. So when you saw, when you saw this, you told Ms. Taylor about seeing these two people come out of the house?

A. Yes, sir.

Q. Okay. Did you leave or did you stick around and talk to the police?

A. I called her and she asked me if I could stay around until the police got there. And I said, sure, and I stayed there and I told the police what I saw.

Q. Okay. Talked to the police officer who showed up and you told him what you saw?

A. And he was asking me which way they went. I told him which way they went. And all that.

Q. Okay. One minute, please. Do you know the defendant in this case, Furman Taylor?

A. (No verbal response.)

Q. Do you know the defendant Furman Taylor?

A. No, sir.

Q. Do you know Amanda Caldwell?

A. No, sir.

Q. All right. Please answer any questions the defense has.

THE COURT: All right. Thank you, Solicitor. Mr. Ianuario.

MR. IANUARIO: Thank you, sir.

CROSS EXAMINATION

BY MR. IANUARIO:

Q. Good afternoon, Mr. Perry?

A. How you doing?

Q. When you arrived you saw a female leaving and you gave a description of her. We've got brown hair and blue

jeans?

A. Something like that, yeah. Like I said, it was a year and a half ago.

Q. Do you recall what color shirt she was wearing?

A. At that time it looks like she had a white shirt on.

Q. Okay. And you said you didn't get a good look at the male because he was covering his face?

A. Yes, sir.

Q. Did you see eye color?

A. No, sir.

Q. Just a little corner ---

A. Like right here. Right there.

Q. So that's how you ---

A. He had a goatee.

Q. You said he was wearing a jacket, black jacket?

A. Yeah. Like a bike shirt, black hat. All that.

Q. All right. Do you remember what color pants he was wearing or shorts?

A. I think he was wearing blue jeans.

Q. Did you happen to see the male or the female carrying what looked like a pry bar or crowbar?

A. No.

Q. How long were you at the home before the police showed up?

A. How long?
Q. Yes, sir?
A. Maybe an hour, something like that. We was there for a little while before the police showed up. I stayed about an hour and so waiting on him.
Q. Okay. And you say your brother was with you also?
A. Yes, sir.
Q. Was there anyone else with you?
A. My daughter.
Q. Okay. How old is she?
A. Eleven.
Q. And did she see anything?
A. Huh?
Q. Did she see anything?

MR. MOYER: Objection. Hearsay.

THE COURT: Sustained.

Q. Did you and your brother have any discussions while you were waiting for the police about what you saw?
A. (No verbal response.)
Q. Did you and your brother discuss what you had seen while you were waiting for the police to show?
A. I told him what I saw.
Q. And where was he in relation to you for all this? Sitting in the vehicle or did he get out and walk around?
A. He was out.

Q. And did you see a license plate on this van?
A. No, I didn't.
Q. All right. And you say it was two-tone, this van was two-tone, white and blue?
A. Yeah.
Q. Can you give a general description, white top half, blue bottom half, vice versa?
A. No. All I know it was blue and white. I can't remember it that much.
Q. It's been a while?
A. Yeah.
Q. All right. Nothing further.

THE COURT: Redirect?

MR. MOYER: No redirect, Your Honor.

THE COURT: Thank you very much, Mr. Perry. You may step down.

MR. MOYER: State calls Deputy Frank Abella.

THE COURT: Come around to be sworn, please.

THE CLERK: Sir, please place your left hand on the bible and raise your right.

Do you swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE CLERK: Thank you. You may be seated.

Please state your name for the record.

THE WITNESS: Deputy Frank Abella.

THE CLERK: Thank you.

DEPUTY FRANK ABELLA,

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MOYER:

Q. Would you please state your name?

A. Frank Abella.

Q. Okay. And where are you employed?

A. Greenville County Sheriff's Office.

Q. Okay. How long have you been in law enforcement?

A. Four years.

Q. How long have you been with the sheriff's office?

A. Four years.

Q. What is your position with the sheriff's office?

A. I currently work for the warrant division.

Q. Okay. And what was your position back in May of 2012?

A. I worked for the uniform patrol.

Q. What kind of -- give us a little bit of an idea what uniform patrol officers do?

A. Uniform patrol's main responsibility is to respond to 911 calls. So if someone needs any kind of assistance they'll call 911 and we'll respond.

Q. So y'all are kind of the first responders for most calls that come in?

A. Yes, sir.

Q. Okay. Regardless of what it is?

A. Yes, sir.

Q. Domestic violence, burglary, traffic?

A. Yes.

Q. Okay. Let me take you back to May the 19th of 2012. Did you receive a call on that afternoon?

A. Yes. I was dispatched a call in reference to a burglary.

Q. Okay. And what was the location that you were dispatched to?

A. It was [redacted] in Travelers Rest.

Q. Okay. And is that in Greenville County?

A. It is.

Q. And you said it was in reference to a burglary call?

A. Yes. One that had already occurred.

Q. Okay. One that had already - as opposed to one that was in progress; right?

A. Yes, sir.

Q. Now, what time did you arrive there at that location?

A. I arrived at four zero nine.
Q. And who was there when you arrived?
A. I had, it was Tandy Perry, T.R., and his brother David Perry and his daughter Kaylie Perry.
Q. Okay. And the man you referred to as Tandy Perry, that was T.R. Perry who just testified?
A. Yes, sir.
Q. Okay. And did you speak to them about what they had observed?
A. Yes.
Q. Now, did you do anything to attempt to contact the victim at this time?
A. Yes. I asked him -- I asked Mr. Perry to contact the victim and have her come to meet her -- to be present to go through her residence.
Q. Okay. And did you remain there while she was en route back here?
A. Yes, I did.
Q. Now, when she arrived back to the residence, did you enter the residence with her?
A. Yes.
Q. And can you tell us what you observed about the residence with the outside and inside?
A. Well, first the side door, the one referred to that has a laundry room, the door that leads into the kitchen

has glass and it was broken. You could tell that's where they gained entry into the house. Once he went inside the house, you could see just things were a mess. Things were definitely scattered. Drawers were open. It seemed to appear that someone had shuffled through -- throughout the house.

Q. Okay. Tell us about the bedroom and the bed. What did you notice about it?

A. The most notable thing was the drawer from the dresser was on the bed. I remember seeing ammunition inside that drawer.

Q. What kind of ---

A. A few rounds of ammunition.

Q. Did you make a notation what kind of ammunition?

A. It was 38 caliber bullets.

Q. Okay. And they were in that drawer?

A. Yes, sir.

Q. Okay. Now, did you -- is it part of your duties in a situation like this where a burglary had taken place not too long ago to get a description of the vehicle?

A. Yes.

Q. And what is the reason for that?

A. In hopes to notify other officers who are working to be on the lookout for a vehicle with that same description.

Q. Okay. So did you get that information out?
A. I did.
Q. And what was the description you gave out for officers to be on the lookout for?
A. T.R. advised that it was a nineties blue and white Ford Aerostar van.
Q. Okay. And did you get a description from the Perrys as to the two individuals who were involved in this?
A. Yes.
Q. And what description did you get?
A. It was a white female, twenty, thirty years old, about five two to five five, a hundred and thirty to a hundred fifty pounds, brown hair, wearing a white shirt and blue or gray pants.
Q. Okay. What about the man?
A. The male was white male, forty to fifty years old, five ten to six feet, one ninety to two hundred and fifteen pounds, gray hair, a black shirt and blue jeans and black baseball cap.
Q. Okay. Did you take an inventory of the stolen property?
A. I did. Once the victim arrived, Ms. Taylor, had a Hewlett-Packard laptop that was red, valued at five hundred dollars; a Sony DVD player that was black valued

at a hundred dollars; a Colt 38 hybrid revolver that was black, valued at five hundred dollars; a glass jewelry box valued at fifty dollars; a Toy brand wrist watch that was pink in color, valued at three hundred fifty dollars; and a white pillow case valued at twenty dollars.

Q. Okay. And did you call for other officers to come to the scene?

A. I did not.

Q. Okay. Did you call for any forensics officers?

A. Yes.

Q. And what's the purpose of that?

A. Any burglary we have, we automatically call forensics and they'll come out and attempt to get fingerprints or any other evidence they can collect on the scene.

Q. Okay. Now, did you have anymore involvement in the case after this initial response to the residence?

A. No, sir.

Q. All right. Please answer any questions the defense has.

THE COURT: Thank you, Solicitor. Mr. Ianuario.

CROSS EXAMINATION

BY MR. IANUARIO:

Q. What was the description that you received when you

first appeared at the scene of the suspects?
A. Female or male or both?
Q. Let's start with the female.
A. All right. Female, white female, twenty to thirty years old, five two to five five, a hundred thirty to a hundred fifty pounds, brown hair, white shirt, gray or blue pants.
Q. Okay. And what was the description that you had for the male?
A. The male was white male, forty to fifty years old, five ten to six feet, one ninety to two fifteen and gray hair, black shirt, blue jeans.
Q. Okay. And then in your report you also note a full beard; is that correct?
A. Let me -- yes. In that section that shows the drop-down portions of our report. It shows a physical description and facial hair, full beard and then black baseball cap.
Q. Okay. And what other information did you receive about the suspects and/or their vehicle?
A. As far as the suspects, he said they were in a hurry; they walked out quickly out of the residence. Mentioned he had a bag with him. They got in the vehicle and left abruptly. And they also said about the vehicle that there was -- they believed they knew the first three

of the tag, and this was -- I believe it was David, he remembered the first three and it was either EZI or E2I, the first three of the tag.

Q. Okay. And did they indicate that was a South Carolina license plate?

A. I think they were unsure.

Q. Okay. And did you observe anything unusual in the perimeter of the residence, footprints in a flower bed, anything ---

A. Not that I recall.

Q. Nothing further.

THE COURT: Redirect?

MR. MOYER: No redirect, Your Honor.

THE COURT: Thank you very much, Officer. You may step down.

MR. MOYER: State calls Dustin Kretschmar to the stand.

THE COURT: All right. If you'll come around and be sworn for us, please.

THE CLERK: Please place your left hand on the bible and raise your right.

Do you swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. You may be seated. Please state your name for the record.

THE WITNESS: Dustin Kretschmar.

THE CLERK: Thank you.

DUSTIN KRETSCHMAR,

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MOYER:

Q. Where do you work?

A. Greenville County Forensics Division.

Q. And what is your position with the forensics division?

A. I'm a forensics technician.

Q. How long have you worked in the forensics division?

A. For a little over three years now.

Q. Do you have any law enforcement experience prior to that?

A. I was a road officer down in Florida for two years.

Q. Now, what are your duties in your current position with forensics?

A. When we respond to a scene, we look for any evidence that might be on the scene, including fingerprints, blood, fibers, hair and things of that nature.

Q. What sort of training have you received for that

position?

A. I've gone to several classes, in-service training, and classes online such as blood spatter analysis, forensics photography, shooting reconstruction, and arson investigation class.

Q. Okay. Have you received training or education in the area of processing for fingerprints?

A. Yes. We do a lot of in-house training as far as that's concerned. And then also we go to our latent fingerprint examiners and they go over what is a comparable fingerprint and what you should look for when you're on the scene as far as fingerprints are concerned.

Q. Let me take you to May the 19th of 2012. On that date did you get involved in a case that we are here talking about today?

A. I did.

Q. And how did you get involved in that case?

A. The deputies called out for a forensics response. I responded to the scene and spoke with the victim to tell me what all was missing, what all was touched or moved. And then I look on scene for any other forensic evidence that might have been there.

Q. Okay. And so the reason for you talking to a victim in a situation like this is what?

A. They would have the best knowledge of their own

house and see what only what was missing but what might have been moved or out of place. Things that whoever was in the house, the suspect, might have touched or left something behind.

Q. Now, when did you arrive at this location?

A. Around sixteen thirty hours, about.

Q. And what is that?

A. Four thirty in the afternoon.

Q. And how long -- when did you -- how long did you stay there on the scene?

A. I don't know the exact time frame.

Q. Would it refresh your memory if you had a chance to take a look at your report?

A. Yes, sir.

Q. I've just handed you something. Do you recognize what that is?

A. I do. It's my report.

Q. Okay. And by taking a look at your report, does it refresh your memory as to times when you arrived and when you left there?

A. It does. I received the call around -- at sixteen thirty-four hours, but I arrived on scene at seventeen twenty and stayed there approximately forty-five minutes and left the scene at eighteen oh five.

Q. Okay. So you arrived about five oh two?

A. Yes, sir.
Q. And left about ---
A. At six oh five.
Q. Six oh five p.m. Okay. Now, what did you do while there at the scene?
A. I walked through the scene with the victim and she described the DVD player that was missing from the living room, and it was originally on an entertainment center or stand, and then in that same living room there was a desk where the laptop was missing, as well. Then we went into the bedroom and she showed me the night stand that the handgun was missing from and also the drawer -- dresser drawer that had been taken out and placed on the bed.
Q. Okay. And did you then process the residence to try to find fingerprints?
A. I did. I processed several areas, including the kitchen entrance, the back door, also the storm door that led to that side kitchen door. I processed the front door, as well, and also the entertainment stand in the living room, the desk top in the living room, the dressers and also the bedside table and drawer that was on the bed in the bedroom.
Q. Now, how do you process for fingerprints? How do you go about doing that?
A. For this I use a latent fingerprint brush which is

made out of fiberglass filament. And we use a carbon black powder, very fine powder, and then we take the brush and use that and use the powder over whatever surface area that I'm looking for the fingerprints.

Q. Okay. And if you find a fingerprint, that powder sort of brings it out?

A. The powder will attach itself to whatever oils or whatever kind of substance was left behind when the suspect will place or whoever will place their fingers down or hand print down on a surface, transfers onto the surface, then I brush over with my powder and that powder will adhere to whatever oily substance was left on it.

Q. Okay. And if you do find a fingerprint, what do you do with it?

A. I will make the determination of whether or not it'll be comparable if there's enough detail to make a comparison for a match. And if I have any questions whether or not the fingerprint should be lifted, I will go ahead and lift it for our latent examiners to make that determination. I use tape to press down on the fingerprint, peel it off and put it on a white card. And that's what gets sent up to our latent examiners.

Q. Okay. So if you find a fingerprint, is it your job then to try to go and make a comparison for somebody or not?

A. I do not make the actual comparison. I just determine whether or not there's sufficient detail to lift the print. And then that print will get sent off to a latent examiner to actually make the match.

Q. Okay. And so obvious question, but when you're actually looking for fingerprints, there's no way for you to know at that time whose prints they may be, whether they're a victim or suspect or guest or anything like that?

A. No, sir. I'll lift whatever I find.

Q. All right. Now, all these places you just mentioned to us that you attempted to find fingerprints, did you find any? Were you able to lift any fingerprints?

A. I did not.

Q. So none at all? Not from a suspect, a victim, or anybody?

A. No, sir.

Q. Okay. Please answer any questions the defense may have.

THE COURT: Thank you, Solicitor. Mr. Ianuario.

MR. IANUARIO: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. IANUARIO:

Q. In addition to checking for fingerprints, did you check for any other type of forensic evidence?
A. I'll keep an eye out for any kind of evidence that might be lying around. But my main focus was fingerprints.
Q. Okay. And you say you weren't able to recover any prints, even from the homeowner or anyone?
A. As far as fingerprints with enough detail to make a comparison, no.
Q. Okay. So no useable prints then?
A. Correct.
Q. And did you take any photographs of the crime scene?
A. I did not.
Q. Okay. And were there any other forensics investigators there?
A. No, sir.
Q. And to your knowledge has there been any further investigation, any further forensic investigation of that ---
A. Not to my knowledge.
Q. Nothing further.
THE COURT: Any redirect?
MR. MOYER: No redirect, Your Honor.
THE COURT: Thank you very much, Officer. You

may step down.

MR. MOYER: State calls Jinny Moran to the stand.

THE COURT: All right. If you would come around and be sworn for us, please.

THE CLERK: Please place your left hand on the bible and raise your right.

Do you swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE CLERK: Thank you. You may be seated. Please state your name for the record.

THE WITNESS: Jinny Moran.

THE CLERK: Thank you.

JINNY MORAN,

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MOYER:

Q. And where are you employed, ma'am?

A. Greenville County Public Safety.

Q. What is your position?

A. I'm a captain over the records division.

Q. How long have you been with -- in this position?

A. I've been a captain over the division for about

fifteen years. And I've been with Greenville County over thirty-two.

Q. Okay. So you've been in law enforcement then with Greenville County this whole time?

A. Yes, sir.

Q. Okay. Now, what is your -- what are your duties as captain?

A. The records division manages records generated by the Greenville County Sheriff's Office, the Police Department, and we also manage the daily operations of the detention jail records.

Q. Okay. Were you summoned to court today to appear and bring any records or documents with you?

A. Yes. I was summoned to bring an arrest mug shot photo?

Q. Okay. What person and what date?

A. The subpoena instructing me to bring a booking photo of Furman Taylor from the arrest date of June the 4th, 2012.

Q. Okay. Now, what are booking photos?

A. Booking photos are when a person is arriving to the detention center, they are processed by the ID office -- ID staff, and a mug shot photo is taken of that arrest date, along with fingerprints.

Q. Okay. And are those booking photos kept in the

course of regularly conducted business activity?

A. Yes. These are normal records that are maintained on people coming into the facility.

Q. Okay. And they are kept in storage as a regular part of the business activity of the ---

A. Of the records division, yeah. We maintain the police reports as well as arrest photos.

Q. Okay. And it's the regular practice of the records department to make and to keep those records?

A. Yes.

Q. And do you have access to those records as a regular function of your job?

A. Yes.

Q. Okay. And you say you brought the booking photo that you just described with you?

A. Yes. I brought two.

Q. Okay.

MR. MOYER: Your Honor, at this time I would move ---

Q. Well, let me show you this again. Let me hand you State's Exhibit Number 5. Do you recognize what I just handed you?

A. Yes.

Q. And what is that?

A. This is a photo for the arrest date of June the

4th, 2012, of Furman Eugene Taylor.

Q. Okay.

MR. MOYER: Your Honor, at this time I would move to have State's Exhibit Number 5 entered into evidence.

MR. IANUARIO: No objection, Your Honor.

THE COURT: State's 5 is into evidence without objection.

(WHEREUPON, State Exhibit Number 5 was marked and admitted into evidence.)

MR. MOYER: I have no further questions for this witness.

THE COURT: Thank you, Solicitor. Mr. Ianuario.

MR. IANUARIO: No questions for this witness, Your Honor.

THE COURT: Thank you very much, Captain. You may step down.

MR. MOYER: Your Honor, may we approach?

THE COURT: Yes, sir.

(WHEREUPON, Messrs. Moyer and Ianuario approached the bar.)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, although your lunch is not here yet, it's kind of an inconsistent, perhaps now would be a good time

to take our lunch and recess. It should be here momentarily.

I would remind you, during this recess, you're not to discuss this case with anyone. That includes your fellow jurors, lunch mates, or anyone else. Obviously since we've brought lunch in, which I did that with the clerk's authorization because of the weather. However, I do remind you, do not read or listen to any news reports about the case. You won't have your computer, cellular phone or any other electronic device with you while you're in your jury room. Remember, do not discuss the case with anyone.

And I'm going to say two fifteen. If you're finished earlier and y'all are ready to come back in, if you'll knock on the jury room door, let me know, I'll be available to -- and the attorneys will be available to start back. Let's give them at least till a quarter till two. Let's say between a quarter till two and two fifteen. No later than two fifteen, no earlier than a quarter till two, if y'all are ready to get back to work, they'll be ready to get back to work.

All right. And leave your notes, Mr. Foreman, upside down in your seat. Thank you very much.

(WHEREUPON, the jury exited the open court at approximately 12:48 p.m.)

THE COURT: Anything further from the state?

MR. MOYER: No, Your Honor.

THE COURT: Defense?

MR. IANUARIO: No, Your Honor.

THE COURT: How many more witnesses do you have?

MR. MOYER: I have another five or six.

THE COURT: Five or six. All right. You heard what I said, quarter till two to two fifteen, if they say they're ready we'll start back then.

Thank y'all very much.

(WHEREUPON, the court stood at recess for a lunch break.)

THE COURT: Anything from the state before we bring in our jury, Solicitor?

MR. MOYER: No, Your Honor.

THE COURT: Defense?

MR. IANUARIO: No, Your Honor.

(WHEREUPON, the jury entered the open court at approximately 1:55 p.m.)

THE COURT: Y'all changed places. Welcome back to y'all. Ladies and gentlemen of the jury panel, I hope y'all had a pleasant lunch. We're continuing the trial of the case by the presentation of evidence, testimony by the state in its case in chief. If you would please

continue to give the parties your complete and undivided attention. And your notes are present, Mr. -- all right. Thank you very much.

Solicitor, you may call your next witness.

MR. MOYER: Please the court, Your Honor, state calls Deputy J.A. Loveless.

THE COURT: All right. If you'd come around and be sworn for us, please.

THE CLERK: Please place your left hand on the bible and raise your right.

Do you swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. You may be seated. Please state your name for the record.

THE WITNESS: Joseph Loveless.

THE CLERK: Thank you.

JOSEPH LOVELESS,

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MOYER:

Q. Where are you employed, sir?

A. The Greenville County Sheriff's Office.

Q. How long have you been in law enforcement?

A. Working on my tenth year right now.
Q. Has it all been with the sheriff's office?
A. No, sir. I came from another agency. I've got a little over four years with the sheriff's office here.
Q. Okay. And where were you before here, did you say?
A. Sumter Police Department.
Q. Okay. What is your position with the sheriff's office?
A. Right now I'm currently assigned to the uniform patrol division.
Q. Is that what you were doing back in May of 2012?
A. Yes, sir, it was.
Q. Okay. Now, let me take you to May the 31st of 2012. Did you get a call that evening related to this case?
A. I did.
Q. How did that come about?
A. The sheriff's office received an anonymous complaint in reference to a wanted person whom they described as Amanda Agnes Caldwell. Stated she was in the parking lot of the Waffle House on White Horse Road, which is located at [redacted] in Greenville County.
Q. Okay. Did you go to that location?
A. I did.

Q. Okay. In addition to the Waffle House, is there another restaurant there?

A. There's a McDonald's, it's right there and the parking lot kind of separates both of them.

Q. Okay. So they're right side by side?

A. Yes, sir, they are.

Q. All right. And were you given a description of how to find this person when you arrived at that location?

A. Yes, sir. We were advised by the anonymous complainant that called in that we needed to look for a blue and white Ford Aerostar van. Stated that the wanted subject would be in that van.

Q. Okay. And when you arrived at the location did you see a vehicle fitting that description?

A. Yes, sir, I did.

Q. And what did you do when you found that vehicle?

A. When I arrived on scene, I observed a blue and white Ford Aerostar van that was parked. There's a curbed area that's located between the Waffle House and the McDonald's right there on White Horse Road in the 6100 block. The van was parked adjacent to the curb. It was a blue and white Ford Aerostar minivan displayed the tag [redacted], which is [redacted]. When I approached the vehicle it was occupied by a white male, the defendant here, and a white female, which was Amanda

Agnes Caldwell.

Q. Okay. And how did you determine the identity of these two people?

A. I asked for identification from both. When they gave me their identification, I ran the identification provided by the male, the defendant, and it come back to Furman Eugene Taylor, Jr. And the female gave an ID, as well, and I identified her to be Ms. Caldwell. The tag on the vehicle that was displayed on that Ford Aerostar van also came back to the defendant, Furman Eugene Taylor, Jr.

Q. Okay. So that vehicle was registered to him?

A. Yes, sir, it was.

Q. Okay. Now, did you take anyone into custody?

A. I did. After confirming Ms. Caldwell's identity, I checked with our warrants division and confirmed that she had a couple of active warrants. They were for burglary in the second degree and a grand larceny warrant. Once we confirmed those warrants were in hand, she was taken into custody.

Q. Okay. What did you do with regards to Furman Taylor?

A. Mr. Taylor, I checked him for active warrants. He was clear at the time. I advised him he was free to leave, and he drove off in the blue and white van after

she was taken into custody.

Q. Okay. No further questions.

THE COURT: Thank you, Solicitor. Mr. Ianuario.

MR. IANUARIO: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. IANUARIO:

Q. This anonymous tip, you said that you were told it was a blue and white Aerostar van would be there?

A. Yes, sir. They specifically stated a blue and white Ford Aerostar van.

Q. And you said that they gave you the name of Amanda Caldwell?

A. They said that she was a wanted person and she would be in that vehicle.

Q. And did you receive any other information?

A. No, sir, I did not.

Q. And you said you ran the license plate and it was [redacted]?

A. [redacted], yes, sir.

Q. And did you search the van before you released Mr. Taylor?

A. No, sir. There was no reason at the time to conduct a search of his vehicle.

Q. Okay. Did you happen to see anything unusual or

suspicious, just casual observations about the van?

A. I did not.

Q. And do you recall what Mr. Taylor was wearing?

A. I do not.

Q. Nothing further. Thank you.

THE COURT: Redirect?

MR. MOYER: No, Your Honor.

THE COURT: Thank you very much. You may step down.

MR. MOYER: State calls Amanda Caldwell.

THE COURT: All right. Ms. Caldwell, if you'll come around and be sworn for us, please.

THE CLERK: Please place your left hand on the bible and raise your right.

Do you swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: Thank you. You may be seated. Please state your name for the record.

THE WITNESS: Amanda Caldwell.

THE CLERK: Thank you.

AMANDA CALDWELL,

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MOYER:

Q. Ms. Caldwell, how old are you?

A. I'm twenty-four.

Q. Okay. Now, let me ask you this question. You were charged also in the case that's currently before the court; isn't that right?

A. Yes, sir.

Q. And you pled guilty to a burglary, a charge of burglary second degree?

A. Yes, sir.

Q. And you also pled guilty to another related burglary second degree; isn't that correct?

A. Yes, sir.

Q. And also obtaining money by false pretenses for pawning the stolen property; isn't that correct?

A. Yes, sir.

Q. Have you been sentenced yet?

A. No, sir.

Q. Did anyone promise you anything about what your sentence would be?

A. No, sir.

Q. So you received no promises from the prosecutor's office or from law enforcement?

A. No, sir.

Q. Have you been asked to do anything with regard to

your testimony?

A. No, sir.

Q. Has anybody told ---

A. Just tell the truth.

Q. Okay. Now, have you seen the map that is currently -- that has been displayed to the jury, State's Exhibit Number 4?

A. Yes, sir.

Q. Have you had a chance to look at that before today?

A. Yes, sir.

Q. Do you recognize it?

A. Yes, sir.

Q. And how do you recognize it?

A. I recognize it as the house that we broke into. I don't remember exact dates, but I do know that we broke into that home.

Q. Okay. And when you say we, who are you referring to?

A. Me and the defendant, Furman Taylor.

Q. So you know him?

A. Yes.

Q. Okay. What was your relationship with him?

A. He was my boyfriend.

Q. When did you start dating him?

A. November of 2011.

Q. Okay. And you were actually still married at that time; correct?

A. Yes.

Q. Okay. You were separated?

A. Yes.

Q. How long had you been separated?

A. Almost three years.

Q. Okay. When did you start dating Furman Taylor?

A. It was November 22nd of 2011.

Q. And did y'all ever live together?

A. Yes.

Q. When did you start doing that?

A. About a week after we met.

Q. Where all did you live together?

A. At my grandmother's house. And then after we left there it was just hotels and just here and there.

Q. Okay. When did you all stop dating?

A. Whenever I got arrested, May 31st of 2012.

Q. Okay. Now, let me ask you about his appearance back in May of 2012. First off, how old was he?

A. How old was he?

Q. Yeah?

A. He was around fifty. I can't remember exact age, but he was almost fifty.

Q. Okay. And you were how old?

A. Twenty-two.
Q. You were twenty-two back then. Okay. Tell us about what race is he?
A. He's white.
Q. And what about his hair?
A. It's a brownish color and long. It's always been long since I met him.
Q. Okay. And what about facial hair?
A. He always wears a goatee.
Q. And about how tall would you say?
A. Almost six foot.
Q. And weight?
A. Somewhere between a hundred and eighty and two hundred.
Q. You've seen the -- let me show you State's Exhibit Number 5. This is a picture that was taken June the 4th of 2012. Is that about how he looked?
A. Yes.
Q. Now, you said you did a burglary at that house ---
A. Yes, sir.
Q. --- on that date? And do you remember around when it was you did this?
A. It was evening. I don't remember exactly what time. I do know it was evening, though.
Q. How about rough dates?

A. I don't remember any dates.
Q. Do you remember what date you got arrested?
A. Yes. May 31st. I do remember that.
Q. Obviously it was prior to that?
A. Yeah. It was prior to that, but I don't -- I'm thinking May sometime, but I don't remember exact dates.
Q. Okay. What kind of vehicle were you in when you did this?
A. Blue and white Ford Aerostar.
Q. Was it the same vehicle that you were in when you were arrested May 31st?
A. Yes, sir.
Q. Whose was that vehicle?
A. Furman's.
Q. And do you know where he got it?
A. From my sister.
Q. Do you know how much he paid for it?
A. Eight hundred dollars.
Q. Now, who was driving the van the day y'all broke into this house?
A. Me.
Q. And around what time of day did you say it was?
A. It was evening. It wasn't dark yet, but it was evening time.
Q. And by evening, what do you mean by that?

A. Like after lunch.
Q. Okay. I know some people have a different understanding of evening.
A. It was after lunch sometime.
Q. Sometime after lunch. Okay. Now, how did you pick that house?
A. We were driving by up this way towards Travelers Rest on Old White Horse Road.
Q. Okay. So coming on White Horse Road from the bottom of the map going up?
A. Yeah, going up.
Q. Okay.
A. We were driving up that way and we passed it. And Mr. Taylor asked me to turn around. And so I turned around. And he asked me to slow down. And so I drove slowly by it. And he was like, you know, that house looks good. Let's hit it, which meant break into it. And so I went up and I turned around on Old McElhaney, however you say it, that road, and I turned back around and went into the first part of the driveway.
Q. Okay. Let me ask you to step down and show the jury where you -- what direction you were heading in initially?
A. Okay. We were headed that way.
Q. Okay.

A. And I got up here somewhere and he told me to turn around. I came back this way slowly.
Q. And what was he doing while you were driving slowly?
A. Just looking at the house, making sure there wasn't any vehicles or it didn't appear there was anybody there.
Q. Okay.
A. And we came back this way. And probably about right here he told me to turn around. I got here and I done kind of like a U-turn almost right here in this. And then I pulled back in the driveway here and pulled up to about right there.
Q. Okay. So kind of right in front of the house there?
A. Yes.
Q. Okay. You can take your seat again. Okay. Now, what happened when you stopped there in that driveway?
A. He went around to the front door and knocked on the front door to see whether or not anybody was at home. And nobody came and answered the door, so he went ---
Q. You were watching him? You could see this?
A. Yeah. I could see from the van what he was doing.
Q. Okay.
A. And then he came back around. He came to the van and got out his gloves and he called it a crook's tool,

but it was like a mini crowbar almost. He got it out and went to the side door and pried at the door. And whenever he was prying at the door, the window broke, the pane of glass broke out of it.

Q. And you were able to observe that?

A. Yeah. The van was parked well enough back to where I could see the side door.

Q. And was it that side door -- so you don't have to get up again -- when you say the side, are you talking down around this ---

A. Yes.

Q. --- part of the house down here?

A. Yes.

Q. Okay.

A. And so he reached in through the pane of glass and unlocked the door and went in.

Q. Okay. Do you remember if your window was down?

A. Both windows were down.

Q. So you were able to ---

A. Both front windows were down. Yes.

Q. You were able to hear and watch him do this?

A. Yes.

Q. Okay. And so when the door opened, what did he do?

A. He went in the house.

Q. Okay. What did you do?

A. I sat there for -- it felt like forever to me, but I guess about five or ten minutes, and I felt like he was taking too long, so I went in the house to get him.

Q. Okay.

A. And after I went in the house, you could see from the bedroom through a window. And I seen a white truck pull up. And I asked him, I was like, oh, my God, what do we do? There's somebody here. And he said, leave, go through this door, and it was the front door to the front of the house. And we opened it and went running out the front door and got in the van and left.

Q. Okay. Now, when you went in the house to get him, what did you see him doing?

A. He was going through drawers, just, you know, kind of tossing everything out of the drawers, looking around trying to find stuff.

Q. Okay. What room was he in?

A. The bedroom.

Q. When he came out of the house was he holding anything?

A. Yes. He had a pillow case and a gun.

Q. Okay. Which hand was he holding -- did he have the pillow case in?

A. The pillow case, we were facing on White Horse Road and the pillow case was like in this hand and the gun was

in this one.

Q. Okay. So the pillow case was in his right?

A. Yes, his right hand.

Q. And what was he doing with the gun? Was he waving it around?

A. No. He just had it down by his side and kind of had his head like in his jacket a little bit walking like that.

Q. Okay. What do you remember he was wearing that day?

A. He had on a black hat; I'm pretty sure it said Taylor Made across the front. And then a black jacket and either a blue or black shirt and blue jeans.

Q. Okay. And what was he doing with the jacket as he was coming out?

A. He just kind of had his face like this in it.

Q. Okay. So it was kind of pulled up a little bit?

A. Yeah.

Q. Did you look and see if there was anybody associated with that pickup truck?

A. I kind of out of the corner of my eye I seen somebody standing there, but I wasn't trying to stop and look and see who was there or anything like that. I just wanted to get out of there.

Q. Okay. Did either of y'all say anything to those

guys?
A. No.
Q. Did they say anything to you?
A. No.
Q. All right. And then you got to the truck and what did you do? You got in the driver's side again?
A. Yes.
Q. What did you -- did you drive away right away?
A. Yes.
Q. And where -- did you drive away slow or fast or ---
A. Fast. Very fast.
Q. Now, you mentioned he was holding something like a bag kind of thing. Did you ever figure out what ---
A. It was a pillow case.
Q. It was a pillow case. Did you ever see any of the property that was taken from the house?
A. Yes.
Q. What did you -- what do you remember seeing?
A. I seen a red laptop and the DVD player and a pendant, like a little necklace thingy like this and the gun, of course. I seen it also.
Q. The gun?
A. Yes.
Q. Now, let me show you State's Exhibit Number 3. Do you recognize that pendant?

A. Yes, sir, that's what I was talking about.
Q. The one that you saw that came from the house?
A. Yes.
Q. Let me show you State's Exhibit Number 1. Do you recognize that?
A. Yes. That's the DVD player.
Q. Okay. Where did y'all go?
A. We went to a pawn shop on East North Street, Cash America.
Q. What did you do when you got to the pawn shop?
A. I took the DVD player and the pendant and another pendant from the other robbery that I was involved in in and pawned it.
Q. A robbery, you mean another burglary?
A. Break-in, yes.
Q. Okay. And you took that into that pawn shop?
A. Yes, sir.
Q. And what did you do when you got inside?
A. I went straight to the counter and pawned it.
Q. What did he do while you were there?
A. He was walking around inside. He waited outside for a little bit. Then he came inside and walked around for a few minutes and went back outside.
Q. All right. After you pawned that property at the pawn shop, what did you do?

A. We went to McDonald's and got something to eat.
Q. What McDonald's; do you remember?
A. I really can't remember.
Q. Then what happened after ---
A. He dropped me off on White Horse Road; not Old White Horse Road. White Horse Road.
Q. And do you know what he did?
A. He was supposed to be going to try to sell the laptop.
Q. Did he tell you who he was going to try to sell it to?
A. He said somebody named Dray.
Q. Was he gone for a while?
A. He was gone for a couple of hours, yes.
Q. Did he come back and get you?
A. Yes.
Q. Did he have anything with him or say anything about ---
A. He didn't have the laptop or the gun anymore, but he had a little bit of money. He had like a hundred and fifty dollars.
Q. Did he tell you how much money he was able to get for these ---
A. He said that he was supposed to get like two hundred, I think, for the laptop, but I never seen the

rest of the money, so I don't know.

Q. And you didn't see the pistol anymore?

A. No.

Q. Do you know what he did with the pistol?

A. No.

Q. Okay. Now, do you remember when you were arrested?

A. Yes.

Q. Tell me about where you were and what you remember about that?

A. I was at the McDonald's and Waffle House on White Horse Road parked at the like curb thingy that separates the parking lots.

Q. What were you doing?

A. I was sitting there eating.

Q. What kind of vehicle were you in?

A. The Ford Aerostar van, the blue and white van.

Q. Once again, the same one that y'all committed this burglary in?

A. Yes.

Q. Who was with you?

A. Furman Taylor.

Q. What happened while you were sitting there?

A. I was sitting there eating and two police cars pulled up. One pulled up in front and one pulled up behind. They asked us for our IDs and asked me to get

out. I got out and gave them my ID. And Furman was telling me, you know, be quite, don't say anything. And so ---

Q. When was he saying that; before the officers walked up?

A. He was saying that -- as soon as he seen the police cars pull up, he started saying, you know, be quiet, don't say anything, keep your mouth shut. And so whenever I got out and gave them my ID, they handcuffed me and took me and put me in a police car.

Q. Okay. Did they do anything to him?

A. They checked his ID and let him go.

Q. After you were being led away and he was being let free, did you have any -- were you able to have any contact with him?

A. No.

Q. Did you make any eye contact or anything like that?

A. He looked at me, and I mean, we looked at each other. And it was just kind of a, you know, a be quiet look.

Q. Now, do you remember talking to an investigator the following day?

A. Yes.

Q. At that time did you give a statement?

A. Yes, I did.

Q. Did you give the full truth about ---
A. No, sir, I didn't.
Q. --- what happened? What did you say?
A. I gave a false statement and just told him honestly a bunch of crap about ---
Q. What did you tell him?
A. I told him that we had -- that I had got the stuff off of Furman and Catherine.
Q. Got what stuff?
A. The stuff that I pawned, the DVD player and the necklaces, off of Furman and Catherine, which was a girl that we both knew. That I didn't have anything to do with the burglary or, you know, I didn't know where the stuff came from or anything like that.
Q. Okay. So you told the investigator that who gave you that DVD and pendant?
A. That Furman gave it to me.
Q. And did you tell the investigator that you knew where that stuff had come from?
A. No.
Q. Just that he gave it to you?
A. Yes.
Q. And you said he was with somebody?
A. Yes. He was -- Catherine Elaine. It's a girl we both know.

Q. And does she look -- the same kind of color of hair as you?
A. Yeah, kind of. She kind of favors me, yes.
Q. About the same height and ---
A. Yes.
Q. --- weight and everything like that? Okay. Now, after you gave that statement -- you gave to this investigator seated in the back row back here?
A. Yes.
Q. And that was on June -- that was the day after you got arrested; right?
A. June 1st, yes.
Q. Now, do you remember a couple of days later talking to him again?
A. Yes. I called him on the phone and asked him to come get me because I wanted to tell him the truth.
Q. What prompted that change between those ---
A. I had a couple of days to think. And honestly, I just -- I wasn't raised like that and I just felt really bad about what we had done and I wanted to do everything possible to make it right and to do the right thing.
Q. Had you ever been in jail before?
A. No.
Q. And so you called the investigator?
A. Yes.

Q. Did he come and get you?
A. Yes.
Q. And you went to his office again?
A. Yes.
Q. And at that time you told him what happened?
A. I told him what really happened.
Q. Did he make any promises to you ---
A. No, sir.
Q. --- to get you to change your story?
A. No, sir.
Q. And in between the time you gave your first story and when you talked to him and told him the truth, did you -- did anybody contact you and tell you to change your story or anything like that?
A. No, sir.
Q. And so you said you had never been in jail before that time; right?
A. Right.
Q. Have you ever had to testify in court against anybody ---
A. No, sir.
Q. --- or testify in court at all?
A. No, sir.
Q. One moment, please. Please answer any questions that the defense attorney has.

A. Yes, sir.

THE COURT: Thank you, Solicitor. Mr. Ianuario.

MR. IANUARIO: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. IANUARIO:

Q. I apologize for asking some of the same things. I'll try not to be repetitive. How did you first meet Furman Taylor?

A. Through friends, Casey and Allison that were friends of mine and friends of his. We were at Casey's house and she called him over and I met him there.

Q. Okay. And that was on 11/22/11?

A. Yeah. That was -- well, it was around November 22nd, 2011. Yes.

Q. Okay. And you said you lived together briefly?

A. We lived together until I went to jail. Yes.

Q. And you say you were living here and there and in hotels. Did he have one permanent residence or was he kind of bouncing around?

A. Whenever we first got together, I was living with my grandmother and he was living with his sister. Well, then he moved into my grandmother's house with me. And we left there because him and my grandmother didn't really get along, so we left there and then it was just

kind of from hotel to hotel. He would stay at his sister's house some. We would stay at just different motels and hotels throughout Greenville.

Q. Okay. How as he usually dressed?

A. He usually wore blue jeans, black shoes and dark colored shirts and always a hat, a baseball cap.

Q. Okay. And on May the 19th, if I understand correctly, there were two pawn shops visited that day; is that correct?

A. I'm not sure. Honestly, I don't remember.

Q. Okay. Do you remember at the pawn shop talking to anybody else or any unusual incidents ---

A. No.

Q. --- like dropping a TV and asking for a jumpstart or anything like that?

A. No.

Q. And you say when he was walking out he had the pillow case in one hand and a gun in the other?

A. Yeah.

Q. Did you get a good look at that gun?

A. All I know it was a handheld gun. It was a pistol. I didn't really get a close look at it. No.

Q. Black, silver; do you remember?

A. It was black.

Q. All right. Now, you said Furman put on some gloves

for this?
A. Yes.
Q. Did you have any gloves?
A. No.
Q. And you entered the residence to check on him?
A. Yes.
Q. And do you remember touching anything in the residence?
A. No.
Q. How did you get the door open?
A. It was left open where he went in.
Q. Can you describe that black jacket he was wearing?
A. It was a hoodie. Like it was a zip-up hoodie.
Q. What happened after the burglary?
A. After we broke into this house? We left and went toward Travelers Rest on Old White Horse Road and went to the pawn shop.
Q. And then he dropped you off after the pawn shop?
A. We went to McDonald's and eat and then he dropped me off on White Horse Road. Yes.
Q. All right. So the burglary took place, you went to the pawn shop, then you went and got food and he dropped you off?
A. Yes, sir.
Q. All right. And where exactly did he drop you off?

A. It was at G.T.'s on White Horse Road. Across from Welcome Elementary School.
Q. Now, after he came back where did y'all end up going?
A. We went to a motel in Mauldin and spent the night.
Q. And who is this Catherine that you mentioned?
A. She was a friend of mine and someone that he had known through Casey and Allison, as well.
Q. Did she have anything to do with this burglary?
A. No, sir.
Q. And who is Tyler Whitman?
A. He's a friend of ours I actually met through Furman.
Q. And did he have anything to do with this burglary?
A. No, sir.
Q. And in your first statement that you gave to the detectives, you did mention that Catherine and Tyler were involved; correct?
A. Yes.
Q. How did Furman's name first get brought up?
A. I was just -- honestly, I mean, I was making up -- I brought his name up because he was actually, you know, involved in it. And I figured if I just threw -- because Detective Mashak said there was a witness who seen a male and female. And so I figured, you know, Furman was

involved in it, so if I gave them his name and told them Catherine, because she looked like me, that maybe I could get out of it.

Q. All right. Have you had a chance to reread your first and second statements?

A. Yes, sir.

Q. Does this sentence sound familiar? Investigator Mashak then told me that I was lying and stated I was with Furman Taylor?

A. Yes, sir.

Q. And that's the first time I see it mentioned in that statement. You said he bought the van from your sister?

A. Yes, sir.

Q. And do you remember about when he bought that?

A. I'm not sure exactly when. No. I know it was after the Ford Explorer tore up.

Q. And you were driving it on that day?

A. Yes, sir.

Q. Is there any particular reason you were driving?

A. Not really.

Q. Did you have a vehicle of your own?

A. No, sir.

Q. And did you ever borrow Furman's vehicles?

A. Not on my own, no. I didn't drive them unless he

was with me.

Q. Just one moment, please. Nothing further, ma'am.

THE COURT: Redirect?

MR. MOYER: No redirect, Your Honor.

THE COURT: Thank you, Ms. Carpenter. You may step down.

MR. MOYER: State calls Scott Phillips to the stand.

THE COURT: All right. Come around and be sworn for us, please.

THE CLERK: Please place your left hand on the bible and raise your right.

Do you swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Thank you. You may be seated. Please state your name for the record.

THE WITNESS: Scott Phillips.

THE CLERK: Thank you.

SCOTT PHILLIPS,

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MOYER:

Q. Where are you employed?

A. Greenville County Sheriff's Office.
Q. What is your position with the sheriff's office?
A. Property crimes investigator.
Q. How long have you been in law enforcement?
A. Twenty-eight years.
Q. Has it all been with the sheriff's office?
A. No, sir. Twenty-seven's been with the sheriff's office.
Q. Where did you work before?
A. A year with the City of Simpsonville Police Department.
Q. And what are your duties in your current position?
A. We investigate property crimes, which includes burglaries, auto break-ins, larcenies, things along that line.
Q. Okay. Now, did you participate in the investigation of this case?
A. Yes, sir, I did.
Q. And what date did you become involved in this case?
A. I believe the case was assigned to me for follow-up on May the 22nd.
Q. So what prompted your involvement in the case? What was your first ---
A. The case was assigned to me on the 23rd. Made contact with Mr. T.R. Perry. He was the complainant and

also had seen the suspects. Just made contact with him to see if he had remembered anything since the original report. He had not.

Q. Tell us ---

A. Then I spoke with the victim, which is normal practice. We always contact the victim.

Q. Now, on May the 23rd of 2012, did you get any other information about the case?

A. Yes, sir, I did. Reviewing my case I found out that Ms. Taylor -- yes, sir, Ms. Taylor had called into our front desk and reported that she had located the serial number for her DVD player. I found that supplemental. And then I was able to locate where that DVD player had been pawned.

Q. Now, how did this information come to your attention? You said through the supplemental report. How did that get triggered to you?

A. A supplemental report that was taken on a case that you're investigating will be forwarded to you because it's your case for investigation. I received the supplemental, at which time saw where Ms. Taylor had called and had located the serial number for her DVD player.

Q. Okay. Now, what did you do with that information?

A. We have a database called Leads Online. Basically

what that is, is someone that sells or pawns something at a pawn shop, they have to show their ID in order to make that transaction. Once that transaction has been made, that information by the pawn shop is loaded onto this database, which enables us to look by serial number or by a person's name. I ran the serial number and found that the DVD player had been pawned by Ms. Caldwell.

Q. Okay. So whenever someone pawns some property, the pawn shop has -- will enter all this information?

A. Yes, sir.

Q. Okay. Both as to the property they pawned and as to the individual who pawned it?

A. Yes, sir. When you pawn or sell something, you have to show a picture I.D. And that's entered onto the ticket, as they call it, which the person making the pawn receives a copy of the ticket. The pawn shop then enters that information onto this database as far as what the item was, serial number if the serial number is known, all the pertinent information on the person making the pawn as far as name, address, phone number, date of birth; things along that line. And also what the pawn shop actually pays for the item.

Q. Okay. And so you found out this DVD player had been pawned where now?

A. It had been pawned at Cash America Pawn at 2516

East North Street in Greenville.
Q. Okay. And that had been pawned by ---
A. Ms. Caldwell.
Q. Now, when you learned that information, what did you do?
A. When I contacted the pawn shop, found out that it had been pawned and it was still there, I had them place it on hold, which we will do that because once we place it on hold, the person that pawned it cannot come back and pick it up. The pawn shop cannot sell it or anything like that. They have to hold it.
Q. Now, in addition to the DVD player, did you have anything else ---
A. Yes, sir. There was also a small charge type thing for a necklace with an R on it.
Q. Now, after speaking and putting this property on hold, what did you do?
A. Shortly after that I was already scheduled for a family vacation. I left to go on vacation and Investigator Mashak finished up the case.
Q. Okay. Did you contact the victim?
A. Yes, sir. I contacted the victim and advised her that I have located the items. She met me at my office on May the 29th to give me a statement.
Q. Okay.

A. Normally in this type situation with a pawn shop, I asked her, I said, do you know an Amanda Caldwell? No, I don't. Well, would you mind coming and just looking at a picture just to confirm that you do not know her.

Q. Okay.

A. That was the purpose of the statement I obtained from her.

Q. Okay. I have no further questions from this witness. Please answer any questions defense has.

THE COURT: Thank you, Solicitor. Mr. Ianuario.

CROSS EXAMINATION

BY MR. IANUARIO:

Q. When you were checking Leads Online, ---

A. Yes, sir, that's correct.

Q. --- did Ms. Caldwell show up as having pawned any other objects?

A. I remember the DVD player and the charm. Other than that, I'm not completely sure, because the main items I was looking for was the laptop, the gun, the DVD player and the charm. And all I could find that she had pawned on my case was the DVD player and the charm.

Q. And you said that you went on vacation and Detective Mashak took over?

A. Yes, sir, that's correct.

Q. At that point in time, did you have any further involvement in this case?

A. No, sir.

Q. And did you talk to any of the pawn shop staff or personnel?

A. Only when I located the items at the pawn shop, I called and spoke with an employee and had them place the items on hold.

Q. Okay. So you didn't ask them if they had a description of the ---

A. No, sir.

Q. Nothing further. Thank you.

THE COURT: Redirect?

MR. MOYER: No, Your Honor.

THE COURT: Thank you very much. You may step down.

MR. MOYER: State calls Brady Mashak to the stand.

THE CLERK: Please place your left hand on the bible and raise your right.

Do you swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: Thank you. You may be seated.

Please state your name for the record.

THE WITNESS: It's Brady Mashak.

THE CLERK: Thank you.

BRADY MASHAK,

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. MOYER:

Q. Investigator Mashak, where are you employed?

A. Sheriff's office.

Q. And how long have you been with the sheriff's office?

A. Since July 2006, so about seven and a half years.

Q. What is your position with the sheriff's office?

A. Right now I'm in auto theft, an investigator for auto theft. But during this time I was in property crimes.

Q. And what do you do in property crimes as an investigator?

A. Like Investigator Phillips said, we work burglaries, larcenies, malicious damage and then pretty much a whole bunch of things.

Q. A whole gamut of those kind of things?

A. Yes, sir.

Q. Okay. And you got involved in the case that's currently before the court?

A. Yes.
Q. All right. Let me take you to May the 21st of 2012. Is that -- did you have involvement in the case on that day?
A. In this case, no. In the other case Ms. Caldwell was talking about, yes.
Q. Okay. And what was your involvement in that case at that time?
A. I worked another burglary case that was involving Ms. Caldwell. And I located some items in the pawn shop that she had pawned that were stolen in that case.
Q. Okay. And what were the items and did that lead you to, did that lead you to any of the property that we've been talking about here today?
A. Yes, sir.
Q. Tell us how that came about?
A. Like Investigator Phillips said, you can put in someone's name, serial numbers, all that stuff. In the other case that I worked, the victim in that case had a serial number. Whenever we search on these online you can put a serial number in. There's custom range, dates range. You can put D.L. numbers in. It's a whole bunch of different things. It's a really good tool for us. I put the serial number in for this camera. It was, I believe, two days later, we get emails saying, okay, you

have a possible hit. We look up that, compare it, and in this case, it was a hit for the camera. So it just showed that one thing that she had sold. So then I put in her driver's license and then of course there was that stuff, as well as other items.

Q. Okay. And so you know other things that she had ---

A. Yes, sir.

Q. So what -- when you found out about this DVD player and that pendant with the R on it, what did you do?

A. I took pictures. Basically that was the first time I had heard about a DVD player or a pendant. A lot of times, like Ms. Taylor, there's stuff gone that no one knows is gone. I mean, there's small things that you might not find until two months later that's gone until you look for them. And so I took pictures at both pawn shops of the stuff just to confirm, hey, is this your stuff? Yes or no? And I took pictures of those items, as well as the other items in the other case.

Q. Okay. And what did you do with those pictures?

A. I showed not Ms. Taylor but the other victim in that case and she pretty much -- I said, is this your stuff? No, yes, no, yes. And she said no on the DVD player and the R pendant.

Q. Okay. She said no on those, so you knew it was

involving another situation?
A. Yes.
Q. Okay. Well, let me take you to June the 1st of 2012. Did you meet with Amanda Caldwell on that date?
A. I did.
Q. Okay. How did it come -- had you already gotten warrants on her for pawning the property?
A. I believe so. I believe I did.
Q. And obviously she was arrested on warrants the day before?
A. Yes.
Q. And they were associated with this pawned property that she had pawned?
A. Yes, sir, I believe so.
Q. Okay. And so after you found out that she had been arrested, you say you met with her. Tell us about how you got her, where you took her.
A. Checked and found out she was arrested, went to the jail, where I pulled her out, me and Investigator Coran (phonics). We walked her over to the law enforcement center and went upstairs in the interview room and spoke with her.
Q. Okay. And that's when she gave you the statement that was not exactly correct that she testified to?
A. That's correct.

Q. Is that the truth? Okay. And after you finished talking to her on that occasion, did you give her your phone number or how did that come about?

A. I gave her my business card. I mean, I knew she wasn't telling me the whole truth. I gave her my business card and told her, if you want to tell me the truth about this whole situation, call me. They can call collect. And I believe it was three days later I got a phone call from her.

Q. Okay. And so in between those dates, had you been trying to contact her to ask her to come meet with you?

A. No.

Q. Did you make any promises to her that you would ---

A. No sir.

Q. --- treat her any differently if she gave you another statement?

A. No, sir.

Q. Or that she would be punished more harshly if she didn't?

A. No, sir.

Q. Okay. So you didn't put any pressure on her at all?

A. No, sir.

Q. And so she contacted you and do you remember what you did when you got that contact?

A. She called me on, I believe it was June 4th. It was pretty much right after I got in the office, got a collect call from her. She said, hey, can you come down and talk to me? And I told her I would. And me and Investigator Coran (phonics) went back down there and pulled her out. And basically went through the whole spiel again at the law enforcement center and waiver of rights and all that stuff.

Q. Okay. So you gave her -- as far as waiver of rights, you're talking about her ---

A. *Miranda* rights. Yeah, the waiver of rights.

Q. Okay. And did you -- at this time did you put any pressure on her to change her story?

A. No.

Q. Did you ever give her any promises?

A. No, sir.

Q. You didn't treat her any differently if she said anything differently than she said the first time?

A. No, sir.

Q. Okay. Did you -- okay. Now, did you have any contact with the Perrys, David and T.R. Perry?

A. I did. When I was -- on the 30th, I believe of May, when Investigator Phillips was going to be out, so I basically took over the case. And so I'm dealing with the same people, so I called T.R. and tried him. Didn't

get in touch with him. Talked to his wife. She said he was at work. So I said I'd, you know, get in touch with him later. Talked to David Perry and talked to him for a little bit. Asked him what he saw. He said he just saw a female and didn't see the male. And said they were in a white and blue Ford Aerostar van.

Q. Okay. And then did you at any point decide to show photo ---

A. I did. It was ---

Q. What led to that?

A. I'm sorry?

Q. What led to you doing that and when did you do it?

A. Whenever I got involved with the other -- I believe it was after I got this, I talked to Russell Droughten (phonics), her ex-husband or you know, I guess it was future ex-husband. I talked to him and said, hey, can you tell me where Amanda is? And he said, I have no idea. I said, can you tell me who she's with? And he said, yeah, Furman Taylor. I said, well, can you describe him? Because in the report they said something about a goatee and long hair. And I said, well, can you describe him? He said, yeah, he has a goatee and long hair. I said, well any chance you can tell me about the vehicle because they obviously saw the Ford Aerostar. And he said, he drives a Ford Explorer and a Ford

Aerostar van. So that's what, you know, matched the description vehicle-wise and suspect-wise.

Q. Okay. And did you take and -- who did you make photo line-ups of? How many different photo line-ups and ---

A. I did three, because the first time when Ms. Caldwell said about Catherine, I found out about her. She said that was the other person that she was talking with -- or about. So I did three different line-ups.

Q. Okay. And who did you show these line-ups to?

A. David and T.R.

Q. Now, did you show the male -- the photo line-ups of Furman ---

A. No. Because he said he never even saw a male. T.R. did.

Q. So you just showed the -- of the two females to David then?

A. Yes, because he never even saw a male.

Q. And he wasn't able to ---

A. They both weren't. They both pretty much gave the same description of the van and stuff they saw. Besides David saying he didn't see the male, they said they sort of turned their heads so they couldn't see. So basically the photo line-up wasn't good because they hadn't seen a face.

Q. Okay. Now, did they look at the photo line-ups to say that the person was definitely not in them?
A. No. They said they could be, they couldn't be. I don't know. I never saw a face.
Q. Okay. Now, at that time did you take a statement from T.R. Perry?
A. I did.
Q. And did you -- was this the only written statement that was taken from him?
A. From T.R.?
Q. Yes?
A. Yes.
Q. And that's -- did you get a description from him at that time about what the male looked like who committed the burglary?
A. Yes.
Q. And how did he describe him?
A. I believe it was a black hat, jacket, goatee with black -- long black hair in a ponytail.
Q. Okay. Would it refresh your memory if you had a chance to look at the ---
A. Yes, sir, it would. Again, he described the ---
Q. Just how did he describe the male?
A. Just the male?
Q. Yes.

A. It says, I then saw a white male wearing a black shirt and black hat. He had black hair that was in a ponytail and a goatee. He was carrying a bag and went into the passenger side. And it says, so I didn't get a good look at either of them. They were looking away.

Q. Okay. But he did describe him with black ponytail and ---

A. And goatee.

Q. Now, is it generally the case when there's a case like this when a uniform officer goes to the scene that the detailed statement is taken later by an investigator like you?

A. Unless we catch them on scene, I mean, that's really the only time as far as a statement from uniform patrol or that night if someone's arrested, you know, in the house or something like that. But usually it's later on.

Q. And it's left with a follow-up?

A. Yes, sir.

Q. So the uniform officer, what's his job as far as identity goes?

A. Basically get the descriptions and give it to our dispatch, so if you're my B partner, if I'm on this, they know, hey, I'm looking for a black and blue Ford Aerostar van. They BOLO it and you know what to look for.

Q. Just to get that information out as quickly as possible ---

A. Yes, sir.

Q. Okay. Did you meet with David and T.R. Perry together at the same time?

A. No, sir. I met David at his house and then T.R. was at work, so I went to where he was working.

Q. Okay. So separate times and separate places? They were not together?

A. No.

Q. Okay. Now, did you ever get the stolen property from the pawn shop?

A. I did.

Q. When did you do that?

A. It was June 5th, 2012.

Q. How do you go about getting stolen property from a pawn shop?

A. We have what's called a Evidence Procurement Fund where if your house gets broken into, like this case, a DVD player or pendant, instead of having the victim pay for their stuff to get it out, which they shouldn't have to do, we have a fund where a lady, Jody Trammell, is in charge of the funds. It's sort of like petty cash. We get the ticket. I got the ticket. It was ten dollars for the DVD player and ten dollars for the R pendant. So

all I needed was twenty dollars. Basically I fill out the paperwork, give it to Jody, she gives us twenty dollars to pay the pawn shop.

Q. Okay. And so you got the money, went and paid for the -- which items did you get out of the pawn shop related to this case?

A. This case, the DVD player and the R pendant.

Q. Okay. And what did you do after you got those items back?

A. I went to my office and met with Ms. Taylor. She met me at my office. And she basically took custody of them. They were turned over to her.

Q. Okay. And so she met with you at your office and you gave it to her?

A. Yes, sir.

Q. And it was the same items that you gave to her are the ones that you took photographs of ---

A. That's correct.

Q. --- a week or so earlier?

A. Yes, sir.

Q. Okay. One moment, please. Please answer any questions defense may have.

THE COURT: Thank you, Solicitor. Mr. Ianuario.

MR. IANUARIO: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. IANUARIO:

Q. Were you the one that placed Furman Taylor under arrest?

A. No.

Q. Were you -- did you have any involvement with his arrest?

A. Actually putting him in handcuffs?

Q. Telling them where to go, where to find him or ...

A. No.

Q. Do you know what happened to his van after he was arrested?

A. I don't.

Q. Do you know if it was searched?

A. I'm sure it was if he was the only one in there; it was inventoried.

Q. And was his residence or any hotel room searched?

A. No.

Q. Did I understand correctly that the first time you heard the name Furman Taylor was from Amanda Caldwell's ex-husband?

A. That's correct.

Q. And was there any mention of a gun from any of the witnesses?

A. I'm sorry. Can you speak up? I'm sorry.

Q. Mr. Perry, T.R. Perry, did he mention seeing a gun in Mr. Taylor's hand or in the person's hand ---
A. No.
Q. And has that gun ever been recovered?
A. No, sir.
Q. Neither has the laptop?
A. No, sir.
Q. And the pillow case?
A. No, sir.
Q. And you said you were working on another burglary that Ms. Caldwell was involved with; correct?
A. That's correct.
Q. And did you recover the items from that?
A. I believe almost all of them.
Q. Okay. Did that include some gold jewelry?
A. I believe so, yes.
Q. And did you ask about that jewelry, had she stolen it or what she had done with it?
A. Did I ask her about it?
Q. Yes, sir?
A. Yeah.
Q. And what did she say?
A. She sold it.
Q. One second. And do you recognize that as the first statement that you took from her?

A. That's correct.
Q. And what does it say in that last sentence there?
A. I told him that we took all the other jewelry to the Gold Exchange on Heyward Road, but it was not real so we threw it away.
Q. But you were able to recover that jewelry; correct?
A. Some other jewelry. Not that jewelry.
Q. Okay. Not that jewelry?
A. There was, I believe, quite a few items of jewelry.
Q. And the second time that Ms. Caldwell gave a statement, did y'all talk a little bit beforehand about the case and what she had to say or did she just go right in and sit down and ---
A. I just asked her what, you know, what's going on? She told me that she wanted to be truthful about everything.
Q. And at one point you did, during the first statement, tell her that she was lying and that she was with Furman Taylor?
A. That's correct.
Q. And did she agree to that?
A. Yes.
Q. In most of your investigations does the defendant typically offer to provide testimony against a co-defendant in exchange for a little help?

A. Is that what we talk about?
Q. No. Is it a common occurrence for a defendant to say, I'll give you some information on somebody if you can give me a little help?
A. Yeah.
Q. And Mr. Perry, T.R. Perry, you showed him the photo line-up and he was unable to identify Furman Taylor out of that; correct?
A. He was unable to identify anybody that's on that.
Q. Was there anyone besides Ms. Caldwell that was able to identify Furman Taylor?
A. No. They didn't see his face.
Q. Okay. And do you know anything about the anonymous tip that was received in regards to their location?
A. No, sir.
Q. Just one second. Nothing further.

MR. IANUARIO: Thank you, Your Honor.

THE COURT: Any redirect?

MR. MOYER: I have nothing further.

THE COURT: Thank you very much, Officer. You may step down.

MR. MOYER: Your Honor, may we approach?

THE COURT: Yes, sir.

(WHEREUPON, Messrs. Moyer and Ianuario approached the bar.)

THE COURT: All right. Solicitor.

MR. MOYER: Please the court, Your Honor, at this time the defense and I have something to state for the record, the defense and I have reached a stipulation that the defendant, Furman Taylor, has at least two or more convictions for burglary on his record.

MR. IANUARIO: And I would object to that, Your Honor. I believe the prejudicial value outweighs the probative value of that.

THE COURT: All right. Well, I would overrule the objection doing (a) a 403 analysis and (b) citing *State versus James*. So with that being said, do you think that protects your objection on the record then, Mr. Ianuario?

MR. IANUARIO: Yes, sir.

THE COURT: I will allow the stipulation that he has two or more prior burglary convictions without the necessity of the state having to call witnesses. I would like them marked as court's exhibits.

MR. MOYER: Yes, Your Honor.

THE COURT: All right. Then you may call your next witness, Solicitor.

MR. MOYER: Your Honor, at this time the state would rest.

THE COURT: All right. Thank you very much,

Solicitor.

Perhaps, now, Mr. Foreman and ladies and gentlemen, would be a good time to take our afternoon recess. We'll take about fifteen minutes. Please do not discuss the case during this brief recess. Thank you very much.

(WHEREUPON, the jury exited the open court at approximately 2:55 p.m.)

THE COURT: All right. Do you have motions, Mr. Ianuario?

MR. IANUARIO: Yes, Your Honor. I'd move for a directed verdict in this matter as I believe the state has failed to establish enough to meet the necessary elements of the crime.

THE COURT: All right. I would respectfully deny those motions. I think there is adequate direct and substantial circumstantial evidence as to both the burglary in the first degree and the larceny less than two thousand.

Anything you'd like to add, Solicitor?

MR. MOYER: Well, on a different matter, Your Honor. I just want to make -- one thing that I think may not be completely clear, the stipulation that was entered into on the defendant's prior convictions. I think the defense was -- stated an objection after I stated the stipulation on the record. I think the objection goes to

the fact that this type of evidence is admissible at all, as opposed to whether or not he has two prior convictions. I'm not quite sure that was made clear to the jury. I would ask that when the jury comes back in that it made clear to the jury that there is no argument between the parties that the defendant has at least two prior convictions for burglary. If we weren't able to come to that consensus then I think I would need to put the two convictions into the record. Does that make sense?

MR. IANUARIO: Yeah. I believe that's probably a better summation, Your Honor.

THE COURT: So what are you asking me to do?

MR. MOYER: Your Honor, for the court to announce to the jury that there is no dispute between the parties that the defendant has at least two convictions for burglary.

THE COURT: Is that what you're asking me to do?

MR. IANUARIO: Yeah. The dispute would be as to admissibility and not the accuracy, Your Honor.

THE COURT: All right. Well, I took it as a 403 objection. All right. I will do that if y'all -- if y'all agree, I will do that when the jury returns.

MR. MOYER: All right. Thank you, Judge.

THE COURT: All right. Sure.

Now, Mr. Taylor, come to the podium, please. And if your attorney will come around, also.

Madam Clerk, would you place Mr. Taylor under oath?

THE CLERK: Yes, sir. Please raise your hand. Do you swear or affirm to tell the truth, the whole truth and nothing but the truth, so help you God?

THE DEFENDANT: Yes, ma'am.

THE COURT: Now, Mr. Taylor, tell me your full name, please?

THE DEFENDANT: Furman Eugene Taylor, Jr.

THE COURT: And how old are you?

THE DEFENDANT: I'm forty-seven.

THE COURT: And how much education do you have?

THE DEFENDANT: I went to a little bit of school when I was in the military.

THE COURT: What branch of the military were you in?

THE DEFENDANT: Navy, sir. Launch and recovery of aircraft.

THE COURT: Say that again. Slow down.

THE DEFENDANT: Launch and recovery of aircraft, United States Navy.

THE COURT: If you were in the navy, you would have to get the army and start talking about MOSs to me.

I can't track the navy. What type work do you do?

THE DEFENDANT: Well, I do a lot of carpentry work, is what I do, Your Honor. I was building crates for General Electric. I've done some two-part epoxy painting for CompX down in Mauldin. I've done some side jobs working on houses doing remodeling and things of that nature.

THE COURT: I need to go over some things with you. I do this with everyone who's on trial. And I needed your responses to be under oath. That's why I had the clerk place you under oath. Do you understand?

THE DEFENDANT: Yes, sir, I understand.

THE COURT: We've reached the stage of the trial where the state has rested and your side, the defense, now has the opportunity to present evidence for the jury to consider. Do you understand where we're at in the trial?

THE DEFENDANT: Yes, sir, I do.

THE COURT: In that regard, you, through your attorney, may call witnesses to testify. And if you choose to testify yourself, you may do so. Do you understand?

THE DEFENDANT: Yes, sir, I do.

THE COURT: No one can force you to testify, Mr. Taylor. You have an absolute right to remain silent.

And if you choose not to testify, I will tell this jury that they cannot hold your silence against you in anyway. I will tell them they are not to discuss that -- not to even discuss that in the jury room. Do you understand?

THE DEFENDANT: Yes, sir, I do.

THE COURT: If your side offers no evidence at all; in other words if neither you nor anyone on your behalf testifies or offers any exhibits, then your attorney will get to make the last argument to the jury. Otherwise, the prosecutor gets to make the last argument to the jury. Do you understand?

THE DEFENDANT: Yes, sir, I do.

THE COURT: Well, Mr. Ianuario, Solicitor, does Mr. Taylor have a prior criminal history that would subject him to impeachment under 609?

MR. MOYER: Yes, Your Honor, he does.

THE COURT: All right. And what would that be?

MR. MOYER: He has three counts of burglary first, two counts of burglary second degree, attempted burglary, all from -- they were all from 1992. However, he was released within the ten years. He was released from prison on that in 2005. So that puts those within the ten year time frame. Then in 2005, he was convicted of burglary second degree and shoplifting. 2009, grand larceny, assault with intent to kill and failure to stop.

THE COURT: All right. Do you agree those would subject him to impeachment under 609, Mr. Ianuario?

MR. IANUARIO: Yes, Your Honor.

THE COURT: All right. Well, basically what that means, Mr. Taylor, if you were to take the stand, then the prosecutor could ask you in front of the jury about whether you've had these prior convictions for these certain offenses in the past. They cannot go into the details of the prior offenses, but they can ask you if you've been convicted of burglary first, three counts; burglary second, two counts; attempted burglary; another burglary second in '05 and shoplifting; and an '09 grand larceny and assault with intent to kill. Does failure to stop also ---

MR. MOYER: It carries over a year, yes, sir.

THE COURT: Okay. And the failure to stop. Do you understand?

THE DEFENDANT: Yes, sir, I do.

THE COURT: Now, in that regard, I would tell the jury, except for the two or more convictions, you know, it's kind of a double -- kind of facing this on two fronts. Two or more convictions for burglary are elements of burglary first. But I would tell the jury for purposes of 609 that they can only consider this evidence if you were asked about it by the prosecutor

during your cross examination or if your attorney asked you about it, if they consider it against you at all, only on the issue of whether your testimony is believable and for no other purpose. Do you understand?

THE DEFENDANT: Yes, sir, I do.

THE COURT: So the decision about whether you testify or not is your decision to make and yours alone. I expect that you've conferred with your attorneys and perhaps others whose opinions you value on important issues, but the decision about whether you testify or not is your call to make, your decision. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: Has anyone exercised any undue influence over you to get you to choose to testify or not to testify?

THE DEFENDANT: No, sir, Your Honor.

THE COURT: Today are you under the influence of any drugs, alcohol, medication or anything that negatively affects your thinking ability?

THE DEFENDANT: No, sir, Your Honor.

THE COURT: Do you suffer from any physical or mental problem that affects your thinking today?

THE DEFENDANT: No, sir, not as I'm aware of.

THE COURT: Do you have any questions you would like to ask me about your right to testify or not to

testify?

THE DEFENDANT: No, sir, Your Honor.

THE COURT: All right. Thank you. I'll give you a few more minutes to talk about it and I'll ask upon our return, Mr. Ianuario. Is there anything else you would like me to ask Mr. Taylor concerning his right to testify or not testify?

MR. IANUARIO: No, Your Honor.

THE COURT: All right. Thank you. We'll take about a ten minutes recess. Thank you very much.

(WHEREUPON, the court stood at recess for a short break.)

(WHEREUPON, Court Exhibit Numbers 1 and 2 were marked for identification.)

THE COURT: All right. Anything from the state before we bring in our jury?

MR. MOYER: Just as long as we make it clear to the jury about the stipulation.

THE COURT: And the -- and I'm trying to track in my mind that there is no disagreement that he has two or more prior convictions?

MR. MOYER: Yes, sir.

THE COURT: However, there is an objection under one of the rules of evidence, 403?

MR. IANUARIO: For it to come in at all.

THE COURT: For it to come in at all, but not that they exist?

MR. IANUARIO: Correct.

THE COURT: I just want to make sure that Mr. Ianuario and Mr. Taylor are protected on the record.

MR. MOYER: Yes, sir.

THE COURT: I'll try not to mess it up too bad. If I do, somebody correct me.

Mr. Ianuario, have you had an opportunity to speak with Mr. Taylor?

MR. IANUARIO: Yes, Your Honor.

THE COURT: All right. Well, let me ask you, does he intend to testify?

MR. IANUARIO: He does not, Your Honor.

THE COURT: He does not? Do you intend to offer any evidence or any testimony?

MR. IANUARIO: No, Your Honor.

THE COURT: Is that a no?

MR. IANUARIO: No.

THE COURT: All right. So what I usually do, is when I come out, I tell the jury, I'll say, all right, the state has rested. The defendant can now offer evidence and testimony if the defendant chooses to do so. And I tell them also again that the state has the burden of proof and presumed to be innocent. And I'll turn my

attention to you and ask if he's going to present any evidence or testimony and you say no and renew your motion for the record.

MR. IANUARIO: Yes, sir.

THE COURT: And I'll tell them they've heard all the evidence, all the testimony they're going to hear in the trial of this case. And the procedure will follow with closing. Solicitor will go first, followed by you; is that correct?

MR. MOYER: That's correct, Your Honor.

THE COURT: Any specific requests to charge?

MR. MOYER: No, Your Honor.

MR. IANUARIO: No, Your Honor.

THE COURT: All right. Thank you, thank you very much.

MR. IANUARIO: Your Honor, did you just want me to renew that directed verdict motion again?

THE COURT: I just -- I never know what to tell lawyers about that, Mr. Ianuario. I'd just say I renew all motions for the record. I don't know. You know, a preservation of error is just really a slippery slope, I think, for practitioners anymore.

MR. IANUARIO: I understand, Your Honor. I just wanted to make sure we're on the same page.

THE COURT: Yes, sir.

(WHEREUPON, the jury entered the open court at approximately 3:24 p.m.)

THE COURT: All right. Welcome back, ladies and gentlemen of the jury panel. As you recall, the state rested -- y'all moved again. The state rested prior to us taking our afternoon recess. The defense may now present evidence and testimony if the defense chooses to do so. You will recall, I have told you a criminal defendant in South Carolina, regardless of the seriousness of the offenses charged, is always presumed to be innocent and does not have to prove himself or herself innocent. The state always bears the burden of proving its case beyond a reasonable doubt. The defense bears no burden whatsoever.

However, we will turn our attention to Mr. Ianuario and ask, does the defense intend to offer any evidence or testimony, Mr. Ianuario?

MR. IANUARIO: No, Your Honor, we do not.

THE COURT: And so the defense rests?

MR. IANUARIO: Yes, Your Honor.

THE COURT: All previous motions are noted for the record.

MR. IANUARIO: Yes, Your Honor.

THE COURT: Thank you very much. The defense has now rested. What that means is you've now heard all

the evidence and all the testimony you're going to hear in the trial of this case. We're now at the point of closing arguments by the attorneys. The procedure we follow in a case such as this is the state presents, through the solicitor, presents a closing argument to you on behalf of the state first; it being the party bearing the burden of proof, followed by Mr. Ianuario on behalf of his client, Mr. Taylor, followed by my instruction, my charge to you. The case will then be submitted to you for your consideration and for your verdicts. Given the hour, my preference is to press on. Seeing no negative, we will press on with that at this time. If you would please give the parties your complete and undivided attention, as you have done throughout the trial of this case.

With that being said, Solicitor.

Oh, one other thing. One other thing. There was a stipulation right before, right before the state rested and an objection by Mr. Ianuario concerning the issue. There is no dispute of fact between the parties that Mr. Taylor has two or more prior convictions for burglary. They agree to that. Mr. Ianuario was objecting as to -- not that they factually exist, but under a specific rule of evidence that I ruled on that is not for your consideration. The parties agree, the state agrees and

the defense agrees, that Mr. Taylor has two or more prior convictions of the crime of burglary already in place. So that is a stipulation. That is an agreement by the parties as far as the factual existence of those two or more burglaries.

With that being said, anything further from the state before closings?

MR. MOYER: No, Your Honor.

THE COURT: From the defense?

MR. IANUARIO: No, Your Honor.

THE COURT: Thank you very much. Solicitor, you may address the jury.

MR. MOYER: Thank you, Your Honor. May it please the court.

CLOSING ARGUMENT

BY MR. MOYER:

Mr. Foreman, ladies and gentlemen, I told you that I thought we would be able to finish this case today. And in fact, we have been able to do more than just finish the evidence, but we were able to get through the whole case and do our closing arguments, too, and I'm glad that we were able to do so. Since it was such a short case, I am not going to have a whole lot to say to you. It will not be a long closing. But I want to just summarize a few things and make a few comments to you about the law

and the evidence that we have heard.

The first thing I wanted to remark on is the fact that, as His Honor told you a few minutes ago, the evidence phase of the case is over. Every once in a while we have jurors who send a note back or ask the bailiff to ask the judge for some more evidence; maybe to put in a statement or call another witness or so forth. That cannot take place at this point. All the evidence, all the witnesses that you're going to hear from and all the evidence that you're going to receive is now before you. Except in rare situations, witness statements and police reports and things like that, are not admissible into evidence. Occasionally they can be referred to and so forth, but they're not things that can come into evidence. So you've heard everything that you're going to hear.

The second thing I want to mention to you is -- has to do with the burden of proof. As you have heard several times already, and as you will hear some more, the defendant in any case comes into court presumed innocent and it's the state's burden to disprove that beyond a reasonable doubt. And I want to tell you, ladies and gentlemen, that we agree with that. And the state gladly accepts that burden in this case. It's the fundamental concept of our judicial system. You know,

we're dealing with people as opposed to just property, so we accept that and we gladly accept it. But I want to say this, keep in mind what that means.

It is beyond a reasonable doubt. It is not beyond all doubt. It is not beyond -- I heard someone call it once, a shadow of a doubt. I'm not quite sure what that means. But that's not the standard. It is beyond a reasonable doubt.

There can be doubt in anything and -- in our daily lives and the judicial system is not different in that case. And just keep in mind also that every criminal defendant who has ever come before a jury in any case has had this same burden of proof. Every defendant who has ever been found guilty before a jury has had his case proven beyond a reasonable doubt. And that goes from the most seemingly insignificant case to the most seemingly significant case.

In South Carolina, you can get a jury trial for speeding. And if you came before a jury in magistrate's court with six people, it would have to be proven beyond a reasonable doubt that you were speeding before you could get that ticket. So it is -- and this is also true with capital cases. So I would ask you to keep that in mind.

The next thing I want to talk to you about, ladies

and gentlemen, are the charges that are before the court -- before you. The defendant has been charged with two crimes, burglary first degree and petit larceny. So let me take a minute just to talk to you a little bit about what that means.

A burglary is the entering of a building without permission with the intent to commit the crime therein. Entry can be by any means whatsoever. If Ms. Taylor had left her front door unlocked and maybe even open, and somebody walked into that crime -- into her residence with the intent to commit a crime, that would be a burglary. You don't have to break in. You don't have to smash out a window. But just entering without permission and with the intent to commit a crime. And it can be any crime. It doesn't have to be stealing. We usually think of burglaries as someone breaking in and stealing something. But if you enter someone's residence or enter a building with the intent to assault somebody or to damage some property or commit arson, it is a burglary.

Now, what makes a burglary first degree burglary like we have in this case are a couple of additional elements. One is that building has to be a residence, a place where somebody lives. Another element is that there has to be a circumstance of aggravation. There are several different kinds of circumstances of aggravation.

It can be if the burglary takes place in a residence at nighttime, that makes it first degree burglary. This one obviously did not. But if the person who commits the burglary is armed, it makes it first degree. And if the person has at least two convictions for burglary in his past, that makes it first degree. Which is why the stipulation that you heard was entered into; why you heard that the defendant has at least two prior convictions for burglary.

So in this situation did a burglary take place? Well, I don't think there's any dispute that Ms. Taylor's house was broken into. There's no question that Perry -- David and his brother T.R. Perry saw these two people coming out of the residence, that Ms. Taylor's property was stolen, that the door had a broken pane of glass, that someone reached in and opened it and someone went in that house without permission and stole. There's no question also that it was a residence. There's no question also that it was done without permission. Ms. Taylor said those two individuals did not have permission to be in her house. And it's common sense that if someone goes into the house and steals something, they did not have permission.

We also know that there's circumstances of aggravation. The defendant was armed. The defendant had

a gun. Now, you say he didn't go in there with a gun. Well, that doesn't matter. Under the law, if you break into someone's house and steal a gun that's already inside that house, that makes it burglary first degree. Why is that? It is because it adds a danger -- it adds a layer of danger to the situation. If somebody would come home while their house is being broken into and that person is stealing a gun, that gun could be potentially turned on that homeowner. So it adds a layer of danger.

It also adds -- to the homeowner. It also adds a layer of danger to the community. We don't know where that gun is. Because of this burglary, there's another handgun out on the streets of Greenville. And who knows where it went. Probably to this Dray person that we heard testimony about where this laptop went to some fence. It's circulating through Greenville. It adds a layer of danger to us all.

We also know that the defendant has at least two convictions for burglary. It's without dispute. It's admitted. So this is a burglary first degree.

Well, what is larceny, real quickly? You probably all know what that is. It's essentially stealing. It is the felonious or wrongful taking and carrying away of the goods of another with the intent to permanently deprive the person of that property. So if you -- essentially if

you take something from somebody, it's larceny. This is petit larceny, which means the dollar value was under two thousand dollars. You heard Ms. Taylor testify about all the things that were stolen and that it would cost about thirteen hundred dollars to replace those items.

So those are the two crimes that are before you. And I think when you're back in the jury room, you can dispense with the argument about whether or not these two crimes were committed rather quickly. Yes. There was a burglary first degree and there was a larceny. So the next question you're going to have to come to, ladies and gentlemen, is this defendant the one who committed the burglary, along with Amanda Caldwell? So yes, there was a burglary. Is this defendant the one who did it? And I think, again, the answer is clearly yes. A resounding yes. And why do I say that?

Well, let's go back over the testimony really briefly. We know Amanda Caldwell did this crime. We know she was involved. She had a minor role in it or at least a less significant role than Furman Taylor. She was the get-away driver. She waited out in the car. She was looking to make sure no one else came along, until she got scared and went inside. But even if she had not gone inside Ms. Taylor's residence, she would be guilty of burglary, because the hand of one is the hand of all.

If two people are committing a crime together and each person is equally guilty for what the other one does. If you have a bank robbery where somebody stays outside on the street and is looking out for, you know, witnesses, and you have a get-away driver, these are the people who even don't go inside the bank and commit the bank robbery but are just as guilty, because they all worked together.

Here Amanda Caldwell was clearly guilty of burglary. She was driving the car. She drove him there. When he said -- when Furman Taylor said, let's hit this house, she didn't even argue with him. She turned her vehicle around, drove slowly by the house so he -- so Furman Taylor could get a good look at the house. And then she drove into the driveway and she waited until he came out. So she is guilty.

Who was the other person that was involved in it with her? We know there was someone involved with her. There's no question about that. Mr. Perry testified, T.R. Perry testified that he saw a man involved in this, as well. His brother David Perry was there. We heard testimony that for whatever reason from his vantage point, he was unable to see the other person. But T.R. Perry saw this man walking out of the house holding what we now know is a pillow case full of the stolen property and holding a pistol by his side. So we know there was a

man involved.

Was it this defendant? Well, we know it was him for many reasons. First off, it was Amanda's boyfriend. It had been -- Furman Taylor had been her boyfriend for months at this time, since November. That's who she hung out with. That's who she spent all her time with. Who would she commit a burglary with? Her boyfriend. We know it was his vehicle. You heard testimony over and over from most of the witnesses about a white and blue Ford Aerostar van. What do we know when Amanda Caldwell was arrested? She was in a blue and white Ford Aerostar van. The tag number was HZQ185, which came back to this defendant. It was registered to him. He bought it from Amanda Caldwell's sister. It was his vehicle.

Now, when David Perry and his brother saw that vehicle in the driveway, they got a partial tag and they told the officers it was -- they thought it was EZI or EQI, which is very close, as far as the beginning of the tag, which is very close to what the real tag was, which was HZQ185. So we have the Z, we have the one, which looks like an I, and they got one of the digits wrong, and they didn't even get the rest of the tag number. So it was very close. It was the vehicle that they were in.

How do we know it was Furman Taylor? Because the man who was with Amanda Caldwell fit his description

exactly. We heard testimony he's about five eleven, six foot, somewhere around two hundred pounds. He's somewhere between forty-five and fifty years old. He had dark ponytail -- long dark hair that he kept in a ponytail and a goatee. And that's the description that David Perry gave when he saw the man coming out. He said, I didn't get a good enough look at him to identify him later in his photo lineup, and that's certainly understandable. When those guys came out of that house, they knew there was a witness right there in the driveway. They didn't want to be seen. Even Amanda Caldwell was hiding her face. So what did the defendant do? He scrunched up his -- the collar of that hoodie and to keep from being seen too clearly. But David Perry was able to see those distinguishing features of him. We know the defendant is about the same height, the same weight, the same hairstyle, the same facial hair, as was described by David Perry.

Now, David Perry gave a statement to Investigator Mashak a few days later. T.R. Perry did. T.R. Perry, the man who gave the full description of this defendant, gave a statement to Investigator Mashak a few days later, and that's the description that he put in the written statement that he gave.

Now, I know there was a little bit of a dispute

based on the reporting officer who came out to the scene, if you recall that. There was some minor discrepancies.

But keep in mind what the roles are for these different officers. The officer who goes to the scene, he's just trying to get that information quick, get it out on the radio, and he's talking to David Perry. He's talking to T.R. Perry. He's getting this information. He just has to get it out on the radio as quickly as he can so other officers who are out driving around can look for this Ford Aerostar van and can look for people who look like the persons who were just seen. That's his role. He doesn't take a statement. Investigator Mashak then took the statement from T.R. Perry, and that's when T.R. Perry said, yes, he had a goatee, long dark hair and the description that he said. And you heard T.R. Perry testify in court today and that's the description that he gave.

Ladies and gentlemen, in short, -- well, let me mention this also. What are the odds that the defendant also was in the vehicle that Amanda Perry [verbatim] was in when she was arrested; the Ford Aerostar van? There he is with her. Because it was -- he was her boyfriend. They spent their time together. They committed this robbery together.

Finally, ladies and gentlemen, I would argue to you

that Amanda Caldwell has no reason to lie. I want you to think about that. She took the stand under oath and she told you that this defendant, Furman Taylor, is the person who committed this crime with her. Furman Taylor was her boyfriend. Not just some guy she knew. He was her boyfriend, her lover. They lived together. They lived in hotels. They were bouncing around from hotel to hotel after they got kicked out of her grandmother's house. For months. They're lovers.

She gave this statement to Investigator Mashak a couple of days after she was arrested when their relationship ended. Why in the world would she lie about who was involved in this crime with her? Why would she lie about that? Why would you take someone who you, not just know, not dislike, but someone who you love, who's your boyfriend, who's your lover, why would you lie about that person and put that person in such dire straits for no reason? There's no reason.

Think about what it would take to frame somebody, because that's what it would be. If she's lying, she is out and out framing somebody. What would that take? How much hatred would that take to do that? It would take utter and complete hatred. But the opposite is true. He was her boyfriend. Why would she lie?

Secondly, why would she lie, because I would argue

to you, ladies and gentlemen, she wants help. Now, she told you nobody promised to help her. Nobody told her, you're going to get X, Y or Z if you testify. But you know she wants to be helped. She wants a judge and a prosecutor to listen to what she says and to take that into consideration about whether she's being truthful or not and hopefully get a little leniency for her. Why would you risk lying if what you want is help? You're not going to get any help if you're lying. When she gave that statement, she doesn't know if what she said could be easily disproven and she would be caught lying. And the same goes with her testimony here. If she's caught lying, how is that going to help her? It's going to hurt her. It's going to damage her. What she would like to have, I'm sure, which is some leniency for being truthful in court and testifying against the person who would commit a crime like this.

Ladies and gentlemen, in conclusion, in order for this defendant to not be guilty of this burglary, I would argue to you that, first, it would have to be the greatest cover-up ever, that Amanda Caldwell and a bunch of police officers got together to frame somebody.

Secondly, I would argue to you that it would be the greatest coincidence, that a vehicle, Ford Aerostar, blue and white, with two -- with basically the same tag

number, with someone who fits the exact same description, facial hair, long hair, race, sex, age, size, weight, all of those matters would have to be aligned together.

I asked you at the beginning of this case to, at the end of this case, do justice. And I would argue to you, ladies and gentlemen, that justice in this case is holding this defendant, Furman Taylor, responsible for what he did, which is committing a burglary of Renna Taylor's residence on May the 19th of 2012, and finding him guilty.

Thank you.

THE COURT: Thank you very much, Solicitor.

Mr. Ianuario.

MR. IANUARIO: Thank you, Your Honor.

CLOSING ARGUMENT

BY MR. IANUARIO:

Thank you, ladies and gentlemen. I'll try to make it quick. I won't be quite that long.

Framing. Framing requires evidence. What evidence do we have? Do we have fingerprints? No. Do we have photographs of where the door was broken into? No. Do we have any hard eyewitness statements, yes, that's definitely Furman Taylor. We only have that from one person; his girlfriend. His girlfriend that he broke up with on the day that she was arrested. Hell hath no fury

like a woman scorned.

When Furman was arrested, we don't know if they searched his van, but surely if they had searched his van and found a crow bar and gloves, those would have been in evidence. If they had searched his residence and found a crow bar and gloves, those would have been in evidence. If they found any of the missing stolen property, those would have been in evidence. We don't have that. We don't have even fingerprints from the homeowner.

Now, license plates, it doesn't match. Partial, EZI, HZQ. Okay, there's a Z in there. How many of you have a Z on your license plate?

The first time that we hear of Furman Taylor in the time line is after the investigator, Mashak, I believe, asked Greg's husband, who is Amanda Caldwell with? And he said Furman Taylor. So the investigator probably runs his background and sees those burglaries that occurred in the early nineties, twenty years ago. That he matches the rough description. Seems like a fairly easy case closed. Amanda Caldwell is placed under arrest. She starts to give a statement. She names two other people before she names Furman. She's trying to save her butt. The only time that she mentions Furman is after the Investigator says, you're lying, you were with Furman Taylor. She says, okay, I was. She says from then on

she was being completely honest, but I've got issues with that. There was a storm door on the residence. Storm doors have hydraulic pulls on them. They shut when you open them up. There's no way for her to walk in without having to touch the door. There's no fingerprints on the door.

She says she never borrowed his car. Well, that makes pretty good sense and that explains the van if you believe everything that she said, that she never would have borrowed the van that was purchased from her sister a couple of weeks before. She's saying she never borrowed it so we would have to believe she never borrowed it unless there's other issues in her testimony that don't add up.

We have only two unbiased witnesses in this case. We have Ms. Taylor, the victim. She had no testimony that implicated Mr. Taylor. She stated her home was broken into. Then we have Mr. Perry, Mr. T.R. Perry. He doesn't care. Ms. Taylor is his friend. Obviously, he wants to help her out, but he couldn't give an accurate description. He couldn't identify the guy in a line-up. He just said long hair and a goatee. Go down to Quaker State on a bike night and see how many guys have long hair and a goatee. I see a couple of gentlemen here with goatees. I'm sure probably some of y'all had long hair.

I did at one point. I could have looked like any other number of people wearing a ball cap.

One thing that really, really jumps out at me, though, she said that Furman Taylor had stolen a gun and that he had the pillow in the right hand and the gun in the left. But when we look at the testimony of Mr. Perry, Mr. Perry says, he was holding up his jacket like this, and there was no mention of a gun. If he's holding a jacket next to his face and he's brandishing a revolver, don't you think that that would have been mentioned? Pretty touch to hide a gun in your hand even when you're pulling up your jacket. He didn't see a gun. And Ms. Caldwell is lying again to save her butt. And because of that, she's trying to send Furman Taylor down the road. Cops look at it, yeah, he matches the description. Yeah, he's got prior burglaries. And she's saying he did it.

Well, that's not enough. This is the United States of America. Beyond a reasonable doubt, everything should be provided for you. How can you convict somebody when there's no forensic evidence, a very vague description of the person as being there, and somebody that's already pled guilty to the same crimes, named a couple of other people and has given inaccurate testimony that conflicts with the only unbiased witness that we've heard from.

There's a reasonable doubt, ladies and gentlemen. That's all it takes. We do not have an airtight case. There's a hole under the door and the mouse has gotten out.

Thank you.

THE COURT: Thank you very much, Mr. Ianuario.

CHARGE

BY THE COURT:

Mr. Foreman, and ladies and gentlemen of the jury panel, if you'll please give me your continued and undivided attention, I'm going to charge you or instruct you on the law that applies -- that you will apply to the facts of this case as you find them to be. The way I instruct a jury is I will give you the general criminal law that applies to all criminal cases in South Carolina. Usually when I go from one subject matter to the next, I will give you the caption of the area I'm fixing to cover.

After I've covered the general criminal law, I will then cover the two counts, two charges in the indictment. In this order, burglary first degree and then larceny less than two thousand dollars. And finally the form of the verdict.

Charge, arrest, indictment; not evidence. The indictments charge the defendant with burglary in the

first degree and petit larceny. I remind you again, that the fact that the defendant was arrested, charged and indicted in this case is not evidence and cannot be considered by you as evidence of guilt in this case. Nor does it create any presumption or inference of guilt. These documents, these indictments, are simply the formal written instruments which contain the charges made against the defendant. They are the formal documents by which this case has been brought before the court. The indictments allege two different offenses; burglary in the first degree and petit larceny. Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other indictment. The defendant may be convicted or acquitted on any or both of the offenses charged. You'll be asked to write a separate verdict of guilty or not guilty as to each indictment.

Presumption of innocence. The defendant has pled not guilty to these indictments. And that plea puts the burden on the state to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of the law that the defendant in a criminal trial, no matter

what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence does not end when you begin your deliberations. But it accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt. Presumption of innocence has been said to be like a robe of righteousness placed about the shoulders of a defendant, which remains with the defendant until it has been stripped from the defendant by evidence satisfying you of the defendant's guilt beyond a reasonable doubt.

The presumption of innocence, ladies and gentlemen, is not a mere legal theory. It is not just a legal phrase. It is a substantial right to which every defendant is entitled, unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

What is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. The state has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases

where you were told that it is only necessary to prove that a fact is more likely true than not true. Such as by the greater weight or the preponderance of the evidence. In criminal cases, the state's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. As you know, there are very few things in this world that we know with absolute certainty. And in criminal cases, the law, our law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crimes charged, you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find him not guilty.

Duty of jury and trial judge. I remind you that during this trial, you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case. And I also have the duty to rule on the admissibility of the evidence offered during this trial. You are to consider only the competent evidence before you. You are to consider only the testimony which has been presented from this witness

stand, the exhibits which have been made a part of the record, and any stipulations of counsel. I have the additional duty to charge you the law that applies to this case.

As the presiding judge, I am the judge of the law of this case and it is your duty as jurors to accept and apply the law as I now state it to you. If you already have any idea as to what the law is or what the law ought to be, and it does not agree with what I now tell you the law is, you must abandon your idea because you are sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts in a case. A trial judge cannot intimate, state, comment on or make any statement to a trial jury about the facts in a case. Since you, the jury, are the sole judge of the facts in this case, you are not to infer from what I have said during the progress of this trial in ruling upon the admissibility of evidence or otherwise, or anything I say now during the course of this instruction to you, that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts in this case. That is a matter solely for you, the jury, to determine. As jurors, it is your duty to determine the

effect, the value, the weight and the truth of the evidence that has been presented during this trial.

Direct and circumstantial evidence. There are generally two types of evidence which are presented during a trial; direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact such as an eyewitness or an ear witness. It is evidence which immediately establishes the main fact to be proven. I saw something, I heard something. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred.

Circumstantial evidence is based on inference and not on personal knowledge or observation. The law, our law, makes absolutely no distinction between the weight or the value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case and after weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty. If, after weighing all of the evidence, you are convinced

of the guilt of the defendant beyond a reasonable doubt, you must find the defendant guilty.

Credibility of the witnesses. Necessarily you must determine the credibility of the witnesses who have testified in this case. As you all know, credibility simply means believability. It becomes your duty as jurors, using your individual good judgment and common sense and your collective good judgment and common sense to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified, you may believe one over several or several over one. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of the witness in its entirety or reject the testimony of the witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case. You may also consider the appearance, the manner, the demeanor of the witness while on the witness stand.

I instruct you and emphasize, the fact that this defendant did not testify is not a factor to be considered by you in anyway in your deliberation and in your consideration on the question of the guilt or

innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant has the constitutional right to remain silent. And the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath, you are to draw no conclusion whatsoever from the fact that the defendant in this case did not testify. The fact that the defendant did not testify, Mr. Foreman, should not even be discussed in the jury room. The burden of proof, as I have stated, is on the state. The defendant is not required to prove his innocence. The burden of proof remains on the state to prove guilt beyond a reasonable doubt.

Intent. In order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the state for a particular crime might be purposely intended to do something; I intentionally did it, I did it knowingly, I did it recklessly, or I did it with criminal negligence. Criminal intent must be proven by the state beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation.

Now, there is no way to prove intent to a mathematical certainty. There is no way medical science

can dissect a person's brain and determine what that person had in mind. So the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make your determination of whether or not the element requiring intent is present. It is not necessary to establish intent by direct and positive evidence. But intent may be established by inference in the same way as any other fact, by taking into consideration the acts of the parties and all the facts and circumstances of the case.

Ladies and gentlemen, that covers the general criminal law that applies to all cases in South Carolina concerning charge, arrest, indictment not evidence, multiple charges, presumption of innocence, reasonable doubt, duties of the judge and trial jury, direct and circumstantial evidence and credibility of witnesses and intent.

I'm now going to charge you on the two specific causes of action or offenses charged in the indictment.

Burglary first degree. There's a statute in South Carolina, 16-11-311. The defendant is charged with first degree burglary. The state must first prove beyond a reasonable doubt that the defendant entered a dwelling without consent. A dwelling is any building or portion of a building in which a person ordinarily sleeps. A

building is a dwelling even if the residents are temporarily absent from the building. In order to prove that the defendant entered the dwelling, the state does not have to show that the defendant's entire body entered the dwelling. The smallest entry is sufficient. It may be any part of the body, such as the hand or foot, or even an instrument such as a hook or other instrument. In addition, the state does not have to prove that force was used to gain entry.

Next, the state must prove beyond a reasonable doubt that the defendant intended to commit a crime, either a felony or a misdemeanor at the time of the entry. The mere entry into a dwelling without consent is not burglary. If the intent to commit a crime is formed after entry, it is not burglary. On the other hand, if the defendant intended to commit a crime at the time of the entry, it is a burglary even if the intent was abandoned after the entry. It does not matter that the intended crime was not completed. Intent, again, may be shown by acts and conduct of the defendant in other circumstances from which you may naturally and reasonably infer intent. Entry of a dwelling without consent with the intent to commit a crime therein and find??the state must prove beyond a reasonable doubt what is known as at least one circumstance of aggravation. When entered or

while in the dwelling or when fleeing, the defendant or an accomplice was armed with a deadly weapon. Again, when entering or while in the dwelling or when fleeing, the defendant or an accomplice was armed with a deadly weapon.

A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. A pistol is a deadly weapon. That's one circumstance of aggravation.

And another circumstance of aggravation is the defendant has a prior record of two or more convictions for burglary and/or house breaking. The state does not have to prove both. They can prove both, but does not have to prove both, but has to prove at least one circumstance of aggravation. Entry into a dwelling without consent with intent to commit a crime therein and one -- at least one or more circumstances of aggravation.

Now, ladies and gentlemen, evidence of prior offenses committed by the defendant was not offered to prove the defendant has a bad character. Or to prove that the defendant committed the burglary on this occasion. The prior convictions may be considered by you only for the purpose of determining whether or not it satisfied that element of the offense that makes it first degree burglary if ycu enter a dwelling without consent

to commit a crime and you have two prior convictions for burglary and/or house breaking. Before you can even consider the evidence of defendant's prior burglary convictions, you must first find that the state has proved beyond a reasonable doubt that a burglary was committed by the defendant in this case. If you find beyond a reasonable doubt that the burglary was committed, then you may consider the evidence of the prior convictions as evidence of one of the circumstances which would make the burglary a first degree burglary. If you do not find beyond a reasonable doubt that the defendant committed these alleged prior offenses, then you cannot return a verdict of first degree burglary.

Larceny. The defendant is charged with larceny. The state must prove beyond a reasonable doubt that the defendant took and carried away the property of another against the will or without the consent of the other person. The slightest removal of the property or the complete possession of the property, even for an instant by the defendant, is enough to show a taking and carrying away of the property.

The state must also prove beyond a reasonable doubt that the defendant intended to permanently deprive the owner of the property. And finally, the state must prove that the value of the things taken was two thousand

dollars or less. That is the charge of burglary first degree and larceny.

Mr. Foreman, you will have a form of verdict in the jury room with you, along with all of the items of evidence. As to each, as to each indictment, there are two possible verdicts; guilty or not guilty. This -- you can see how it's almost like a judicial ballet, it just flows so good in the courtroom. This is the form of the verdict that you will have with you. It's got the caption and all. Once you -- once the jury determines the facts, as you, the jury, determine them to be, apply them to the law as I've told you the general law is, and the elements of burglary and the elements of larceny. If you find -- and these aren't listed in any order. There's no significance whatsoever. One's got to be listed first. If you apply those facts to the law as I've told you, you find that the state has met its burden of proof beyond a reasonable doubt as to the charge of burglary first degree, you will see, number one, as to the charge of burglary in the first degree, we, the jury, unanimously find the defendant guilty of burglary first degree, or not guilty. Whichever one, Mr. Foreman, if you would check to the left of the appropriate verdict that y'all find and circle what your checkmarks and those words.

And then the second one is the same as to petit larceny. Larceny less than two thousand dollars.

Again, ladies and gentlemen, your verdicts must be a unanimous one. All twelve of you must agree. Your verdicts may not be based on passion or prejudice or emotion or any other consideration not in evidence in this case. When the jury has agreed on the verdict, you'll have a place to sign as presiding juror, Mr. Foreman, and date it. If you will then knock on the jury room door, the bailiff will then inform us that you have reached your verdict. At that time we'll receive you back into the courtroom.

If you have any questions during the course of your deliberation, if you will write me out a note, please, and give it to the bailiff, he will deliver it to me and I'll respond timely.

I'm going to ask you to go to your jury room one final time before you begin your deliberations. In case I've forgot something, I'll have to bring you back out for further instructions. If I have not, everything looks great, our alternates will come out. The evidence will then be presented to you along with the form and you'll be directed by the clerk or the bailiff to begin your deliberations.

You may take your notes at this time, Mr. Foreman.

Thank you very much.

(WHEREUPON, the jury exited the open court at approximately 4:13 p.m.)

THE COURT: All right. If y'all would check the exhibits, check the form of verdict. It should be State's 1 through 5; is that right?

MADAM REPORTER: Yes, sir, that's all.

THE COURT: Is that right?

MADAM REPORTER: That's right, yes, sir.

THE COURT: Would y'all look at this verdict form, Mr. Ianuario, Solicitor?

(WHEREUPON, the jury received the verdict form and exhibits and began deliberations at approximately 4:16 p.m.)

THE COURT: Thank you very much for your service. I'm going to release you for the remainder of the day, which is not much, of course, and the evening, and ask you to please call back after six o'clock tomorrow. The courthouse is closed tomorrow; is that -- I believe the court is closed. So if you would please call back after six o'clock tomorrow and it will prompt you and give you instructions concerning your jury service for the remainder of the week. If I don't get to be with y'all any further, I've enjoyed being with y'all this week and hope to see you soon. I'm not sure y'all

feel the same way, but thank you so much for your service.

(WHEREUPON, the alternates were dismissed.)

(WHEREUPON, the court stood at recess awaiting the verdict of the jury.)

THE COURT: All right. This is a note from the jury. During Amanda's first quote, lie, in discussion with the dective, d-e-c-t-i-v-e, what name did she give for the name of the man? Of course, I can't answer that question. I can tell them I cannot answer that question. I can also tell them that if they want to listen to any testimony they can do that. Or I can tell them -- Solicitor, do you have a position?

MR. MOYER: Your Honor, I think that's all you can say, Judge. I don't know what else you could tell them.

THE COURT: Mr. Ianuario?

MR. IANUARIO: I would agree, unless you want to read her statement and then instruct them from it. I just think ---

THE COURT: Well, I think they have to use their memories. I don't want to instruct them on what the facts are or what the statement says.

MADAM REPORTER: Her testimony is like twenty-two minutes.

THE COURT: What I've put is I cannot answer this question. However, if you wish to listen to her testimony, please let me know and I will make arrangements.

Any objections?

MR. MOYER: No objection.

MR. IANUARIO: No objection, Your Honor.

THE COURT: Will you put the stamp on that and just tell them that's their answer.

(WHEREUPON, Court Exhibit Number 3 was marked for identification.)

(WHEREUPON, the court stood at recess awaiting the verdict of the jury.)

THE COURT: This note I received from the jury. We have reached an impasse and cannot come to a unanimous decision. Signed juror number 36, foreperson.

Solicitor?

MR. MOYER: Judge, I guess I would ask for an *Allen* charge before we give up on them.

THE COURT: All right. Mr. Ianuario?

MR. IANUARIO: I would have to go along with that. I'd like to see us try to get something today.

THE COURT: Today? Tonight?

MR. IANUARIO: If the jury wishes to deliberate further on the matter, I would like to offer them that

option to go on home and we just come back again on Friday and regroup as Your Honor sees fit.

THE COURT: All right. I think I'll give them an option. Tell them I have an additional charge I typically give jurors in this situation. However, I could give that to -- I don't want to rush them into a verdict either way. The stakes are high. You know, the hour is late. As far as the weather is concerned, also. They've been here since nine thirty this morning. Not in trial. So I may give them the option of going home tonight and either calling back -- I guess it would be calling back early Thursday morning to see if y'all are open Thursday. Is that right?

THE CLERK: That's right.

THE COURT: And if you're not, to call back early Friday morning to see if they're open Friday.

MR. MOYER: You going to give them the option of staying tonight or ...

THE COURT: I'll give them that option, yes, sir.

MR. MOYER: Okay.

THE COURT: It suits me.

MR. MOYER: Yeah, me too.

MR. IANUARIO: It suits me.

THE COURT: If it suits y'all, I won't give

them an option. I'll just give them an *Allen* charge.

MR. MOYER: I would prefer that, but again, whatever Your Honor ...

MR. IANUARIO: I would prefer to give them the option just to sort of avoid any potential issues with possibly maybe rushing a verdict to try to get out.

(WHEREUPON, the jury entered the open court at approximately 6:03 p.m.)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, welcome back. I received your second note. And perhaps I'm going to explain to you a little bit about where we're at and a couple of different options. According to our court reporter, y'all went out about four sixteen. That's about an hour and fifty-two minutes ago, which is not a particular long time. There's no set short or long. It's however long a particular jury takes on a particular case or trial. There were also some nine witnesses, I understand.

Typically I have another jury charge that I give to the jury when I get a note such as this, which is based on case law. It's not something that I just made up, it's just a law that's a specific additional charge. It is after six o'clock at night. I realize y'all have been here all day, whether in the trial, from nine thirty on this morning. But you have been here all day and

somewhat held captive during your lunch and recess and now you're back in the jury room.

I can give you this charge and ask you to continue deliberations tonight or I can release you for the remainder of the evening. The courthouse is closed tomorrow. That's already been decided by those that decide those issues. And have you call a particular number back at six o'clock Thursday morning. That'll tell you about whether you're open Thursday.

THE CLERK: Right. Yes, sir.

THE COURT: You could call back and that may give us some guidance of whether to report back Thursday or to call back and report back Friday. Now, if you want to discuss that with your colleagues before you make the decision, just for timing. I don't want to rush you. That's not, that's not fair to the state and it's not fair to Mr. Taylor. It's not fair to you. As I say, there's no specific amount of time you should or should not take. But if you want to discuss that with your colleagues. I realize what the weather's like out there now. I realize the time. If you want to be released for the evening, I will be happy to do that. But again, you'll have to call back and you'll have to come back when we're able to reassemble.

Do you want to talk with your colleagues about that

first, Mr. Foreman?

MR. FOREMAN: You mentioned you had a charge?

THE COURT: Yes, sir.

MR. FOREMAN: Was that it? Or was there something further? Was there more guidance that you would provide?

THE COURT: I can give you the charge probably in just about the amount of time it's taken for me to explain the options to you. If I give you this charge tonight, I'm going to ask you to return to your jury room and resume your deliberations. If you want -- I mean to be kind of folksy about it, daddy used to say sleep on it, you know, and it may look different in the morning. I mean, but it may not if you need that time.

MR. FOREMAN: I think the consensus is that we would like to come back Friday.

THE COURT: Now, with that being said, it may not be Friday. It may be Thursday.

MR. FOREMAN: Thursday then.

THE COURT: All right. Then they would just call the juror number; is that correct?

THE CLERK: That's correct.

THE COURT: All right. That's fine. Let me give you these instructions, and I sure you could be able to repeat them back to me.

I remind you that during this recess you shall not discuss this case with others. That includes your fellow jurors, family members, family, friends or anyone else. Do not read, listen to or watch any news reports about the case, should there be any. Do you use your computer, cellular phone or any other electronic device with communication capabilities or any other method to obtain or disclose information about the case when you're not in court. Information about the case includes, but is not limited to the following: Information about a party, a witness, attorney or court officer. News accounts about the case, should there be any, present or past. Information collected through juror research on any topics raised or testimony offered by any witness. Or information collected through juror research on any other topic that the juror might think would be helpful in deciding the case. Do not do any independent investigation. Do not do any investigation on the internet. Keep your own counsel. Please call your juror information number back. Is there a particular time, Madam Clerk?

THE CLERK: No. No.

THE COURT: All right. Call your juror information number back tomorrow after six p.m. We will prompt you and give you instructions concerning whether

or not to report Thursday or to call back Thursday and what time to report, hopefully, no later than Friday.

All right. With that being said, thank you very much for all of your diligent work today and your patience with the court. You're now released. Hope you have a pleasant evening. Thank you very much.

(WHEREUPON, the jury exited the open court at approximately 6:06 p.m.)

THE COURT: Any objection from the state?

MR. MOYER: No, Your Honor.

THE COURT: Defense?

MR. IANUARIO: No objection, Your Honor.

THE COURT: All right. Well, I'll be back whenever they tell me I can be back as far as the courthouse is concerned. But I won't be back tomorrow.

MR. MOYER: Correct.

THE COURT: Okay. And I guess I'll have to get that juror number to call and see when I should be back.

Thank y'all very much. Hope y'all have a pleasant evening.

(WHEREUPON, the court stood at recess for the day.)

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THE COURT: I'm going to bring them out and *Allen* charge them.

THE BAILIFF: Do you want to feed them directly

in here, sir, or take them to the jury room first and then bring them out?

THE COURT: Whichever is easiest for you.

THE BAILIFF: I'll take them to the jury room first.

I'll bring them in in just a moment, sir.

Your Honor, you ready for the jury?

THE COURT: Yes, sir.

(WHEREUPON, the jury entered the open court at approximately 10:47 a.m.)

THE COURT: All right. It appears our jury is back present in the courtroom, along with the attorney for the state and the defendant. And the defendant, Mr. Taylor, is also present.

Mr. Foreman, ladies and gentlemen of the jury, you may recall Tuesday evening I indicated to you that I would have an additional charge or instruction for you. Based on your last note that you provided to the court concerning the status of the jury at that time, you stated that you had been unable to agree on verdicts in this case.

As I instructed you earlier, the verdict of the jury must be unanimous. When a matter is in dispute it isn't always easy for even two people to agree, so when twelve people must agree, it becomes even more difficult. In

most cases absolute certainty cannot be reached nor is it expected. However, you have a duty to make every reasonable effort to reach unanimous verdicts in this case. In doing this, you should consult with one another, express your own views and listen to the opinions of your fellow jurors. Tell each other how you feel and why you feel that way. Discuss your differences with an open mind. And by stating this, please do not take that I do not think you had already done this in any manner. I do not know and do not want to know how you have conducted your deliberations up until this point.

Although the verdict of the jury must be unanimous, every one of you has the right to your own opinion. The verdict you agree to must be your own verdict, the result of your own convictions, and you should not give up your firmly held beliefs merely to be in agreement with your fellow jurors.

However, the majority should consider the minority's position, and the minority should consider the majority's position. You should carefully consider and respect the opinions of each other and re-evaluate your position for reasonableness, correctness and impartiality. You must lay aside any and all outside matters and re-examine the questions before you based on the law and the evidence that has been given to you in this case.

As you were told by your clerk Tuesday when you were sworn in, you shall well and truly try?? and true deliverance make between the state and the defendant, according to the law and the evidence, so help you God. All of you have taken that oath and are sworn to follow that oath.

If you do not agree on a verdict in this case, I must declare a mistrial. In that case it does not mean that anybody wins. It just means that at some future time I will try this case with some other jury sitting where you now sit. The same participants will come. The same witnesses will come. And the same lawyers will ask basically the same questions and get basically the same answers. And we will go through this entire whole process again.

You were selected in the same manner and from the same source as any future jury would be and there's no reason for me to suppose that the case will ever be submitted to twelve more intelligent, impartial, conscientious and competent jurors than you. Or that more or clearer evidence will be produced on one side or the other. You twelve are in the best position to decide this case based on the facts as you find them to be, comparing those facts to the law as I told you the law is.

I therefore will ask you to return to your jury room to resume your deliberations with the hope and the expectations that you can arrive at a unanimous verdict within a reasonable time.

Again, Mr. Foreman, ladies and gentlemen, if you have any questions of me, please write them out, send them to my attention. I am going to take up some other matters in court, not having to do with this case but with other cases, while I await your verdicts.

Thank you very much for being back with us today. Hope you all fared the weather well and, as I say, you may now go with your bailiff and resume your deliberations.

(WHEREUPON, the jury exited the open court at approximately 10:53 a.m.)

THE COURT: Any objection to anything I told the jury from the state?

MR. MOYER: No, Your Honor.

THE COURT: From the defense, Mr. Ianuario?

MR. IANUARIO: No objections, Your Honor.

THE COURT: All right. Thank you. We'll be awaiting our jury's verdict.

(WHEREUPON, Court Exhibit Number 4 was marked for identification.)

(WHEREUPON, the court stood at recess awaiting the

verdict of the jury.)

THE COURT: All right. I received a note from the jury foreperson through the bailiff that says: We are unable to come to a unanimous decision. Signed, Foreperson.

Statute 14-7-1330 indicates that when a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberations. But if it returns a second time -- this would be the second time -- without having agreed upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law.

I take it this would be the second time, second time. Solicitor, do you have any position in this matter?

MR. MOYER: Judge, I'm confident I have no qualms with a mistrial being granted.

THE COURT: Mr. Ianuario?

MR. IANUARIO: I agree with the solicitor, Your Honor.

THE COURT: All right. Well, I typically bring them out and ask them if they'll consent to deliberate

further? If they say no, I accept them at their word.

All right. Bring us our jury, please.

(WHEREUPON, the jury entered the open court at approximately 12:21 p.m.)

THE COURT: All right. Welcome back, Mr. Foreman, ladies and gentlemen of the jury. I received your note: We are unable to come to a unanimous decision. I preface my remarks at this time by informing you that I do not want and am directed by our Appellate Courts to not ask for the numerical split within a jury. That's solely within the providence of the jury. But as I look at this law in this area, and realizing y'all had come back Tuesday indicating you had not reached a unanimous verdict and we took a break Wednesday and Thursday, you're back Friday now indicating this, our law says that if the jury returns a second time without having agreed upon a verdict it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law.

I guess, Mr. Foreman, ladies and gentlemen, I'm asking if you consent to continue your deliberations?

MR. FOREMAN: No, sir, Your Honor. We think we have come to a serious impasse.

THE COURT: All right. Thank you very much. In that case then I have no option except to declare a

mistrial in this particular case. Thank you for your service. Mr. Taylor is remanded to the custody of the Greenville County Detention Center until such time as he may be retried in the future.

Thank you for your service this week. It has been my pleasure and privilege to be with y'all in Greenville County this week. You're now excused from your jury duty for the remainder of the week, which I've pretty much taken up all of that. You don't have to call back, don't have to come back. It's been my pleasure. Thank you very much. You're now excused.

(WHEREUPON, the jury exited the open court at approximately 12:24 p.m.)

THE COURT: All right. Anything further from the state?

MR. MOYER: No, Your Honor.

THE COURT: From the defense?

MR. IANUARIO: No, Your Honor.

THE COURT: I'll be around the rest of the day now in case anybody wants to enter a plea of guilty to any charge. I say the rest of the day. I'm going to be out of here at about fifteen hundred hours. You know what that means; right?

THE DEFENDANT: Three o'clock.

THE COURT: All right. Thank you very much.

Good luck to you.

(WHEREUPON, Court Exhibit Number 5 was marked for identification.)

[END OF REQUESTED TRANSCRIPT OF RECORD]

CERTIFICATE OF REPORTER

I, the undersigned Danette P. Hanks, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 11th day of February, 2014.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 15, 2014

_____

Circuit Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Furman E. Taylor, #198161 Applicant, v. State of South Carolina, Respondent.	)	2016-CP-23-5673 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed on October 3, 2016 by Furman E. Taylor (Applicant). Respondent made its Return on or about February 24, 2017. An evidentiary hearing into the matter was convened on October 27, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Susannah C. Ross, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's First Trial Counsel Robert Ianuario, Esquire (Counsel #1) testified as did Applicant's Second Trial Counsel Alex Kornfeld, Esquire (Counsel #2). Applicant's Appellate Counsel Robert Pachak, Esquire also testified via telephone. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and Applicant's appellate records. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. Applicant was indicted by the April 2013 term of the Grand Jury for Greenville County for one of Burglary – 1st degree (2012-GS-23-6511) and one of Petit Larceny – Sentencing pursuant to § 16-1-0057 (2012-GS-23-6513). Applicant was represented by Robert E. Ianuario, Esquire during a trial which occurred in February of 2014 which resulted in a mistrial due to a hung jury. On January 5, 2015, Applicant proceeded to a new trial represented by Alex Kornfeld, Esquire On January 7, 2015, Applicant was convicted as indicted of Burglary – 1st degree (2012-GS-23-6511) and Petit Larceny – Sentencing pursuant to § 16-1-0057 (2012-GS-23-6513). Applicant was sentenced on January 7, 2015, by the Honorable D. Garrison Hill to life in prison for Burglary, 1st degree, pursuant to § 17-25-45, and thirty days for Petit Larceny, to be served concurrently.

Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal after review pursuant to Anders v. California[1] on August 3, 2016. State v. Taylor, Op. No. 2016-UP-390 (S.C. Ct. App. 2016). The Remittitur was returned on August 19, 2016.

ALLEGATIONS

1. Newly Discovered Evidence
   a. "Affidavit of alibi witness."
   b. "Newly after [*sic*] discovered evidence that was discovered only after the notice of appeal was perfected and the appeals court, having exclusive control, would not grant leave for [Applicant] to have this evidence reviewed by the circuit court."

1 386 U.S. 738 (1967).

2. Ineffective Assistance of Trial Counsel (pertaining to counsel during 2014 mistrial)
   a. "Failed to formally request motion for speedy trial."
   b. Failed to obtain relevant evidence
   c. Failed to make appropriate objections

3. Ineffective Assistance of Trial Counsel (pertaining to the trial resulting in Applicant's conviction in January of 2015)
   a. "Failed to request a pre-trial evidentiary hearing discover admissible/inadmissible evidence."
   b. Failed to make appropriate objections

4. Ineffective Assistance of Appellate Counsel
   a. "Failed to designate the entire record on appeal."
   b. "Failed to re-brief meritorious issues at the request of [Applicant]."
   c. "Appellant counsel did not communicate in any meaningful manner with [Applicant]."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified he got rid of his first attorney because the attorney would not get the complete video from the pawn shop that he requested. He testified by the time his second attorney went to get the video from the pawnshops it had been destroyed or was no longer available and the State wanted his second attorney to rely on what already had been produced. Applicant testified the co-defendant in this case was Amanda Caldwell and that police had said they had video of her going into the pawn shop and leaving. He testified when he viewed the video it only showed Ms. Caldwell from the time she was standing at the counter until she left. Applicant testified Investigator Mashak, the officer working the case, testified at Applicant's second trial that he had Ms. Caldwell on video from the time she came in until the time they left.

Applicant testified the video that was shown to the jury did not show the entire event as testified to by Investigator Mashak. He testified the video was only from the time Ms. Caldwell was at the counter until the time she left because the individual with her who the police were describing was on the first part of that video and came there with her. Applicant testified he was there to jump-start his vehicle. Applicant testified he allowed Ms. Caldwell to borrow his vehicle because he went somewhere else and he had an alibi witness who he could never get in contact with but had tried on several occasions to contact them.

Applicant testified during the first trial, the video did not come in at all because it was never subpoenaed but Trial Counsel #2 subpoenaed the video for the second trial. He testified Trial Counsel #2 told him he had actually went and tried to get it from the pawnshop, and they never would respond to his subpoenas. Applicant testified Trial Counsel eventually received the video some thirty months after he was charged but that the video only had limited amounts of time. He testified Trial Counsel #2 went to talk to the investigator in the case and he told Investigator Mashak about the limited amounts of time on the video. Applicant testified prior to the first trial he did not have the video in discovery and he tried to get it several times form Counsel #1. Applicant testified the video came in during his second trial and that he sought out to get it because he knew it had exculpatory evidence in his favor on it. He testified during trial the chain of custody of the video was discussed. Applicant testified the investigator's testimony at trial was that he started off by going to the manager of the pawnshop and the pawnshop manager signed paperwork stating they gave the videos to the investigator and the investigator signed saying he obtained them. Applicant testified the investigator testified at trial that he then took the evidence to property and evidence and signed them in. Applicant testified the investigator was asked on pg. 209 of the trial transcript what he did with the videos and he

responded he brought them to his office, viewed them, basically, burned a copy of them and then placed them in property and evidence. Applicant testified the investigator had an opportunity to distort the videos. He testified he did not understand why the videos were allowed into evidence after the chain of custody was broken by the investigator's own testimony. He testified the investigator probably had the videos in his possession during the first trial but did not produce them. Applicant testified he felt the delay in getting the video prejudiced him tremendously because it would have exonerated him if he showed a second suspect dressed exactly like him. He testified Counsel #2 tried to subpoena the video but by that time it was too late. Applicant testified Counsel #2 did try and exclude the video under Kyles v. Whitley[2]. He testified Counsel #2 argued the motion to exclude on his behalf but it was overruled. Applicant testified one of the complaints he had was there was never an original video from the beginning only a copy and Counsel #2 also argued that. Applicant testified the prosecution argued it was the original however when Counsel #2 was asked by the trial judge what his objection was regarding the video he said relevance which was an improper contemporaneous objection when previously he had made the proper argument concerning the video. He testified Counsel #2 did not ask for a jury instruction regarding the video or its destruction but he did ask for an instruction on prior bad acts. Applicant testified the video was extremely unduly and unfairly prejudicial to him in his defense and more of an objection should have been made to the chain of custody. Applicant testified he did not understand why Kara Bennick could testify to the authenticity of the video when she had never seen or had firsthand knowledge about it. He testified Ms. Bennick was the property and evidence witness and she testified whether she received the video or not.

Applicant testified he was charged with burglary first and that Counsel #2 moved to exclude the prior bad acts. He testified when Counsel #2 originally brought up that he wanted to

2 Kyles v. Whitley, 514 U.S. 419 (1995)

make a Rule 404(b) motion to exclude prior bad acts, and knowing his priors were an element of the crime, Counsel #2 should have made an interlocutory stipulation under Hamilton vs. State or even Old Chief and it would have triggered an obligation of the Court to eliminate the name and nature from the prior charges. Applicant testified Counsel #2 did not stipulate that there was a gun involved or that the crime occurred at night. He testified the trial judge did not weigh factors of probative value versus prejudice under Rule 403 and Counsel #2 did not make any constitutional arguments against the statute itself and this prejudiced him. Applicant testified he believed the outcome of his trial would have been different if the jury had not heard about two prior burglary firsts when he was on trial.

Applicant testified Counsel #2 failed to properly impeach witnesses from his first trial in his second trial. He testified the investigator in the case had made statements at the first trial that David Perry, a witness, had never seen a male suspect at all and had been advised and testified to that at trial. Applicant testified at the second trial, the investigator said that he had showed Mr. Perry a photo lineup to see if he could identify the person who committed the burglary, insinuating that Mr. Perry did, in fact, see a male. Applicant testified Mr. Perry was then put on the stand to testify to something he had said he had not seen. Applicant testified it was improper of the State to not correct or allow the testimony they knew was contrary to prior testimony given and statements of witnesses. He testified Mr. Perry was a witness who kind of came onto the scene and could not point to or identify him. Applicant testified his co-defendant Ms. Caldwell should have also been impeached because she made a lot of different statements and there were a lot of discrepancies in her testimony. He testified his name came up in the case because the Ms. Caldwell told the investigator a man named Tyler Whitman had given her the items stolen and the investigator told her she was lying and that Applicant had given her the

items and then Ms. Caldwell said that was the truth. He testified Ms. Caldwell never brought his name up first and it was only brought up by the investigator. Applicant testified Counsel #2 cross-examined Ms. Caldwell about this. Applicant testified Counsel #2 elicited reference to another case about him and the jury go to hear about it and it was improper.

Applicant testified Counsel #1 should have requested a speedy trial because it took over twenty months to get to his first trial and almost thirty months before his second trial. He testified by that time so much evidence had been lost and witnesses' memories had been so jaded and changed there was no way he could have built a defense at that point which prejudiced because of the delay. He testified he felt there should have been some clarification that Investigator Mashak was the one who brought his name into the whole crime and not his co-defendant Ms. Caldwell. He testified he thought there should have been a motion for prosecutorial misconduct and a mistrial for putting up David Perry as a witness.

Applicant testified he also had an allegation of ineffective assistance of appellate counsel. He testified Appellate Counsel never made contact with him in any kind of way. He testified Appellate Counsel told him it was Appellate Counsel's decision to make regarding briefing his case and too basically just sit tight. Applicant testified he should have had the ability to have input into the appeal. Applicant testified an objection should have been made when a witness brought up a recent mug shot photo of his during trial which led the jury to believe he had a criminal background. Applicant testified there were meritorious issues that Appellate Counsel did not brief. He testified there were several issues where Trial Counsel objected that should have been briefed. Applicant testified Appellate Counsel did an Anders brief and said there was no merit. He testified he filed his own brief to the court. Applicant testified he felt like there was a due process violation because of the State's failure to produce the video in the first place. He

testified he was never served with life without parole notice before his second trial.

On cross-examination, Applicant testified he met with Counsel #2 maybe three times before going to trial. He testified he met with Counsel #1 three or four times prior to going to trial as well. He testified Counsel #1 did not go over the video with him and he had to wait until the day of court to even get a glimpse of the video. He testified he gave his attorney leads and witnesses to go out and talk to but he did not do so. Applicant testified Counsel #1 discussed with him about testifying. He testified he asked Counsel #1 to file a motion for a speedy trial. Applicant testified Counsel #2 asked him certain questions about witnesses and things he could get. He testified Counsel #2 had a defense strategy for his case. Applicant testified Trial Counsel #2 cross-examined several witnesses during his second trial.

First Trial Counsel's Testimony

Robert Ianuario testified he was appointed to be Applicant's original Trial Counsel (Counsel #1). He testified he had been practicing law in South Carolina since 2008 and all of that time had been devoted to criminal law. Counsel #1 testified about the facts of the case and that Applicant's case involved a burglary of a home. He testified some neighbors stopped by to take out the homeowner's trash while she was out of town and they noticed a strange vehicle in the driveway. Counsel #1 testified the neighbors called the homeowner and asked if there was supposed to be somebody else there and she said no. He testified during that point in time, a male and female suspect walked out, got in a van and pulled off. Counsel #1 testified some of the stolen property turned up at a pawnshop and the homeowner did identify those as the items that were stolen. He testified since it had been almost five years since he had Applicant's case his memory was a little fuzzy but he recalled the police made an arrest of Applicant's co-defendant when she was with Applicant. Counsel #1 testified police arrested her at that point in time and

they let Applicant go on his way but they did note the type of vehicle Applicant was driving determining it was similar to the vehicle that was used in the burglary. He testified the Applicant's original trial at which he represented Applicant resulted in a hung jury. Counsel #1 testified he did not recall Applicant ever asking him to file a motion for a speedy trial. He testified that with the speed with which Applicant's case moved from the initial appointment to the trial in about twenty months, even had Applicant asked for one, he probably would have said not enough time had gone by to file a motion for a speedy trial. Counsel #1 testified overall twenty months was slow but for the legal system it was moving pretty productively. He testified he did not issue a subpoena for videos from the pawnshops in Applicant's case. Counsel #1 testified he went back and looked at the records he had from Applicant's file and he received the appointment to represent Applicant on June 8, 2012. He testified he received the initial discovery on July 17, 2012 and that the initial discovery did not include any videos or anything. Counsel #1 testified he then met with the Applicant and reviewed the discovery with him on July 19, 2012. He testified his notes from the file indicated that on September 17, 2012 he talked with Cash Pawn and they indicated to him the video did not go back that far so he sent a letter to the Solicitor. He testified he actually received the videos from the store through the Solicitor's Office on November 13, 2012 and December 19, 2012. Counsel #1 testified he made initial inquiries into the video prior to the Solicitor's Office doing so. He further testified he received a life without parole notice (LWOP) for Applicant which was dated July 15, 2013.

On cross-examination, Counsel #1 testified the LWOP notice was served on him and was still in his file but that he provided Applicant's second trial counsel with an electronic copy of his file which included the LWOP notice. He testified he received the videos from the pawnshops some thirteen months before Applicant's first trial but the videos were not introduced

into evidence at Applicant's first trial.

Second Trial Counsel's Testimony

Alexander Kornfeld testified he was Applicant's second Trial Counsel (Counsel #2). He testified he had practiced law in South Carolina since 2009 and about sixty-five percent of that time had been devoted to criminal law. Counsel #2 testified he agreed with the facts of the case as testified to by Counsel #1. He testified Applicant was very well informed about the law for someone that was not a lawyer but that he and Applicant talked about Applicant's charges in depth. Counsel #2 testified Applicant actually had another pending burglary as well as the petit larceny with that charge and Applicant was very clear that he was not going to plea to the charges because he was not guilty of them. He testified Applicant knew what was going on with his case and knew the charges against him. Counsel #2 testified Applicant more so than most clients was more active in his case and would wanted to know about the case law. He testified Applicant was very aware about speedy trials and rules to request. Counsel #2 testified that although rules for not indicting a case were deemed administrative he told Applicant he would make a motion to have his charges dismissed because of the delay in having his case indicted but that the motion would probably be unsuccessful. He testified he made the motion, and brought up the fact that State v. Langford[3] may have changed the analysis that a court may look at concerning any delay of indicting or bringing a case to trial but unfortunately his motion was denied. Counsel #2 testified he made a motion to dismiss the indictment for the petit larceny, a motion to exclude Applicant's prior bad acts, and a motion to exclude the video coming into Applicant's trial. He testified one of the reasons for making a motion to exclude the video was because Applicant was adamant that if that video would have been a complete version it would have showed and exonerated him but Counsel #2 was concerned about how long had gone by

3 State v. Langford 400 S.C. 421 (2012)

with regard to when the video footage was first requested. He testified he did not necessarily think the video helped Applicant and that it would be better if they did not have the video but he subpoenaed Cash Pawn anyway. Counsel #2 testified the pawnshops went quite some time without responding, but that he did get ahold of them and they both sent him a letter. He testified he believed he talked to somebody at Cash Pawn that said they did not have that video anymore. Counsel #2 testified in his motion to exclude the video before the Court, he asked that the video be suppressed or in the alternative for a spoliation charge and that was denied. He testified he believed the analysis by the trial court was that he could not show any prejudice. Counsel #2 testified in terms of his motion to exclude prior bad acts he tried to narrow the issue on how the State was going to charge Applicant with burglary first. He testified the way the indictment was written the charge could have been because it happened at night, a weapon was used, or because of the two previous burglaries Applicant had. Counsel #2 testified the State went forward on the two previous burglaries and his argument then was that it was an element of the offense of burglary first. He testified because of the fact that it was an element of the offense it kept the court from doing an analysis they would normally do under Rule 608 or Rule 403 of the rules of evidence to see if the mention of prior burglaries were unduly prejudicial. He testified he argued against them being introduced citing case law which said if there are previous robberies, do not bring those robberies in because it would be unduly prejudicial. Counsel #2 testified in Applicant's case the judge had to follow the statute. He testified he thought the Applicant's previous burglaries being introduced would be an issue for appeal where the Court of Appeals could say you cannot legislate prejudicial prior bad acts into a law and force the judge to follow it or otherwise handcuff the judge. Counsel #2 testified in terms of investigation Applicant wanted him to find several witnesses. He testified he found Katherine Sasser and he subpoenaed

her but after talking with Applicant and how the case was going during trial, it did not make sense to call her to testify. Counsel #2 testified he could not remember all the other witnesses but that the trial strategy was that Amanda Caldwell, Applicant's co-defendant, was not being truthful and that Tyler Whitman, who she originally stated was with her, was the actual one that did the crime. He testified besides Applicant's co-defendant testifying against him, the most damning piece of evidence was the video. He testified without the video there was nobody other than Applicant's co-defendant that positively identified Applicant as being with the co-defendant during the crime. Counsel #2 testified he cross-examined the co-defendant extensively, and she admitted that she had changed her story in the past. He testified he did not think the co-defendant seemed to be credible in his opinion but that ultimately the video was too damning to their case. He testified he had the opportunity to cross-examination several other witnesses in the case as well. Counsel #2 testified he discussed with Applicant about testifying but that ultimately it was Applicant's decision to not testify. He further testified he thought last argument was more important than Applicant testifying as well as the fact Applicant had a prior record that could possibly come in. He testified he had a LWOP notice in his file from Counsel #1 but that he made a motion that he was not specifically o his client did not specifically get served with an LWOP notice for his second trial. He testifie his argument in defense of Applicant was if the State was going to put Applicant away for life ey needed to serve him before every trial so that he knew the gravity of it. He testified he did t get the videos of the pawnshop until around December 30th and the trial was January 5th. He stified the discovery policy was that he go up to get them at the Solicitor's Office and he did no et them until the week of trial or possibly the Friday before. He testified however, he believed at keeping the videos out would have been more beneficial for his client especially after he cd not get a spoliation charge. He testified he

could not prove the police intentionally or wrongfully disclosed the video.

On cross-examination, Counsel #2 testified he was appointed to represent Applicant. He testified after Applicant's initial trial he and Applicant talked about maybe a plea of fifteen year but that Applicant was not going to plea in this case. Counsel #2 testified that Applicant was not going to plead guilty regardless of if the State was willing to take LWOP off the table. He testified he tried to get the solicitor to take LWOP off the table. Counsel #2 testified he thought he used the testimony of witnesses from Applicant's first trial to impeach them during the second trial. He testified he independently researched Applicant's prior record to see if he qualified for LWOP. Counsel # 2 testified he believed he told the judge concerning the videos that he got them at a very late notice or just before trial and that he could not get the full video. He testified he asked the trial judge for a spoliation charge by not specifically for a jury instruction on any kind of inference about losing parts of a video. Counsel #2 testified he believed he properly showed that Applicant's co-defendant gave previous inconsistent statements.

Appellate Counsel's Testimony

Appellate Counsel testified via telephone. He testified he had been an appellate attorney for twenty-eight years and before that he was in a family business for ten years as a lawyer. Appellate Counsel testified he was currently an appellate attorney at appellate defense and he kept abreast of current issues in criminal law by reading cases when they come out from the appellate courts. He testified when a new appeal is received in his office he goes through the file to see if he has everything which usually means the indictments and the full trial transcript. He testified he then reads the trial transcript to try to find out what good issues there may be to raise for the appeal and then once he makes that decision he would write a brief. Appellate Counsel testified in Applicant's case regarding appellate strategy, after reading the trial transcript he

decided the case did not have that much merit as far as issues went so he did an Anders brief. He testified with regards to his work everything he went by was in the transcript and that he really did not need to talk to his clients unless it is absolutely necessary because he could not bring things up that were not in the transcript. Appellate Counsel testified if there were some objections that were raised and he did not brief them it was because he did not believe they had merit on appeal.

On cross-examination, Appellate Counsel testified regarding the trial judge letting in Applicant's prior convictions. He testified that the State was allowed to bring in prior burglaries to enhance the current charge so he did not brief that issue. He testified he assumed he did not brief the issue of a complete version of the video not being introduced at trial because he did not see any strength in it. Appellate Counsel testified if he thinks there is some serious merit in correspondence from clients he tries to respond to them and that he had spent most of his morning before testifying at this PCR hearing writing to his clients.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

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, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the

applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). 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.

Ineffective Assistance of Counsel

Trial Counsel from 2014 Trial

Applicant alleges ineffective assistance by Trial Counsel #1 who represented him during his 2014 mistrial. The mistrial was a result of a hung jury. This Court finds this allegation 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....

S.C. Code Ann. § 17-27-20.

This Court finds ineffective assistance of counsel during a preceding mistrial is not a claim cognizable under the act. Applicant is not collaterally attacking his conviction or sentence, but rather the result of a trial which resulted in neither conviction nor sentence. Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Therefore, this Court dismisses this allegation pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

Trial Counsel from January 2015 Trial

Applicant alleges ineffective assistance by Trial Counsel #2 who represented him during his 2015 trial. First, Applicant alleged Trial Counsel #2 did not exclude his prior bad acts. Counsel #2 testified he made a motion to exclude Applicant's prior bad acts. He testified in terms of his motion to exclude Applicant's prior bad acts, he tried to narrow the issue on how the State was going to charge Applicant with burglary first. Counsel #2 testified the way the indictment was written the charge could have been because it happened at night, a weapon was

involved, or because of the two previous burglaries Applicant had. Counsel #2 testified the State went forward on the two previous burglaries and his argument then was that it was an element of the offense of burglary first. He testified because of the fact that it was an element of the offense it kept the court from doing an analysis they would normally do under Rule 608 or Rule 403 of the rules of evidence to see if the mention of prior burglaries were unduly prejudicial. He testified he argued against them being introduced if there were previous robberies and that they should not be brought in because it would be unduly prejudicial. Counsel #2 testified in Applicant's case the judge had to follow the statute. He testified he thought the Applicant's previous burglaries being introduced would be an issue for appeal where the Court of Appeals could say you cannot legislate prejudicial prior bad acts into a law and force the judge to follow it or otherwise handcuff the judge. After a review of the record, this Court finds Counsel #2 was not ineffective. This Court finds while ultimately unsuccessful, Counsel #2 made a motion to exclude Applicant's prior bad acts and diligently sought to protect Applicant's rights. (Trial Tr. pg. 9-12) (pg.109-115). Ultimately, the trial court found that the prior burglaries were elements of the crime that Applicant was charged with. This Court sees no argument Counsel #2 could have advanced that would have circumvented this. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. This allegation is denied and dismissed.

Second, Applicant alleged Trial Counsel #2 failed to effectively move to exclude the video from the pawnshop. Counsel #2 testified he made a motion to exclude the video coming into Applicant's trial. He testified one of the reasons for making a motion to exclude the video was because Applicant was adamant that if the video had been a complete video, it would have showed and exonerated him but Counsel #2 was concerned about how long had gone by since the incident occurred. He testified he did not necessarily think the video helped Applicant and that it would be better if they did not have the video but he subpoenaed Cash Pawn anyway. Counsel #2 testified in his motion to exclude the video before the Court, he asked that the video be suppressed or in the alternative for a spoliation charge and that was denied. He testified he believed the analysis by the trial court was that he could not show any prejudice. After a review of the record, this Court finds Counsel #2 was not ineffective. This Court finds while ultimately unsuccessful, Counsel #2 made a motion to exclude the video from the pawnshop and diligently sought to protect Applicant's rights. (Trial Tr. pg. 39-45). Here, Counsel #2 argued to the trial court that Applicant felt as through the extended version of the video would be beneficial to Applicant. Moreover, the trial court found that there was no proof that the State had evidence that was not available due to some bad faith on their part or other improper conduct or that they ever had the longer version of the video. (Trial Tr. pg. 44-45). Furthermore, Applicant presented no evidence an extended version of the video existed. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of

proving Counsel failed to render reasonably effective assistance. This allegation is denied and dismissed.

Third, Applicant alleged Trial Counsel #2 failed to properly impeach witnesses at trial. Counsel #2 testified he cross-examined Applicant's co-defendant extensively, and she admitted that she had changed her story in the past. He testified he did not think the co-defendant seemed to be credible in his opinion but that ultimately the video was to damning to their case. He testified he had the opportunity to cross-examine several other witnesses in the case as well. Counsel #2 testified he thought he used the testimony of witnesses from Applicant's first trial to impeach them during the second trial. After a review of the record, this Court finds Counsel #2 was not ineffective. This Court finds Counsel #2 extensively cross-examined the State's witnesses especially Applicant's co-defendant, Amanda Caldwell, and Investigator Mashak (Trial Tr. pg. 172-190)(pg. 219-227). Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. This allegation is denied and dismissed.

Fourth, Applicant alleged Trial Counsel #2 failed to attack the chain of custody of the video from the pawnshop. Applicant testified Investigator Mashak had an opportunity to distort the videos from the pawnshop. He testified he did not understand why the videos were allowed into evidence after the chain of custody was broken by the investigator's own testimony. Applicant testified the video was extremely unduly and unfairly prejudicial to him in his defense

and more of an objection should have been made to the chain of custody. After a review of the record, this Court finds Counsel #2 was not ineffective for failing to attack the chain of custody. During the trial testimony of Investigator Mashak, he testified after he received the video surveillance from the pawnshops he viewed them, burned a copy and placed them into property and evidence. (Trial Tr. pg. 209-210). Investigator Mashak went on to testify once he placed the videos into property and evidence the next time he took them out was for use in the Applicant's trial and that no one else to his knowledge had checked them out. (Trial Tr. pg. 210-211). Notwithstanding the testimony given by Investigator Mashak at trial, Applicant has failed to present any evidence to demonstrate why Counsel #2 should have attacked the chain of custody other than his belief Investigator Mashak altered the video which he has no prove of. Additionally, this Court finds any motions attacking the chain of custody would have been unsuccessful. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. This allegation is denied and dismissed.

Lastly, Applicant alleged Trial Counsel #2 was not served with or notified about the LWOP notice. Counsel #1 testified he received a life without parole notice (LWOP) for Applicant which was dated July 15, 2013. Counsel #1 testified the LWOP notice was served on him and still in his file but that he provided Applicant's second trial counsel an electronic copy of his file which included the LWOP notice. Counsel #2 testified he had a LWOP notice in his

file from Counsel #1 but that he made a motion that he was not specifically or his client did not specifically get served with an LWOP notice for the second trial. He testified his argument in defense of Applicant was if the State was going to put Applicant away for life they needed to serve him before every trial so that he knew the gravity of it. Counsel #2 testified he independently researched Applicant's prior record to see if he qualified for LWOP. This Court would note under South Carolina Law, a defendant can be sentenced to life without parole for certain crimes. S.C. Code Ann. §17-25-45. Furthermore, where the solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and defendant's counsel not less than ten days before trial. S.C. Code Ann. §17-25-45 (H). Here, this Court finds Applicant was properly served with written notice of the State's intent to seek life without parole. This Court finds Counsel #1 was sufficiently notified per the statue and Counsel #2 was aware of this fact as well as he had a copy of Counsel #1's file. This Court can think of no authority which requires a second notice of the State's intent to seek life without parole. Notwithstanding, this Court notes that Counsel #2 informed the trial court during sentencing he received additional discovery which included the notice of intent to seek life without parole. (Trial Tr. pg. 316). According, this Court finds this allegation lacks merit. Therefore, this allegation is denied and dismissed with prejudice.

Ineffective Assistance of Appellate Counsel

Applicant alleges ineffective assistance of appellate counsel in his application. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose

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

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Here Appellate Counsel filed an Anders' brief. Appellate Counsel testified regarding the trial judge letting in Applicant's prior convictions. He testified that the State was allowed to bring in prior burglaries to enhance the current charge so he did not brief that issue. He testified he assumed he did not brief the issue of a complete version of the video not being introduced at trial because he did not see any strength in it. Appellate Counsel testified if he thinks there is some serious merit in correspondence from clients he tries to respond to them. After a review of the record, this Court finds Applicant has failed to establish the requisite deficiency of appellate counsel or prejudice entitling him to relief. First, this Court finds Applicant has failed to show that appellate counsel's performance was deficient, where there is no standard requiring appellate counsel to brief every possible meritorious issue and Appellate counsel testified to his reasoning on why he did not brief the issues Applicant argues about. Second, this Court finds

Applicant has failed to establish prejudice, as there is no reasonable likelihood that he would have prevailed on appeal. Further, this Court finds no significant and obvious issues that should have been raised on appeal.This Court concludes Applicant has not met his burden of proving Appellate Counsel failed to render reasonably effective assistance. This allegation is denied and dismissed.

Newly Discovered Evidence

Applicant seeks relief on the basis of newly discovered evidence. A party making a motion for a new trial or for relief from judgment based on newly-discovered evidence must show that the evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005). Before the Court will hold an evidentiary hearing, the Applicant must make a prima facie showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). While under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained, Applicant has failed to present any evidence to this Court regarding newly discovered evidence by way of an alibi witness or their affidavit. This Court finds, as to Applicant's allegation, Applicant has failed to present any evidence regarding newly discovered evidence. This allegation is denied and dismissed.

Brady Violation

Applicant presented testimony concerning a Brady violation in that a complete video was not turned over or may have been tampered with. Brady requires the State to disclose evidence in

its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Under this requirement, "favorable" evidence includes both exculpatory evidence and impeachment evidence. State v. Kennerly, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998). "Determining whether evidence withheld by the state is 'material' under Brady turns on whether the cumulative effect of the withheld evidence results in a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." State v. Hill, 368 S.C. 649, 661, 630 S.E.2d 274, 280-81 (2006). Put another way, to establish a Brady violation, the aggrieved party must show "that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Kyles v. Whitley, 514 U.S. 419, 434 (1995). This Court finds, as to Applicant's Brady allegation, Applicant failed to present evidence the State committed such a violation as no evidence was shown that another version of the video from the pawnshop existed or ever existed. The allegation is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate

appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. Reefer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;

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 31 day of July, 2018.

LETITIA H. VERDIN
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	
FURMAN E. TAYLOR, APPLICANT,	CASE NO. 2016-CP-23-5673
	MOTION TO ALTER OR AMEND THE JUDGMENT
VS.	
STATE OF SOUTH CAROLINA,	
RESPONDENT.	

COMES NOW the Applicant and hereby moves pursuant to Rule 59(e), SCRCP, to alter or amend the judgment of this Court filed on July 31, 2018. The Applicant takes issue with the findings of fact and conclusions of law set fourth resulting in the denial of post-conviction relief in his case. He argues each allegation set fourth amounted to undue prejudice. He further argues that if each allegation did not amount to ineffective assistance of counsel standing alone, the cumulative error prejudiced him to the degree that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 386 S.E.2d 624, 625 (1989).

For the foregoing reasons, the Applicant requests this Court to alter its Order of Dismissal and grant Applicant relief.

Respectfully submitted,

Susannah Ross
Attorney for the Applicant
333 E. Coffee Street,
Greenville, SC 29601
(864) 242-0029

This 7 day of August, 2018.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2305673

Furman E Taylor		South Carolina State Of	
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by: Susannah Ross		Attorney for: ☒ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

'18 AUG 15 PM 3:17
Paul Wickensimer COC GVL SC

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order, (formal order to follow) ☒ Statement of Judgment by the Court: The Plaintiff's Motion to Alter or Amend the Judgment in this case is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	8/14/2018 Date

For Clerk of Court Office Use Only

This judgment was entered on 8-15-18, and a copy mailed first class or placed in the appropriate attorney's box on 8-15-18, to attorneys of record or to parties (when appearing pro se) as follows:

926

Susannah Conyers Ross 330 East Coffee St. Greenville, SC 29601

Susannah Ross

ATTORNEY(S) FOR THE PLAINTIFF(S)

Deshawn Mitchell

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES

Brady Mashak

Greenville County Sheriffs Office

6/4/2012

ARREST WARRANT NUMBER
N201214

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Donald Godbey
Foreperson of Petit Jury

Date: 1-7-15

DOCKET NO. 2012-GS-23- 006511
LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2013

THE STATE

vs.

FURMAN EUGENE TAYLOR JR

✓ **Indictment for**

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

ENTERED
ACCT.

RECEIVED
AUG 30 2012
Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on APR 2 3 2013 the Grand Jurors of Greenville County present upon their oath:

That FURMAN EUGENE TAYLOR JR did in Greenville County, on or about the 19th day of May 2012, willfully and unlawfully enter the dwelling of RENNA TAYLOR located at [redacted] White Horse Road, Travelers Rest, South Carolina, without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: the entering and/or remaining did occur during the nighttime hours, the defendant was armed with a deadly weapon, and/or the defendant has two or more prior convictions for burglary. This is in violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

3887240

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville)
STATE VS.)
Furman Eugene Taylor Jr)
AKA:)
Race: WHITE Sex: M Age: 47)
DOB: [redacted]-1967 SS#: [redacted])
Address: [redacted])
City,State,Zip: CONESTEE, SC)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 2012GS2306511
A/W#: N201214
Date of Offense: 5/19/2012
S.C. Code § : 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: _____ 13066 64155 _____ _____ _____
Moyer, Mark Wallace, Matthew SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____ _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § ~~24-13-40 to be~~ calculated and applied by the State Department of Corrections. June 1, 2012 GH
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect ~~pursuant to S.C. Code~~ §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 3500
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul Blan
Court Reporter: Jenkins
Presiding Judge _____
Judge Code: 2138
Sentence Date: 1-7-2015

SCCA/217 (03/2011)

930

006513

WITNESSES

Brady Mashak

Greenville County Sheriffs Office

6/4/2012

ARREST WARRANT NUMBER
N201215

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Donald Godfrey

Foreperson of Petit Jury

Date: 1-7-15

DOCKET NO. 2012-GS-23- LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
April 2013
TERM ~~2012~~

THE STATE

vs.

FURMAN EUGENE TAYLOR JR

Indictment for

3596

PETIT LARCENY
(SENTENCING PURSUANT TO § 16-1-0057)

VIOLATION § 16-13-0030

ENTERED ACCT

RECEIVED

AUG 30 2012

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
PETIT LARCENY

(SENTENCING PURSUANT TO § 16-1-0057)

At a Court of General Sessions, convened on APR 23 2013 the Grand Jurors of Greenville County present upon their oath:

That FURMAN EUGENE TAYLOR JR did in Greenville County, on or about the 19th day of May, 2012, feloniously take and carry away the personal property of Renna Taylor, to wit: electronic equipment, firearms, jewelry, and/or other miscellaneous items, with a total value less than Two Thousand Dollars ($2,000.00) with intent to deprive the owner permanently of such property. This is in violation of § 16-13-0030 and § 16-1-0057 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)
STATE VS.)
Furman Eugene Taylor Jr)
AKA:)
Race: WHITE Sex: M Age: 47)
DOB: [redacted]-1967 SS#: [redacted])
Address: [redacted])
City,State,Zip: CONESTEE, SC)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2306513
A/W#: N201215
Date of Offense: 5/19/2012
S.C. Code § : 16-13-0030(A)
CDR Code #: 3419

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Larceny / Petit or Simple Larceny - $2,000 or less

in violation of § 16-13-0030(A) of the S.C. Code of Laws, bearing CDR Code # 3419
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.
ATTEST: [signature] 13066 64155

Moyer, Mark | Williams, Matthew | SC Bar# | Defendant | Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since 6/1/12.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
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§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.00
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B Wm
Court Reporter: Jenkins
Presiding Judge [signature]
Judge Code: 2138
Sentence Date: 1-7-2015

SCCA/217 (03/2011)