

ORIGINAL

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions
The Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No: 2013-000196

THE STATE,

RESPONDENT,

v.

JAMES E. WISE,

APPELLANT.

RECORD ON APPEAL

JAMES E. WISE, #250411
Lieber Correctional Inst.

ALAN WILSON
Attorney General

P.O. Box 205
Ridgeville, S.C. 29472

SALLEY W. ELLIOTT
Assistant Attorney General
S.C. Bar No: 1871

APPELLANT PRO SE

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3737

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ATTORNEYS FOR RESPONDENT

SC Court of Appeals

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Newberry County

Wyatt T. Saunders, Jr., Circuit Court Judge

JAMES E. WISE,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

WANDA H. HAILE
Senior Assistant Appellate Defender

South Carolina Office
of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201

ATTORNEY FOR PETITIONER

HENRY DARGAN McMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

ALLEN BULLARD
Assistant Deputy Attorney General

P. O. Box 11549
Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

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1 MR. PEACE: THE STATE CALLS THE CASE OF THE STATE V.
2 JAMES EDWARD WISE, INDICTMENT NUMBER 97-GS-36-480. HE'S
3 CHARGED WITH ESCAPE FROM CUSTODY OF AN OFFICER AND ALSO
4 INDICTMENT 98-GS-36-402. HE'S CHARGED WITH BURGLARY IN
5 THE FIRST DEGREE.

6 THE COURT: MR. GRIFFITH, WE'LL DRAW THE JURY AND
7 THEN MAKE MOTIONS OUT OF THE PRESENCE OF THE JURY.

8 MR. GRIFFITH: YES, YOUR HONOR. THANK YOU.

9 THE COURT: MEMBERS OF THE PETIT JURY, WE ARE ABOUT
10 TO BEGIN THE TRIAL OF THE STATE V. JAMES EDWARD WISE.
11 WOULD YOU STAND UP, MR. WISE, AND LOOK THAT WAY?

12 ANY MEMBER KIN BY BLOOD OR MARRIAGE TO JAMES EDWARD
13 WISE?

14 (NO RESPONSE.)

15 ANYBODY KIN TO DANNY GILLIAM, TODD JOHNSON, CLAY
16 BABB?

17 (NO RESPONSE.)

18 ANYBODY KIN BY BLOOD OR MARRIAGE TO TODD JOHNSON,
19 MARY BATES --- IS MARY BATES IN THE COURTROOM?

20 MR. PEACE: YES, YOUR HONOR. SHE IS.

21 THE COURT: STAND UP, LOOK THAT WAY. YOU MAY BE
22 SEATED.

23 YES, MA'AM?

24 JUROR: I'M HER AUNT.

25 THE COURT: ALL RIGHT. THANK YOU FOR TELLING US.

1 EVERYBODY AGREES WITH THE PREMISE EVERYONE IS
2 PRESUMED INNOCENT UNTIL PROVEN GUILTY BEYOND A REASONABLE
3 DOUBT?

4 (NO RESPONSE.)

5 THE COURT: ANYBODY HAVE ANY REASON WHY THEY COULD
6 NOT GIVE BOTH THE STATE AND THE DEFENDANT A FAIR AND
7 IMPARTIAL TRIAL?

8 (NO RESPONSE.)

9 THE COURT: THE STATE HAS FIVE STRIKES. THE DEFENSE
10 HAS TEN. YOU MAY PROCEED. ANY OBJECTION TO THE CLERK
11 DRAWING THE JURY?

12 MR. PEACE: YOUR HONOR, IF I MAY, ASK FOR ONE
13 QUESTION TO BE ASKED?

14 THE COURT: YES, SIR.

15 MR. PEACE: MR. GRIFFITH HAS BEEN APPOINTED TO THIS
16 CASE. HE HAS A PRIVATE PRACTICE HERE IN NEWBERRY.

17 THE COURT: ALL RIGHT. ANYBODY REPRESENTED BY MR.
18 GRIFFITH?

19 WHAT'S YOUR NAME? STAND UP.

20 JUROR: DOYLE SHEALY.

21 THE COURT: DOYLE SHEALY.

22 JUROR: HE WAS GUARDIAN.

23 THE COURT: ALL RIGHT. THANK YOU. YOU MAY NOT GET
24 CALLED OUT, BUT I'LL QUESTION YOU LATER.

25 ALL RIGHT. YOU MAY PROCEED.

1 MADAM CLERK: MEMBERS OF THE JURY, AS I CALL YOUR
2 NAME, PLEASE COME FORWARD. NUMBER 6, KIM BARTELLE.

3 (THE JUROR, A BLACK FEMALE, COMES FORWARD.)

4 MADAM CLERK: WHAT SAYS THE STATE?

5 MR. PEACE: PLEASE SEAT THE JUROR.

6 MADAM CLERK: DEFENDANT?

7 MR. GRIFFITH: PLEASE SWEAR MS. BARTELLE.

8 MADAM CLERK: HAVE A SEAT IN THE BOX. 82, REBECCA
9 PITTS.

10 (THE JUROR, A BLACK FEMALE, COMES FORWARD.)

11 MADAM CLERK: WHAT SAYS THE STATE?

12 MR. PEACE: PLEASE SEAT MS. PITTS.

13 MADAM CLERK: THE DEFENDANT?

14 MR. GRIFFITH: PLEASE SWEAR THIS JUROR.

15 MADAM CLERK: HAVE A SEAT, PLEASE. 109, JOHN
16 TALBOT.

17 (THE JUROR, A WHITE MALE, COMES FORWARD.)

18 MADAM CLERK: WHAT SAYS THE STATE?

19 MR. PEACE: PLEASE SWEAR MR. TALBOT.

20 MADAM CLERK: DEFENDANT?

21 MR. GRIFFITH: PLEASE EXCUSE MR. TALBOT.

22 MADAM CLERK: YOU'RE EXCUSED, MR. TALBOT. 9, SHARON
23 BOYCE.

24 (THE JUROR, A BLACK FEMALE, COMES FORWARD.)

25 MADAM CLERK: WHAT SAYS THE STATE?

1 MR. PEACE: PLEASE SEAT THE JUROR.

2 MADAM CLERK: THE DEFENDANT?

3 MR. GRIFFITH: PLEASE SWEAR MS. BOYCE.

4 MADAM CLERK: HAVE A SEAT, PLEASE. 56, RICHARD

5 JOHNSON.

6 (THE JUROR, A WHITE MALE, COMES FORWARD.)

7 MADAM CLERK: WHAT SAYS THE STATE?

8 MR. PEACE: PLEASE SWEAR THE JUROR.

9 MADAM CLERK: THE DEFENDANT?

10 MR. GRIFFITH: PLEASE SWEAR THE JUROR.

11 MADAM CLERK: HAVE A SEAT, PLEASE. 11, RICHARD

12 BOWERS.

13 (THE JUROR, A WHITE MALE, COMES FORWARD.)

14 MADAM CLERK: WHAT SAYS THE STATE?

15 MR. PEACE: PLEASE SWEAR THE JUROR.

16 MADAM CLERK: THE DEFENDANT?

17 MR. GRIFFITH: PLEASE SWEAR MR. BOWERS.

18 MADAM CLERK: HAVE A SEAT, PLEASE. 71, REGINA

19 MANUS.

20 (THE JUROR, A WHITE FEMALE, COMES FORWARD.)

21 MADAM CLERK: WHAT SAYS THE STATE?

22 MR. PEACE: PLEASE SEAT MS. MANUS.

23 MADAM CLERK: THE DEFENDANT?

24 MR. GRIFFITH: PLEASE EXCUSE MS. MANUS.

25 MADAM CLERK: YOU'RE EXCUSED. 21, NARVIS CROMER.

1 (THE JUROR, A BLACK FEMALE, COMES FORWARD.)
2 MADAM CLERK: WHAT SAYS THE STATE?
3 MR. PEACE: PLEASE EXCUSE THE JUROR.
4 MADAM CLERK: YOU' RE EXCUSED. 72, ANTHONY MARTIN.
5 (THE JUROR, A BLACK MALE, COMES FORWARD.)
6 MADAM CLERK: WHAT SAYS THE STATE?
7 MR. PEACE: PLEASE EXCUSE MR. MARTIN.
8 MADAM CLERK: YOU' RE EXCUSED, MR. MARTIN. 78,
9 STEPHANIE NANCE.
10 (THE JUROR, A BLACK FEMALE, COMES FORWARD.)
11 MADAM CLERK: WHAT SAYS THE STATE?
12 MR. PEACE: PLEASE SEAT MS. NANCE.
13 MADAM CLERK: THE DEFENDANT?
14 MR. GRIFFITH: PLEASE SWEAR MS. NANCE.
15 MADAM CLERK: HAVE A SEAT, PLEASE. 94, DOYLE
16 SHEALY.
17 (THE JUROR, A WHITE MALE, COMES FORWARD.)
18 MADAM CLERK: WHAT SAYS THE STATE?
19 MR. PEACE: PLEASE SEAT MR. SHEALY.
20 MADAM CLERK: THE DEFENDANT?
21 MR. GRIFFITH: PLEASE EXCUSE MR. SHEALY.
22 MADAM CLERK: YOU' RE EXCUSED. 23, RONALD CURRY.
23 (THE JUROR, A BLACK MALE, COMES FORWARD.)
24 MADAM CLERK: WHAT SAYS THE STATE?
25 MR. PEACE: PLEASE SEAT MR. CURRY.

1 MADAM CLERK: THE DEFENDANT?

2 MR. GRIFFITH: PLEASE SWEAR MR. CURRY.

3 MADAM CLERK: HAVE A SEAT, PLEASE. 118, VIRGINIA,
4 WILLIAMS.

5 (THE JUROR, A BLACK FEMALE, COMES FORWARD.)

6 MADAM CLERK: WHAT SAYS THE STATE?

7 MR. PEACE: PLEASE EXCUSE MS. WILLIAMS.

8 MADAM CLERK: YOU'RE EXCUSED. 70, WILLIAM MACK.

9 (THE JUROR, A BLACK MALE, COMES FORWARD.)

10 MADAM CLERK: WHAT SAYS THE STATE?

11 MR. PEACE: PLEASE EXCUSE MR. MACK.

12 MADAM CLERK: YOU'RE EXCUSED. 64, KEITH LEOPARD.

13 (THE JUROR, A WHITE MALE, COMES FORWARD.)

14 MADAM CLERK: WHAT SAYS THE STATE?

15 MR. PEACE: PLEASE SEAT THE JUROR.

16 MADAM CLERK: THE DEFENDANT?

17 MR. GRIFFITH: PLEASE SWEAR MR. LEOPARD.

18 MADAM CLERK: HAVE A SEAT, PLEASE. 28, ANDREA
19 DEWALT.

20 (THE JUROR, A BLACK FEMALE, COMES FORWARD.)

21 MADAM CLERK: WHAT SAYS THE STATE?

22 MR. PEACE: PLEASE SWEAR THE JUROR.

23 MADAM CLERK: THE DEFENDANT?

24 MR. GRIFFITH: PLEASE SWEAR MS. DEWALT.

25 MADAM CLERK: HAVE A SEAT, PLEASE. 98, HOWARD SIMS.

1 (THE JUROR, A BLACK MALE, COMES FORWARD.)
2 MADAM CLERK: WHAT SAYS THE STATE?
3 MR. PEACE: PLEASE EXCUSE MR. SIMS.
4 MADAM CLERK: YOU' RE EXCUSED, MR. SIMS. 54, PEGGY
5 HUNNICUTT.
6 (THE JUROR, A WHITE FEMALE, COMES FORWARD.)
7 MADAM CLERK: ANY CHALLENGE FOR CAUSE BY THE STATE?
8 MR. PEACE: NO CHALLENGE FOR CAUSE.
9 MADAM CLERK: THE DEFENDANT?
10 MR. GRIFFITH: PLEASE EXCUSE MS. HUNNICUTT.
11 MADAM CLERK: YOU' RE EXCUSED, MS. HUNNICUTT. 14,
12 REBA CUBERTSON.
13 (THE JUROR, A WHITE FEMALE, COMES FORWARD.)
14 MADAM CLERK: WHAT SAYS THE STATE?
15 MR. PEACE: NO CHALLENGE FOR CAUSE. THANK YOU.
16 MADAM CLERK: BY THE DEFENSE?
17 MR. GRIFFITH: PLEASE EXCUSE MS. CUBERTSON.
18 MADAM CLERK: YOU' RE EXCUSED. 46, MARILYN GRAY.
19 (THE JUROR, A WHITE FEMALE, COMES FORWARD.)
20 MADAM CLERK: ANY CHALLENGE FOR CAUSE BY THE STATE?
21 MR. PEACE: NO CHALLENGE FOR CAUSE.
22 MADAM CLERK: WHAT SAYS THE DEFENDANT?
23 MR. GRIFFITH: PLEASE EXCUSE MS. GRAY.
24 MADAM CLERK: 49, VICKIE HENDRIX.
25 (THE JUROR, A WHITE FEMALE, COMES FORWARD.)

1 MADAM CLERK: ANY CHALLENGE FOR CAUSE BY THE STATE?

2 MR. PEACE: NO CHALLENGE FOR CAUSE.

3 MADAM CLERK: WHAT SAYS THE DEFENDANT?

4 MR. GRIFFITH: PLEASE SWEAR MS. HENDRIX.

5 MADAM CLERK: HAVE A SEAT, PLEASE. 104, CHARLENE
6 STROUD.

7 (THE JUROR, A WHITE FEMALE, COMES FORWARD.)

8 MADAM CLERK: ANY CHALLENGE FOR CAUSE BY THE STATE?

9 MR. PEACE: NO CHALLENGE FOR CAUSE.

10 MADAM CLERK: WHAT SAYS THE DEFENDANT?

11 MR. GRIFFITH: PLEASE EXCUSE MS. STROUD.

12 MADAM CLERK: YOU'RE EXCUSED. 104, I'M SORRY ---
13 92, RANDOLPH SENN.

14 (THE JUROR, A WHITE MALE, COMES FORWARD.)

15 MADAM CLERK: ANY CHALLENGE FOR CAUSE BY THE STATE?

16 MR. PEACE: NO CHALLENGE FOR CAUSE.

17 MADAM CLERK: WHAT SAYS THE DEFENDANT?

18 MR. GRIFFITH: PLEASE EXCUSE MR. SENN.

19 MADAM CLERK: YOU'RE EXCUSED, MR. SENN. 80, TRACY
20 KANNIER.

21 (THE JUROR, A WHITE FEMALE, COMES FORWARD.)

22 MADAM CLERK: ANY CHALLENGE FOR CAUSE BY THE STATE?

23 MR. PEACE: NO CHALLENGE FOR CAUSE.

24 MADAM CLERK: WHAT SAYS THE DEFENDANT?

25 MR. GRIFFITH: PLEASE EXCUSE MS. KANNIER.

1 MADAM CLERK: YOU'RE EXCUSED. 67, HENRY LOMINACK.

2 (THE JUROR, A WHITE MALE, COMES FORWARD.)

3 MADAM CLERK: ANY CHALLENGE FOR CAUSE BY THE STATE?

4 MR. PEACE: NO CHALLENGE FOR CAUSE.

5 MADAM CLERK: WHAT SAYS THE DEFENDANT?

6 MR. GRIFFITH: PLEASE EXCUSE MR. LOMINACK.

7 MADAM CLERK: YOU'RE EXCUSED, MR. LOMINACK. 95,

8 PEGGY SHULL.

9 (THE JUROR, A WHITE FEMALE, COMES FORWARD.)

10 MADAM CLERK: ANY CHALLENGE FOR CAUSE BY THE STATE?

11 MR. PEACE: NO CHALLENGE FOR CAUSE.

12 MADAM CLERK: BY THE DEFENDANT?

13 MR. GRIFFITH: PLEASE SWEAR.

14 MADAM CLERK: HAVE A SEAT IN THE BOX. 27, LATICHUS

15 DAVIS.

16 (THE JUROR, A BLACK FEMALE, COMES FORWARD.)

17 MADAM CLERK: ANY CHALLENGE FOR CAUSE BY THE STATE?

18 MR. PEACE: NO CHALLENGE FOR CAUSE.

19 MADAM CLERK: BY THE DEFENDANT?

20 MR. GRIFFITH: PLEASE SWEAR.

21 MADAM CLERK: HAVE A SEAT, PLEASE. JUST ONE

22 ALTERNATE?

23 THE COURT: YEAH, GET ONE ALTERNATE. THE STATE'S

24 GOT ONE, THE DEFENSE TWO STRIKES.

25 MADAM CLERK: 107, DONNA SUMMER.

1 (THE JUROR, A WHITE FEMALE, COMES FORWARD.)

2 MADAM CLERK: WHAT SAYS THE STATE?

3 MR. PEACE: PLEASE SWEAR THE JUROR.

4 MADAM CLERK: THE DEFENDANT?

5 MR. GRIFFITH: PLEASE EXCUSE MS. SUMMER.

6 MADAM CLERK: YOU'RE EXCUSED. 81, MARGARETTE
7 PARDEE.

8 (THE JUROR, A WHITE FEMALE, COMES FORWARD.)

9 MADAM CLERK: WHAT SAYS THE STATE?

10 MR. PEACE: PLEASE SWEAR MS. PARDEE.

11 MADAM CLERK: DEFENSE?

12 MR. GRIFFITH: PLEASE EXCUSE MS. PARDEE.

13 MADAM CLERK: 20, FRANCES COLEMAN.

14 (THE JUROR, A BLACK FEMALE, COMES FORWARD.)

15 MADAM CLERK: WHAT SAYS THE STATE?

16 MR. PEACE: PLEASE SWEAR MS. COLEMAN.

17 MADAM CLERK: DEFENDANT?

18 MR. GRIFFITH: PLEASE SWEAR MS. COLEMAN.

19 MADAM CLERK: HAVE A SEAT IN THE BOX.

20 THE COURT: YOU'LL KEEP THAT SAME SEAT BACK THERE.

21 I'M GOING TO LET THE JURY GO OUT. WHEN THEY COME BACK IN

22 MS. BOYCE, IS THAT THE WAY YOU PRONOUNCE YOUR NAME?

23 WHEN YOU COME BACK IN, YOU TAKE THE FOREMAN'S SEAT. LET

24 THE JURY GO IN THE ROOM.

25 (JURY TO JURY ROOM.)

1 THE COURT: WHAT ABOUT THIS OTHER CASE?

2 MR. PEACE: MAY WE APPROACH, YOUR HONOR?

3 THE COURT: YES, SIR.

4 (A BENCH CONFERENCE TAKES PLACE AT THIS TIME OUTSIDE
5 THE PRESENCE OF THE JURY.)

6 THE COURT: MEMBERS OF THE JURY NOT IN THE TRIAL OF
7 THIS CASE, I HATE TO INCONVENIENCE YOU, BUT I' LL ASK
8 Y' ALL TO GO OUTSIDE AND WE' LL CALL YOU BACK IN. YOU CAN
9 GO DOWNSTAIRS AND IF ANY OF YOU STILL SMOKE, YOU CAN GO
10 OUT AND SMOKE AND REST.

11 (JURY POOL LEAVES COURTROOM.)

12 THE COURT: YES, SIR?

13 MR. PEACE: IF IT PLEASE THE COURT, THE STATE WOULD
14 NOW MAKE A MOTION BASED ON BATSON V. KENTUCKY. EVERY,
15 ALL TWELVE CHALLENGES THAT THE DEFENSE MADE TO THE
16 SEATING OF THIS PARTICULAR JURY PANEL WERE AGAINST
17 WHITES, AND WE WOULD ASK THAT THE DEFENSE BE REQUIRED TO
18 STATE A USEFUL REASON FOR EACH STRIKE.

19 THE COURT: ALL RIGHT. YES, SIR?

20 MR. GRIFFITH: YOUR HONOR, I ALSO HAVE A CURRENT
21 MOTION, BUT I' LL RESPOND IF YOU' D LIKE TO FIRST?

22 THE COURT: YES, SIR. LET ME HEAR IT.

23 MR. GRIFFITH: ALL RIGHT. IN RESPONSE TO MR.
24 TALBOT, DURING THE QUALIFICATIONS ON MONDAY HE APPEARED
25 TO BE UNWILLING TO SERVE. NUMBER TWO, MS. MANUS WAS

1 UNMARRIED. MY CLIENT --- THE FACTS OF THIS CASE CAN BE
2 DEVELOPED INTO A RELATIONSHIP BETWEEN TWO PEOPLE, AND WE
3 STRUCK ALL UNMARRIED FEMALES THAT WE HAD KNOWLEDGE OF.

4 THE COURT: ALL RIGHT.

5 MR. GRIFFITH: SHE BEING UNMARRIED. NUMBER THREE,
6 DOYLE SHEALY HAS BEEN A CLIENT OF MINE IN THE PAST AND I
7 CURRENTLY REPRESENT A CHILD HE'S ATTEMPTING TO ADOPT AS
8 THE GUARDIAN. MS. HUNNICUTT HAS COME BY MY OFFICE
9 BEFORE. SHE DID NOT RETAIN ME, BUT CLIENTS COME AND
10 DON'T STAY, I DON'T CONSIDER THEM FRIENDLY. MS. REBA
11 BRYAN APPEARED TO BE UNWILLING TO SERVE, AND SHE DIDN'T
12 HAVE THE APPEARANCE OF WANTING TO BE HERE ON HER FACE.
13 MRS. GRAY, DURING VENIRE SHE STATED HER OCCUPATION WAS A
14 HOUSEWIFE. HER VOICE DIDN'T APPEAL TO ME. IT WAS QUITE
15 SQUEAKY, AND SHE'S MORE THAN 60 YEARS OLD AND I STRUCK
16 OFF THE LADIES OVER 60 YEARS OLD. MRS. STROUD WORKS AT
17 LOUIS RICH AND MY CLIENT HAS SOME BAD RELATIONSHIPS WITH
18 LOUIS RICH EMPLOYEES. SO, I THINK HE WORKED THERE AT ONE
19 TIME. MS. PANNIER, I THINK SHE ALSO WAS SINGLE. MS.
20 DONNA SUMMER, WORKS AT LOUIS RICH. I'VE BEEN INVOLVED IN
21 SOME CASES AS ATTORNEY FOR LOUIS RICH, ALSO, AND SHE WAS
22 THE AGENT FOR LOUIS RICH WHICH I WORKED WITH. I DON'T
23 LIKE PLACING HER ON THE JURY IN THAT POTENTIAL --- AND
24 MS. PARDEE, THE AGE PROBLEM THERE AGAIN.

25 MR. PEACE: WHAT WAS THE REASON FOR MR. SENN, NUMBER

1 92?

2 MR. GRIFFITH: YOUR HONOR, MR. SENN AND MR. LOMINACK
3 BOTH APPEARED RELUCTANT TO SERVE. I THINK I ENUMERATED
4 THAT EARLIER.

5 THE COURT: YES, SIR. ALL RIGHT. DO YOU HAVE THE
6 SAME MOTION?

7 MR. GRIFFITH: YES, YOUR HONOR, SAME MOTION. I
8 STRUCK TEN AND THEY STRUCK FIVE, ALL BEING BLACK. UNDER
9 BATSON DOESN'T HE ALSO SO MOVE TO DELINEATE ---

10 THE COURT: ALL RIGHT. TELL ME ABOUT YOURS.

11 MR. PEACE: OKAY. YOUR HONOR, NUMBER 21, NARVIS
12 CROMER, WE STRUCK DURING THE QUALIFICATION OF THE JURY.
13 SHE WAS NOT WELL SPOKEN WHEN SHE ANSWERED THE QUESTIONS
14 BY THE CLERK. NUMBER 72, ANTHONY MARTIN, JR., WE DID NOT
15 LIKE HIS BODY LANGUAGE AS HE CAME UP TO PRESENT HIMSELF
16 TO THE COURT. NUMBER 118, VIRGINIA WILLIAMS, IS
17 DISABLED. WE DIDN'T WANT TO PUT MRS. WILLIAMS THROUGH A
18 TRIAL IF SHE HAS A DISABILITY. WE DIDN'T THINK THAT SHE
19 WOULD BE ABLE TO PROPERLY CONCENTRATE THE WHOLE TRIAL.
20 NUMBER 98, HOWARD SIMS, IS LIKEWISE DISABLED, AND WE
21 DIDN'T WANT TO PUT THE FOLKS WHO ARE DISABLED THROUGH THE
22 TRIAL PROCESS.

23 THE COURT: ALL RIGHT.

24 MR. PEACE: WE DIDN'T THINK THAT THEY WOULD BE ABLE
25 TO PROPERLY CONCENTRATE.

1 THE COURT: ALL RIGHT.

2 MR. GRIFFITH: WHAT ABOUT MR. WILLIAM MACK? I DON'T
3 BELIEVE THEY ENUMERATED THAT REASON.

4 MR. PEACE: WHICH ONE IS THAT?

5 MR. GRIFFITH: HE WOULD BE THE FOURTH STRIKE, NUMBER
6 70.

7 MR. PEACE: 70, YEAH, MR. WILLIAM MACK SERVED ON THE
8 JURY ON THE PREVIOUS TRIAL, AND ALTHOUGH THE STATE
9 RECEIVED THE RESULT THAT IT WANTED IN THE TRIAL, MR. MACK
10 SLEPT THROUGH PROBABLY 68% OF THE TRIAL, AND WE DIDN'T
11 WANT A SLEEPING JUROR ON THIS PARTICULAR CASE.

12 THE COURT: NOW, HE WAS JUST CONCENTRATING. HE
13 WASN'T ASLEEP.

14 MR. PEACE: HE WAS CONCENTRATING HARD, YOUR HONOR.

15 THE COURT: ALL RIGHT. I'M GOING TO OVERRULE BOTH
16 MOTIONS AND WE'LL GO FORWARD. I THINK YOU'VE
17 SUFFICIENTLY COVERED THE STRIKES.

18 MR. GRIFFITH: THANK YOU, YOUR HONOR.

19 THE COURT: YES, SIR?

20 MR. GRIFFITH: YOUR HONOR, PRIOR TO SWEARING THE
21 JURY, I'D LIKE TO MAKE A MOTION IN SEVERAL REGARDS,
22 CHIEFLY WITH REGARD TO THE INDICTMENTS. 98-GS-36-402,
23 BURGLARY FIRST. I NOTE TO THE COURT FOR THE RECORD THAT
24 PREVIOUSLY MR. WISE HAD BEEN INDICTED UNDER ANOTHER
25 INDICTMENT, WHICH IS --- WELL, IT'S THE ORIGINAL.

1 INDICTMENT 97-GS-36-479, FOR BURGLARY FIRST AND ASSAULT
2 AND BATTERY OF A HIGH AND AGGRAVATED NATURE. PRIOR TO MY
3 REPRESENTATION OF MR. WISE, HE PLED GUILTY TO ASSAULT AND
4 BATTERY IN MAGISTRATE'S COURT AND RECEIVED A SENTENCE OF
5 TIME SERVED. HE'S BEEN INCARCERATED EVER SINCE.

6 NOW, YOUR HONOR, UNDER CASE LAW WHICH I HAVE, STATE
7 V. KELLY, I BELIEVE IT'S ARGUABLE THAT THE ELEMENTS
8 CONTAINED IN THE ASSAULT AND BATTERY ARE ALSO COMMON
9 ELEMENTS WITH THE BURGLARY FIRST, A PERSON ENTERING THE
10 DWELLING WITHOUT CONSENT WITH INTENT TO COMMIT A CRIME,
11 THE CRIME BEING AN ASSAULT AND BATTERY. THE CASE LAW I
12 HAVE DONE RESEARCH UPON I FOUND THAT THE STATE IN THIS
13 PARTICULAR CASE APPROACHED MR. KELLY WITH THREE COUNTS OF
14 INDICTMENT AND PROCEEDED UPON ONE.

15 HE WAS ACQUITTED AND SUBSEQUENTLY PLED GUILTY TO SAY
16 COUNT THREE OF THE INDICTMENT THE NEXT DAY. HE FILED A
17 PCR, AND THE SUPREME COURT RULED THAT JEOPARDY ATTACHED
18 ON ALL COUNTS OF THE INDICTMENT UPON HIS ACQUITTAL ON THE
19 FIRST CHARGE. HOWEVER, IT WAS CURED BY WAY OF THE ---
20 HIS PLEADING GUILTY THE FOLLOWING DAY TO THE GRAND
21 LARCENY. SO, HE MORE OR LESS WAIVED HIS RIGHTS TO THE
22 DOUBLE JEOPARDY ARGUMENT. HOWEVER, IN THIS CASE, THE
23 FIRST INDICTMENT HAS NOW BEEN --- MY CLIENT HAS BEEN
24 PLACED UNDER JEOPARDY BY PLEADING GUILTY TO ASSAULT AND
25 BATTERY WHICH WOULD RENDER THAT INDICTMENT USELESS AT

1 THIS TIME, AND I MAKE A MOTION TO HAVE THAT INDICTMENT
2 QUASHED, AS WELL AS THE SECONDARY INDICTMENT WHICH HE IS
3 INDICTED ONLY FOR BURGLARY FIRST. IF THE FIRST ONE'S NO
4 GOOD, THE SECOND ONE OBVIOUSLY CAN'T BE ANY GOOD.

5 THE COURT: INDICTMENT 480 ---- WHAT DO YOU SAY,
6 SOLICITOR?

7 MR. PEACE: WELL, YOUR HONOR, I SAY A COUPLE OF
8 THINGS. NUMBER ONE, THE STATE HAS NOT RECEIVED NOTICE OF
9 THIS MOTION. SO, WE WOULD ASK THE COURT TO NOT EVEN
10 CONSIDER THIS MOTION BECAUSE WE HAVEN'T BEEN TIMELY
11 NOTICED TO PREPARE A RESPONSE. NUMBER TWO, EVEN IF YOU
12 FIND THAT FOR SOME REASON YOU SHOULD HEAR THE MOTION,
13 UNDER BLOCKBERGER, THERE ARE OTHER ELEMENTS IN BURGLARY
14 FIRST THAT ARE NOT CONTAINED IN ASSAULT AND BATTERY. SO,
15 HE WAS RE-INDICTED AS BURGLARY FIRST AFTER THE STATE
16 LEARNED THAT HE HAD PLED GUILTY TO ASSAULT AND BATTERY IN
17 MAGISTRATE'S COURT.

18 SO, THE INDICTMENT WITH THE BURGLARY FIRST AND ABHAN
19 WILL BE NOL PROSSED AT THE CONCLUSION OF THIS CASE.
20 THERE'S NOT ANY REASON THAT WE CANNOT PROCEED ON THE
21 PRESENT INDICTMENT FOR THE BURGLARY FIRST. JEOPARDY HAS
22 NOT ATTACHED. HE HAS NOT PLED TO BURGLARY FIRST. THE
23 ELEMENTS FOR BURGLARY FIRST ARE DIFFERENT FROM ASSAULT
24 AND BATTERY.

25 THE COURT: I'LL OVERRULE HIS MOTION. YES, SIR?

1 MR. GRIFFITH: YOUR HONOR, IN RESPONSE TO THAT, I
2 NOTE FOR THE RECORD THAT THE MOTION IN REGARDS TO
3 SUFFICIENCY OF THE INDICTMENT , THAT MATTER CAN BE MADE
4 AT ANY TIME. THE ASSAULT AND BATTERY OR THE ATTEMPT TO
5 COMMIT A CRIME INVOLVING BODILY HARM ARE PART OF THE
6 ELEMENTS WITHIN THE BURGLARY. THERE'S NO QUESTION THE
7 STATE IS NOT GOING TO PROCEED ON THE ASSAULT AND BATTERY
8 OF A HIGH AND AGGRAVATED NATURE. THEY, I BELIEVE,
9 CONCEDED THAT EARLIER. HOWEVER, THOSE COMMON ELEMENTS,
10 JEOPARDY ATTACHES TO THE INDICTMENT NOT TO THE CHARGE.
11 THE INDICTMENT HAD TWO COUNTS. THE INDICTMENTS NOW ARE
12 INEFFECTIVE.

13 MR. PEACE: YOUR HONOR, THERE MUST BE SOME
14 MISUNDERSTANDING. WE'RE NOT PROCEEDING UPON THE
15 INDICTMENT THAT HAS THE BURGLARY FIRST AND THE ABHAN.
16 WE'RE PROCEEDING ON THE INDICTMENT, THE RE-INDICTMENT
17 THAT HAS ONLY THE BURGLARY FIRST.

18 MR. GRIFFITH: JUDGE, I'VE GOT NO QUALM IF THEY RE-
19 INDICT HIM, BUT IF JEOPARDY ATTACHED, JEOPARDY IS DONE.

20 THE COURT: I'LL OVERRULE THAT MOTION AT THIS TIME.
21 ANYTHING ELSE? I BELIEVE YOU HAD A LETTER YOU WANTED TO
22 PUT INTO EVIDENCE.

23 MR. GRIFFITH: YOUR HONOR, I BELIEVE IT MIGHT BE
24 MORE APPROPRIATE TO PUBLISH THE LETTER PRIOR TO MY
25 CLIENT'S PRESENTING EVIDENCE.

1 THE COURT: ALL RIGHT. ALL RIGHT. BRING THE JURY
2 IN. WHAT DID THEY DECIDE TO DO? WAIT JUST A MINUTE.

3 MR. PEACE: YOUR HONOR, IF I COULD TAKE A MOMENT ---

4 THE COURT: GO SEE WHAT THEY DECIDED TO DO ON THAT
5 CASE.

6 MR. GRIFFITH: WE'D LIKE TO DISCUSS THE POTENTIAL
7 USE OF THE PRIOR RECORD OF MY CLIENT, AS WELL AS I'VE
8 PLACED HIM ON NOTICE I INTEND TO USE THE PRIOR RECORD OF
9 THE VICTIM IN THIS CASE. UNDER RULE 609, IT'S MY
10 UNDERSTANDING THAT APART FROM BEING IMPEACHED BY A CRIME
11 WHICH CARRIES A PUNISHMENT OF MORE THAN ONE YEAR.
12 HOWEVER, THE LIMITATION ON IT ALLOWS A TEN YEAR
13 LIMITATION. YOU CAN'T LOOK BACK ANY FURTHER UNLESS THE
14 PERSON WHO INTENDS TO USE IT FOR IMPEACHMENT PURPOSES
15 PLACES THE OTHER PARTY ON NOTICE THAT THEY INTEND TO USE
16 IT BECAUSE OF ITS PROBATIVE VALUE, AND I DID SO.

17 MR. PEACE ALSO PLACED ME ON NOTICE OF INTENT TO
18 IMPEACH MY CLIENT SHOULD HE TAKE THE STAND. THE REASON
19 I WISH TO USE THIS CONVICTION ON MRS. BATES' RECORD THAT
20 OCCURRED SOMETIME IN 1985 OR 1986 THAT --- I CONCEDE IT'S
21 MORE THAN TEN YEARS. HOWEVER, IT WAS AN EVENT WHICH MY
22 CLIENT AND SHE BOTH PLED GUILTY AT THE SAME TIME TO THE
23 SAME OR SIMILAR SET OF CIRCUMSTANCES ON THE SAME
24 INDICTMENT. THEY HAD A RELATIONSHIP ABOUT THAT TIME AND
25 WERE GIRLFRIEND AND BOYFRIEND, AND WE INTEND TO OFFER

1 EVIDENCE THROUGH THIS TRIAL THAT THERE'S A CONTINUING
2 RELATIONSHIP WHICH WAS STARTED SOMETIME PRIOR TO 1985,
3 AND SO, THEIR INVOLVEMENT IN CRIME TOGETHER AND THE
4 CONTINUING RELATIONSHIP, FACTS THAT WE INTEND TO PRESENT
5 ARE RELEVANT TO THIS CASE AND TO THESE CHARGES AS TO HER
6 MAYBE WANTING TO PAY BACK MY CLIENT SO TO SPEAK, AND SO,
7 THAT'S THE PURPOSE OF MY DESIRE TO IMPEACH HER.

8 MR. PEACE: YOUR HONOR, WE WOULD OBJECT TO ALLOWING
9 THE DEFENSE TO IMPEACH UNDER 609. 609(B) SAYS "EVIDENCE
10 OF A CONVICTION UNDER THIS RULE IS NOT ADMISSIBLE IF A
11 PERIOD OF MORE THAN TEN YEARS HAS ELAPSED SINCE THE DATE
12 OF THE CONVICTION OR OF A RELEASE OF THE WITNESS FROM THE
13 CONFINEMENT IMPOSED FOR THAT CONVICTION WHICHEVER IS THE
14 LATER DATE, UNLESS THE COURT DETERMINES IN THE INTEREST
15 OF JUSTICE THAT THE PROBATIVE VALUE OF THE CONVICTION
16 SUPPORTED BY SPECIFIC FACTS AND CIRCUMSTANCES
17 SUBSTANTIALLY OUTWEIGH THE PREJUDICIAL EFFECT."

18 YOUR HONOR, THERE WON'T BE ANY CONTESTING THAT THE
19 VICTIM IN THIS CASE AND THE DEFENDANT HAD A RELATIONSHIP
20 BACK IN THE 80'S. ALLOWING THE CONVICTION IN THE MID
21 1980'S TO BE INTRODUCED FOR IMPEACHMENT ADDS NOTHING TO
22 THIS SHOWING OF THE RELATIONSHIP.

23 THE COURT: DID THEY HAVE ANY RELATIONSHIP AFTER
24 THEY WERE RELEASED FROM THE PENITENTIARY?

25 MR. GRIFFITH: YOUR HONOR, WE INTEND TO INTRODUCE

1 EVIDENCE TO THAT EFFECT, YES, SIR.

2 MR. PEACE: NO, YOUR HONOR.

3 THE COURT: I WON'T RULE ON IT AT THIS TIME AND SEE
4 WHAT COMES OUT ---

5 MR. GRIFFITH: ALL RIGHT.

6 THE COURT: --- ABOUT THE RELATIONSHIP.

7 MR. GRIFFITH: YOUR HONOR, ALSO IN REGARDS TO HIS
8 MOTION TO USE THE SAME TYPE OF EVIDENCE, ALL CONVICTIONS
9 PRIOR TO TEN YEARS, I MAKE THE SAME REMARKS HE MADE. MY
10 CLIENT IS ON TRIAL TODAY AND ANY OF THOSE CRIMES WOULD BE
11 MORE PREJUDICIAL TO HIM THAN TO HER TO THE BENEFIT OF
12 THIS TRIAL BECAUSE THERE ARE EVENTS WHICH HAPPENED BACK
13 IN THE SUMMER OF 1997.

14 MR. PEACE: THE ONLY THING I WOULD ASK, YOUR HONOR,
15 IF YOUR HONOR ALLOWS THE VICTIM JUST TO BE IMPEACHED WITH
16 THAT 1985 CONVICTION, THE STATE WOULD ASK TO BE SIMILARLY
17 ALLOWED BASED ON THE SAME REASONING THAT THE DEFENSE HAS
18 TO IMPRACH THE DEFENDANT WITH THE SAME CONVICTION.

19 THE COURT: YOU MIGHT BE BETTER OFF IF JUST BOTH OF
20 YOU LEAVE BOTH OF THEM OUT.

21 MR. GRIFFITH: WE MIGHT BE, JUDGE, BUT ---

22 THE COURT: WELL, I'M GOING TO RULE ON IT AT THAT
23 TIME: BRING THE JURY IN.

24 (JURY TO COURTROOM.)

25 THE COURT: YOU MAY PROCEED..

1 MR. PEACE: THANK YOU, YOUR HONOR. IF IT PLEASE THE
2 COURT, MR. GRIFFITH, ---

3 MADAM CLERK: JUDGE, WE NEED TO SWEAR ---

4 THE COURT: OH, LET HER SWEAR THE JURY. I FORGOT.

5 (SWEARING OF THE JURY.)

6 OPENING STATEMENT

7 BY MR. PEACE

8 THANK YOU, YOUR HONOR. IF IT PLEASE THE COURT.
9 LADIES AND GENTLEMEN OF THE JURY, MADAM FOREMAN, SOME OF
10 YOU WERE ON THE JURY EARLIER THIS WEEK SO YOU HEARD MY
11 INTRODUCTION. I'M JERRY PEACE. I'M THE DEPUTY SOLICITOR
12 FOR NEWBERRY COUNTY. I'M NOT FROM NEWBERRY, ALTHOUGH I
13 WOULDN'T MIND THAT A BIT. NEWBERRY SEEMS TO BE A NICE
14 PLACE TO BE FROM.

15 I ACTUALLY GREW UP IN GREENVILLE AND WENT TO WOFFORD
16 COLLEGE. WENT TO LAW SCHOOL IN COLUMBIA AT THE
17 UNIVERSITY OF SOUTH CAROLINA, AND THEN I JOINED THE ARMY
18 AFTER THAT AND BOUNCED AROUND THE WORLD FOR TWENTY YEARS.
19 I BOUNCED MY KIDS AROUND THE WORLD FOR TWENTY YEARS. I
20 HAD A LOT OF GREAT EXPERIENCES AND SPENT NINE YEARS IN
21 EUROPE AND HAVE DONE QUITE A BIT OF TRAVELING, BUT I
22 REACHED A POINT WHERE I HIT THE TWENTY YEAR MARK AND
23 COULD RETIRE AND WANTED TO SETTLE DOWN AND TO GROW ROOTS
24 SOMEWHERE. SO, WE DECIDED TO DO THAT IN THE EIGHTH
25 CIRCUIT, ALTHOUGH I ACTUALLY LIVE IN AUGUSTA, GEORGIA.

1 I'VE GOT A DAUGHTER WHO'S A SENIOR IN HIGH SCHOOL.
2 SHE THINKS IT'S IMPORTANT TO HER FOR HER TO GO AHEAD AND
3 FINISH HER SENIOR YEAR WHERE SHE'S ATTENDED THE LAST FOUR
4 YEARS. SO I'M A ROAD HOG. I TRAVEL AT LEAST FIVE DAYS
5 A WEEK. SO I DRIVE FROM AUGUSTA TO NEWBERRY WHEN WE
6 HAVE COURT HERE AND FROM AUGUSTA TO GREENWOOD OR AUGUSTA
7 TO LAURENS, WHEREVER WE HAPPEN TO BE. BUT, THAT'S WHO I
8 AM.

9 WHAT DO I DO? AS DEPUTY SOLICITOR, I PRESENT THE
10 STATE'S CASE TO YOU. TODAY, THE STATE'S CASE IS THE
11 STATE VERSUS THE DEFENDANT, JAMES WISE. MR. WISE IS
12 CHARGED WITH BURGLARY IN THE FIRST DEGREE AND ESCAPING
13 FROM THE CUSTODY OF AN OFFICER.

14 AS I SUGGESTED IN THE PREVIOUS CASE, I'LL GO ON AND
15 TELL YOU WHERE WE ARE NOW AND WHERE WE'RE GOING AND HOW
16 WE'RE GOING TO GET THERE. HE'S JUST CHARGED RIGHT NOW.
17 THE STATE HAS THE BURDEN OF PROOF. WE HAVE TO COME IN
18 AND SHOW BEYOND A REASONABLE DOUBT HE'S GUILTY OF THESE
19 OFFENSES. MR. WISE AND HIS ATTORNEY DON'T HAVE TO DO
20 ANYTHING. THEY CAN SIT OVER THERE THE WHOLE CASE. THEY
21 DON'T HAVE TO ASK ANY QUESTIONS. THEY DON'T HAVE TO
22 PRESENT ANY EVIDENCE. IT'S OUR RESPONSIBILITY AND THAT'S
23 THE WAY THAT WE WOULD WANT IT. I'VE SPENT TWENTY YEARS
24 GIVING EVERYBODY THE RIGHT TO DO THAT, AND THAT'S THE WAY
25 IT OUGHT TO BE. THE STATE OUGHT TO HAVE THE

1 RESPONSIBILITY TO COME IN HERE AND SHOW BEYOND A
2 REASONABLE DOUBT WHEN SOMEBODY IS GUILTY. THEY OUGHT NOT
3 TO MAKE A DEFENDANT HAVE TO PROVE THAT HE IS NOT GUILTY.
4 SO, THAT'S WHAT I INTEND TO DO.

5 NOW, WHAT'S BURGLARY IN THE FIRST DEGREE? I WANT TO
6 SHOW YOU WHAT THE ELEMENTS ARE SO DURING THE TESTIMONY OF
7 THE WITNESSES YOU CAN IN YOUR MIND CHECK OFF --- OKAY,
8 HE'S PROVED THAT STATEMENT, PROVED THAT STATEMENT, PROVED
9 THAT ONE. BURGLARY FIRST DEGREE IS THE ENTERING OF A
10 DWELLING HOUSE OF ANOTHER WITHOUT CONSENT WITH THE INTENT
11 TO COMMIT A CRIME AND BECAUSE IT'S BURGLARY IN THE FIRST
12 DEGREE, IN THE NIGHTTIME. THIS PARTICULAR CASE WE HAVE
13 TO SHOW UNDER RULES OF EVIDENCE IT OCCURRED IN THE
14 NIGHTTIME. THOSE ARE THE THINGS I HAVE TO PROVE.

15 NOW, HAVING SAID THAT, LET ME TELL YOU THIS ---
16 WITH THE INTENT TO COMMIT A CRIME. MOST PEOPLE WHEN THEY
17 THINK OF BURGLARY THEY THINK OF SOMEBODY GOING IN AND
18 GETTING A TV OR A STEREO OR JEWELRY OR SOMETHING, BUT YOU
19 DON'T HAVE TO SHOW THAT A LARCENY IS INTENDED. YOU JUST
20 HAVE TO SHOW THAT THERE'S AN INTENT TO COMMIT ANY CRIME.

21 NOW, THIS PARTICULAR CASE, THE CRIME IS GOING TO BE
22 ASSAULT AND BATTERY. MR. WISE ENTERED THE HOUSE AND BEAT
23 UP AND ASSAULTED AND BATTERED. THAT'S BURGLARY IN THE
24 FIRST DEGREE. THOSE ARE THE THINGS THAT WE HAVE TO SHOW.
25 SO, DURING THE TESTIMONY JUST CHECK IT OFF. IF THE STATE

1 PROVES IT, CHECK IT OFF AND THAT WILL BE EASIER WHEN WE
2 GET TO THE POINT WE'RE GOING.

3 NOW, ESCAPE FROM THE CUSTODY OF AN OFFICER IS REALLY
4 PRETTY SIMPLE. YOU HAVE TO BE IN CUSTODY OF AN OFFICER
5 TO HAVE ESCAPE. YOU HAVE TO GO AWAY WITHOUT PERMISSION
6 OF THE OFFICER. SO, THOSE ARE REALLY THE ONLY TWO THINGS
7 THAT WE NEED TO LOOK FOR IN THAT PARTICULAR CRIME.

8 THAT'S WHERE WE ARE. THE STATE HAS THE BURDEN. THE
9 CHARGES ARE BURGLARY FIRST DEGREE AND ESCAPE FROM CUSTODY
10 OF AN OFFICER. WHERE ARE WE GOING? WELL, AFTER ALL THE
11 EVIDENCE HAS BEEN PRESENTED, YOU'LL GO BACK INTO THE
12 DELIBERATION ROOM AND YOU WILL DELIBERATE.

13 HOW DO YOU GET BACK INTO THE DELIBERATION ROOM?
14 WELL, THE STATE'S GOING TO PRESENT EVIDENCE. WE'RE GOING
15 TO PRESENT WITNESSES. THE WITNESSES ARE GOING TO COME
16 IN. THEY'RE GOING TO TAKE THE STAND AND THEY'RE GOING TO
17 TESTIFY. I WON'T TELL YOU WHAT EACH WITNESS IS GOING TO
18 SAY, BUT I DO WANT TO GIVE YOU A ROAD MAP, A GUIDE ON HOW
19 WE'RE GETTING FROM WHERE WE ARE NOW BACK INTO THE
20 DELIBERATION ROOM.

21 IN JULY, 1997, MARY BATES LIVED OVER AT [REDACTED]
22 [REDACTED]. SOMETIME DURING THE EARLY MORNING HOURS, THE
23 DEFENDANT, JAMES WISE, CAME OVER TO HER HOUSE. HE WANTED
24 TO COME IN. SHE WOULDN'T LET HIM IN. TOLD HIM TO GO
25 AWAY. HE WOULDN'T GO AWAY. SO, SHE CALLED THE POLICE.

1 THE POLICE CAME AND TOLD HIM TO LEAVE, AND MR. WISE LEFT.
2 A LITTLE BIT LATER HE CAME BACK, POUNDED ON THE DOOR, LET
3 ME IN, LET ME IN. IT'S AROUND 4:00 O' CLOCK, 4:30 IN THE
4 MORNING, A.M. MARY BATES, BEING IN FEAR, PICKED UP THE
5 PHONE AND CALLED HER BOYFRIEND, JAMES GALLMAN, AND TOLD
6 HIM THAT JAMES WISE WAS AT THE DOOR.

7 ABOUT THAT TIME JAMES WISE BUSTS THE OUTER DOOR,
8 BREAKS THE GLASS, CUTS HIMSELF AND BUSTS IN THE INNER
9 DOOR. HE COMES IN AND STARTS ASSAULTING MARY BATES.
10 SLAPPING HER AROUND, BEATING HER UP. SHE'S TALKING TO
11 JAMES GALLMAN AT THIS TIME. HE HANGS UP AND CALLS 911.
12 HEY, THERE'S SOMETHING GOING ON AT [REDACTED]. HE
13 HEARS ALL THIS COMMOTION AND SOME STUFF GOING IN THE
14 BACKGROUND. HE CALLS BACK TO TALK TO MARY BATES, AND SHE
15 PICKS UP THE PHONE AND HE ASKS IF EVERYTHING IS OKAY, AND
16 SHE SAYS, YES, BUT ONLY BECAUSE JAMES WISE, THE
17 DEFENDANT, IS STANDING OVER HER WITH A CERAMIC PIG, AND
18 YOU'LL GET TO SEE THIS CERAMIC PIG. SHE'S IN FEAR. THE
19 POLICE COME. BILL GRIFFIN, WHO AT THAT TIME WAS WORKING
20 WITH THE NEWBERRY COUNTY SHERIFF'S OFFICE, CAME. MR.
21 WISE WAS STILL IN THE HOUSE. HE GOES IN AND THEY HAVE A
22 SCUFFLE, AND THEN MR. WISE IS PLACED INTO CUSTODY.

23 NOW, MR. WISE WAS CUT FROM THE GLASS THAT HE'S
24 BROKEN. SO, SOME BLOOD GETS ON LIEUTENANT GRIFFIN, AND
25 YOU'LL HEAR THAT THROUGH HIS TESTIMONY. AFTER HE WAS

1 PLACED IN CUSTODY, OFFICER CLAY BABB WHO AT THE TIME
2 WORKED FOR THE NEWBERRY, SHERIFF'S OFFICE, CAME TO PICK
3 HIM UP AND TRANSPORT HIM, AND WHILE HE WAS TRANSPORTING
4 HIM TO THE DETENTION CENTER HERE IN NEWBERRY, MR. WISE
5 ESCAPED, TOOK OFF.

6 SO, THAT'S WHERE WE ARE. THAT'S THE ROAD MAP AND
7 THE GUIDE TO GET YOU BACK HERE, AND THAT'S WHAT THE STATE
8 IS GOING TO PROVE. WHEN YOU GET BACK --- WHAT HAPPENS
9 WHEN YOU GET BACK HERE? WELL, YOU WEIGH ALL THE
10 EVIDENCE, AND YOU DECIDE IF THE STATE HAS SHOWN THOSE
11 ELEMENTS OF BURGLARY FIRST THAT I HAD TALKED TO YOU
12 ABOUT, AND IF YOU FIND THE STATE HAS SHOWN THOSE ELEMENTS
13 ON THIS CASE IN CUSTODY, I'VE TALKED ABOUT.

14 THE JUDGE IS GOING TO GO OVER THOSE ELEMENTS WITH
15 YOU, AND THE JUDGE GIVES THE LAW. WHATEVER HE SAYS THE
16 ELEMENTS ARE, THOSE ARE THE ELEMENTS. IF I'VE MISSTATED
17 THEM OR IF HE DOESN'T STATE THEM EXACTLY LIKE I DO, YOU
18 LISTEN TO THE JUDGE, BECAUSE HE'S THE GIVER OF THE LAW.

19 SO, YOU HAVE YOUR EVIDENCE. YOU GO BACK THERE.
20 WHAT DO YOU DO WHEN YOU GET BACK THERE? YOU DELIBERATE.
21 YOU HAVE TO DETERMINE IF THE STATE HAS SHOWN BEYOND A
22 REASONABLE DOUBT THAT HE COMMITTED THOSE OFFENSES, AND
23 THE JUDGE IS GOING TO TELL YOU WHAT REASONABLE DOUBT IT.
24 HE'S GOING TO DEFINE IT FOR YOU. I CAN TELL YOU THIS
25 RIGHT NOW, THAT REGARDLESS OF WHAT DEFINITION HE GIVES

1 YOU OF REASONABLE DOUBT, REGARDLESS OF WHAT HE TELLS YOU
2 REASONABLE DOUBT IS, I CAN ASSURE YOU THAT WHEN YOU GO
3 BACK INTO THE DELIBERATION ROOM THAT YOU WON' T HAVE ANY
4 PROBLEM FINDING THE DEFENDANT GUILTY BEYOND A REASONABLE
5 DOUBT OF BURGLARY IN THE FIRST DEGREE AND ESCAPE FROM THE
6 CUSTODY OF AN OFFICER.

7 I THANK YOU FOR YOUR TIME AND ATTENTION. I KNOW IT
8 WILL TAKE YOU A WHILE TO GET CRANKED UP AND GET YOU HERE,
9 BUT I THANK YOU FOR YOUR PATIENCE, AND I THANK YOU FOR
10 THE OPPORTUNITY TO PRESENT THE STATE' S CASE TO YOU.

11 THE COURT: MR. GRIFFITH.

12 MR. GRIFFITH: IF IT PLEASE THE COURT.

13 THE COURT: YES, SIR.

14 MR. GRIFFITH: THANK YOU, YOUR HONOR.

15 BY MR. GRIFFITH

16 LADIES AND GENTLEMEN OF THE JURY, AS MR. PEACE SAID,
17 I AM EUGENE GRIFFITH. I GO BY BUBBA GRIFFITH. I
18 PRACTICE LAW HERE IN NEWBERRY, AND I GREW UP HERE IN
19 NEWBERRY. I' VE BEEN HERE ABOUT EIGHT YEARS PRACTICING
20 LAW AND MY OFFICE IS NOT TOO FAR FROM THE COURTHOUSE AND
21 I' M IN AND AROUND THE AREA A GREAT DEAL. MY OPPORTUNITY
22 TODAY IS TO REPRESENT JAMES WISE.

23 NOW, A COUPLE OF THINGS IN PARTICULAR I WANT YOU TO
24 UNDERSTAND. THE STATE HAS THE RESPONSIBILITY OF PROVING
25 EACH AND EVERY ELEMENT OF THE CHARGES WHICH WERE READ TO

1 YOU WHEN WE WERE SELECTING YOU. IT'S THEIR
2 RESPONSIBILITY TO PROVE THE FACTS WHICH SUPPORT THEIR
3 CHARGES. NOW, JAMES WISE HAS NOTHING TO PROVE. HE CAN
4 SIT THERE AND DO NOTHING. THE JUDGE IS GOING TO INSTRUCT
5 YOU AT THE END OF THE CASE THAT IF HE DOES NOT TESTIFY,
6 YOU CAN'T USE THAT AGAINST HIM.

7 NOW, BASED UPON ALL THIS, I WOULD HOPE Y' ALL WOULD
8 DO ME ONE FAVOR. THE STATE GETS TO TESTIFY FIRST, OR
9 PRESENT THEIR WITNESSES FIRST BY TESTIMONY, AND BECAUSE
10 OF THAT YOU WON'T HEAR ANYTHING FROM JAMES WISE UNTIL THE
11 STATE --- WE'RE LAST IN THIS PROCESS. SO, PLEASE WAIT
12 UNTIL YOU HEAR ALL THE TESTIMONY BEFORE YOU MAKE ANY
13 DECISION AT ALL AS TO WHAT HAPPENED AND WHEN IT HAPPENED
14 AND HOW IT HAPPENED. SEE THE WHOLE PICTURE. GET ALL THE
15 PIECES OF THE PUZZLE BEFORE YOU MAKE UP YOUR MIND, BEFORE
16 YOU MAKE A DECISION, BECAUSE THAT'S IMPORTANT.

17 NOW, ANOTHER THING THAT I WANT YOU TO UNDERSTAND IS
18 THAT WHAT I SAY AND WHAT MR. PEACE SAYS, THEY'RE NOT
19 FACTS. WE ASK QUESTIONS AND WE TRY TO BRING THE FACTS TO
20 Y' ALL TO CONSIDER THE VALUE OF IT, WHETHER A PERSON IS
21 TELLING THE TRUTH, OR NOT. THAT'S Y' ALL'S JOB, TO
22 DETERMINE WHAT THE FACTS ARE, WHAT HAPPENED THAT NIGHT.
23 WHAT HAPPENED THAT NIGHT IS THE ISSUE THAT Y' ALL NEED TO
24 FIND. THE JUDGE MAKES RULINGS OF THE LAW. YOU APPLY THE
25 LAW. Y' ALL ARE THE GATHERERS OF FACTS, AND THE FACTS MAY

1 BE A LITTLE DIFFERENT VERSION FROM ONE SIDE TO THE OTHER.
2 IT'S Y' ALL'S JOB TO EVALUATE EACH ONE OF THE WITNESSES'
3 CREDIBILITY. IT'S FOR THAT REASON I WOULD JUST ASK YOU
4 DON'T MAKE A DECISION UNTIL YOU GET ALL PIECES OF THE
5 PUZZLE AND UNDERSTANDING THAT I THINK YOU'LL BE ABLE TO
6 MAKE A FAIR AND JUST DECISION. JAMES WISE ASKED ME WHEN
7 I FIRST MET HIM, HE SAID "ALL I WANT IS A FAIR TRIAL."
8 WELL, TODAY I'M CERTAIN WE'LL GET A FAIR TRIAL. SO,
9 PLEASE GIVE YOUR CONSIDERATION TO THE STATE'S WITNESSES
10 AND ALSO TO MR. WISE'S.

11 THANK YOU VERY MUCH.

12 MR. PEACE: YOUR HONOR, IF IT PLEASE THE COURT, THE
13 STATE WOULD CALL MARY BATES TO THE STAND.

14 THEREUPON:

15 MARY BATES, BEING FIRST DULY
16 SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. PEACE

19 Q. MS. OR MRS. BATES?

20 A. MS., I'M A WIDOW.

21 Q. OKAY. MS. BATES, DO YOU KNOW THE DEFENDANT IN THIS
22 CASE?

23 A. YES, SIR.

24 Q. IF YOU SEE HIM IN THE COURTROOM, WOULD YOU POINT TO
25 HIM AND SAY HIS NAME?

- 1 A. HIS NAME IS MR. JAMES EDWARD WISE.
- 2 Q. AND HOW DO YOU KNOW MR. WISE?
- 3 A. WE HAD A RELATIONSHIP BACK IN 1985.
- 4 Q. DID YOU HAVE OCCASION TO SEE MR. WISE DURING, THE
- 5 MORNING HOURS OF JULY 15, 1997?
- 6 A. YES, I DID.
- 7 Q. AND WHERE WAS THAT?
- 8 A. AT MY HOUSE.
- 9 Q. AND WHAT HAPPENED WHEN YOU SAW MR. WISE?
- 10 A. HE PULLED IN THE YARD.
- 11 Q. WHAT TIME WAS THIS?
- 12 A. IT WAS ABOUT 4:00. I WAS GETTING UP GETTING READY TO
- 13 GO TO WORK. I WAS WORKING AT KAYSER ROTH.
- 14 Q. YOU WORKED WHERE?
- 15 A. AT KAYSER-ROTH HOSIERY.
- 16 Q. OKAY.
- 17 A. AND HE PULLED IN MY YARD, AND ---
- 18 Q. WAS HE IN A VEHICLE WHEN HE PULLED IN YOUR YARD?
- 19 A. HE WAS IN A VAN.
- 20 Q. OKAY. PLEASE CONTINUE.
- 21 A. HE DROVE UP. I LOOKED OUT THE WINDOW. HE BLEW AND
- 22 I LOOKED OUT THE WINDOW. I THOUGHT IT WAS ONE OF MY
- 23 FRIENDS, AND I THOUGHT SHE WAS BRINGING ME A MESSAGE
- 24 ABOUT MY SISTER. MY SISTER HAS CANCER, AND I LOOKED OUT
- 25 THE WINDOW AND IT WAS --- A VAN. SO, HE CAME AND HE

1 ASKED ME WHERE WAS MY BOYFRIEND.
2 Q. WHEN DID YOU KNOW IT WAS MR. WISE?
3 A. WHEN I SEEN HIM.
4 Q. DID YOU SEE HIM IN THE VEHICLE?
5 A. YES, SIR.
6 Q. OKAY.
7 A. AND HE ASKED ME WHERE WAS MY BOYFRIEND, AND I TOLD
8 HIM MY BOYFRIEND WAS IN PROSPERITY.
9 Q. WHO IS YOUR BOYFRIEND?
10 A. JAMES EVAN GALLMAN.
11 Q. DOES HE KNOW YOUR BOYFRIEND?
12 A. YES, SIR.
13 Q. HOW LONG HAS MR. GALLMAN BEEN YOUR BOYFRIEND?
14 A. OH, YEARS, ABOUT FIVE OR SIX YEARS, BUT I'VE BEEN
15 KNOWING HIM ALL MY LIFE.
16 Q. DO YOU AND MR. GALLMAN RESIDE TOGETHER?
17 A. YES, SIR.
18 Q. HOW LONG HAVE YOU RESIDED TOGETHER?
19 A. ABOUT TWO YEARS.
20 Q. PLEASE CONTINUE.
21 A. AND SO, I TOLD HIM HE WAS IN PROSPERITY, AND HE SAID
22 "I WANT TO ASK HIM TO BE A PALL BEARER FOR MY SISTER'S
23 FUNERAL," AND I SAID, "WELL, HE IN THE TRAILER PARK."
24 SO, MR. WISE ASKED ME IF HE COULD HAVE FIVE MINUTES OF MY
25 TIME AND I TOLD HIM "NO." AND SO, I SAID "WELL, THE BEST

MARY BATES
DIRECT EXAMINATION BY MR. PEACE

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1 THING TO DO IS GET OFF MY PORCH BEFORE I CALL 911."

2 Q. AND WHERE DO YOU LIVE?

3 A. I LIVE AT [REDACTED] ROAD.

4 Q. OKAY. NOW, IS THAT HERE IN NEWBERRY COUNTY?

5 A. YES, SIR.

6 Q. OKAY.

7 A. AND SO HE SAID, HE TOLD ME "I WOULDN'T DO THAT." AND

8 I SAID "YES, I WILL." AND SO, I GOT ON THE PHONE AND I

9 CALLED 911, AND SO, THE OFFICER CAME AND HE ---

10 Q. DO YOU RECALL WHICH OFFICER CAME?

11 A. I DON'T KNOW HIS NAME. HE DIDN'T GIVE ME HIS NAME,

12 BUT I KNOW HIM IF I SEE HIM.

13 Q. OKAY.

14 A. AND SO, THE OFFICER CAME AND TOLD MR. WISE HE HAD TO

15 LEAVE. SO, MR. WISE LEFT WALKING, BUT I TOLD THE OFFICER

16 TO MAKE HIM GET THE VAN OUT OF MY YARD. SO, HE MADE HIM

17 GET THE VAN OUT OF THE YARD TOO. SO, THE OFFICER LEFT

18 AND HE LEFT. SO, AFTER WHILE I WAS GETTING READY FOR

19 WORK. I HAD TO BE TO WORK AT SIX O' CLOCK, AND HE CAME

20 BACK, BANGING ON THE DOOR.

21 Q. HE CAME BACK?

22 A. YES, SIR.

23 Q. OKAY, WAS HE IN THE VAN WHEN HE CAME BACK?

24 A. NO, SIR. HE WAS WALKING.

25 Q. OKAY.

- 1 A. AND SO, HE STARTED BANGING ON THE DOOR.
- 2 Q. WHAT DO YOU MEAN BANGING?
- 3 A. STARTED KNOCKING ON THE DOOR, HITTING ON THE DOOR.
- 4 Q. WAS IT A LOUD KNOCK OR A SOFT KNOCK OR ---
- 5 A. IT WAS LOUD.
- 6 Q. CAN YOU DEMONSTRATE?
- 7 A. HE WAS BAMMING, HE WAS BAMMING, HE WANTED TO GET IN,
- 8 HE WANTED TO TALK TO ME. I TOLD HIM I DIDN' T WANT TO
- 9 TALK TO HIM.
- 10 Q. YOU TOLD HIM YOU DIDN' T WANT TO TALK TO HIM?
- 11 A. YES, SIR.
- 12 Q. OKAY. WAS THE DOOR OPEN OR CLOSED?
- 13 A. NO, SIR. IT WAS LOCKED, THE SCREEN DOOR AND ALL.
- 14 WELL, IT WAS GLASS IN --- IT WAS A GLASS SCREEN DOOR.
- 15 Q. OKAY.
- 16 A. AND IT WAS LOCKED. EVERYTHING WAS LOCKED. AND SO,
- 17 HE STARTED MAKING ACCUSATIONS ABOUT I WOULDN' T TALK TO
- 18 HIM. I DIDN' T WANT ANYTHING TO DO WITH HIM. I TRIED TO
- 19 HOLD HIM DOWN. AND I, YOU KNOW, AND I SAID "WELL, JUST
- 20 LEAVE" AND SO, I CALLED JAMES GALLMAN, MY BOYFRIEND, AND
- 21 I TOLD HIM HE WAS ON THE PORCH MAKING ALL KIND OF
- 22 ACCUSATIONS, AND BY THE TIME I WAS ON THE PHONE THAT' S
- 23 WHEN MR. WISE BUST MY GLASS OUT IN MY SCREEN DOOR.
- 24 Q. WHAT DO YOU MEAN BUSTED IT OUT?
- 25 A. HE HIT IT, KNOCKED THE GLASS OUT OF IT.

1 Q. DID HE INJURE HIMSELF WHEN HE HIT IT?

2 A. YES, SIR. HE HAD BLOOD EVERYWHERE.

3 Q. OKAY.

4 A. AND SO, WHEN HE KNOCKED THE GLASS OUT THE FRONT DOOR,
5 HE MUST'VE UNLOCKED THE SCREEN AND THAT'S WHEN HE KICKED
6 MY BIG DOOR DOWN. MY BIG --- THE BIG DOOR. HE KICKED IT
7 IN. HE CAME IN ON ME, AND THAT'S WHEN HE STARTED HITTING
8 ME AND BEATING ME.

9 Q. OKAY. WHAT WAS HE HITTING YOU WITH?

10 A. HIS FISTS.

11 Q. OKAY.

12 A. I MEAN HE WAS POUNDING, OUTRAGEOUS --- AND SO ---

13 Q. HOW TALL ARE YOU, MS. BATES?

14 A. 5' 4".

15 Q. HOW MUCH DO YOU WEIGH?

16 A. A HUNDRED AND TWENTY.

17 Q. OKAY. PLEASE CONTINUE.

18 A. AND SO, AFTER THAT HE HAD ME DOWN IN A CHAIR. I'VE
19 GOT A LOUNGE SITTING UP AGAINST A WINDOW. THAT'S WHERE
20 HE HAD ME PINNED AT. THE PHONE RANG AND AFTER THE PHONE
21 RANG I PICKED IT UP. IT WAS MY BOYFRIEND, AND HE SAID
22 "ARE YOU ALL RIGHT?" I COULDN'T SAY HE WAS IN THERE.

23 Q. WHY COULD YOU NOT SAY HE WAS IN THERE?

24 A. BECAUSE HE HAD A CERAMIC PIG DREW BACK AT ME, AND HE
25 TOLD ME IF I TELL HIM, THAT HE WAS GOING TO BEAT ME. HE

1 WOULD KILL ME. HE WOULD HIT ME UP SIDE MY HEAD AND KILL
2 ME.

3 Q. DID HE HIT YOU UP SIDE YOUR HEAD WITH HIS FISTS?

4 A. YES, SIR.

5 Q. MS. BATES, I NOW SHOW YOU WHAT'S BEEN MARKED AS
6 STATE'S EXHIBIT ONE FOR IDENTIFICATION, AND ASK YOU IF
7 YOU RECOGNIZE THAT? YOU MAY TAKE IT.

8 A. YES, SIR.

9 Q. AND WHAT IS THAT?

10 A. THIS IS MY CERAMIC PIG. IT HAVE LITTLE BABY PIGS ON
11 IT, AND IT WAS ON MY COFFEE TABLE AT THE TIME.

12 Q. OKAY. IS THAT THE SAME CERAMIC PIG THAT YOU HAD IN
13 YOUR POSSESSION ON JULY 15, 1997?

14 A. YES, SIR.

15 Q. IS THAT THE SAME CERAMIC PIG THAT WAS PICKED UP BY
16 THE DEFENDANT TO STRIKE YOU WITH?

17 A. YES, SIR.

18 Q. HAS THAT CERAMIC PIG BEEN IN YOUR POSSESSION SINCE
19 JULY 15, 1997?

20 A. YES, SIR.

21 MR. PEACE: YOUR HONOR, AT THIS TIME I WOULD MOVE TO
22 ADMIT STATE'S EXHIBIT ONE FOR IDENTIFICATION INTO
23 EVIDENCE AS STATE'S EXHIBIT ONE.

24 THE COURT: NO OBJECTION.

25 MR. GRIFFITH: YOUR HONOR, I HAVE NO OBJECTION.

1 (STATE'S EXHIBIT NUMBER ONE MARKED FOR
2 IDENTIFICATION AND MADE A PART OF THE RECORD.)
3 BY MR. PEACE,

4 Q. NOW MS. BATES, WHAT HAPPENED AFTER YOU WERE
5 THREATENED WITH THIS CERAMIC PIG? YOU SAY HE THREATENED
6 TO KILL YOU?

7 A. YES, SIR.

8 Q. OKAY, WHAT HAPPENED AFTER THAT THREAT?

9 A. JAMES --- I GUESS JAMES, I DON'T KNOW WHO CALLED THE
10 POLICE. THE POLICE CAME BACK DOWN THERE. MR. GALLMAN -
11 -- I MEAN MR. WISE, EXCUSE ME, MR. WISE WAS STILL IN MY
12 HOUSE.

13 Q. HE WAS STILL IN THE HOUSE?

14 A. YES, SIR.

15 Q. PHYSICALLY IN THE HOUSE?

16 A. YES, SIR.

17 Q. OKAY. PLEASE CONTINUE.

18 A. AND THE OFFICER CAME IN THERE AND HE GOT MR. WISE.

19 Q. DO YOU KNOW WHAT OFFICER CAME IN?

20 A. I KNOW HIM WHEN I SEE HIM.

21 Q. WAS IT THE SAME ONE THAT CAME EARLIER?

22 A. SAME ONE. YES, SIR.

23 Q. PLEASE CONTINUE.

24 A. AND HE PUT HANDCUFFS ON MR. WISE AND TOOK HIM OUTSIDE
25 AND PUT HIM IN THE CAR, AND THEN ANOTHER OFFICER HAD

1 CAME. ANOTHER OFFICER CAME TO HELP THAT OFFICER, AND
2 AFTER HE GOT THE OFFICER IN THE CAR, THE SECOND OFFICER
3 TOOK MR. WISE AND PUT HIM IN HIS CAR, AND SO, THE
4 OFFICER CAME IN AND ASKED ME COULD HE WASH HIS HAND
5 BECAUSE HE HAD BLOOD ALL OVER HIS HANDS, AND I TOLD HIM
6 "YES" AND HE WENT TO THE SINK IN MY KITCHEN AND HE WASHED
7 HIS HANDS WITH MY DISH DETERGENT.

8 Q. OKAY. WHAT INJURIES DID YOU RECEIVE AS A RESULT OF
9 THIS BEATING?

10 A. I HAD KNOTS ON MY HEAD, AND MY ARMS WAS ALL BEAT UP
11 AND BRUISED, MY LEGS. I HAD BRUISES ON MY LEGS,
12 EVERYWHERE.

13 Q. DID YOU HAVE ANY CUTS OR LACERATIONS?

14 A. NO, SIR.

15 Q. NO CUTS OR LACERATIONS?

16 A. NO. I JUST HAD KNOTS AND BRUISES.

17 Q. DID YOU SEEK MEDICAL ATTENTION AS A RESULT OF THIS
18 BEATING?

19 A. YES, SIR.

20 Q. AND WHERE DID YOU SEEK THAT ATTENTION?

21 A. FIRST I WENT TO NEWBERRY HOSPITAL AND THEN I WENT TO
22 MY PRIVATE DOCTOR.

23 Q. AND WHERE IS THAT?

24 A. AT PINNER CLINIC.

25 Q. OKAY, AND DID YOU RECEIVE MEDICAL ATTENTION?

1 A. YES, SIR.

2 Q. AND WHAT WAS DONE?

3 A. DR. FERGUSON, HE CHECKED ME OVER. HE GAVE ME A
4 THOROUGH EXAMINATION, AND THEN HE GAVE ME SOME PILLS TO
5 HELP THE KNOTS THAT WAS ALL IN MY HEAD.

6 Q. OKAY. HOW MANY DAYS DID IT TAKE FOR THE KNOTS TO GO
7 AWAY?

8 A. I WAS OUT OF WORK SEVEN DAYS.

9 Q. SEVEN DAYS?

10 A. YES, SIR.

11 Q. WERE THE KNOTS AND BRUISES GONE AWAY WITHIN SEVEN
12 DAYS, OR WERE YOU JUST OUT OF WORK THAT LONG?

13 A. NO. THEY WEREN'T GONE COMPLETELY, BUT AFTER A SEVEN
14 DAY PERIOD I WENT BACK TO WORK.

15 Q. THANK YOU. I HAVE NO FURTHER QUESTIONS. PLEASE
16 ANSWER ANY QUESTIONS MR. GRIFFITH MAY HAVE.

17 A. YES, SIR.

18 CROSS EXAMINATION

19 BY MR. GRIFFITH

20 Q. MS. BATES, WHERE DO YOU WORK RIGHT NOW?

21 A. I WORK AT QUALITY STITCHING.

22 Q. ARE YOU WORKING AT A DIFFERENT PLACE NOW THAN YOU
23 WERE THEN?

24 A. YES, SIR, BECAUSE IT CLOSED DOWN.

25 Q. OKAY. NOW, HOW LONG DID YOU SAY YOU AND MR. GALLMAN

- 1 HAVE BEEN LIVING TOGETHER?
- 2 A. WELL, I'VE KNOWN MR. GALLMAN FOR YEARS, BUT WE'VE
- 3 BEEN LIVING TOGETHER, I KNOW IT'S BEEN ABOUT LIKE THREE
- 4 YEARS I BELIEVE.
- 5 Q. THIS EVENT HAPPENED WITHIN THE LAST --- LAST SUMMER
- 6 SOMETIME, JULY OF '97?
- 7 A. YES, SIR.
- 8 Q. WAS HE LIVING WITH YOU AT THAT TIME?
- 9 A. YES, SIR.
- 10 Q. WHY WAS HE IN PROSPERITY?
- 11 A. BECAUSE WE HAD HAD A FIGHT THAT SUNDAY NIGHT, AND
- 12 WHEN HE GOT OFF FROM WORK THAT MONDAY I TOLD HIM TO GO
- 13 HOME TO HIS DAD'S. WE HAD A BIG ARGUMENT THAT SUNDAY
- 14 NIGHT.
- 15 Q. NOW, DURING THIS ARGUMENT DID Y' ALL FIGHT?
- 16 A. NO, SIR.
- 17 Q. Y' ALL JUST ARGUED?
- 18 A. JUST ARGUED.
- 19 Q. OKAY. NOW, HOW LONG HAVE YOU KNOWN JAMES WISE?
- 20 A. EVER SINCE '85.
- 21 Q. DID YOU KNOW HIM PRIOR TO '85?
- 22 A. NO, SIR.
- 23 Q. DID YOU EVER LIVE WITH MR. WISE?
- 24 A. IN 1985 FOR ABOUT, I THINK THAT WAS ABOUT SIX MONTHS.
- 25 Q. OKAY. WHERE DID Y' ALL LIVE?

MARY BATES
CROSS EXAMINATION BY MR. GRIFFITH

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1 A. WE LIVED IN A BIG HOUSE IN FRONT OF MY TRAILER WITH,
2 MY MOM.

3 Q. WHERE Y' ALL LIVED TOGETHER IS IN CLOSE PROXIMITY TO,
4 WHERE YOU LIVE RIGHT NOW?

5 A. RIGHT.

6 Q. ALMOST SIDE BY SIDE, I GUESS?

7 A. NO, SIR. IT'S IN FRONT OF ME.

8 Q. FRONT TO BACK?

9 A. RIGHT.

10 Q. WITH A WOODEN HOUSE, OR A CONSTRUCTED HOUSE ON THE
11 ROAD AND A TRAILER BEHIND IT?

12 A. YES, SIR...

13 Q. OKAY, AND THIS TRAILER BEHIND IT IS WHERE THIS
14 INCIDENT TOOK PLACE?

15 A. YES, SIR.

16 Q. NOW, IS THAT WHERE YOU AND MR. GALLMAN LIVE RIGHT
17 NOW?

18 A. YES, SIR.

19 Q. MR. GALLMAN AND MR. WISE, ARE THEY KIN?

20 A. I DON'T KNOW, SIR.

21 Q. WELL, I MEAN --- LET ME ASK YOU THIS. MR. JAMES WISE
22 CAME OVER TO YOUR HOUSE LOOKING FOR --- I'M KIND OF
23 HAVING SOME TROUBLE WITH THESE NAMES, BECAUSE I'VE GOT
24 JAMES AND JAMES AND ALL.

25 A. OKAY, YEAH.

1 Q. THEY GO BY NICKNAMES. DON' T THEY?

2 A. YES, SIR.

3 Q. NOW, JAMES WISE, MY CLIENT, WHAT' S HIS NICKNAME?

4 A. SAP.

5 Q. ALL RIGHT.

6 MR. PEACE: I' M SORRY?

7 MR. GRIFFITH: SAP, S-A-P.

8 BY MR. GRIFFITH

9 Q. AND MR. GALLMAN' S NICKNAME IS?

10 A. SLOP.

11 Q. SLOP.

12 A. RIGHT.

13 MR. PEACE: WHAT NOW?

14 MR. GRIFFITH: SLOP.

15 MR. PEACE: SLOP?

16 MR. GRIFFITH: I THINK THAT' S S-L-O-P.

17 BY MR. GRIFFITH

18 Q. IS THAT THE CORRECT SPELLING?

19 A. YES, SIR.

20 Q. NOW, SAP CAME TO YOUR HOUSE LOOKING FOR SLOP THAT
21 NIGHT?

22 A. RIGHT.

23 Q. HE WANTED HIM TO BE A PALLBEARER OR SOMETHING WHERE?

24 A. IN HIS SISTER' S FUNERAL.

25 Q. SO, SAP' S SISTER HAD JUST PASSED AWAY RECENTLY?

MARY BATES
CROSS EXAMINATION BY MR. GRIFFITH

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- 1 A. YES, SIR.
- 2 Q. WERE YOU FRIENDS WITH HER?
- 3 A. WELL, I KNEW HER BUT WE WASN'T THAT CLOSE.
- 4 Q. ALL RIGHT. NOW, DO YOU THINK IT WOULD BE UNUSUAL IF
- 5 SLOP AND SAP WERE KIN SOMEHOW; THAT THAT MAY BE THE
- 6 REASON HE WOULD BE IN THE FUNERAL?
- 7 A. I DON'T KNOW.
- 8 Q. AS A PALLBEARER?
- 9 A. I HAVE NO IDEA.
- 10 Q. HOW LONG WOULD YOU ESTIMATE THE TIME SAP WAS AT YOUR
- 11 HOUSE FROM THE TIME HE GOT THERE 'TIL THE TIME THE POLICE
- 12 TOOK HIM AWAY?
- 13 A. I DON'T KNOW.
- 14 Q. FIFTEEN MINUTES? AN HOUR?
- 15 A. IT WASN'T NO HOUR. IT WAS ABOUT TEN MINUTES I
- 16 BELIEVE.
- 17 Q. TEN MINUTES?
- 18 A. I BELIEVE. I DON'T BELIEVE IT WAS TEN MINUTES.
- 19 Q. OKAY. NOW, YOU'VE BEEN RECEIVING --- I'M SORRY, I
- 20 DON'T WANT TO DO THAT RIGHT YET. YOU CALLED 911 THE
- 21 FIRST TIME?
- 22 A. YES, SIR.
- 23 Q. WHEN HE WAS ON YOUR PORCH ASKING YOU TO SPEAK TO HIM?
- 24 A. YES, SIR.
- 25 Q. AND THE 911 PEOPLE SENT AN OFFICER OUT THERE TO

1 ASSIST YOU?
2 A. YES, SIR.
3 Q. AND HE ADVISED SAP TO LEAVE?
4 A. YES, SIR.
5 Q. DID HE LEAVE?
6 A. HE LEFT WALKING, AND I TOLD THE OFFICER TO MAKE HIM
7 COME BACK AND GET THE VAN OUT OF MY YARD.
8 Q. OKAY.
9 A. AND HE CAME BACK AND HE GOT THE VAN OUT OF MY YARD.
10 Q. ALL RIGHT, AND SO, HE'S GONE. HOW LONG --- I BELIEVE
11 YOU TESTIFIED THAT SOME PERIOD OF TIME HE WAS BACK ON
12 YOUR PORCH KNOCKING ON YOUR DOOR?
13 A. YES, SIR.
14 Q. HOW LONG WAS HE GONE?
15 A. ABOUT FIVE MINUTES.
16 Q. ALL RIGHT. NOW, HOW LONG WAS IT BEFORE YOU TOLD HIM
17 HE HAD TO LEAVE AGAIN? HOW LONG --- WHAT KIND OF
18 CONVERSATION --- HOW LONG A CONVERSATION DID Y' ALL HAVE
19 THEN?
20 A. WHEN HE CAME BACK --- WHEN HE CAME UP ON MY PORCH AND
21 KNOCKED, AND BECAUSE I WAS IN THE BATHROOM AND I WAS
22 GETTING READY TO GO TO WORK, AND I SAID "WHO IS IT NOW?"
23 JUST LIKE THAT, AND HE SAID "LET ME IN. I WANT TO TALK
24 TO YOU", AND I SAID, "NO." I SAID, "I'M NOT OPENING THE
25 DOOR", AND I WENT TO THE TELEPHONE AND I CALLED MY

1 BOYFRIEND AND I TOLD HIM THAT ---

2 Q. LET ME ASK YOU THIS. WHY DID YOU CALL YOUR BOYFRIEND
3 RIGHT THEN? WHY DIDN' T YOU CALL 911?

4 A. BECAUSE I WANTED TO LET MY BOYFRIEND KNOW THAT SAP
5 WAS UP THERE HARASSING ME.

6 Q. BUT YOU AND YOUR BOYFRIEND HAD FALLEN OUT THE WEEK
7 BEFORE THAT?

8 A. YES.

9 Q. Y' ALL WERE HAVING TROUBLE.

10 A. YES, THAT' S TRUE.

11 Q. WHY CALL HIM IF Y' ALL WERE HAVING TROUBLE? WHY
12 DIDN' T YOU CALL THE POLICE AGAIN?

13 A. BECAUSE I WANTED HIM TO KNOW THAT SAP WAS ON MY PORCH
14 UP THERE HARASSING ME.

15 Q. OKAY. SO ---

16 A. CAUSE HE TOLD ME, HE SAID, "HANG UP AND CALL 911,"
17 AND I DID HANG UP AND CALL 911, BUT HE HAD ALREADY HUNG
18 UP AND CALLED 911 HIMSELF, BECAUSE BY THE TIME I GOT OFF
19 THE TELEPHONE, 911. THE POLICE WAS COMING BACK AND SAP
20 HAD DONE JUMPED ON ME THEN. HE HAD DONE BROKE IN THE
21 HOUSE AND JUMPED ON ME THEN.

22 Q. OKAY. SO, YOU DON' T KNOW WHETHER SLOP CALLED 911 OR
23 NOT?

24 A. NO, I DON' T.

25 Q. BUT YOU CALLED 911?

- 1 A. YES, I DID.
- 2 Q. ALL RIGHT. NOW, THEN SLOP CALLED YOU BACK?
- 3 A. YES, SIR. HE DID.
- 4 Q. WHAT WAS THE NATURE OF Y' ALL' S CONVERSATION WHEN HE
5 CALLED YOU BACK?
- 6 A. HE ASKED ME WAS I ALL RIGHT, AND I COULDN' T TELL HIM
7 NO BECAUSE SAP WAS IN THE HOUSE WITH A PIG OVER ME AND
8 TOLD ME IF I LET ANYBODY KNOW THAT HE WAS IN THERE, AND
9 HAD DONE JUMPED ON ME, HE WAS GOING TO PULL THAT PIG BACK
10 AND HIT ME UP SIDE MY HEAD AND KILL ME.
- 11 Q. WELL, IF HE' S BEATING YOU UP, WHY DID HE LET YOU
12 ANSWER THE PHONE? WHY DIDN' T HE JUST LET IT RING?
- 13 A. THAT' S WHAT I DIDN' T UNDERSTAND EITHER. HE TOLD ME
14 TO ANSWER IT, BUT HE HAD THE PIG DREW BACK, AND HE SAID
15 "IF YOU LET ANYBODY KNOW THAT I' M IN HERE AND DONE JUMPED
16 ON YOU, I' M GOING TO HIT YOU UP SIDE THE HEAD WITH THIS
17 PIG. IT' LL KILL YOU." THEM WAS HIS EXACT WORDS.
- 18 Q. AND SO, THE NEXT THING THAT HAPPENED, THE LAW MAN
19 SHOWED BACK UP?
- 20 A. THAT' S RIGHT. HE WAS IN THERE WHEN HE CAME IN.
- 21 Q. HE CAME RIGHT ON IN THE HOUSE?
- 22 A. HE CAME ON IN THE HOUSE. HE STEPPED ACROSS THE GLASS
23 AND EVERYTHING AND CAME ON IN THE HOUSE.
- 24 Q. HOW MUCH GLASS WAS IN THE HOUSE?
- 25 A. IT WAS --- IT WAS SCATTERED EVERYWHERE. IT WAS ALL

1 OUT ON MY PORCH. IT WAS ALL IN THERE, ON MY CARPET. IT
2 WAS EVERYWHERE. THE WHOLE GLASS SHATTERED OUT THE THING.

3 Q. BUT YOU SAID --- I'M A LITTLE CONFUSED. YOU HAVE A
4 GLASS SCREEN DOOR?

5 A. YES, SIR.

6 Q. AND THEN YOU'VE GOT ANOTHER DOOR?

7 A. YES, SIR..

8 Q. AND HE KICKED THE SECOND DOOR IN?

9 A. YES, SIR, AND IT GOT A LITTLE BIT OF LITTLE GLASS
10 DOWN THE MIDDLE OF THE DOOR, BUT YOU CAN'T SEE THROUGH
11 IT. IT'S KIND OF LIKE COLORFUL.

12 Q. OKAY.

13 A. HE BROKE THAT ONE TOO. THAT LITTLE GLASS SHATTERED
14 WHEN HE KICKED THE DOOR IN.

15 Q. ALL RIGHT, BUT THE GLASS SCREEN DOOR, IF HE BROKE IT
16 BEFORE HE KICKED THE DOOR IN, ALL THAT GLASS WOULD BE ON
17 THE OUTSIDE.

18 A. IT WAS FOUND ON THE OUTSIDE, AND IN THE INSIDE, RIGHT
19 DOWN THE SIDE OF THE DOOR, RIGHT THERE AS YOU WALK UP IN
20 THE DOOR, BECAUSE YOU SEE HOW MY TRAILER IS MADE. YOU
21 CAN SEE IT'S NOT NO NEW TRAILER. IT'S A OLD MODEL
22 TRAILER.

23 Q. RIGHT..

24 MR. GRIFFITH: I BEG THE COURT'S INDULGENCE?

25 Q. MS. BATES, I'M GOING TO SHOW YOU THIS PICTURE.

- 1 A. YES, SIR.
- 2 Q. DID YOU TAKE THAT PICTURE?
- 3 A. NO, SIR. AN OFFICER DID.
- 4 Q. CAN YOU IDENTIFY IT?
- 5 A. YES, SIR.
- 6 Q. WHAT IS THAT?
- 7 A. THAT'S MY FRONT DOOR.
- 8 MR. GRIFFITH: YOUR HONOR, ---
- 9 A. IT WASN'T --- IT WASN'T EXACTLY THE WAY IT IS NOW.
- 10 Q. WHAT DO YOU MEAN?
- 11 A. THAT DEAD BOLT LOCK WAS NOT THERE AT THE TIME.
- 12 Q. OKAY, BUT THE GLASS ---
- 13 A. THAT'S THE ORIGINAL GLASS.
- 14 Q. THE ORIGINAL GLASS?
- 15 A. IN THE DOOR.
- 16 Q. THERE'S A LITTLE HOLE IN THAT GLASS?
- 17 A. RIGHT. I GOT BLACK TAPE ON THE INSIDE OF IT.
- 18 Q. OKAY.
- 19 MR. GRIFFITH: YOUR HONOR, I'D LIKE THIS MARKED AS
- 20 DEFENSE EXHIBIT NUMBER ONE.
- 21 THE COURT: NO OBJECTION.
- 22 BY MR. GRIFFITH
- 23 Q. THIS IN AN ACCURATE DEPICTION OF HOW YOUR DOOR LOOKS
- 24 RIGHT NOW?
- 25 A. YES, SIR.

1 Q. BUT YOU DIDN' T TAKE THIS PICTURE?

2 A. NO, SIR, AN OFFICER DID?

3 Q. DOES YOUR DOOR LOOK LIKE THIS RIGHT NOW?

4 A. YES, SIR.

5 Q. OKAY.

6 MR. GRIFFITH: I' D LIKE TO MOVE THIS INTO EVIDENCE
7 AS DEFENSE EXHIBIT NUMBER ONE.

8 MR. PEACE: NO OBJECTION.

9 (DEFENSE EXHIBIT NUMBER ONE MARKED FOR
10 IDENTIFICATION AND MADE A PART OF THE RECORD.)

11 BY MR. GRIFFITH

12 Q. MS. BATES, THAT HOLE IN THAT DOOR, HOW BIG IS THAT?

13 A. IT' S GLASS --- OKAY, DOWN HERE THIS GLASS IS ALL
14 CRACKED UP HERE. THERE' S GLASS ALL CRACKED, BUT I' VE GOT
15 A PIECE OF BLACK TAPE DOWN THERE KEEPING YOU FROM SEEING
16 THROUGH IT.

17 Q. RIGHT, BUT THE HOLE IN THE DOOR, HOW BIG IS THAT
18 HOLE?

19 A. I' DON' T UNDERSTAND WHAT YOU' RE ASKING ME.

20 Q. THERE' S A HOLE IN THE GLASS. HOW BIG IS IT?

21 A. IT' S NOT SO BIG.

22 Q. OKAY. MS. BATES, PRIOR TO MR. --- TO SAP BEING
23 ARRESTED FOR THIS INCIDENT, HAD YOU AND HIM HAD ANY KIND
24 OF RELATIONSHIP AT ALL?

25 A. YES, SIR. WE HAD --- YOU TALKING ABOUT ---

1 Q. YOU AND HIM. DID Y' ALL HAVE ANY KIND OF
2 RELATIONSHIP?

3 A. NO, SIR, NOT SINCE 1985.

4 Q. NONE?

5 A. NONE WHATSOEVER.

6 Q. I MEAN, YOU AIN'T BUMPED INTO HIM. YOU'RE NOT
7 FRIENDS WITH HIM, OR ANYTHING LIKE THAT?

8 A. NO, SIR.

9 MR. GRIFFITH: YOUR HONOR, I'VE GOT A MATTER OF LAW
10 WHICH WE'VE ADDRESSED TO THE COURT ON A PRIOR OCCASION WE
11 MAY RE-ADDRESS AT THIS TIME.

12 (A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE
13 JURY BUT OUTSIDE THE HEARING OF THE JURY.)

14 MR. GRIFFITH: THANK YOU, MS. BATES, AND I
15 APPRECIATE YOU ANSWERING MY QUESTIONS.

16 MR. PEACE: THERE ARE A FEW FOLLOW-UP QUESTIONS, IF
17 YOU WILL.

18 REDIRECT EXAMINATION

19 BY MR. PEACE

20 Q. MS. BATES, I HAND YOU WHAT'S BEEN MARKED AS STATE'S
21 EXHIBIT FOUR FOR IDENTIFICATION AND ASK YOU IF YOU
22 RECOGNIZE THAT?

23 A. YES, SIR.

24 Q. WHAT IS THAT PHOTOGRAPH?

25 A. THAT'S THE FRONT OF MY HOUSE.

1 Q. OKAY, AND DO YOU KNOW WHEN THAT PHOTOGRAPH WAS TAKEN?

2 A. IT WAS TAKEN IN AUGUST, I BELIEVE.

3 Q. IS THAT THE SAME TYPE DOOR THAT WAS --- HAD THE GLASS
4 THAT WAS BROKEN IN JULY?

5 A. THAT'S MY SCREEN DOOR.

6 Q. OKAY. IS THAT THE SAME SCREEN DOOR?

7 A. YES, SIR, BUT IT'S GOT SCREEN IN IT NOW, WHICH IT HAD
8 GLASS IN IT.

9 Q. I SHOW YOU WHAT'S BEEN MARKED AS DEFENDANT'S EXHIBIT
10 NUMBER ONE. NOW, MR. GRIFFITH ASKED YOU ABOUT THE HOLE
11 IN THAT DOOR. HOW DID MR. WISE GET INTO YOUR HOUSE
12 THROUGH THAT DOOR?

13 A. HE KICKED IT IN.

14 Q. SO, HOW DID THE GLASS GET BROKEN?

15 A. I GUESS WHEN HE KICKED IT, IT SHATTERED.

16 Q. WAS THERE A DEAD BOLT LOCK ON THE DOOR AT THE TIME?

17 A. NO, SIR. I INSTALLED IT AFTER THIS HAPPENED.

18 Q. AND WHY DID YOU INSTALL THAT?

19 A. BECAUSE I WAS AFRAID.

20 Q. I NOW SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT TWO
21 FOR IDENTIFICATION AND ASK YOU IF YOU RECOGNIZE THAT?

22 A. YES.

23 Q. AND WHAT IS THAT?

24 A. THAT'S WHERE I LIVE. THAT'S MY TRAILER.

25 Q. OKAY. IS THAT AN ACCURATE DEPICTION OF YOUR TRAILER?

1 A. YES, SIR.

2 Q. IS THAT HOW YOUR TRAILER APPEARED ON JULY, IN JULY,
3 1997?

4 A. YES, SIR.

5 Q. I NOW SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
6 THREE FOR IDENTIFICATION AND ASK YOU IF YOU RECOGNIZE
7 THAT?

8 A. YES, SIR.

9 Q. AND WHAT IS THAT, MS. BATES?

10 A. THAT'S MY TRAILER.

11 Q. IS THAT HOW --- AN ACCURATE DEPICTION OF YOUR
12 TRAILER?

13 A. YES, SIR.

14 Q. IS THAT HOW YOUR TRAILER LOOKED IN JULY, 1997?

15 A. YES, SIR.

16 Q. AND WHEN WAS THAT PHOTO TAKEN?

17 A. IN AUGUST.

18 MR. PEACE: YOUR HONOR, I WOULD MOVE TO ADMIT
19 STATE'S EXHIBITS TWO, THREE AND FOUR FOR IDENTIFICATION.

20 MR. GRIFFITH: NO OBJECTION.

21 THE COURT: NO OBJECTION.

22 (STATE'S EXHIBITS NUMBER TWO, THREE AND FOUR MARKED
23 FOR IDENTIFICATION AND MADE A PART OF THE RECORD.)

24 MR. PEACE: YOUR HONOR, WITH YOUR PERMISSION, I WANT
25 TO PUBLISH THEM TO THE JURY.

- 1 BY MR. PEACE
- 2 Q. MS. BATES, YOU HAVE AN OUTER DOOR, A SCREEN DOOR?
- 3 A. YES, SIR.
- 4 Q. AND AT THAT TIME THE SCREEN DOOR HAD GLASS IN IT?
- 5 A. YES, SIR.
- 6 Q. AND THE GLASS WAS BROKEN?
- 7 A. YES, SIR.
- 8 Q. AND THAT DOOR WAS OPENED?
- 9 A. YES, SIR.
- 10 Q. AND THEN THE DEFENDANT KICKED IN THE INNER DOOR?
- 11 A. YES, SIR.
- 12 Q. AND THE GLASS ON THE INNER DOOR WAS BROKEN AFTER HE
- 13 KICKED THAT IN?
- 14 A. RIGHT.
- 15 Q. YOU DON'T MIND IF I DON'T REFER TO MR. WISE AND MR.
- 16 GALLMAN AS SAP AND SLOP, DO YOU?
- 17 A. NO, SIR.
- 18 Q. IS IT OKAY IF I JUST CALL THEM BY THEIR NAME SO I CAN
- 19 IDENTIFY THEM?
- 20 A. YES, SIR.
- 21 Q. JULY, 1997, DID YOU GIVE THE DEFENDANT CONSENT TO
- 22 ENTER YOUR HOUSE?
- 23 A. NO, SIR.
- 24 Q. WERE YOU ASSAULTED AFTER HE BROKE INTO YOUR HOUSE?
- 25 A. YES, SIR.

1 Q. DID YOU RECEIVE MEDICAL TREATMENT AS A RESULT OF THAT
2 ASSAULT?

3 A. YES, SIR.

4 Q. DID YOU RECEIVE INJURIES AS A RESULT OF THAT ASSAULT?

5 A. YES, SIR.

6 Q. WAS IT DURING THE NIGHTTIME WHEN HE BROKE IN?

7 A. EARLY MORNING HOURS.

8 Q. AND WHAT TIME WAS IT IN THE MORNING?

9 A. IT WAS ABOUT FOUR O' CLOCK IN THE MORNING.

10 Q. NOW, WHY DID YOU CALL YOUR BOYFRIEND?

11 A. BECAUSE I WANTED TO LET HIM KNOW THAT SAP WAS ON MY
12 PORCH MAKING ALL KIND OF ACCUSATIONS.

13 Q. WERE YOU TRYING TO AVOID HAVING THE POLICE COME BACK
14 A SECOND TIME TO YOUR HOUSE?

15 A. NO, SIR.

16 Q. WHEN IS THE LAST TIME THAT YOU HAD SEEN THE DEFENDANT
17 BEFORE JULY, 1997?

18 A. IN 1985.

19 Q. SO, FROM 1985 TO 1997 --- LET ME REPHRASE THAT. FROM
20 1985 TO 1997, DID YOU HAVE A RELATIONSHIP WITH THE
21 DEFENDANT?

22 A. NO, SIR.

23 Q. I HAVE NO FURTHER QUESTIONS.

24 RECROSS EXAMINATION

25 BY MR. GRIFFITH

- 1 Q. MS. BATES?
- 2 A. YES, SIR.
- 3 Q. DID YOU PAY ANY MONEY OR RECEIVE A BILL FROM NEWBERRY
4 HOSPITAL FOR YOUR TREATMENT THERE?
- 5 A. NO, SIR.
- 6 Q. NO?
- 7 A. I DIDN'T --- WHAT DID YOU SAY? DID I PAY ANY BILLS?
- 8 Q. RIGHT.
- 9 A. YES, SIR. I PAID SOME BILLS.
- 10 Q. NO, IN THE HOSPITAL. DID YOU RECEIVE A BILL FROM THE
11 HOSPITAL?
- 12 A. YES, SIR.
- 13 Q. DID YOU RECEIVE A BILL FROM DR. PINNER?
- 14 A. YES, SIR.
- 15 Q. HOW MUCH WAS YOUR BILL FROM THE HOSPITAL?
- 16 A. IT WAS, I THINK IT WAS A HUNDRED AND SOMETHING FOR
17 THE EMERGENCY ROOM.
- 18 Q. WHAT WAS YOUR BILL WITH DR. PINNER?
- 19 A. I'M NOT SURE BECAUSE MY INSURANCE PAID IT.
- 20 Q. MA'AM, I SHOW YOU THIS DOCUMENT AND ASK YOU CAN YOU
21 IDENTIFY IT?
- 22 A. YES, SIR.
- 23 Q. WHAT IS THAT?
- 24 A. A DOCUMENT FROM PINNER CLINIC.
- 25 Q. NOW, CAN YOU REVIEW THAT DOCUMENT AND MAYBE REFRESH

1 YOUR MEMORY AS TO HOW MUCH YOU PAID DR. PINNER?

2 A. I HAD TO PAY A \$15 CO-FEE, AND THEN AETNA INSURANCE
3 PAID THE REST. I HAD TO PAY A \$15 CO-PAY, BECAUSE MY
4 INSURANCE REQUIRE A \$15 CO-PAY, AND THE INSURANCE PAID
5 THE REST.

6 Q. AND DO YOU HAVE ANY IDEA WHAT THE REST WAS?

7 A. NO, SIR.

8 Q. CAN YOU LOOK AT THAT BILL AND DETERMINE THAT? MA'AM,
9 LOOKING AT THIS BILL WOULD YOU AGREE WITH ME THAT IT
10 APPEARS THAT THE CHARGE FOR THIS WAS \$25?

11 A. I DON'T KNOW.

12 Q. LOOKING HERE FOR A TREATMENT DATE OF 7/15/97, THE
13 CHARGE WAS \$25.

14 A. OKAY.

15 Q. WOULD YOU DISAGREE WITH THAT?

16 A. I HAVE NO IDEA.

17 Q. SO, IT APPEARS DR. ---

18 A. THEY TOLD ME TO PAY MY \$15 CO-PAY, AND THE INSURANCE
19 PAID THE REST. THAT'S WHAT WE ALWAYS HAVE DID WITH OUR
20 MEDICAL INSURANCE.

21 Q. RIGHT. SO, IT APPEARS THAT YOUR TOTAL CHARGE,
22 INSURANCE AND YOUR PART WAS \$25. IS THAT FAIR?

23 A. YES.

24 Q. NOW, THIS DOOR TO YOUR HOUSE, THE BACK DOOR THAT YOU
25 SAY HE KICKED IN, IS IT METAL OR IS IT WOOD?

1 A. IT'S NOT METAL. IT'S THAT LITTLE THIN STUFF. IT'S
2 NOT THE BACK OF MY HOUSE. IT'S THE FRONT.

3 Q. THE FRONT DOOR, THE DOOR YOU SAY HE CAME THROUGH,
4 WHAT'S IT MADE OF?

5 A. IT'S MADE OF A LITTLE, IT'S THIN. IT'S NOT THICK.

6 Q. OKAY. WELL, IF HE KICKED IT IN LIKE YOU SAID HE DID,
7 WHY DIDN'T HE PUT A DENT IN IT OR KNOCK A HOLE IN IT?

8 A. I HAVE NO IDEA, BUT HE KICKED IT IN.

9 Q. THANK YOU, MS. BATES.

10 MR. PEACE: JUST ONE FOLLOW-UP QUESTION, YOUR HONOR.

11 REDIRECT EXAMINATION

12 BY MR. PEACE

13 Q. I SHOW YOU DEFENSE EXHIBIT NUMBER ONE AND ASK YOU, IS
14 THERE A HOLE IN THAT DOOR?

15 A. NO, SIR.

16 Q. IN THE GLASS?

17 A. YES, SIR. IT'S A HOLE IN THE GLASS.

18 Q. A HOLE IN THE GLASS?

19 A. YES, SIR.

20 Q. WAS THAT HOLE PLACED THERE AS A RESULT OF THE
21 DEFENDANT KICKING THE DOOR IN?

22 A. YES, SIR.

23 Q. NO FURTHER QUESTIONS.

24 RE CROSS EXAMINATION

25 BY MR. GRIFFITH

1 Q. MA'AM, YOU JUST SAID YOU DIDN' T KNOW. THAT' S THE
2 SAME QUESTION THAT I JUST ASKED YOU. WHY DID YOU CHANGE
3 YOUR ANSWER?

4 A. NO, IT' S A HOLE ---

5 MR. PEACE: OBJECTION, YOUR HONOR, HE' S ARGUING WITH
6 THE WITNESS.

7 THE COURT: NO, DON' T ARGUE. JUST ASK HER A
8 QUESTION.

9 A. IT' S A HOLE IN THE GLASS IN THE DOOR COME FROM WHERE
10 HE KICKED THE DOOR IN. THAT HOLE GOT THERE WHEN HE CAME
11 IN. WHEN HE ENTERED MY HOUSE THAT MORNING THAT' S THE WAY
12 THAT HOLE CAME IN THE FRONT, IN THAT DOOR, IN THAT GLASS
13 IN THAT DOOR, WHEN HE CAME IN MY HOUSE THAT MORNING.
14 THAT' S HOW THAT HOLE GOT IN THAT GLASS.

15 Q. WELL, YOU SAY, YOU' RE TELLING THE JURY NOW THAT HE
16 KICKED IT WITH HIS FOOT?

17 A. HE KICKED THE DOOR OPEN, AND THAT GLASS BROKE WHEN HE
18 CAME IN MY HOUSE. WHEN HE KICKED THAT DOOR OPEN THAT' S
19 WHEN THAT GLASS BROKE. THAT' S HOW THAT HOLE GOT IN THAT
20 LITTLE GLASS IN THAT DOOR, WHEN HE ENTERED MY HOUSE,
21 CAUSE IT WASN' T NO HOLE IN IT UNTIL HE ENTERED MY HOUSE.

22 Q. YOU JUST --- I ASKED YOU THE SAME QUESTION A MOMENT
23 AGO ABOUT THE DOOR BEING DENTED, AND YOU SAID IT WAS A
24 SMALL, LIGHT DOOR.

25 A. YES, SIR. YOU ASKED ME WAS THE HOLE IN THE DOOR.

1 Q. WHY DIDN'T --- IF HE'S KICKING THE DOOR WITH HIS
2 FOOT, WHY ISN'T THERE A GREAT BIG HOLE IN THAT DOOR?

3 A. THAT'S THE ONLY THING BROKE WAS THE GLASS. THE LOCK
4 ON THE DOOR IS NOT HARD. THAT'S WHY I PUT THE DEAD BOLT
5 LOCK ON IT. IT'S NOT HARD. THE LOCK ON MY DOOR IS NOT
6 HARD, CAUSE I AIN'T NEVER THOUGHT NOBODY WOULD BREAK IN
7 ON ME BY ME STAYING IN THAT LITTLE COMMUNITY. I DIDN'T
8 NEVER THOUGHT NOBODY WOULD BREAK IN MY HOME.

9 Q. OKAY. THANK YOU, MA' AM.

10 MR. PEACE: NO FURTHER QUESTIONS BY THE STATE, YOUR
11 HONOR.

12 THE COURT: YOU MAY STEP DOWN. YOU CAN STAY IN
13 HERE.

14 MR. PEACE: YOUR HONOR, THE STATE WOULD NEXT CALL
15 MR. JAMES GALLMAN.

16 THEREUPON:

17 JAMES GALLMAN, BEING FIRST DULY
18 SWORN TO TELL THE HOLE TRUTH, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. PEACE

21 Q. MR. GALLMAN, WHERE DO YOU LIVE?

22 A. [REDACTED]

23 Q. WHERE DO YOU WORK?

24 A. MILLS TRUCKING.

25 Q. I'M SORRY?

- 1 A. MILLS TRUCKING.
- 2 Q. MR. GALLMAN, DO YOU KNOW MARY BATES?
- 3 A. YES, I DO.
- 4 Q. HOW DO YOU KNOW MARY BATES?
- 5 A. SHE'S MY GIRLFRIEND.
- 6 Q. HOW LONG HAS SHE BEEN YOUR GIRLFRIEND?
- 7 A. FOR YEARS.
- 8 Q. FOR YEARS?
- 9 A. YEAH.
- 10 Q. CAN YOU ESTIMATE HOW MANY YEARS?
- 11 A. I DON'T KNOW.
- 12 Q. TWO, THREE, FOUR?
- 13 A. MORE THAN THAT.
- 14 Q. DO YOU RESIDE WITH MARY BATES?
- 15 A. YEAH.
- 16 Q. DID YOU KNOW MARY BATES ON JULY 15, 1997?
- 17 A. YES, I DID.
- 18 Q. DID YOU HAVE AN OPPORTUNITY TO TALK WITH MARY BATES
- 19 IN THE EARLY MORNING HOURS OF JULY 15, 1997?
- 20 A. YEAH.
- 21 Q. AND WHAT HAPPENED THEN?
- 22 A. SHE CALLED ME ON THE PHONE AND TOLD ME, SAID "SAP ---
- 23 MR. GRIFFITH: YOUR HONOR, I DON'T --- SHE HAS
- 24 TESTIFIED TO WHAT SHE TALKED ABOUT. I DON'T THINK HE CAN
- 25 TESTIFY ---

1 THE COURT: DON'T SAY --- AS A RESULT OF WHAT SHE
2 SAID YOU CAN TELL WHAT YOU DID.

3 BY MR. PEACE

4 Q. WHAT DID YOU DO AS A RESULT OF THIS CONVERSATION?

5 A. WHAT DID I DO?

6 MR. PEACE: YOUR HONOR, MAY WE APPROACH?

7 THE COURT: YES, SIR.

8 (A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE
9 JURY BUT OUTSIDE THE HEARING OF THE JURY.)

10 THE COURT: I OVERRULE THE OBJECTION. UNDER THE RES
11 GESTAE I'LL LET IT COME IN.

12 BY MR. PEACE

13 Q. OKAY. MR. GALLMAN, YOU RECEIVED A TELEPHONE CALL
14 FROM MARY BATES?

15 A. YES, I DID.

16 Q. AND WHAT WERE YOU TOLD DURING THIS TELEPHONE CALL?

17 A. SHE TOLD ME THAT SAP WAS TRYING TO BREAK INTO HER
18 HOUSE.

19 Q. WHO IS SAP?

20 A. JAMES WISE.

21 Q. AND YOU KNOW JAMES WISE?

22 A. YES, I DO.

23 Q. IF YOU SEE HIM IN THE COURTROOM, WOULD YOU PLEASE
24 POINT HIM OUT.

25 A. HE'S SITTING RIGHT THERE.

JAMES GALLMAN
CROSS EXAMINATION BY MR. GRIFFITH

66

1 A. RIGHT.

2 Q. AND YOU SAY YOU CALLED 911?

3 A. YEAH.

4 Q. OTHER THAN THAT YOU HAVE NO IDEA WHAT HAPPENED THAT
5 NIGHT?

6 A. WELL, ALL BECAUSE SHE TOLD ME, AND WHAT I HEARD.

7 Q. YOU'RE NOT A COUSIN TO SAP?

8 A. NOT THAT I KNOW OF.

9 Q. HAD YOU AND MS. BATES BEEN HAVING TROUBLE EARLIER
10 THAT DAY?

11 A. EXCUSE ME?

12 Q. HAD YOU AND MS. BATES BEEN HAVING ANY TROUBLE BETWEEN
13 Y' ALL?

14 A. YEAH, WE HAD AN ARGUMENT.

15 Q. DID Y' ALL FUSS?

16 A. DID WE FUSS?

17 Q. YES.

18 A. YEAH.

19 Q. DID Y' ALL TRADE ANY BLOWS OR ANYTHING LIKE THAT?

20 A. NO.

21 Q. YOU STILL LIVE WITH MS. BATES?

22 A. YES, I DO.

23 Q. WHEN YOU WERE TALKING TO THE 911 OPERATOR, HOW DID
24 YOU IDENTIFY TO THEM WHERE TO GO?

25 A. HOW DID IDENTIFY IT?

1 Q. YES. YOU WEREN' T OUT THERE. SO, THEY COULDN' T LOOK
2 AT YOUR TELEPHONE NUMBER CALLING IN.

3 A. [REDACTED].

4 Q. YOU GAVE THEM THE ADDRESS?

5 A. THAT' S RIGHT.

6 Q. OKAY. THANK YOU MUCH.

7 MR. PEACE: JUST A COUPLE OF QUESTIONS, YOUR HONOR.

8 REDIRECT EXAMINATION

9 BY MR. PEACE

10 Q. IS THIS FUSS YOU HAD WITH MARY BATES THE REASON YOU
11 WERE STAYING IN PROSPERITY?

12 A. YEAH.

13 Q. AND WHAT DID YOU HEAR WHEN MARY BATES CALLED?

14 A. I HEARD SOMEONE ON THE OUTSIDE YELLING SOMETHING. I
15 COULDN' T MAKE OUT WHAT HE WAS SAYING.

16 Q. AND WHAT HAPPENED AFTER YOU HEARD THE YELLING?

17 A. I REMEMBER I HEARD THE GLASS SHATTER.

18 Q. AND WHAT DID YOU HEAR AFTER THE GLASS SHATTERED?

19 A. I HEARD HER SCREAM.

20 Q. DID SHE TELL YOU WHO WAS THERE?

21 A. YEAH.

22 Q. AND WHO DID SHE SAY WAS THERE?

23 A. SAP.

24 Q. AND SAP IS --- IS SAP JAMES WISE, THE DEFENDANT?

25 A. YEAH.

1 Q. NO FURTHER QUESTIONS, YOUR HONOR.

2 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

3 MR. PEACE: YOUR HONOR, THE STATE WOULD NEXT CALL
4 WILLIAM GRIFFIN.

5 THE COURT: WILLIAM GRIFFIN.

6 THEREUPON:

7 WILLIAM GRIFFIN, BEING FIRST
8 DULY SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. PEACE:

11 Q. MR. GRIFFIN, WHERE ARE YOU EMPLOYED?

12 A. WHITMIRE POLICE DEPARTMENT.

13 Q. AND WHAT IS YOUR POSITION AT THE WHITMIRE POLICE
14 DEPARTMENT?

15 A. I'M A MAJOR WITH THE POLICE DEPARTMENT.

16 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

17 A. SINCE FEBRUARY.

18 Q. OF 1998?

19 A. THIS YEAR.

20 Q. WHERE WERE YOU EMPLOYED ON JULY 15, 1997?

21 A. NEWBERRY COUNTY SHERIFF'S OFFICE.

22 Q. AND WHAT WAS YOUR POSITION AT THE NEWBERRY COUNTY
23 SHERIFF'S OFFICE?

24 A. I WAS A LIEUTENANT OVER THE NIGHT SHIFT.

25 Q. LIEUTENANT, OR MAJOR GRIFFIN, HOW LONG HAVE YOU BEEN

1 IN LAW ENFORCEMENT?

2 A. TEN YEARS.

3 Q. WHERE HAS THAT TEN YEARS IN LAW ENFORCEMENT BEEN
4 SPENT?

5 A. IN THE NEWBERRY COUNTY SHERIFF'S OFFICE, AND I WENT
6 TO AIKEN COUNTY SHERIFF'S OFFICE AND CAME BACK TO
7 NEWBERRY, AND NOW I'M WITH THE WHITMIRE POLICE
8 DEPARTMENT.

9 Q. MAJOR GRIFFIN, ON JULY 15, 1997, DID YOU HAVE
10 OCCASION TO RESPOND TO AN INCIDENT AT 1182 BOYD CROSSING?

11 A. YES, SIR. I DID.

12 Q. OKAY, WOULD YOU PLEASE TELL THE JURY WHAT HAPPENED IN
13 RELATION TO THAT RESPONSE?

14 A. WE HAD A 911 HANG-UP CALL. WE RESPONDED TO BOYD
15 CROSSING. UPON ARRIVAL MR. WISE WAS AT THE RESIDENCE OF
16 MS. BAXTER(SIC), AT WHICH TIME HE WAS ASKED TO LEAVE, AND
17 HE WAS IN A VAN. I WENT IN AND I ASKED HER I SAID, "YOU
18 DON'T WANT HIM HERE?" AND SHE SAID, "NO." SHE SAID, "I
19 DON'T WANT HIM IN MY HOUSE." SO, HE AGREED TO LEAVE, AT
20 WHICH TIME HE SAID, "I'M LEAVING" AND HE, I DON'T
21 REMEMBER NOW IF IT WAS HER MOTHER OR SOMEONE'S MOTHER,
22 BUT IT'S A HOUSE IN FRONT OF HER HOUSE THAT HE WAS GOING
23 TO. I ASKED HER IF THAT WOULD BE ALL RIGHT AND SHE SAID
24 AS LONG AS HE LEFT THAT WAS FINE.

25 Q. OKAY. NOW, YOU SAY MR. WISE, IS MR. WISE IN COURT

1 TODAY?

2 A. YES, SIR. RIGHT HERE.

3 Q. WOULD YOU POINT TO HIM?

4 MR. PEACE: LET THE RECORD REFLECT THAT THE WITNESS
5 HAS PROPERLY IDENTIFIED THE DEFENDANT.

6 Q. OKAY. NOW, YOU RESPONDED TO THE HOUSE OF MARY BATES?

7 A. YES, SIR.

8 Q. OKAY, AND WHERE IS THIS LOCATED?

9 A. [REDACTED]

10 Q. IS THAT IN NEWBERRY COUNTY?

11 A. YES, SIR. IT IS.

12 Q. PLEASE CONTINUE.

13 A. I ASKED HER IF HE WENT --- BEING THIS HOUSE WAS ONLY
14 A SHORT DISTANCE FROM HER RESIDENCE, IF HE WENT THERE AND
15 SHE SAID AS LONG AS HE LEFT HER HOUSE THAT WAS FINE. SO,
16 HE LEFT, AND I GOT THE INFORMATION. I CLEARED UP FROM
17 THE CALL, AND AFTER I HAD CLEARED UP FROM THE CALL, AND
18 THIS WAS IN THE EARLY MORNING HOURS WHEN WE GOT THE CALL
19 ANYWAY, AND AFTER I CLEARED UP IT WASN'T BUT A FEW
20 MINUTES THAT I RECEIVED A SECOND CALL. IT MIGHT HAVE
21 BEEN --- IT MIGHT HAVE BEEN TWENTY OR THIRTY MINUTES.
22 I'M NOT SURE, BUT WE RECEIVED THE SECOND CALL. I HAD
23 ALREADY STAYED CLOSE BECAUSE I TOLD THE GUYS, I SAID,
24 "IT'S CLOSE TO SHIFT CHANGE. EVERYBODY GET YOUR PROPERTY
25 CHECKED. I'M JUST GOING TO BE ON HIGHWAY 76."

1 Q. DO YOU HAVE AN ESTIMATE OF WHAT TIME THIS MIGHT HAVE
2 BEEN?

3 A. IT WAS A SHORT PERIOD, BUT SIR, I DON' T --- I DON' T
4 KNOW.

5 Q. WAS IT DARK OUTSIDE?

6 A. WELL, SEE IT WAS IN THE MORNING HOURS WHEN THE FIRST
7 CALL CAME IN, SOMETHING LIKE 4:30, QUARTER 'TIL 5:00 IN
8 THE MORNING, WHICH WAS DARK.

9 Q. OKAY. PLEASE CONTINUE.

10 A. AND SO, I STAYED CLOSE BECAUSE OUR SHIFT WAS GOING TO
11 BE OVER AT 6:00 A.M. IN THE MORNING, AND I SAID, "I' M
12 GOING TO STAY CLOSE ON 76 IN CASE WE GET A RETURN CALL
13 THEN I' LL STILL BE HERE." AT WHICH TIME WE DID GET A
14 SECOND CALL, DISPATCH CALLED AND SAID, "HE' S BREAKING IN
15 THE HOUSE. HE' S TRYING TO BREAK IN THE HOUSE." SO, I
16 RESPONDED, I TOLD HIM, I SAID, "I' M CLOSE. I' M GOING TO
17 THE CALL. I' M GOING CODE THREE." BECAUSE IT WAS A HIGH
18 PRIORITY CALL, BECAUSE THEY SAID HE WAS TRYING TO BREAK
19 IN THE HOUSE.

20 Q. NOW, WHAT IS CODE THREE, MAJOR GRIFFIN?

21 A. BLUE LIGHTS AND SIRENS, BECAUSE SOMEONE' S LIFE COULD
22 BE IN JEOPARDY OR IN DANGER.

23 Q. PLEASE CONTINUE.

24 A. I RESPONDED CODE, AND RIGHT BEFORE I GOT TO THE
25 HOUSE, I RECEIVED ANOTHER CALL FROM DISPATCH AND IT SAID

1 "HE HAS BROKE IN, AND WE GOT ANOTHER CALL THAT SAYS THEY
2 HEAR GLASS BREAKING." AND MY DISPATCHER SAYS, "I THINK
3 HE BROKE IN." I PULLED UP IN THE YARD AND MR. WISE WAS
4 IN THIS LADY'S HOUSE. THE FRONT DOOR --- THERE WAS GLASS
5 WHERE IT HAD BEEN SHATTERED. HE HAD AN OBJECT --- HE HAD
6 HIS BACK TO ME WHEN I WENT IN THE HOUSE. HE HAD AN
7 OBJECT IN HIS HAND AND HE WAS RARING BACK LIKE HE WAS
8 GOING TO HIT HER, AT WHICH TIME I GOT HIM. I DON'T
9 REMEMBER WHAT THE OBJECT WAS, BUT I GOT HIM.

10 I GOT HIM IN CUFFS. WHEN I GOT HIM IN CUFFS THE
11 OTHER UNIT HAD GOT TO ME WHICH WAS CLAY BABB. HE HAD GOT
12 TO ME, AND I TOLD HER, I SAID, "YOU JUST STAY WHERE
13 YOU'RE AT. LET ME GET HIM OUT OF HERE. GET HIM AWAY
14 FROM HERE."

15 WELL, AS I WAS BRINGING MR. WISE OUT, HE WAS
16 ARGUING. HE REALLY DIDN'T WANT TO GO. HE NEEDED TO TALK
17 TO HER AND HE WAS KIND OF PULLING WITH ME AND WHEN I GOT
18 HIM THERE, I TOLD CLAY, I SAID, "NOW, BE CAREFUL WITH
19 HIM." I SAID, "BECAUSE I'VE DONE GOT BLOOD ON ME. HE'S
20 GOT CUTS ON HIM WHERE HE BUSTED THE WINDOW OUT."

21 I GOT HIM INTO THE POLICE VEHICLE AND GOT HIM
22 STRAPPED IN AND I TOLD CLAY, I SAID, "GET HIM OUT OF HERE
23 AND GET HIM OUT OF HERE NOW." AT WHICH TIME DEPUTY BABB
24 LEFT WITH HIM, AND I WENT IN TO TALK TO HER TO SEE IF SHE
25 NEEDED AN AMBULANCE BECAUSE SHE HAD KNOTS ON HER FOREHEAD.

1 AND SHE HAD BLOOD ON HER NECK, AND THAT'S WHEN, AFTER I
2 TALKED WITH HER A LITTLE BIT, TRYING TO DECIDE IF SHE
3 NEEDED AN AMBULANCE OR WHATEVER, ASSESSED THE SITUATION.
4 DEPUTY BABB CALLED THAT HE WAS ON THE 34 BY-PASS AT NANCE
5 AND MR. WISE HAD ESCAPED OUT OF HIS POLICE VEHICLE.

6 Q. DID YOU CALL AN AMBULANCE FOR MARY BATES?

7 A. NO, SIR. I DIDN'T BECAUSE I ASKED HER IF SHE'D BE
8 ALL RIGHT AND I TOLD HER I SAID "LOOK, YOU'VE GOT PEOPLE
9 COMING TO YOU", BECAUSE SHE HAD CALLED SOMEONE THAT WAS
10 GOING TO COME AND BE WITH HER, AND I SAID "YOU'VE CALLED
11 PEOPLE. DO YOU NEED ME TO GET YOU AN AMBULANCE? DO YOU
12 NEED ME TO STAY HERE? IF YOU DO, I WILL." I SAID "BUT,
13 HE'S ALREADY JUMPED OUT OF THE CAR." I SAID, "I'VE GOT
14 TO GET OUT THERE UNLESS YOU NEED ME." SHE DIDN'T NEED
15 ME. SO, THAT'S WHEN I CLEARED.

16 Q. SO, YOU DID SEE BRUISES ---

17 A. I SAW SEVERAL LUMPS ON HER FOREHEAD AND SAW BLOOD ON
18 THE NECK.

19 Q. MAJOR GRIFFIN, I SHOW YOU WHAT'S BEEN MARKED STATE'S
20 EXHIBIT FOUR AND ASK YOU IF YOU RECOGNIZE THAT?

21 A. ALL I CAN TELL YOU IS WHAT IT LOOKS LIKE. IT KIND OF
22 APPEARS TO BE HER TRAILER, BUT I'M NOT SURE.

23 Q. ALL RIGHT. I SHOW YOU STATE'S EXHIBIT TWO ---

24 A. YES, SIR.

25 Q. --- AND ASK YOU IF YOU RECOGNIZE THAT? WHAT IS THAT?

1 A. THAT'S THE RESIDENCE I WENT TO ON THE TWO CALLS.

2 Q. WOULD THAT BE THE RESIDENCE OF MARY BATES?

3 A. YES, IT WOULD.

4 Q. OKAY. IS THAT THE RESIDENCE IN WHICH YOU FOUND THE
5 DEFENDANT, JAMES WISE?

6 A. YES, SIR, AND PLACED HIM UNDER ARREST.

7 Q. WAS HE INSIDE THE HOUSE?

8 A. YES, SIR. HE WAS.

9 Q. DID MARY BATES GIVE YOU ANY INDICATION THAT SHE HAD
10 CONSENTED TO HIS ENTERING INTO HER HOUSE?

11 A. NO, SIR. SHE HAD NOT CONSENTED.

12 Q. IS THAT THE DOOR IN WHICH THE GLASS WAS BROKEN? DO
13 YOU RECALL?

14 A. YES, SIR. THE DOOR WAS, IT WAS BROKEN OUT AND THERE
15 WAS --- THE BEST I CAN RECALL, I KNOW THERE WAS GLASS
16 INSIDE, BUT THERE WAS GLASS ON THE PORCH ALSO.

17 Q. THANK YOU. THANK YOU, MAJOR GRIFFIN. PLEASE ANSWER
18 ANY QUESTIONS THAT MR. GRIFFITH MAY HAVE.

19 A. YES, SIR.

20 CROSS EXAMINATION

21 BY MR. GRIFFITH

22 Q. GOOD MORNING, MAJOR GRIFFIN, ALMOST GOOD AFTERNOON
23 NOW. WHEN YOU FIRST ARRIVED AT THIS HOUSE AND YOU SPOKE
24 WITH MS. BATES, WAS SHE INSIDE OR OUTSIDE?

25 A. ON THE FIRST CALL, SHE WAS ON THE INSIDE.

- 1 Q. AND YOU SPOKE WITH HER FOR SEVERAL MINUTES. DID YOU
2 GO INSIDE?
- 3 A. YES, SIR.
- 4 Q. OKAY. NOW, WHEN YOU ADVISED MR. WISE TO LEAVE, HOW
5 DID HE LEAVE?
- 6 A. HE HAD A VAN, BUT TO BE HONEST WITH YOU, I DON' T KNOW
7 IF THE VAN WAS ALREADY AT THAT --- AT WHICH HOUSE IT WAS
8 AT. THE BEST I CAN REMEMBER I' D SAY HE GOT IN THE VAN
9 AND PULLED TO THE FRONT HOUSE.
- 10 Q. OKAY. NOW, WHAT TIME, IF YOU KNOW, DID YOU GET THERE
11 ON THAT FIRST CALL?
- 12 A. I DON' T REMEMBER THE EXACT TIME, BUT LIKE I SAY I
13 KNOW THAT THE FIRST CALL CAME IN CLOSE TO 5:00 A.M.
- 14 Q. OKAY. WOULD YOU HAVE NOTED IT ON SOME SORT OF
15 REPORT?
- 16 A. ON THE FIRST CALL?
- 17 Q. YES.
- 18 A. IT SHOULD BE ON THE ONE YOU' VE GOT IN YOUR HAND.
- 19 Q. OKAY.
- 20 A. IT SHOULD BE 4:56, WHEN I GOT THERE THE FIRST TIME.
- 21 Q. I' LL SHOW YOU WHAT I' VE BEEN PROVIDED BY MR. PEACE
22 AND ASK YOU IF YOU CAN IDENTIFY IT?
- 23 A. YES, SIR. IT' S MY WRITING AND MY REPORT.
- 24 Q. OKAY.
- 25 A. THIS IS WHEN I WAS DISPATCHED. THAT' S WHEN I GOT

1 THERE THE FIRST TIME.

2 Q. RIGHT.

3 A. YOU SEE I WAS CLOSE THE FIRST TIME ALSO. THEY DIDN'T
4 PUNCH ME A SECOND CARD ON THE SECOND CALL BECAUSE IT CAME
5 IN SO CLOSE.

6 Q. HOW CLOSE DO THEY HAVE TO BE IN TO NOT GET A SECOND
7 CARD IF YOU CALL IN. IS THIS A CARD?

8 A. THAT --- WHEN THEY PUNCH A CARD, SIR, IT COMES UP
9 WITH THE DATE, LOCATION AND TIME.

10 Q. OKAY.

11 A. AND WE CALL THEM AND GET OUR DISPATCH TIME, ARRIVAL
12 TIME, AND DEPARTURE IS WHEN WE LEAVE THE CALL.

13 Q. OKAY.

14 A. AND TO THE BEST OF MY --- THE BEST I REMEMBER WHEN
15 THEY PUNCHED THE FIRST ONE, IT SAYS IT WENT THROUGH A 911
16 HANG-UP CALL THE FIRST TIME.

17 Q. RIGHT.

18 A. THIS IS THE FIRST TIME, AT 4:51.

19 Q. OKAY.

20 A. AND I ARRIVED AT 4:56.

21 Q. SO, YOU WEREN'T TOO FAR AWAY.

22 A. NO, SIR.

23 Q. OKAY.

24 A. THEN I LEFT AND ONCE I CLEARED UP, THEY DIDN'T --- I
25 DIDN'T GET A SECOND TIME UNTIL WE HAD FINISHED THE CALL

1 AT 6:41. THAT WAS WITH EVERYTHING.

2 Q. RIGHT, RIGHT. I WAS UNSURE AS TO WHETHER YOU
3 TESTIFIED EARLIER --- DID YOU SAY IT WAS TEN MINUTES,
4 TWENTY MINUTES, BETWEEN THE FIRST CALL AND THE SECOND
5 CALL?

6 A. IT WASN'T LONG. I'LL TELL YOU WHERE I WENT TO, SIR.
7 I WENT FROM 1182 BOYD CROSSING TOWARDS HIGHWAY 76. MR.
8 MICK HALTIWANGER'S SAWMILL ON HIGHWAY 76, THAT'S WHERE I
9 WAS AT WHEN I GOT THE SECOND CALL.

10 Q. NOW, IS THAT SAWMILL YOU'RE DESCRIBING, IS THAT THE
11 SAWMILL THAT THE --- ANY JURORS WHO MIGHT NOT BE FAMILIAR
12 WITH BOYD CROSSING, IS THAT BETWEEN NEWBERRY AND
13 PROSPERITY ON THE RIGHT?

14 A. THAT'S THE ONE THAT JOINS BOYD CROSSING.

15 Q. OKAY.

16 A. IT'S ON BOYD CROSSING ITSELF, RIGHT OFF OF HIGHWAY
17 76. IT'S ON BOYD CROSSING.

18 Q. ALL RIGHT, BUT YOU WENT TO THE 76 SIDE OF IT. IS
19 THAT WHAT YOU'RE SAYING?

20 A. YES, SIR.

21 Q. SO, YOU WERE MORE OR LESS ON HIGHWAY 76?

22 A. I HAD JUST GOT TO HIGHWAY 76. I WAS APPROXIMATELY
23 FOUR AND A HALF MILES FROM THE CALL WHEN I GOT IT THE
24 SECOND TIME.

25 Q. ON THIS REPORT THAT YOU WROTE YOUR NARRATIVE ON, CAN

1 YOU TELL ME WHY YOU DIDN' T NOTE THE, --- A DESCRIPTION OF
2 HIM, YOU' RE TALKING ABOUT BLOOD ON HIS, ON HIS HAND, I
3 BELIEVE ---

4 A. YES, SIR. I SURE CAN, BECAUSE THE CALL CAME IN AT
5 4:51 A.M. WE RESPONDED THE FIRST TIME. WE LEFT AND HAD
6 TO GO BACK THE SECOND TIME. WE PICKED HIM UP, PLACED HIM
7 UNDER ARREST FOR BREAKING IN THE RESIDENCE, ASSAULT AND
8 BATTERY ON THE YOUNG LADY, THE MALICIOUS INJURY. I TOLD
9 MY DEPUTY TO GET HIM OUT OF THERE AND GET HIM TO THE JAIL
10 AND GET HIS PAPERWORK OVER WITH.

11 Q. NOW, YOU HAD HIM PLACED IN HANDCUFFS WHEN YOU HANDED
12 HIM OVER TO MR. BABB?

13 A. YES, SIR. I PLACED HIM IN MY HANDCUFFS.

14 Q. OKAY. NOW, WHO PUT HIM IN THE BACK OF MR. BABB'S
15 CAR?

16 A. HE DIDN' T GO IN THE BACK. HE WENT IN THE FRONT SEAT.
17 MYSELF AND OFFICER BABB PLACED HIM IN THE FRONT SEAT AND
18 PUT HIM IN CUFFS.

19 Q. WHY DID Y' ALL PUT HIM IN THE FRONT SEAT?

20 A. BECAUSE IF WE DON' T HAVE A CAGE, YOU WANT HIM IN THE
21 FRONT SEAT IN A SEAT BELT INSTEAD OF BEHIND YOU, BECAUSE
22 YOU HAVE MORE CONTROL.

23 Q. OKAY. ALL RIGHT. I' M JUST ASKING.

24 A. YES, SIR. I UNDERSTAND, BUT YOU WERE ASKING ABOUT
25 THIS NARRATIVE. THE REASON IT IS SUCH A SKIMP NARRATIVE,

1 OUR SHIFT ENDS, WHEN I WAS WITH THE COUNTY, AT 6:00 A.M.
2 IN THE MORNING. THIS IS GETTING CLOSE TO SHIFT CHANGE.
3 WE'VE ALREADY BEEN ON --- AND MY SHIFT ALWAYS CAME OUT AT
4 LEAST AN HOUR BEFORE SHIFT CHANGE. WE'VE ALREADY BEEN ON
5 THIRTEEN OR FOURTEEN HOURS. IF YOU DON'T HAVE YOUR
6 PAPERWORK BEFORE YOU GO HOME, THEY CALL YOU RIGHT BACK
7 OUT. SO, I WROTE THIS NARRATIVE. I HAD ALREADY BEEN ON
8 APPROXIMATELY SIXTEEN TO SEVENTEEN HOURS. I WROTE THIS
9 NARRATIVE AND TOLD THEM IF THEY NEEDED ANYTHING FURTHER
10 TO LET ME KNOW AND I'D DO A SUPPLEMENT.

11 Q. MAJOR GRIFFIN, TELL ME ABOUT --- I BELIEVE YOU
12 TESTIFIED THAT YOU CAME IN THE HOUSE AFTER THE INCIDENT
13 TO WASH YOUR HANDS OR WHAT NOT. WHERE DID THE BLOOD ON
14 YOUR HANDS COME FROM?

15 A. OFF OF HIM.

16 Q. OKAY.

17 A. BECAUSE WHEN I GOT HIM AND GOT HIM CUFFED, HE KIND
18 OF, NOT EXACTLY, HE WASN'T EXACTLY RESISTING BUT THERE
19 WAS A SMALL SCUFFLE, AND WHEN I WAS GETTING HIM OUT OF
20 THE HOUSE, OFFICER BABB ARRIVED ABOUT THE TIME I GOT HIM
21 AND GOT HIM CUFFED AND GOT HIM OUTSIDE AND I TOLD OFFICER
22 BABB, I SAID, "WATCH HIM CAUSE I GOT BLOOD ON ME." AND
23 I GOT HIM IN THERE AND I GOT HIM CUFFED AND I TOLD CLAY,
24 I SAID, "GET HIM OUT OF HERE AND GET HIM OUT OF HERE
25 NOW."

1 Q. SO, THAT BLOOD WAS COMING FROM HIS HAND?

2 A. AS FAR AS I REMEMBER, YES, SIR. CAME OFF OF HIM,
3 BECAUSE HE'S THE ONLY ONE I TOUCHED.

4 Q. OKAY.

5 A. AND I HAD HIM CUFFED, RESTRAINED, AND THEN I LOOKED
6 AT THE LADY AND I SAID "HAVE YOU GOT SOMEWHERE I CAN
7 WASH, BECAUSE I NEED TO GET THIS OFF."

8 Q. OKAY. NOW, DID YOU FOLLOW, AFTER Y' ALL --- YOU SAY
9 HE GOT OUT OF THE CAR AND RAN. AFTER YOU --- DID YOU
10 TAKE HIM TO JAIL FROM THERE?

11 A. NO, SIR.

12 Q. WHO DID?

13 A. I HAVE NO IDEA.

14 Q. OKAY.

15 A. BECAUSE WE HAD SO MANY OFFICERS RESPONDING. NOW, I
16 WAS THERE WHEN HE CAME OUT OF THE WOODS DOWN ON 395,
17 BELOW PARKER COMMUNITY CENTER. THE BLOOD HOUND TEAM CAME
18 OUT, AND HE CAME OUT BELOW THEM AND I SAW THEM APPREHEND
19 HIM, BUT I DON'T REMEMBER WHO TOOK HIM TO JAIL.

20 Q. OKAY. SO, YOU DIDN'T EXAMINE HIM AT THE JAIL OR
21 ANYTHING YOURSELF?

22 A. NO, SIR.

23 Q. YOU DIDN'T HAVE ANY PART OF THAT?

24 A. NO, SIR.

25 Q. SOMEBODY ELSE --- IF HE WAS EXAMINED IT WAS BY

1 SOMEBODY ELSE?

2 A. THAT'S TRUE.

3 Q. ALL RIGHT. YOU DIDN'T TALK TO HIM AT THE JAIL OR
4 ANYTHING?

5 A. NO, SIR. I NEVER SPOKE TO HIM AFTER I TOLD MY DEPUTY
6 TO GET HIM OUT OF THERE.

7 Q. RUN HIM OUT OF HERE --- OKAY, THAT WAS YOUR LAST TALK
8 TO HIM?

9 A. MY LAST TALK --- NOW, I WAS IN ON THE TRYING TO TRAIL
10 HIM AND TRYING TO GET HIM BACK INTO CUSTODY.

11 Q. RIGHT. OKAY.

12 A. AND THAT WAS IT.

13 Q. OKAY. THANK YOU, MAJOR.

14 A. THANK YOU, SIR.

15 MR. PEACE: NO FURTHER QUESTIONS, YOUR HONOR.

16 THE COURT: THANK YOU. GIVE ME ANOTHER SHORT ONE.

17 MR. PEACE: THE STATE CALLS OFFICER BABB.

18 THEREUPON:

19 CLAY BABB, BEING FIRST DULY
20 SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS?

21 DIRECT EXAMINATION

22 BY MR. PEACE

23 Q. MR. BABB, WHERE ARE YOU EMPLOYED?

24 A. ASSOCIATED ROCK BLASTING.

25 Q. WHERE WERE YOU EMPLOYED ON JULY 15, 1997?

- 1 A. NEWBERRY COUNTY SHERIFF'S OFFICE.
- 2 Q. AND WHAT WERE YOUR DUTIES IN THE NEWBERRY COUNTY
3 SHERIFF'S OFFICE?
- 4 A. ANSWER ANY TYPE OF COMPLAINT WE MAY HAVE AND ENFORCE
5 ALL LOCAL, STATE AND FEDERAL LAWS.
- 6 Q. WERE YOU A LAW ENFORCEMENT OFFICER AT THE TIME?
- 7 A. YES, I WAS.
- 8 Q. WHAT WAS YOUR POSITION?
- 9 A. I WAS SECOND IN CHARGE ON MY SHIFT.
- 10 Q. DID YOU HAVE A RANK AT THE TIME?
- 11 A. AT THE TIME I THINK I WAS STILL CONSIDERED PFC.
- 12 Q. BUT YOU WERE AN OFFICER IN THE SHERIFF'S DEPARTMENT?
- 13 A. YES, I WAS.
- 14 Q. NEWBERRY COUNTY?
- 15 A. NEWBERRY COUNTY.
- 16 Q. DID YOU HAVE OCCASION TO RESPOND TO A CALL OUT ON
17 BOYD CROSSING IN THE EARLY MORNING OF JULY 15, 1997?
- 18 A. YES, I RESPONDED OUT THERE TO ASSIST OFFICER GRIFFIN
19 ON SOME TYPE OF DOMESTIC PROBLEM THAT WAS GOING ON.
- 20 Q. OKAY. WHAT HAPPENED WHEN YOU RESPONDED TO THAT
21 INCIDENT?
- 22 A. WHEN I GOT THERE HE HAD ALREADY HAD THE DEFENDANT
23 HANDCUFFED.
- 24 Q. HE WHO?
- 25 A. OFFICER GRIFFIN.

- 1 Q. OKAY.
- 2 A. BILL GRIFFIN, HAD THE DEFENDANT HANDCUFFED.
- 3 Q. OKAY. DO YOU SEE THAT DEFENDANT IN COURT TODAY?
- 4 A. YES, I DO.
- 5 Q. WOULD YOU PLEASE POINT TO HIM AND STATE HIS NAME?
- 6 A. JAMES WISE.
- 7 MR. PEACE: LET THE RECORD REFLECT THAT THE WITNESS
- 8 HAS PROPERLY IDENTIFIED THE DEFENDANT.
- 9 Q. PLEASE CONTINUE.
- 10 A. OFFICER GRIFFIN ASKED ME TO TRANSPORT MR. WISE TO THE
- 11 DETENTION CENTER. WE PUT HIM IN MY CAR. HE WAS
- 12 HANDCUFFED BEHIND HIS BACK.
- 13 Q. WERE YOU IN A SHERIFF'S OFFICE VEHICLE?
- 14 A. YES, I WAS. I WAS IN MY PATROL CAR. HE WAS
- 15 HANDCUFFED BEHIND HIS BACK. I PUT HIM IN THE FRONT SEAT
- 16 WITH ME AND ALSO RESTRAINED HIM WITH THE SEAT BELT. I
- 17 DIDN'T PUT HIM IN THE BACK SEAT BECAUSE I DIDN'T HAVE A
- 18 CAGE OR ANYTHING, AND I DIDN'T WANT TO GET KICKED OR
- 19 ANYTHING LIKE THAT.
- 20 Q. AT THAT POINT, DID YOU CONSIDER HIM TO BE IN CUSTODY?
- 21 A. YES, I DID.
- 22 Q. OKAY. PLEASE CONTINUE.
- 23 A. I WAS EN ROUTE TO THE DETENTION CENTER. I CAME UP TO
- 24 THE INTERSECTION OF 34 BY-PASS AND NANCE STREET.
- 25 SOMEWHERE DURING THE TRIP HE HAD REACHED AROUND AND TAKEN

1 HIS SEAT BELT OFF. I DIDN'T KNOW THAT AT THE TIME. AS
2 I STOPPED AT THE STOP SIGN, HE REACHED AROUND THE OTHER
3 WAY AND WAS ABLE TO OPEN UP THE DOOR. HE STARTED TO JUMP
4 OUT OF MY PATROL CAR. I REACHED ACROSS AND I GRABBED
5 HIM, GRABBED HIM BY THE HAND. HE BROKE AWAY FROM ME AND
6 I THREW MY CAR IN PARK AND I JUMPED OUT AND I DIDN'T SEE
7 HIM ANYWHERE.

8 Q. WHAT DID HE DO WHEN HE BROKE AWAY?

9 A. WHAT DID I DO?

10 Q. WHAT DID HE DO?

11 A. HE JUST, HE GOT AWAY FROM ME AND HE RAN. I DON'T
12 KNOW WHICH WAY HE RAN. I NEVER DID SEE HIM AGAIN. I
13 LOST SIGHT OF HIM.

14 Q. HE JUMPED OUT OF THE CAR AND RAN AWAY?

15 A. YES.

16 Q. DID YOU GIVE HIM PERMISSION TO LEAVE?

17 A. OH, NO.

18 Q. NO FURTHER QUESTIONS.

19 CROSS EXAMINATION

20 BY MR. GRIFFITH:

21 Q. FORMER OFFICER BABB, DID YOU AND MY CLIENT HAVE A
22 CONVERSATION WHILE YOU WERE RIDING UP THE ROAD?

23 A. YES, PRETTY MUCH THE WHOLE WAY. THE WHOLE TIME HE
24 WAS IN THE CAR WITH ME HE WAS ASKING ME TO TAKE HIM BACK
25 TO THE VICTIM'S RESIDENCE STATING THAT HE WANTED TO TALK

1 WITH HER.

2 Q. RIGHT. DID HE ASK YOU TO CALL ANYBODY?

3 A. NOT THAT I CAN RECALL. I DON'T REMEMBER IF HE ASKED
4 ME TO CALL ANYONE OR NOT.

5 Q. OKAY, AND SO, NO TELEPHONE CALL WAS MADE WHILE YOU
6 HAD HIM IN CUSTODY FOR HIM ON HIS BEHALF?

7 A. WAS THERE ANY WHILE HE WAS IN CUSTODY? NO.

8 Q. NOW, YOU DIDN'T GET HIM OUT OF THE CAR. YOU'RE
9 SAYING, TESTIFYING THAT HE JUMPED OUT OF THE CAR AND RAN?

10 A. HE GOT OUT ON HIS OWN, YES.

11 Q. THANK YOU, YOUR HONOR.

12 MR. PEACE: JUDGE, THE STATE WOULD NEXT CALL TINA
13 BOWERS.

14 THEREUPON:

15 TINA BOWERS, BEING FIRST DULY
16 SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. PEACE

19 Q. I APOLOGIZE FOR THE TIME. IS IT MS. OR MRS. BOWERS?

20 A. MRS.

21 Q. MRS. BOWERS, WHERE DO YOU WORK?

22 A. PINNER CLINIC.

23 Q. WERE YOU WORKING AT PINNER CLINIC ON JULY 15, 1997?

24 A. YES, SIR.

25 Q. WHAT ARE YOUR DUTIES AT PINNER CLINIC?

1 A. I'M A MEDICAL ASSISTANT.

2 Q. WHAT DO YOU DO?

3 A. I DO ANYTHING FROM DRAWING BLOOD TO E.K.Gs. MY MAIN
4 JOB IS FOLLOWING THE DOCTOR AND WRITING THE CHARTS UP
5 WHILE HE'S SEEING A PATIENT.

6 Q. ON JULY 15, 1997, DID YOU HAVE OCCASION TO ASSIST THE
7 DOCTOR IN THE TREATMENT OF MARY BATES?

8 A. YES, I DID.

9 Q. DID YOU TAKE NOTES OF THAT TREATMENT?

10 A. YES, I DID.

11 Q. DO YOU HAVE THOSE NOTES WITH YOU?

12 A. YES, SIR.

13 Q. LET'S SEE THOSE.

14 MR. GRIFFITH: YOUR HONOR, WE'LL STIPULATE TO THOSE
15 NOTES. WE'VE SEEN THEM AND KNOW SHE WROTE THE NOTES FOR
16 THE DOCTOR. I DON'T THINK THEY'RE REAL IMPORTANT. SHE
17 SAYS HE'S GIVEN TREATMENT TO THE VICTIM.

18 BY MR. PEACE

19 Q. DO YOU HAVE THOSE NOTES WITH YOU?

20 A. YES, SIR.

21 Q. WOULD YOU REFER TO THOSE NOTES?

22 A. DO YOU WANT ME ---

23 A. COULD YOU TELL US WHAT THE TREATMENT WAS FOR MS.
24 BATES?

25 A. WE GAVE HER AN ANTI-INFLAMMATORY, WHICH WAS ANAPROX

1 FOR INFLAMMATION AND FOR PAIN.

2 Q. WHAT WERE THE COMPLAINTS THAT SHE HAD?

3 A. WE LISTED LACERATIONS TO RIGHT FOOT, ABRASION TO BOTH
4 KNEES, AND THE LEFT SHIN, BRUISE TO RIGHT ARM WITH
5 ABRASIONS, A HEMATOMA TO THE FOREHEAD, A SORE AREA BEHIND
6 HER RIGHT EAR, A LARGE HEMATOMA ABOVE THE LEFT EAR, AND
7 SHE ALSO STATED THAT SHE HAD A PIECE OF GLASS IN HER FOOT
8 BUT ELECTED TO TRY TO GET THIS OUT HERSELF.

9 Q. THANK YOU. NO FURTHER QUESTIONS.

10 MR. GRIFFITH: NO QUESTIONS, YOUR HONOR.

11 THE COURT: THANK YOU, MA' AM.

12 MR. PEACE: YOUR HONOR, THIS MAY BE A GOOD TIME TO
13 BREAK FOR LUNCH.

14 THE COURT: YES, IT'S A GOOD TIME FOR CORNBREAD AND
15 CABBAGE. YOU MAY GO. THANK YOU, MA' AM.

16 MADAM FOREMAN, LADIES AND GENTLEMEN OF THE JURY, AT
17 THIS TIME I'M GOING TO EXCUSE YOU FOR LUNCH. I WILL ASK
18 YOU NOT TO DISCUSS THIS CASE WITH EACH OTHER OR WITH
19 ANYONE. IF ANYONE TRIES TO DISCUSS IT WITH YOU, TAKE
20 THEIR NAME AND REPORT IT TO ME, AND I'LL ASK YOU TO BE
21 BACK IN THE JURY ROOM AT 2:30. BE BACK AT 2:30.
22 EVERYBODY REMAIN SEATED WHILE THE JURY LEAVES.

23 (JURY LEAVES FOR LUNCH.)

24 THE COURT: COURT WILL RECESS 'TIL 2:30.

25 (COURT IN RECESS.)

1 (COURT RECONVENES.)

2 THE COURT: YES, SIR.

3 MR. GRIFFITH: YES, YOUR HONOR, WE'RE READY.

4 THE COURT: BRING THE JURY IN.

5 (JURY TO COURTROOM.)

6 MR. PEACE: --- STATE'S EXHIBIT FIVE, WHICH IS A
7 NEWBERRY COUNTY MAGISTRATE'S COURT UPDATE DISPOSITION,
8 THIS IS THE RECORD OF THE DEFENDANT, MR. WISE, PLEADING
9 GUILTY TO ASSAULT AND BATTERY IN MAGISTRATE'S COURT.

10 THE COURT: ALL RIGHT. NO OBJECTION?

11 MR. GRIFFITH: NO, YOUR HONOR. WE HAVE NO OBJECTION
12 TO THAT. HE PROVIDED US A COPY.

13 MR. PEACE: YOUR HONOR, AT THIS TIME, THE STATE
14 RESTS.

15 (STATE'S EXHIBIT FIVE MARKED FOR IDENTIFICATION AND
16 MADE A PART OF THE RECORD.)

17 THE COURT: ALL RIGHT. LET THE JURY GO IN THE ROOM.

18 (JURY TO JURY ROOM.)

19 THE COURT: YES, SIR?

20 MR. GRIFFITH: YOUR HONOR, AT THIS TIME I'D LIKE TO
21 RENEW MY MOTION REGARDING THE SUFFICIENCY OF THE
22 INDICTMENT AND ALL THE ARGUMENT I MADE PRIOR TO THE JURY
23 BEING SWORN AS IT'S SUFFICIENCY IN THE SUBJECT MATTER OF
24 JURISDICTION OF THIS COURT REGARDING THE BURGLARY FIRST
25 OFFENSE.

1 SECONDARILY, I'D LIKE TO MAKE A MOTION ALSO FOR A
2 DIRECTED VERDICT OF NOT GUILTY ON BOTH THE ESCAPE AND THE
3 BURGLARY FIRST CHARGES IN THAT THE STATE HAS FAILED TO
4 MEET ITS BURDEN OF PROOF REGARDING THE INTENT, THE
5 ASSAULT AND BATTERY HAVING ALREADY BEEN PLED TO. ALL THE
6 TESTIMONY REGARDING THAT WOULD --- HE'D BE PLACED IN
7 DOUBLE JEOPARDY FOR THE SAME SERIES OF EVENTS AND
8 SEQUENCE OF EVENTS AS TO DAMAGE OR INJURIES CAUSED TO MS.
9 BATES. THAT'S ALREADY BEEN DEALT WITH IN MAGISTRATE'S
10 COURT AND CAN'T BE USED AGAINST HIM AGAIN IN THE
11 BURGLARY. AND FOR THAT REASON, THE LACK OF INTENT
12 BREAKING IN THE HOUSE WITH REGARD TO COMMITTING A CRIME
13 THEREIN WOULD FAIL, AND FOR THAT REASON I REQUEST A
14 DIRECTED VERDICT OF NOT GUILTY ON BOTH CHARGES.

15 THE COURT: WHAT DO YOU SAY, SOLICITOR?

16 MR. PEACE: YOUR HONOR, AGAIN I ADOPT THE ARGUMENTS
17 I MADE WHEN MR. GRIFFITH MADE HIS FIRST MOTION. YOUR
18 HONOR, THE ELEMENTS OF BURGLARY FIRST, THERE ARE MORE
19 ELEMENTS IN BURGLARY FIRST THAN WITH INTENT TO COMMIT A
20 CRIME. THE STATE HAS NO ARGUMENT WITH THE PROPOSITION
21 THAT HE CAN'T BE TRIED FOR THE ASSAULT AND BATTERY OF A
22 HIGH AND AGGRAVATED NATURE BECAUSE HE PLED TO ASSAULT AND
23 BATTERY IN MAGISTRATE'S COURT. THAT'S NOT THE ISSUE.

24 THE ISSUE IS THE BURGLARY FIRST, BLOCKBERGER SAYS
25 "IN ORDER FOR IT TO BE DOUBLE JEOPARDY THERE HAS TO BE

1 THE SAME ELEMENTS IN BOTH CRIMES." THE INTENT TO COMMIT
2 A CRIME --- AND THE JURY COULD FIND THAT IT'S ANY CRIME,
3 NOT JUST THE ASSAULT AND BATTERY. THE JURY COULD FIND
4 THAT IT'S ANY CRIME. SO, BASED ON THAT, BASED ON THE
5 OTHER ELEMENTS, THERE'S NO VIOLATION OF DOUBLE JEOPARDY.
6

7 THE COURT: I'LL OVERRULE THAT, OVERRULE THE MOTIONS
8 ON THAT.

9 MR. GRIFFITH: ALL RIGHT. YOUR HONOR, I ALSO NOTE
10 FOR MY ARGUMENT THERE WAS NO OTHER TESTIMONY OF ANY OTHER
11 CRIME OTHER THAN ASSAULT AND BATTERY.

12 THE COURT: I'M GOING TO OVERRULE THE MOTION AND GO
13 FORWARD.

14 MR. GRIFFITH: YOUR HONOR, WITH REGARD TO IT AT THIS
15 TIME, IN THE DEFENSE'S CASE, I'D LIKE FOR THE COURT TO
16 INQUIRE OF MY CLIENT FOR TWO REASONS --- HE AND I
17 DISCUSSED THIS CASE AT GREAT LENGTH AND DISCUSSED WITH
18 HIM HIS RIGHT TO TESTIFY OR NOT TO TESTIFY AND THE
19 INSTRUCTIONS THE COURT WOULD GIVE THE JURY. I'D LIKE TO
20 MAKE A REQUEST THAT THE COURT ALSO INQUIRE OF HIM
21 REGARDING HIS RIGHTS SO WE CAN BE ASSURED HE UNDERSTANDS
22 HIS RIGHTS IN THAT REGARD.

23 THE COURT: MR. WISE, STAND UP. DO YOU UNDERSTAND
24 -- HOW FAR DID YOU GO IN SCHOOL?

25 MR. WISE: EIGHTH GRADE.

1 THE COURT: DO YOU READ AND WRITE?

2 MR. WISE: YES, SIR.

3 THE COURT: DO YOU UNDERSTAND THAT YOU HAVE A RIGHT
4 TO TAKE THE STAND AND TESTIFY, AND IF YOU DO THEY CAN GO
5 INTO ANY CRIMES THAT HAPPENED AFTER '85, AND YOU COULD BE
6 CROSS EXAMINED? YOU DO NOT HAVE TO TAKE THE STAND, AND
7 IF YOU DO TAKE THE STAND, YOU WILL BE CROSS EXAMINED. DO
8 YOU UNDERSTAND THAT?

9 MR. WISE: YES, SIR.

10 THE COURT: AND IT'S YOUR WISH AND DESIRE TO TAKE
11 THE STAND?

12 MR. WISE: YES, SIR. I WISH TO TAKE THE STAND.

13 THE COURT: EVEN THOUGH YOUR LAWYER HAS ADVISED YOU
14 AGAINST IT? HAS HE ADVISED YOU AGAINST TAKING THE STAND?

15 MR. WISE: I STILL WANT TO TAKE THE STAND.

16 THE COURT: ALL RIGHT. YOU MAY BE SEATED.

17 MR. GRIFFITH: ALL RIGHT, YOUR HONOR. SECONDLY,
18 ALSO I'D LIKE TO MAKE A RECORD OF THE FACT THAT PRIOR TO
19 THIS TRIAL WE DID HAVE PLEA NEGOTIATIONS, AND THE STATE
20 TENDERED AN OFFER IN REGARD TO ALL THESE CHARGES IN THE
21 AMOUNT OF FIFTEEN YEARS, AND I RECOMMENDED TO MY CLIENT
22 AT THAT TIME THE PERILS OF GOING TO TRIAL AND A JURY,
23 UNCERTAINTY OF WHAT WOULD HAPPEN IN A JURY TRIAL, AND WE,
24 HE MADE AN INFORMED DECISION AT THAT TIME TO PROCEED ON
25 TO TRIAL, EVEN THOUGH THE STATE HAD PROVIDED NOTICE OF

1 THE LIFE WITHOUT PAROLE.

2 YOUR HONOR, I'D ALSO LIKE TO MAKE A RECORD OF THE
3 FACT THAT MY CLIENT WAS NOT PRESENT DURING THE QUALIFYING
4 OF THE JURY. HE WAS PROVIDED ASSISTANCE BY THE SHERIFF'S
5 OFFICE, BUT DECLINED TO COME. I WAS HERE DURING THE
6 QUALIFICATIONS AND DID TAKE SOME NOTES DURING THE PERIOD
7 OF TIME THE JURY WAS QUALIFIED. HOWEVER, HE DECLINED TO
8 COME AND DID NOT SEE THAT.

9 YOUR HONOR, I'VE ALSO EXPLAINED TO MY CLIENT THE
10 NECESSITY OF HIM TO TESTIFY TRUTHFULLY WHEN HE TAKES THE
11 STAND, AND IT'S MY UNDERSTANDING BASED ON CONVERSATIONS
12 WITH HIM THAT HE WANTS TO TESTIFY. HE WANTS TO EXPLAIN
13 HIS VERSION OF THE FACTS AND HIS VERSION OF THE FACTS MAY
14 DIVERGE QUITE A GREAT DEAL FROM THE STATE'S FACTS, AND HE
15 AND I DISCUSSED THAT, AND SO I WANT HIM TO BE INFORMED OF
16 THAT FACT ALSO.

17 THE COURT: ALL RIGHT.

18 MR. PEACE: YOUR HONOR, I APOLOGIZE TO THE COURT.
19 I DIDN'T --- I DID NOT ADDRESS THE MOTION FOR THE
20 DIRECTED VERDICT. THE STATE WOULD OBJECT TO THAT MOTION
21 BEING GRANTED. WE THINK THAT WE HAVE PRESENTED
22 SUBSTANTIAL ---

23 THE COURT: I OVERRULED THAT MOTION.

24 MR. PEACE: THANK YOU, YOUR HONOR.

25 THE COURT: ALL RIGHT. BRING THE JURY BACK IN.

1 (JURY TO COURTROOM.)

2 MR. GRIFFITH: YOUR HONOR, AT THIS TIME, THE FIRST
3 WITNESS WILL BE TODD JOHNSON, INVESTIGATOR.

4 THE COURT: COME AROUND.

5 THEREUPON:

6 TODD JOHNSON, BEING FIRST DULY
7 SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. GRIFFITH

10 Q. TODD, WHERE ARE YOU EMPLOYED?

11 A. THE NEWBERRY COUNTY SHERIFF'S OFFICE.

12 Q. WHAT'S YOUR RANK OR YOUR DUTIES?

13 A. I'M THE SENIOR INVESTIGATOR IN THE INVESTIGATIONS
14 DIVISION.

15 Q. OKAY. NOW, TODD, I SPOKE TO YOU PRIOR TO LUNCH
16 REGARDING A DEPUTY WHO WORKS UNDER YOU. I BELIEVE HE'S
17 A NARCOTIC'S INVESTIGATOR?

18 A. THAT'S CORRECT.

19 Q. INVESTIGATOR EDUARDO SALAZAR?

20 A. CORRECT.

21 Q. DID I SPEAK WITH YOU ABOUT HIM?

22 A. THAT'S CORRECT.

23 Q. NOW, HAD I PRODUCED SUBPOENA FOR HIS PRESENCE IN THE
24 COURT, WHICH I DIDN'T. I DID NOT HAVE A SUBPOENA IN MY
25 HAND TO GIVE TO YOU. I ASKED YOU COULD YOU FIND HIM.

TODD JOHNSON
CROSS EXAMINATION BY MR. PEACE

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1 DID I NOT?

2 A. YOU DID.

3 Q. NOW, DID YOU SEARCH FOR HIM ON MY BEHALF AND MY
4 CLIENT'S?

5 A. I DID AT THAT POINT. APPROXIMATELY TWO DAYS AGO, I
6 WAS INFORMED INVESTIGATOR SALAZAR --- THAT HE WAS EN
7 ROUTE TO KENTUCKY FOR AN ONGOING INVESTIGATION INVOLVING
8 FEDERAL PRISONERS IN KENTUCKY IN THE FEDERAL CORRECTIONS
9 SYSTEM.

10 Q. DO YOU HAVE KNOWLEDGE THAT HE IS BACK IN NEWBERRY
11 RIGHT NOW?

12 A. I DO NOT.

13 Q. DO YOU THINK HE'S STILL IN KENTUCKY?

14 A. AS FAR AS I KNOW, HE IS.

15 Q. IS HE UNAVAILABLE TODAY TO TESTIFY?

16 A. THAT'S SA --- AS FAR AS I KNOW HE IS.

17 Q. THANK YOU.

18 CROSS EXAMINATION

19 BY MR. PEACE

20 Q. WHEN WERE YOU APPROACHED ABOUT THIS PARTICULAR
21 WITNESS?

22 A. THIS AFTERNOON.

23 Q. WHAT TIME THIS AFTERNOON?

24 A. I DON'T RECALL.

25 MR. GRIFFITH: IT WAS BETWEEN TWELVE AND ONE

1 O' CLOCK.

2 Q. WAS IT ONE O' CLOCK?

3 A. IT WAS THIS AFTERNOON AFTER LUNCH. I DON' T RECALL
4 THE EXACT TIME.

5 Q. DO YOU KNOW HOW LONG THIS CASE HAS BEEN ON THE TRIAL
6 DOCKET?

7 A. NO, SIR, I DON' T. IT' S QUITE SOME TIME.

8 Q. THANK YOU. NO FURTHER QUESTIONS.

9 MR. GRIFFITH: THANK YOU, INVESTIGATOR JOHNSON.
10 YOUR HONOR, OUR NEXT WITNESS WOULD BE JAMES WISE.

11 JAMES, COME ON AROUND HERE AND LET HER SHOW YOU
12 WHERE TO SIT.

13 THEREUPON:

14 JAMES WISE, BEING FIRST DULY
15 SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. GRIFFITH

18 Q. JAMES, YOU AND I HAVE TALKED AT GREAT LENGTH ABOUT
19 YOUR CASE AND THE FACT THAT LED UP TO YOUR ARREST ON THE
20 15TH DAY OF JULY, '97, HAVE WE NOT?

21 A. RIGHT.

22 Q. NOW, SINCE YOUR ARREST, WHERE HAVE YOU BEEN RESIDING?

23 A. IN THE COUNTY JAIL.

24 Q. WOULD YOU ESTIMATE 450 DAYS IS HOW LONG YOU' VE BEEN
25 WAITING FOR THIS DAY IN COURT?

1 A. I KNOW I'VE BEEN THERE FOURTEEN MONTHS, GOING ON
2 FIFTEEN MONTHS THE 15TH OF THIS MONTH.

3 Q. YES, SIR; AND YOU'VE BEEN ON THE TRIAL DOCKET QUITE
4 A LONG TIME AND NOW YOU'RE READY TO TELL YOUR STORY. IS
5 THAT CORRECT?

6 A. YEAH.

7 Q. NOW, I'M GOING TO DRAG YOUR ATTENTION BACK TO JULY
8 '97. TELL ME WHAT HAPPENED IN THE MIDDLE OF JULY, THE
9 13TH AND 14TH OF JULY. WHAT EVENTS IN YOUR FAMILY TOOK
10 PLACE?

11 A. MY SISTER HAD PASSED AWAY.

12 Q. ALL RIGHT. NOW, AS A RESULT OF THAT, WHAT DID YOU
13 DO? MAYBE I CONFUSED YOU, JAMES. WHEN YOU AND I
14 ORIGINALLY TALKED, YOUR SISTER'S PASSING CAUSED YOU SOME
15 MENTAL AND EMOTIONAL PROBLEMS DEALING WITH HER LOSS.

16 A. YEAH.

17 Q. ALL RIGHT. NOW, AS A RESULT OF DEALING WITH THOSE
18 EMOTIONS, WHAT DID YOU DO?

19 A. TRYING TO BE THERE FOR SUPPORT FOR MY FAMILY.

20 Q. RIGHT. ALL RIGHT. NOW, ON THE 14TH OF JULY YOU GOT
21 OFF WORK LATE IN THE AFTERNOON. WHAT DID YOU DO THAT
22 AFTERNOON?

23 A. OH, NOW WE'RE GETTING TO IT.

24 Q. NOW ---

25 A. WHEN WE'RE LEADING UP TO THE CRIME NOW.

1 Q. THAT'S IT. WHEN YOU GET OFF WORK, AND JUST TELL THE
2 JURY EXACTLY WHAT HAPPENED.

3 A. WELL, THAT AFTERNOON AFTER I GOT HOME FROM WORK, AS
4 I DO EVERYDAY, I SAT AROUND AND DRINK AFTER I TAKE A
5 BATH. PEOPLE COME OVER FROM THE NEIGHBORHOOD AND WE SIT
6 AROUND AND DRINK.

7 Q. NOW, TELL ME ABOUT WHAT TIME YOU GET HOME FROM WORK.

8 A. I GET HOME ABOUT 5:30.

9 Q. ALL RIGHT, AND WHERE DO YOU LIVE?

10 A. PROSPERITY.

11 Q. ALL RIGHT. NOW, AFTER YOU TAKE A BATH, FRIENDS COME
12 OVER. DID THAT HAPPEN ON THAT DAY?

13 A. YEAH.

14 Q. ALL RIGHT. TELL IT, JUST KEEP ON GOING AND PROGRESS
15 THROUGH THE NIGHT AND TELL THE JURY WHAT HAPPENED THAT
16 NIGHT.

17 A. I DON'T ---

18 Q. I UNDERSTAND IT'S BEEN EIGHTEEN MONTHS.

19 A. YEAH, I DON'T REMEMBER EVERYTHING THAT HAPPENED THAT
20 NIGHT.

21 Q. ALL RIGHT, BUT YOU'VE BEEN WAITING TO TELL YOUR
22 STORY. NOW'S YOUR OPPORTUNITY.

23 A. I'LL JUST SKIP THE WHOLE NIGHT AND JUST GET TO THIS
24 PART WHERE THEY ACCUSING ME OF THESE CHARGES.

25 Q. THAT'S WHAT WE WANT TO TELL. SO, NOW, LET ME ASK YOU

1 THIS. DID YOU LEAVE YOUR FRIENDS LATE THAT NIGHT ON THE
2 14TH OR 15TH TO GO SEE MS. BATES?

3 A. YES, SIR. I DID.

4 Q. ALL RIGHT. NOW, START FROM THERE.

5 A. I USED A GUY'S VAN IN THE NEIGHBORHOOD TO GO TO THE
6 STORE.

7 Q. IS THIS GUY A FRIEND OF YOURS?

8 A. YEAH.

9 Q. OKAY.

10 A. I USED THE VAN TO GO TO THE STORE. I HAD SPOKE WITH
11 HER, MS. BATES, EARLY AND, YOU KNOW, AND UP TO HER HOUSE.

12 Q. ON THE PHONE? HOW DID YOU SPEAK WITH HER?

13 A. ON THE TELEPHONE.

14 Q. OKAY.

15 A. AND I WENT OVER TO HER HOUSE, AND WHEN I GOT THERE I
16 BLOWED THE HORN AND SHE CAME OUT AND WE TALKED.

17 Q. WHAT DID Y' ALL TALK ABOUT?

18 A. WE TALKED ABOUT THE DEATH OF MY SISTER WHO HAD PASSED
19 AWAY. SHE KNEWED MY SISTER.

20 Q. ALL RIGHT. WHAT ELSE?

21 A. WE TALKED A LITTLE WHILE AND I WAS INVITED IN.

22 Q. OKAY.

23 A. I DECIDED ---

24 Q. DO YOU KNOW ABOUT WHAT TIME THIS WAS?

25 A. AROUND ABOUT ELEVEN.

- 1 Q. HOW DO YOU RECOLLECT THAT?
- 2 A. FROM THE NEWS.
- 3 Q. WHAT DO YOU MEAN THE NEWS?
- 4 A. ON THE TV IN HER HOUSE.
- 5 Q. OKAY. GO ON FROM THERE. Y' ALL WERE HAVING A
6 CONVERSATION INSIDE?
- 7 A. I WAS INVITED IN. THE DOOR WASN' T BROKE WHEN I WENT
8 IN, AND AFTER WE GOT IN AND WE TALKED, QUESTION ABOUT THE
9 FUNERAL. THE GIRL THAT I WAS INVOLVED WITH WAS A FLOWER
10 GIRL.
- 11 Q. ALL RIGHT. NOW, LET' S FOCUS ON THAT FOR A MINUTE.
12 NOW, THE GIRL YOU' RE INVOLVED WITH, YOUR GIRLFRIEND AT
13 THAT TIME WAS NOT MS. BATES?
- 14 A. NO.
- 15 Q. SHE WAS GOING WITH SOMEBODY ELSE?
- 16 A. YEAH.
- 17 Q. SLOP?
- 18 A. YEAH.
- 19 Q. ALL RIGHT. NOW, YOU' RE GOING WITH ANOTHER GIRL AND
20 WE DON' T KNOW ABOUT HER, BUT SHE' S GOING TO BE IN YOUR
21 SISTER' S FUNERAL?
- 22 A. YES, SHE WAS A FLOWER GIRL.
- 23 Q. ALL RIGHT. YOUR SISTER' S FUNERAL WAS THE NEXT DAY?
- 24 A. YEAH, IT WAS ON A TUESDAY.
- 25 Q. OKAY. NOW, Y' ALL HAD SOME SORT OF DISCUSSION ABOUT

1 THE NEW GIRLFRIEND BEING A FLOWER GIRL?

2 A. . . YEAH.

3 Q. . . TELL THE JURY ABOUT THAT.

4 A. WE TALKED ABOUT WHO THE FLOWER GIRL, THE PALLBEARERS,
5 AND I MENTIONED THE GIRL'S NAME. IT GOT HEATED UP. WE
6 GOT IN A ARGUMENT, SLAPPING GOING ON. WE TALKED IT OUT,
7 AND I SPENT THE NIGHT, AND I TOLD HER THAT I HAD TO LEAVE
8 THAT MORNING.

9 Q. ALL RIGHT. NOW, YOU SAY YOU SPENT THE NIGHT. TELL
10 THE JURY WHERE --- WHERE DID YOU SLEEP? DID YOU SLEEP IN
11 THE BED WITH HER?

12 A. NO.

13 Q. HOLD ON A MINUTE.

14 A. WE SLEPT ON THE CHAIR.

15 Q. OKAY, IN THE DEN?

16 A. YEAH, IN THE FRONT ROOM ON A LONG CHAIR.

17 Q. OKAY.

18 A. AND THAT MORNING WHEN I GOT UP TO LEAVE --- CAUSE I
19 HAD TO TAKE THE GUY HIS VAN BACK SO HE COULD PICK UP HIS
20 HANDS.

21 Q. WHAT TIME DID YOU GET UP?

22 A. EARLY IN THE MORNING. I'D SAY ABOUT FOUR.

23 Q. OKAY.

24 A. CAUSE I HAD TO TAKE HIS VAN BACK TO HIM.

25 Q. YOU GOT UP TO GO DELIVER THE VAN BACK SO HE COULD GO

- 1 TO WORK?
- 2 A. YEAH.
- 3 Q. AND YOU COULD GO TO WORK?
- 4 A. NO, I WASN' T GOING TO WORK. MY SISTER WAS BEING
5 BURIED THAT DAY.
- 6 Q. SO, THAT TUESDAY MORNING YOU GOT UP EARLY TO GO BACK
7 TO DELIVER THE VAN?
- 8 A. YEAH.
- 9 Q. WHAT HAPPENED NEXT?
- 10 A. WE GOT INTO A ARGUMENT AGAIN.
- 11 Q. SAME THING?
- 12 A. SAME THING, ABOUT THE SAME THING, THE FLOWER GIRL.
13 GOT INTO A ARGUMENT AGAIN, SLAPPING WENT ON. I SLAPPED
14 HER AND WALKED OUT THE DOOR.
- 15 Q. OKAY. THEN WHAT HAPPENED?
- 16 A. LATER ON SHE CAME BACK OUT TO THE DOOR AND STOPPED ME
17 AND THE POLICE CAME AND ARREST ME.
- 18 Q. ALL RIGHT. NOW, HOW LONG FROM THE TIME WHEN Y' ALL
19 ARGUED AND YOU SAID, "I' M LEAVING", AND YOU WENT OUT THE
20 DOOR, THAT SHE CAME OUT THERE TO SAY SOMETHING ELSE TO
21 YOU? HOW LONG?
- 22 A. IT WASN' T LONG. I WAS LETTING THE VAN WARM UP. IT
23 WASN' T LONG.
- 24 Q. A MINUTE OR SO?
- 25 A. NO, LONGER THAN THAT.

1 Q. ALL RIGHT. YOU'RE OUT IN THE YARD LETTING THE VAN
2 WARM UP AND HOW'D YOU KNOW SHE CAME --- I MEAN HOW'D SHE
3 GET OUT TO YOU?

4 A. I'M PARKED RIGHT THERE IN THE YARD.

5 Q. OKAY. SO, SHE CAME OUT THE DOOR?

6 A. YEAH.

7 Q. WHAT DID SHE DO?

8 A. SHE STOPPED ME, "WAIT A MINUTE", STOPPED ME.

9 Q. ALL RIGHT.

10 A. TOLD ME SHE WANTED TO TALK TO ME. SHE WAS TALKING
11 ALL OUT HER HEAD, AND THE POLICE CAME. I DIDN'T EVEN
12 KNOW SHE HAD CALLED NO POLICE. TALKING ALL OUT HER HEAD.

13 Q. NOW, SHE WAS UPSET WITH YOU?

14 A. YEP.

15 Q. ALL RIGHT. NOW, WERE YOU STILL UPSET WITH HER?

16 A. I HAD TO GO TOO. I HAD PROBLEMS TO DEAL WITH MY
17 SISTER. I HAD TO GO.

18 Q. OKAY. NOW, AFTER THE POLICE SHOWED UP AROUND 4:00
19 O'CLOCK, 4:30 IN THE MORNING, WHAT DID THEY DO WHEN THEY
20 GOT THERE?

21 A. THE MAN PLACED ME UNDER ARREST FOR DISORDERLY CONDUCT
22 BECAUSE WE WERE ARGUING IN THE YARD.

23 Q. WERE Y' ALL LOUD IN THE YARD?

24 A. YEP.

25 Q. ALL RIGHT. NOW, DO YOU REMEMBER THE NAME OF THE

- 1 POLICE OFFICER THAT ARRESTED YOU IN THE YARD?
- 2 A. NO. I DON'T KNOW IT.
- 3 Q. HAVE YOU SEEN HIM COME THROUGH HERE TODAY?
- 4 A. YEAH.
- 5 Q. OKAY. IT WAS ONE OF THOSE POLICE OFFICERS?
- 6 A. UH-HUH.
- 7 Q. ALL RIGHT. NOW, TELL ME WHAT HAPPENED NEXT. HE
- 8 ARRESTED YOU AND PUT HANDCUFFS ON YOU?
- 9 A. YEAH.
- 10 Q. IN THE FRONT OR THE BACK?
- 11 A. HANDS IN THE BACK.
- 12 Q. WHERE DID HE PUT YOU IN THE CAR?
- 13 A. IN THE BACK SEAT.
- 14 Q. WHOSE PATROL CAR?
- 15 A. HIS CAR. WASN'T BUT ONE POLICE THERE.
- 16 Q. WASN'T BUT ONE POLICE THERE?
- 17 A. WASN'T BUT ONE POLICE THERE.
- 18 Q. ALL RIGHT. ONE CAR, ONE POLICEMAN?
- 19 A. YEP.
- 20 Q. WHAT HAPPENED NEXT AFTER HE PUT YOU IN THE CAR?
- 21 A. WE LEFT. I GOT TO TALK TO HIM.
- 22 Q. THE POLICE?
- 23 A. GOT TO TALK TO THE POLICE, AND AFTER WE LEFT HER
- 24 HOUSE AND TURNED OUT THERE, I TOLD HIM TO CALL SALAZAR.
- 25 Q. OKAY, AND WHO IS SALAZAR?

- 1 A. HE'S THE DUDE RIGHT THERE AT THE POLICE DEPARTMENT.
2 HE'S A DRUG DEALER.
- 3 Q. DID YOU HEAR ME EARLIER WHEN I WAS TALKING TO DEPUTY
4 JOHNSON AND I ASKED HIM ABOUT EDUARDO SALAZAR --- I
5 UNDERSTAND THAT'S HOW YOU PRONOUNCE IT. IS THAT THE
6 GENTLEMAN YOU'RE REFERRING TO?
- 7 A. YEAH, HE'S AN INVESTIGATOR OUT THERE OVER THE DRUGS.
- 8 Q. ALL RIGHT. NOW, YOU WERE ASKING THE POLICE OFFICER
9 DRIVING THE CAR YOU WERE IN ---
- 10 A. YEP.
- 11 Q. TO CALL ---
- 12 A. CALL SALAZAR.
- 13 Q. INVESTIGATOR SALAZAR?
- 14 A. YEP.
- 15 Q. DID HE CALL HIM FOR YOU?
- 16 A. YEAH, HE CALLED SALAZAR.
- 17 Q. WHAT DID Y' ALL DO AFTER HE CALLED HIM?
- 18 A. WE STOPPED RIGHT THERE AT THE STOP SIGN WAITING ON
19 SALAZAR TO COME, AND I WAS EXPLAINING TO HIM WHY THAT I
20 WANTED TO SEE SALAZAR. THE GUYS IN PROSPERITY THEY
21 WANTED ME TO SET IT UP.
- 22 Q. WHAT DO YOU MEAN SET UP? WHO'S TALKING ABOUT ---
- 23 A. BUST HIM, BE WIRED UP TO BUST HIM.
- 24 Q. YOU MEAN, LIKE TRY TO BUY DRUGS FROM HIM?
- 25 A. THAT'S RIGHT.

- 1 Q. OKAY.
- 2 A. AND WE WERE OUT THERE AND HE HAD LET ME RIGHT OUTSIDE
3 THE CAR, AND THEN ANOTHER CAR CAME UP. I DIDN' T KNOW WHO
4 IT WAS, AND I RAN BECAUSE SALAZAR DRIVE A BLAZER, A
5 BRONCO. IT WASN' T HIM, AND I RAN.
- 6 Q. YOU DON' T TRUST EVERYBODY AROUND YOU? IS THAT RIGHT?
- 7 A. I DIDN' T TRUST THEM NO WAY. I WASN' T GOING TO DO
8 THAT NO WAY.
- 9 Q. WELL, WHAT DID YOU CALL FOR?
- 10 A. I WANTED TO GET OUT OF JAIL. MY SISTER WAS BEING
11 BURIED THAT DAY AND I WANTED TO GO TO THE FUNERAL.
- 12 Q. OKAY. SO, YOU THOUGHT OFFICER SALAZAR --- SALAZAR
13 COULD HELP YOU REMAIN OUT OF CUSTODY FOR THE FUNERAL
14 TIME?
- 15 A. IF I HELPED HIM TO BUST SOMEBODY, HE WOULD. HE' D BE
16 DOING IT.
- 17 Q. NOW, AFTER YOU RAN, YOU DON' T KNOW WHO DROVE UP IN
18 THE CAR?
- 19 A. NO.
- 20 Q. IT WASN' T A POLICE CAR?
- 21 A. NO.
- 22 Q. YOU RAN IN THE WOODS?
- 23 A. YEP.
- 24 Q. ALL RIGHT. SOME TIME AFTER THAT ANOTHER POLICE
25 OFFICER GOT YOU INTO CUSTODY?

1 A. A LOT OF THEM. A LOT OF THEM FOUND ME IN THE BUSHES.

2 Q. OKAY.

3 A. AND SALAZAR CAME AND HE WANTED TO FIGHT ME.

4 Q. FIGHT YOU?

5 A. YEAH, HE WANTED TO BEAT ME WITH THE FLASHLIGHT
6 BECAUSE I DONE BEAT HIM BEFORE, AND I WASN' T TAKING DRUGS
7 THEN AND THEY WANTED ME TO GO IN AND SET THE GUY UP. THE
8 GUY AIN' T TRUST ME BECAUSE I JUST HAD GOT OUT OF PRISON,
9 AND THE DEAL WENT BAD WHEN THEY GOT SOMEBODY ANYWAY.

10 Q. ALL RIGHT. YOU JUST MENTIONED SOMETHING. YOU HAD
11 DONE SOME PRISON TIME BEFORE?

12 A. YEAH.

13 Q. HOW LONG --- WHY WERE YOU IN JAIL --- WHAT HAD YOU
14 BEEN IN JAIL FOR THAT YOU'D BEEN RELEASED? WHAT WAS
15 THAT?

16

17 A. WELL, I'VE BEEN TO JAIL A NUMBER OF TIMES, PRISON.

18 Q. ALL RIGHT. THE MOST RECENT TIME?

19 A. ABOUT THREE TIMES, ASSAULT AND BATTERY WITH INTENT TO
20 KILL.

21 Q. ALL RIGHT. NOW, WAS THAT INVOLVING ANYBODY IN THIS,
22 WHAT WE'RE DEALING WITH TODAY, ANY OF THE OFFICERS OR ANY
23 OF THE VICTIMS OR ANYTHING?

24 A. NO.

25 Q. IT INVOLVED NONE OF THEM?

- 1 A. NO.
- 2 Q. NO ONE RELATED TO YOU. NOW, YOU MADE, PAID YOUR DEBT
3 TO SOCIETY IN REGARD TO THAT CHARGE?
- 4 A. THAT'S RIGHT.
- 5 Q. NOW, YOU WERE RELEASED AND YOU HAD A JOB WORKING?
- 6 A. RIGHT.
- 7 Q. YOU AND EDDIE WERE ---
- 8 A. I AIN'T NEVER WORKED FOR HIM. I AIN'T NO SNITCH. I
9 DONE BEAT HIM OUT OF THE MONEY. I'M A DRUG USER. I USE
10 DRUGS.
- 11 Q. ALL RIGHT. WERE YOU DOING DRUGS THAT NIGHT?
- 12 A. I WAS DRINKING.
- 13 Q. YOU WERE DRINKING. YOU WEREN'T DOING ANY DRUGS?
- 14 A. THEY CLASSIFY ALCOHOL AS DRUGS. I WAS DRINKING BEER,
15 LIQUOR.
- 16 Q. YOU HAD SOMETHING TO DRINK THAT NIGHT?
- 17 A. YEAH.
- 18 Q. OKAY. YOU WEREN'T SMOKING ANY NARCOTICS OR ANYTHING
19 LIKE THAT?
- 20 A. NO.
- 21 Q. OKAY. NOW, AFTER YOU GOT TO THE JAIL AND THEY WERE
22 BOOKING YOU IN, DO YOU REMEMBER THAT?
- 23 A. YEAH.
- 24 Q. ALL RIGHT. DO YOU REMEMBER ABOUT WHAT TIME OF DAY IT
25 WAS?

- 1 A. EARLY IN THE MORNING.
- 2 Q. ALL RIGHT. NOW, HOW LONG WERE YOU LOOSE ON THE RUN?
- 3 HOW LONG DID IT TAKE THEM TO CATCH YOU?
- 4 A. I DON'T KNOW.
- 5 Q. NOT LONG? I MEAN AN HOUR, TWO HOURS?
- 6 A. WASN'T LONG.
- 7 Q. OKAY. DID YOU RECEIVE ANY MEDICAL TREATMENT FOR
- 8 INJURIES THEY HAD TALKED ABOUT EARLIER?
- 9 A. NO.
- 10 Q. WHY NOT?
- 11 A. CAUSE I WASN'T CUT.
- 12 Q. NO CUTS ON YOUR HANDS?
- 13 A. NO.
- 14 Q. NO CUTS ON YOUR HEAD?
- 15 A. NO.
- 16 Q. ANYTHING ON YOUR LEGS OR YOUR FEET?
- 17 A. NO.
- 18 Q. NO MEDICAL TREATMENT AT ALL?
- 19 A. NO, NO MEDICAL TREATMENT.
- 20 Q. I WANT TO CHECK ONE THING REAL QUICK, JAMES. JAMES,
- 21 TELL THE JURY ABOUT YOU HAD GONE TO SEE MS. BATES THAT
- 22 NIGHT AND THESE PROBLEMS ENSUED, BUT HAD Y' ALL HAD A
- 23 RELATIONSHIP GOING ON AFTER YOU'D BEEN RELEASED THE LAST
- 24 TIME FROM JAIL?
- 25 A. SNEAKING AROUND.

- 1 Q. NOBODY KNEW ABOUT THAT?
- 2 A. SOME KNOWS.
- 3 Q. NOW, HAVE YOU GOT ANY INFORMATION AS TO WHY SHE DON' T
- 4 WANT THAT FOUND OUT?
- 5 A. SHE' S GOT A BOYFRIEND, MY COUSIN. I GUESS YOU' RE
- 6 SNEAKING AROUND YOU DON' T WANT NOBODY TO KNOW YOUR
- 7 BUSINESS. I DIDN' T. I HAD A GIRL.
- 8 Q. YOU DIDN' T TELL HER?
- 9 A. NO.
- 10 Q. SHE DIDN' T TELL HIM?
- 11 A. APPARENTLY SHE DIDN' T, UNTIL JUST NOW I GUESS.
- 12 Q. HOW OFTEN DID Y' ALL MEET?
- 13 A. EVERY TIME WE COULD GET THE CHANCE TO BE AWAY, SNEAK
- 14 AWAY FROM OUR FRIENDS.
- 15 Q. NOW, SO, IT' S YOUR TESTIMONY BEFORE THE JURY AND THE
- 16 JUDGE, IS THAT Y' ALL WERE FRIENDS, BUT Y' ALL DIDN' T LET
- 17 THAT GET OUT?
- 18 A. I MEAN PEOPLE KNOW, SOME PEOPLE IN THE TOWN KNOW THAT
- 19 WE SNEAKING AROUND.
- 20 Q. BUT Y' ALL DIDN' T MAKE THAT --- YOU TRIED TO KEEP THAT
- 21 QUIET?
- 22 A. I DID.
- 23 Q. OKAY. SHE DID TOO?
- 24 A. YEAH.
- 25 Q. JAMES, DID YOU THAT NIGHT --- YOU HEARD THE TESTIMONY

1 THAT THE STATE PROVIDED. DID YOU KICK THAT DOOR IN THAT
2 NIGHT?

3 A. NO.

4 Q. DID YOU BREAK THAT SCREEN DOOR THAT HAD GLASS IN IT?

5 A. NO.

6 Q. DID SHE LET YOU IN?

7 A. YEAH.

8 Q. JAMES, YOU'VE TESTIFIED TRUTHFULLY TODAY. HAVE YOU
9 NOT?

10 A. YEAH, I TESTIFIED TO THE TRUTH.

11 Q. AND YOU UNDERSTAND YOU'VE GOT TO LIVE AND DIE WITH
12 THAT?

13 A. THAT'S RIGHT.

14 Q. JAMES, IS THERE ANYTHING ELSE, ANY OTHER PART OF THE
15 STORY THAT NIGHT? YOU'VE WAITED 450 DAYS TO TESTIFY. I
16 WANT YOU TO HAVE AMPLE OPPORTUNITY. IF THERE IS ANYTHING
17 ELSE THAT I MAY HAVE NEGLECTED TO TALK ABOUT, WE'LL
18 FINISH IT. ANY PARTS OF THE STORY LEFT OUT. I CAN'T
19 THINK OF ANY, BUT YOU'VE DONE A GOOD JOB PROVIDING ALL
20 THE ---

21 A. I JUST TOLD WHAT HAPPENED. THAT'S ALL. I DON'T KNOW
22 NOTHING ELSE TO TELL YOU.

23 Q. OKAY. WILL YOU ANSWER ANY QUESTIONS THAT THE
24 SOLICITOR MAY HAVE FOR YOU?

25 A. YES, SIR.

1 MR. PEACE: YOUR HONOR, I BEG THE COURT'S INDULGENCE
2 JUST ONE MOMENT, PLEASE.

3 CROSS EXAMINATION

4 BY MR. PEACE

5 Q. YOU SAY YOU'VE BEEN WAITING FOR TRIAL FOR 450
6 SOMETHING DAYS. IS THAT CORRECT?

7 A. THAT'S CORRECT.

8 Q. YOU'VE BEEN RESIDING IN THE COUNTY JAIL THAT WHOLE
9 TIME?

10 A. THAT'S CORRECT.

11 Q. OKAY. HOW MANY LAWYERS HAVE YOU HAD DURING THIS
12 TIME? YOU HAD MR. PYATT. DIDN'T YOU?

13 A. THAT'S CORRECT.

14 Q. YOU FIRED MR. PYATT AND GOT MR. HYZER(PHONETICALLY.)
15 DIDN'T YOU?

16 A. THAT'S CORRECT.

17 Q. FIRED MR. HYZER(PHONETICALLY)?

18 A. THAT'S CORRECT.

19 Q. BOTH TIMES YOUR CASES WERE READY TO BE CALLED FOR
20 TRIAL. AS A MATTER OF FACT, YOUR CASE HAS BEEN READY TO
21 CALL FOR TRIAL SINCE LAST MARCH. HASN'T IT?

22 A. PROBABLY HAS.

23 Q. AND IT HASN'T BEEN TRIED DUE TO YOUR OWN ACTIONS.
24 ISN'T THAT CORRECT?

25 A. I DIDN'T FEEL COMFORTABLE WITH THE LAWYER..

1 Q. SO, YOU HAVEN' T BEEN SITTING OVER IN JAIL WAITING FOR
2 THE STATE TO DO ANYTHING. YOU' VE BEEN SITTING OVER THERE
3 IN JAIL BECAUSE OF YOUR OWN ACTIONS. ISN' T THAT CORRECT?

4 A. NO, BECAUSE I DIDN' T HAVE AN ATTORNEY GOING TO
5 REPRESENT ME PROPER.

6 Q. OKAY. NOW, YOU SAY THAT, I GUESS THE EVENING OF THE
7 14TH YOU GOT OFF WORK?

8 A. THAT' S CORRECT.

9 Q. AND YOU WENT HOME?

10 A. THAT' S CORRECT.

11 Q. AND YOU TOOK A BATH AND YOU STARTED DRINKING WITH
12 YOUR FRIENDS?

13 A. THAT' S CORRECT.

14 Q. ALL RIGHT. CAN YOU GIVE US THE NAMES OF ANY OF THOSE
15 FRIENDS?

16 A. A LOT OF GUYS COME AROUND EVERY DAY.

17 Q. ALL RIGHT. SO, A LOT OF ---

18 A. IT' S NEIGHBORHOOD, NEIGHBORHOOD PEOPLE COMES AROUND
19 THAT LIVES IN THE NEIGHBORHOOD. SURE, I CAN GIVE YOU THE
20 NAMES OF THEM.

21 Q. OKAY. NOW, YOU SAY YOU LEFT YOUR FRIENDS TO GO SEE
22 MARY BATES. IS THAT CORRECT?

23 A. THAT' S CORRECT.

24 Q. ALL RIGHT. WHAT TIME DID YOU LEAVE YOUR FRIENDS?

25 A. I DON' T KNOW. I DIDN' T HAVE NO WATCH ON.

- 1 Q. OKAY. NO WATCH, OKAY, THAT'S YOUR ANSWER. WELL,
2 WHAT TIME DID YOU SPEAK WITH MARY BATES TO MAKE THESE
3 ARRANGEMENTS TO GO SEE HER?
- 4 A. I HAD TALKED WITH HER EARLY.
- 5 Q. BEFORE YOU TOOK A BATH OR AFTER YOU TOOK A BATH?
- 6 A. IT WAS AFTER I HAD TOOK A BATH.
- 7 Q. OKAY, BEFORE YOU STARTED DRINKING OR AFTER YOU
8 STARTED DRINKING?
- 9 A. I TALKED TO HER BEFORE I STARTED DRINKING, BECAUSE I
10 WENT AND USED THE PHONE UP BY THE LIQUOR STORE.
- 11 Q. BEFORE THESE FRIENDS CAME OVER OR AFTER THESE FRIENDS
12 CAME OVER?
- 13 A. WHAT DO YOU MEAN? DID I TALK TO HER?
- 14 Q. YEAH. YOU TALKED TO HER BEFORE THE FRIENDS CAME OVER
15 OR AFTER THE FRIENDS CAME OVER?
- 16 A. THE FRIEND BEEN THERE.
- 17 Q. YOU SAY THE FRIEND WAS THERE?
- 18 A. I TALKED TO HER AFTER MY FRIEND WAS ALREADY THERE.
19 I LEFT AND WENT AND TALKED TO HER ON THE PHONE.
- 20 Q. OKAY. YOUR FRIEND WAS THERE AT YOUR HOUSE?
- 21 A. I DOESN'T REALLY UNDERSTAND THE QUESTION THE WAY YOU
22 PUTTING IT.
- 23 Q. ALL RIGHT. WELL, LET ME PUT IT SOME WAY YOU CAN
24 UNDERSTAND. DID YOU TALK TO MARY BATES AFTER YOUR
25 FRIENDS CAME TO YOUR HOUSE OR BEFORE?

1 A. BEFORE, OH, YOU JUST ASKED ME THAT IN THAT WAY EARLY.
2 I SAID I DIDN'T UNDERSTAND THAT. I CAN EXPLAIN TO YOU
3 NOW!

4 Q. OKAY, WELL EXPLAIN TO ME.

5 A. MY FRIENDS WERE OVER.

6 Q. AT YOUR HOUSE?

7 A. OVER AT MY HOUSE, AND I LEFT AND THEN I HAD TALKED TO
8 MARY:

9 Q. OKAY. DID YOUR FRIENDS REMAIN AT YOUR HOUSE WHILE
10 YOU WERE GONE?

11 A. A LOT OF THEM.

12 Q. OKAY. SO, YOU LEFT YOUR FRIENDS AT YOUR HOUSE AND
13 WENT TO THE LIQUOR STORE?

14 A. I WENT AND USED THE PHONE UP BY THE LIQUOR STORE.

15 Q. OKAY, AND YOU USED THE PHONE THERE ---

16 A. I USED THE PHONE UP THERE.

17 Q. --- TO CALL MARY BATES?

18 A. YEAH.

19 Q. YOU DON'T KNOW WHAT TIME, BECAUSE YOU DIDN'T HAVE A
20 WATCH?

21 A. RIGHT.

22 Q. WAS IT DARK AT THAT POINT?

23 A. NO, IT WASN'T DARK.

24 Q. OKAY, IT WAS STILL LIGHT. WHAT TIME DID YOU GO OVER
25 TO MARY BATES' HOUSE?

- 1 A. IT MUST HAVE BEEN ABOUT A QUARTER 'TIL ELEVEN.
- 2 Q. AND HOW DID YOU GET OVER THERE?
- 3 A. I DROVE A VAN.
- 4 Q. WHAT VAN IS THAT?
- 5 A. THE VAN THAT THE DUDE IN THE NEIGHBORHOOD USE WORKING
- 6 FOR THIS COMPANY THAT HE WORK FOR.
- 7 Q. OKAY. SO, IT WAS NOT YOUR VAN?
- 8 A. NO.
- 9 Q. AND IT WAS NOT THE VAN OF A COMPANY YOU WORK FOR?
- 10 A. NO.
- 11 Q. AND YOU GOT OVER THERE AT A QUARTER OF ELEVEN AND
- 12 TALKED TO HER ABOUT YOUR SISTER'S FUNERAL ARRANGEMENTS?
- 13 A. WE TALKED, BUT THAT WASN' T THE REASON I WENT THERE TO
- 14 TALK TO HER CONCERNING MY SISTER'S FUNERAL. IT WAS
- 15 BROUGHT UP.
- 16 Q. OKAY. WHY DID YOU GO THERE?
- 17 A. WE WAS SNEAKING AROUND.
- 18 Q. SNEAKING AROUND. SO, YOU WENT TO YOUR --- LET ME GET
- 19 THIS STRAIGHT. YOU WENT TO HER HOUSE? DID YOU GO TO HER
- 20 HOUSE?
- 21 A. YEAH.
- 22 Q. SO, YOU WENT TO HER HOUSE TO SNEAK AROUND?
- 23 A. I DONE TALKED TO HER ON THE PHONE. SHE DONE TOLD ME
- 24 TO COME UP THERE.
- 25 Q. OKAY. SO, YOU WENT TO HER HOUSE?

- 1 A. YEAH.
- 2 Q. OKAY, AND YOU WERE SNEAKING AROUND.
- 3 A. HER BOYFRIEND WASN' T THERE. SHE DONE TOLD ME. IF HE
- 4 WAS THERE I WOULDN' T HAVE WENT UP THERE. SHE DONE TOLD
- 5 ME: SHE INVITE ME THERE.
- 6 Q. SHE INVITED YOU OVER THERE?
- 7 A. SO, I' M SNEAKING AROUND.
- 8 Q. GOTCHA. I UNDERSTAND NOW. WHO LIVES IN FRONT OF
- 9 HER, IN THE FRAME HOUSE IN FRONT OF HER?
- 10 A. HER MOTHER.
- 11 Q. HER MOTHER LIVES THERE. OKAY. DO YOU KNOW IF HER
- 12 MOTHER WAS HOME?
- 13 A. NO.
- 14 Q. YOU DON' T KNOW? OKAY. THIS WAS A QUARTER OF ELEVEN?
- 15 A. SHOULD HAVE BEEN, CAUSE THE NEWS HAD BEEN ON.
- 16 Q. OKAY. SO, YOU' RE SNEAKING AROUND WITH MARY BATES AT
- 17 HER HOUSE WHICH IS BEHIND HER MOTHER' S HOUSE. NOW, HOW
- 18 LONG HAVE YOU HAD A RELATIONSHIP WITH MARY BATES?
- 19 A. I CAME HOME IN NOVEMBER OF '96, AND WE STARTED
- 20 SNEAKING AROUND.
- 21 Q. SO, SINCE NOVEMBER OF '96 YOU' VE BEEN SNEAKING
- 22 AROUND?
- 23 A. YEP.
- 24 Q. OKAY. NOW, MR. GALLMAN, SLOP? IS THAT IT?
- 25 A. YEAH.

- 1 Q. SLOP?
- 2 A. THAT' S HIS NICKNAME.
- 3 Q. AND HE' S YOUR COUSIN?
- 4 A. SUPPOSED TO BE.
- 5 Q. SUPPOSED TO BE. I MEAN, IS HE NOT BECAUSE HE DOESN' T
- 6 WANT TO BE OR WHY IS HE NOT?
- 7 A. HIS MOTHER MARRIED A WISE, AND HE WAS GOING BY THE
- 8 NAME OF WISE.
- 9 Q. OKAY.
- 10 A. SO, I GUESS WE SUPPOSED TO BE KIN.
- 11 Q. OKAY.
- 12 A. ACCORDING TO WHAT THE FAMILY SAY.
- 13 Q. ALL RIGHT. NOW, WHEN DID YOU REKINDLE THIS
- 14 RELATIONSHIP WITH MARY BATES? DID YOU DO IT AS SOON AS
- 15 YOU GOT OUT IN '96?
- 16 A. I TALKED TO HER RIGHT AFTER I GOT OUT, BUT WE DIDN' T
- 17 SEE EACH OTHER RIGHT AWAY.
- 18 Q. OKAY. SO, YOU DIDN' T START SNEAKING AROUND AS SOON
- 19 AS YOU GOT OUT? HOW LONG WAS IT BEFORE YOU STARTED
- 20 SNEAKING AROUND?
- 21 A. IT WASN' T LONG.
- 22 Q. HOW LONG? A WEEK OR TWO WEEKS?
- 23 A. ABOUT TWO WEEKS OR SO.
- 24 Q. A MONTH?
- 25 A. A MONTH OR SO. IT WASN' T LONG.

- 1 Q. OKAY, AND HOW OFTEN WOULD YOU SNEAK AROUND?
- 2 A. WHEN WE CAN GET AWAY.
- 3 Q. OKAY. I MEAN WOULD IT BE ONCE A WEEK, TWICE A WEEK?
- 4 A. SOMETIMES IT DON'T EVEN BE A WEEK, BECAUSE I GOT A
- 5 GIRL, YOU KNOW.
- 6 Q. AND YOU DON'T WANT HER TO KNOW?
- 7 A. NO.
- 8 Q. OKAY. YOU WANT TO SNEAK AROUND.
- 9 A. I COULDN'T LET MY GIRL KNOW.
- 10 Q. I UNDERSTAND. SO, YOU SNEAK AROUND WITH MARY BATES.
- 11 WHERE ELSE WOULD YOU SNEAK AROUND? WOULD YOU SNEAK
- 12 AROUND SOMEWHERE ELSE BESIDES HER HOUSE?
- 13 A. YEAH.
- 14 Q. WHERE ELSE WOULD YOU SNEAK AROUND?
- 15 A. IN THE BUSHES.
- 16 Q. OH, YEAH, IN THE BUSHES WHERE?
- 17 A. RIGHT DOWN THE ROAD FROM HER HOUSE. DOWN THERE WHERE
- 18 THE CHURCH IS AT.
- 19 Q. OKAY. SO, THIS IS NEAR HER HOUSE?
- 20 A. YEAH.
- 21 Q. OKAY. I MEAN, WOULD YOU CALL HER FROM THE PHONE NEXT
- 22 TO THE LIQUOR STORE OR HOW WOULD THAT --- HOW WOULD YOU
- 23 MAKE THE ARRANGEMENTS?
- 24 A. HOLD, HOLD UP.
- 25 Q. OKAY.

- 1 A. WHERE WE GOING NOW, I JUST --- IT'S JUST THAT WE
2 SNEAK AROUND DOWN FROM HER HOUSE. WHERE DOES THE LIQUOR
3 STORE COME IN AT?
- 4 Q. WELL, HOW DO YOU GET IN TOUCH --- LET ME ADD
5 SOMETHING THERE. HOW WOULD YOU GET IN TOUCH WITH HER TO
6 LET HER KNOW YOU WANTED TO SNEAK AROUND?
- 7 A. WHEN WE BE TOGETHER ONE TIME, WE MIGHT SAY, "HEY,
8 LOOK, SEE YOU NEXT WEEK, NEXT TUESDAY" OR WHATEVER.
- 9 Q. OKAY.
- 10 A. EITHER I'LL CALL. LIKE SHE MIGHT SEND WORD THROUGH
11 SOMEBODY.
- 12 Q. NOW, HOW FAR AWAY ARE THESE BUSHES FROM HER HOUSE?
- 13 A. YOU LEAVE FROM HER HOUSE, GO OUT THERE AND TURN TO
14 YOUR LEFT, AND IT'S ANOTHER ROAD ON DOWN THERE, A CHURCH
15 DOWN THERE. YOU GO DOWN THERE.
- 16 Q. OKAY. SO, THERE'S A CHURCH --- I MEAN, EXCUSE ME,
17 THERE'S BUSHES NEXT TO THE CHURCH?
- 18 A. WE PARKING RIGHT THERE ON THE ROAD.
- 19 Q. OH, YEAH? I MEAN, WOULD YOU BE IN AN AUTOMOBILE OR
20 WALKING, OR HOW WOULD THESE RENDEZVOUS TAKE PLACE?
- 21 A. WE WOULD BE IN A CAR.
- 22 Q. IN A CAR? YOU WOULD BE IN A CAR?
- 23 A. IN THAT TRUCK SHE GOT OUT THERE.
- 24 Q. SHE HAS A TRUCK?
- 25 A. YEAH.

- 1 Q. HOW WOULD YOU GET THERE?
- 2 A. I'D WALK OR CATCH A RIDE WITH SOMEBODY. I DON'T WANT
3 PEOPLE KNOW WHERE I'M GOING. I'M SNEAKING AROUND.
- 4 Q. OKAY, GOTCHA. SO, WOULD YOU CATCH A RIDE WITH
5 SOMEBODY AND THEY'D TAKE YOU OUT THERE SO YOU COULD SNEAK
6 AROUND?
- 7 A. THEY DROP ME OFF IN THE NEIGHBORHOOD, DROP ME OFF
8 RIGHT THERE. I MIGHT STOP THERE AND HOLLER AT HER, HER
9 SISTER OR HER MOTHER. YOU KNOW, JUST SNEAK AROUND. I
10 MAY JUST WALK ON UP THE ROAD AND THEN SHE COME ON UP.
- 11 Q. I UNDERSTAND. OKAY. THANK YOU. SO, THIS EVENING OF
12 JULY 14 AFTER YOU WENT OVER TO SNEAK AROUND, YOU GOT
13 THERE AT A QUARTER 'TIL ELEVEN, AND SHE LET YOU IN THE
14 HOUSE?
- 15 A. YEAH.
- 16 Q. DID SHE JUST SAY, COME ON IN, SAP?
- 17 A. SHE HAD COME TO THE DOOR. WE TALKED. SHE CAME TO
18 THE DOOR. SHE WAS ON THE PORCH. I WAS SITTING IN THE
19 VAN. WE BE TALKING AND SHE ASKED ME TO GET OUT AND COME
20 IN.
- 21 Q. OKAY, AND YOU WENT IN?
- 22 A. YEAH.
- 23 Q. AND YOU SPENT THE NIGHT IN THE HOUSE?
- 24 A. YEAH.
- 25 Q. WAS ANYBODY ELSE IN THE HOUSE?

- 1 A. NO.
- 2 Q. NO. JUST YOU AND MARY BATES?
- 3 A. JUST ME AND HER.
- 4 Q. THERE WERE NO CHILDREN IN THE HOUSE?
- 5 A. NO.
- 6 Q. NONE AT ALL? OKAY, AND YOU SLEPT IN A CHAIR?
- 7 A. THE LONG CHAIR, NOT A STRAIGHT UP CHAIR LIKE THIS,
- 8 A LONG CHAIR.
- 9 Q. OKAY. LIKE A CHAISE LOUNGE THAT LAYS OUT OR A
- 10 RECLINER.
- 11 A. NOT TRYING TO BE SMART OR NOTHING, DO YOU HAVE A LONG
- 12 CHAIR IN YOUR HOUSE?
- 13 Q. A LONG CHAIR?
- 14 A. LONG CHAIR.
- 15 Q. GOTCHA. OKAY. LIKE YOU USE ON PICNICS AND COOKOUTS?
- 16 A. NO, NO, NO. A LONG CHAIR.
- 17 Q. LONG?
- 18 A. YEAH.
- 19 Q. OKAY.
- 20 A. WHERE YOU CAN LAY DOWN ON IT.
- 21 Q. OKAY. OKAY. GOTCHA. ALL RIGHT, AND THIS WAS IN HER
- 22 HOUSE?
- 23 A. YEAH.
- 24 Q. OKAY, AND WHAT TIME DID YOU GET UP TO GO TO WORK?
- 25 A. EARLY, ABOUT FOUR OR SO. I DIDN'T GET UP TO GO TO

1 WORK. I HAD TO TAKE THE VAN BACK. I WASN'T GOING TO
2 WORK THAT DAY.

3 Q. OH, I'M SORRY, I MISUNDERSTOOD. SO, WHAT, YOU GOT UP
4 AT FOUR O' CLOCK?

5 A. ABOUT FOUR.

6 Q. OKAY. DID MARY BATES WAKE YOU UP?

7 A. I WOKE UP ON MY OWN.

8 Q. YOU WOKE UP ON YOUR OWN. OKAY. DID YOU TAKE A
9 SHOWER?

10 A. NO, I DON'T LIVE THERE. I DRESSED EARLIER AND I WAS
11 SNEAKING AROUND. I WAS USING SOMEONE ELSE'S VAN. I HAD
12 TO GET IT BACK TO THEM SO THEY CAN GO PICK UP THEIR HANDS
13 AND TAKE THEM BACK AND FORWARD TO WORK.

14 Q. OKAY.

15 A. I WASN'T GOING TO WORK THAT DAY.

16 Q. OKAY, BUT WERE YOU DRESSED WHEN YOU WOKE UP, OR DID
17 YOU HAVE TO GET DRESSED?

18 A. I HAD ON MY CLOTHES.

19 Q. OKAY. SO, YOU WOKE UP AT FOUR O' CLOCK, HAD YOUR
20 CLOTHES ON, AND YOU DID WHAT?

21 A. I WENT TO SLEEP WITH MY CLOTHES ON. I DIDN'T PUT NO
22 CLOTHES ON. I WENT TO SLEEP WITH MY CLOTHES ON.

23 Q. OKAY. I'M SORRY. I MISUNDERSTOOD YOU.

24 A. NOW, NOW, ASK THE QUESTION RIGHT.

25 Q. I'M SORRY. I APOLOGIZE. FOUR O' CLOCK YOU GET UP,

- 1 YOU HAVE YOUR CLOTHES ON, AND YOU' RE GOING TO TAKE THIS
2 VAN BACK. IS THAT CORRECT?
3 A. THAT' S CORRECT.
4 Q. WHAT DID YOU DO AFTER YOU GOT UP?
5 A. WE GOT IN A ARGUMENT.
6 Q. OKAY. SO, WAS MARY BATES AWAKE WHEN YOU GOT UP, OR
7 DID YOU WAKE HER UP?
8 A. WE WERE LAYING ON THE CHAIR. WHEN I WOKE UP, I GOT
9 UP AND PUT MY SHOES ON. SHE WOKE UP.
10 Q. OH, SO, SHE WAS ON THE CHAIR WITH YOU?
11 A. YEAH.
12 Q. OH, YOU WERE BOTH ON THE LONG CHAIR?
13 A. YEAH.
14 Q. OKAY. WAS SHE DRESSED TOO?
15 A. YEAH.
16 Q. OKAY. SO, YOU WERE BOTH DRESSED ON THE LONG CHAIR,
17 AND YOU WOKE UP AND SHE WOKE UP, AND THEN YOU GOT IN AN
18 ARGUMENT? WHAT WAS THE ARGUMENT ABOUT?
19 A. I TOLD YOU ABOUT THE FLOWER GIRL.
20 Q. THE FLOWER GIRL.
21 A. IT STARTED THAT NIGHT.
22 Q. WHAT DOES A FLOWER GIRL DO?
23 A. SHE WAS GOING TO BE IN THE FUNERAL.
24 Q. OKAY. YOU HAVE A FLOWER GIRL AT FUNERALS?
25 A. YEAH.

- 1 Q. OKAY.
- 2 A. HOLD UP, EXCUSE ME. I'M NOT TRYING TO BE SMART.
- 3 Q. I UNDERSTAND. NEITHER AM I.
- 4 A. WELL, WHY ARE YOU ASKING ME THESE UNNECESSARY
5 QUESTIONS LIKE YOU NEVER BEEN TO A FUNERAL OR ANYTHING?
6 I FEEL THAT YOU TRYING TO PLAY WITH MY INTELLIGENCE.
- 7 Q. NO, NO, I'VE NEVER BEEN TO A FUNERAL WITH FLOWER
8 GIRLS. I DON'T KNOW THE CONCEPT.
- 9 A. OKAY. ALL RIGHT.
- 10 Q. SO, WHAT STARTED THE ARGUMENT?
- 11 A. IT GOES BACK TO WHAT I JUST SAID.
- 12 Q. OKAY.
- 13 A. YOU ASKED ME EARLIER.
- 14 Q. OKAY.
- 15 A. THE FLOWER GIRL IS WHAT STARTED THE ARGUMENT.
- 16 Q. THE FLOWER GIRL --- AND THE FLOWER GIRL WAS YOUR
17 GIRLFRIEND?
- 18 A. YES.
- 19 Q. AND WHAT'S HER NAME?
- 20 A. ANNA MAE.
- 21 Q. ANNA MAE?
- 22 A. UH-HUH.
- 23 Q. AND HOW LONG HAS SHE BEEN YOUR GIRLFRIEND?
- 24 A. SINCE I GOT OUT, SEVERAL MONTHS.
- 25 Q. SO, SINCE SOMETIME IN '96?

- 1 A. UH-HUH.
- 2 Q. OKAY, AND YOU GUYS STARTED ARGUING OVER THIS FLOWER
3 GIRL? WERE YOU STILL IN THE HOUSE WHEN YOU STARTED
4 ARGUING?
- 5 A. YES.
- 6 Q. OKAY. NOW, DID YOU SLAP ONE ANOTHER AROUND INSIDE
7 THE HOUSE, EXCHANGE BLOWS?
- 8 A. YES.
- 9 Q. OKAY. HOW DID YOU GET OUTSIDE?
- 10 A. I OPENED THE DOOR AND I WALKED OUT.
- 11 Q. OKAY. DID SHE TELL YOU TO GET OUT?
- 12 A. NO.
- 13 Q. OR YOU JUST GOT OUT ON YOUR OWN?
- 14 A. YEAH.
- 15 Q. OKAY, AND THEN WHAT DID YOU DO ONCE YOU GOT OUTSIDE?
- 16 A. I GOT IN THE VAN AND STARTED IT UP TO LET THE VAN
17 WARM UP.
- 18 Q. OKAY. THEN WHAT HAPPENED?
- 19 A. WASN'T TOO LONG AFTER SHE CAME AND STOPPED ME AND
20 SAID SHE WANTED TO TALK TO ME.
- 21 Q. OKAY. SO, YOU'RE IN THE VAN. IT'S WARMING UP.
- 22 A. HOLD UP.
- 23 Q. OKAY.
- 24 A. YOU ASKED ME WHAT HAPPENED THAT NEXT NIGHT.
- 25 Q. OKAY. PLEASE DO.

- 1 A. AND I, WHEN I WAS LETTING THE VAN WARM UP, SHE CAME,
2 OUT AND STOPPED ME.
3 Q. OKAY.
4 A. I GOT OUT OF THE VAN. WE WAS TALKING AND THE POLICE
5 CAME AND LOCKED ME UP.
6 Q. OKAY. DID THE POLICE COME ONE TIME OR TWO TIMES?
7 A. ONE TIME.
8 Q. ONLY ONE TIME. OKAY. DID YOU SEE THE POLICEMAN WHO
9 CAME IN COURT TODAY?
10 A. YES, I DID.
11 Q. WHICH POLICEMAN WAS IT?
12 A. THE LITTLE ONE.
13 Q. THE WHICH ONE?
14 A. THE LITTLE ONE.
15 Q. THE OLDER?
16 A. NO, THE LITTLE ONE, THE LITTLE YOUNG DUDE.
17 Q. THE YOUNG GUY?
18 A. YEAH.
19 Q. OKAY. . . OKAY. . . THE ONE WHO'S NO LONGER A POLICEMAN?
20 A. I DON'T KNOW WHETHER HE'S A POLICEMAN. THE ONE THAT
21 SAY HE IS.
22 Q. THE YOUNG BLOND GUY?
23 A. YEAH.
24 Q. OKAY. SO, HE CAME AND DID WHAT?
25 A. PLACED ME UNDER ARREST, PUT HANDCUFFS ON ME.

- 1 Q. OKAY, PUT HANDCUFFS ON YOU AND PUT YOU IN THE BACK
2 SEAT OF HIS CAR.
- 3 A. YES.
- 4 Q. AND THEN TOOK OFF WITH YOU TO TAKE YOU TO JAIL?
- 5 A. YES.
- 6 Q. AND ON THE WAY TO JAIL YOU TOLD HIM TO CALL SALAZAR?
- 7 A. YES.
- 8 Q. DID HE CALL SALAZAR?
- 9 A. YES.
- 10 Q. DID SALAZAR RESPOND?
- 11 A. HE WAS TALKING TO SOMEBODY ON THE PHONE. I DON'T
12 KNOW WHO HE WAS TALKING TO.
- 13 Q. AND HE ARRANGED FOR YOU TO MEET SALAZAR?
- 14 A. THEY WERE GOING TO MEET OUT THERE.
- 15 Q. OUT WHERE?
- 16 A. AT THE STOP SIGN WHERE THEY STOPPED AT.
- 17 Q. OKAY. SO, THEY'RE GOING TO MEET YOU AT A STOP SIGN.
18 WHICH STOP SIGN WAS THAT?
- 19 A. I GUESS IT WAS BY 34.
- 20 Q. BY 34.
- 21 A. BY THE BY-PASS SOMEWHERE OUT THERE.
- 22 Q. OKAY, AND DID YOU AND OFFICER BABB STOP AT THE STOP
23 SIGN?
- 24 A. YES.
- 25 Q. AND OFFICER BABB LET YOU OUT OF THE CAR?

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- 1 A. YEAH.
- 2 Q. DID HE COME AROUND AND OPEN THE DOOR FOR YOU?
- 3 A. YEAH.
- 4 Q. AND LET YOU GET OUT?
- 5 A. YES.
- 6 Q. DID HE TAKE THE HANDCUFFS OFF?
- 7 A. NO.
- 8 Q. AND THEN ANOTHER CAR PULLED UP?
- 9 A. YES.
- 10 Q. AND YOU TOOK OFF RUNNING?
- 11 A. YES.
- 12 Q. BECAUSE YOU DIDN' T KNOW WHO IT WAS?
- 13 A. RIGHT.
- 14 Q. WHY WOULD YOU TAKE OFF RUNNING?
- 15 A. I DIDN' T KNOW WHO WAS IN THE CAR. I DIDN' T KNOW WHAT
16 HE WAS FIXING TO DO TO ME.
- 17 Q. WELL, WHAT WOULD MAKE YOU THINK THEY' RE FIXING TO DO
18 ANYTHING TO YOU?
- 19 A. THE WAY POLICE BEEN BEATING PEOPLE UP.
- 20 Q. OKAY. YOU SAY YOU' D BEEN DRINKING THAT NIGHT?
- 21 A. THAT' S CORRECT.
- 22 Q. YOU HAD NOT DONE ANY DRUGS?
- 23 A. NO, I HAVEN' T GOT NO DRUGS.
- 24 Q. OKAY. SO, YOU' VE BEEN SNEAKING AROUND WITH MARY
25 BATES AND NOBODY KNOWS IT BUT --- IS IT HER SISTER OR

1 YOUR SISTER?

2 A. HER SISTER KNEW ABOUT IT. HER NEPHEW KNEW ABOUT IT.
3 PEOPLE ON THE OUTSIDE KNEW ABOUT IT. A LOT OF PEOPLE
4 KNEW ABOUT I WAS SNEAKING AROUND AND SHE SNEAKING AROUND,
5 BUT HE JUST DIDN' T KNOW ABOUT IT, AND MY GIRLFRIEND AIN' T
6 KNOW ABOUT IT UNTIL ALL THIS CAME ABOUT.

7 Q. OKAY. SO, THEY'RE THE ONLY TWO IN THE DARK.
8 EVERYBODY ---

9 A. NO, NO, NO, NOT --- THOSE JUST THE ONLY TWO. MAYBE
10 THERE' S A LOT OF OTHER PEOPLE THAT DON' T KNOW ABOUT IT
11 AND MINDING THEIR OWN BUSINESS AND AIN' T BEING IN
12 PEOPLE' S BUSINESS.

13 Q. NOW, YOU TESTIFIED YOU' D BEEN IN TROUBLE BEFORE.
14 DIDN' T YOU?

15 A. YES, I DID.

16 Q. AS A MATTER OF FACT, IN AUGUST OF 1990, YOU PLED
17 GUILTY TO BURGLARY THIRD. DIDN' T YOU?

18 A. IN '90?

19 Q. AUGUST OF 1990.

20 A. I DIDN' T LOOK AT THE RECORD AGAIN. I DON' T REMEMBER.

21 Q. OKAY. NOW, I' LL SHOW YOU WHAT' S BEEN MARKED AS
22 STATE' S EXHIBIT SIX FOR IDENTIFICATION AND ASK YOU WHAT
23 THAT DOCUMENT IS? DOES THAT DOCUMENT HAVE YOUR NAME ON
24 IT? DOES THAT SAY THE STATE VERSUS JAMES EDWARD WISE?

25 A. DON' T IT SAY ATTEMPT BURGLARY, THIRD DEGREE?

1 Q. IT DOES. IS THAT WHAT YOU WERE SENT TO JAIL FOR,
2 ATTEMPTED BURGLARY, THIRD DEGREE?

3 A. I DIDN'T GO TO JAIL. I GOT PROBATION.

4 Q. YOU GOT PROBATION. OKAY, BUT THAT'S THE OFFENSE YOU
5 WERE CONVICTED OF?

6 A. I WASN'T CONVICTED OF IT. I'M TELLING YOU I GOT
7 PROBATION FOR IT. WELL, YOU CAN CALL THAT CONVICTED
8 BECAUSE I PLEADED GUILTY TO IT, AND I WOULDN'T HAVE
9 PLEADED GUILTY TO IT THEN IF I WASN'T UNDER PRESSURE WITH
10 THE LAW ENFORCEMENT HERE IN NEWBERRY COUNTY BECAUSE THEY
11 WANTED TO USE ME TO SET UP PEOPLE WITH DRUGS.

12 Q. OKAY. I SEE. I SHOW YOU WHAT'S BEEN MARKED AS
13 STATE'S EXHIBIT SEVEN FOR IDENTIFICATION AND ASK YOU WHAT
14 THAT DOCUMENT IS? IS THAT THE STATE VERSUS JAMES EDWARD
15 WISE?

16 A. YES, IT DO.

17 Q. ALL RIGHT. WHAT CRIMES DID YOU PLEAD GUILTY TO OR
18 WERE YOU CONVICTED OF?

19 A. I WAS CONVICTED OF THESE CHARGES, ASSAULT AND BATTERY
20 WITH INTENT TO KILL, POINTING AND PRESENTING A FIREARM,
21 CARRYING A PISTOL UNLAWFULLY.

22 Q. OKAY. THANK YOU. MAY I HAVE THIS BACK?

23 MR. PEACE: YOUR HONOR, I HAVE CERTIFIED COPIES OF
24 THE EXHIBITS. I WOULD REQUEST THAT STATE'S EXHIBIT SIX
25 FOR IDENTIFICATION AND SEVEN FOR IDENTIFICATION BE

1 ADMITTED AS STATE'S EXHIBIT SIX AND SEVEN.

2 MR. GRIFFITH: THAT'S WITHOUT OBJECTION, YOUR HONOR.

3 THE COURT: NO OBJECTION.

4 MR. GRIFFITH: HE TESTIFIED TO THEM ON DIRECT. HE
5 HAS NO OBJECTION TO THEM BEING INTRODUCED.

6 THE COURT: NO OBJECTION.

7 MR. PEACE: THANK YOU, YOUR HONOR.

8 (STATE'S EXHIBITS NUMBER SIX AND SEVEN MADE A PART
9 OF THE RECORD.)

10 BY MR. PEACE

11 Q. NOW, MR. WISE, IS IT YOUR TESTIMONY TO THIS JURY THAT
12 YOU DID NOT GO TO THE HOUSE OF MARY BATES AND HAVE THE
13 POLICE COME AND RUN YOU OFF?

14 A. I DIDN'T SAY I DIDN'T GO THERE. I NEVER SAID THAT.
15 ONCE.

16 Q. BUT YOU ONLY WENT THERE ONE TIME THAT EVENING. IS
17 THAT YOUR TESTIMONY?

18 A. THAT'S MY TESTIMONY.

19 Q. YOU ONLY WENT THERE ONCE, NOT TWICE?

20 A. ONCE.

21 Q. ONCE. YOU DID NOT BREAK THE GLASS IN THE DOOR TO HER
22 HOUSE?

23 A. NO, I DIDN'T.

24 Q. YOU DID NOT KICK THE DOOR OPEN?

25 A. NO, I DIDN'T.

- 1 Q. YOU DID NOT THREATEN HER WITH THIS PIG?
- 2 A. NO, I DIDN' T. I NEVER SEEN THAT.
- 3 Q. NEVER SEEN THIS?
- 4 A. NEVER SEEN IT 'TIL TODAY.
- 5 Q. HOW MANY TIMES DID YOU SNEAK AROUND IN HER HOUSE?
- 6 A. I' VE BEEN IN HER HOUSE MORE THAN ONCE.
- 7 Q. HOW MANY?
- 8 A. I DIDN' T KEEP COUNT.
- 9 Q. TEN?
- 10 A. I DON' T KNOW.
- 11 Q. MORE OR LESS?
- 12 A. I DON' T KNOW.
- 13 Q. BUT YOU NEVER SAW THIS PIG?
- 14 A. NO, UNTIL TODAY.
- 15 Q. BUT YOU' VE BEEN IN HER HOUSE SNEAKING AROUND?
- 16 A. YEAH.
- 17 Q. SO, YOU WEREN' T IN THE HOUSE WHEN JAMES GALLMAN
- 18 CALLED TO SEE IF SHE WAS ALL RIGHT?
- 19 A. WHEN I WAS IN THERE, SHE NEVER WAS ON THE PHONE.
- 20 Q. AND YOU WERE NEVER ARRESTED BY MAJOR BILL GRIFFIN?
- 21 A. THE OLDER FELLOW YOU TALKING ABOUT?
- 22 Q. OLDER FELLOW.
- 23 A. NO.
- 24 Q. YOU WERE NOT ARRESTED BY HIM ON JULY 15, 1997?
- 25 A. NO.

1 MR. PEACE: NO FURTHER QUESTIONS, YOUR HONOR.

2 REDIRECT EXAMINATION

3 BY MR. GRIFFITH

4 Q. JAMES, ONE THING THAT I NEGLECTED TO ASK YOU ON
5 DIRECT WAS DID YOU RECEIVE A LETTER LAST, THIS PAST
6 AUGUST IN THE MAIL?

7 A. YES, I DID.

8 Q. WHILE YOU WERE AT THE DETENTION CENTER?

9 A. YES, SIR.

10 Q. NOW, I SHOW YOU WHAT I'D LIKE MARKED PLEASE AS
11 DEFENSE EXHIBIT TWO.

12 (DEFENSE EXHIBIT NUMBER TWO MARKED FOR
13 IDENTIFICATION.)

14 Q. JAMES, THIS HAS BEEN MARKED AS DEFENSE EXHIBIT TWO.
15 WILL YOU LOOK AT THAT AND TELL ME WHAT THAT IS?

16 A. THIS IS THE LETTER ADDRESSED FROM MARY BATES TO
17 JAMES WISE.

18 Q. NOW, IS THERE A LETTER INSIDE THE ENVELOPE?

19 A. YES.

20 Q. ALL RIGHT. NOW, CAN YOU IDENTIFY THE LETTER THAT'S
21 IN THE ENVELOPE?

22 A. YEAH.

23 Q. WHAT DOES THAT ---

24 MR. GRIFFITH: CAN I MARK THE LETTER, MADAM CLERK, AS
25 DEFENSE EXHIBIT THREE FOR IDENTIFICATION PURPOSES?

1 (DEFENSE EXHIBIT NUMBER THREE MARKED FOR
2 IDENTIFICATION.)

3 Q. WHAT DOES THAT LETTER SAY THAT THE CLERK HAS MARKED
4 AS DEFENSE EXHIBIT THREE?

5 A. YOU WANT ME TO READ IT?

6 Q. NO, I WANT YOU TO EXAMINE IT, AND I ASK YOU CAN YOU
7 IDENTIFY IT?

8 A. YES.

9 Q. ALL RIGHT.

10 A. I REMEMBER SEEING THIS. I GAVE IT TO YOU.

11 Q. YOU GAVE IT TO ME BEFORE THIS TRIAL.

12 A. YEAH, WAY BEFORE THAT.

13 Q. WHO IS THAT LETTER FROM?

14 A. MARY BATES.

15 Q. WHO IS IT ADDRESSED TO ON THE ENVELOPE?

16 A. TO ME, JAMES WISE.

17 Q. ALL RIGHT.

18 MR. GRIFFITH: NOW, YOUR HONOR, I'D LIKE TO MOVE BOTH
19 OF THESE ITEMS, DEFENSE EXHIBITS TWO AND THREE HAVE BEEN
20 IDENTIFIED. ---

21 MR. PEACE: NO OBJECTION.

22 THE COURT: NO OBJECTION.

23 (DEFENSE EXHIBITS NUMBER TWO AND THREE MADE A PART
24 OF THE RECORD.)

25 BY MR. GRIFFITH

1 Q. THERE WAS A YELLOW STICKY THING INSIDE THE ENVELOPE.

2 A. I GOT IT FROM THERE. THE OFFICER GAVE IT TO ME AT
3 THE JAIL.

4 Q. WHO GAVE YOU THAT?

5 A. THE OFFICER THERE AT THE JAIL FOR ME TO CALL.

6 Q. ALL RIGHT.

7 A. THAT' S HER.

8 Q. NOW, LET ME ASK YOU THIS, JAMES. I'VE HANDED YOU A
9 YELLOW STICKY, OR A POST-IT NOTE, THAT HAS SOME WRITING
10 ON IT AND WAS WITHIN THE ENVELOPE, AND I WAS UNAWARE AS
11 TO WHAT IT WAS. CAN YOU IDENTIFY IT TODAY?

12 A. YEAH, IT' S A PHONE NUMBER.

13 Q. NOW, IS IT A ---

14 A. WITH MARY BATES NAME ON THERE. I RECEIVED IT FROM
15 THE OFFICER.

16 Q. NOW, IS THAT LIKE A PHONE MESSAGE YOU MIGHT RECEIVE
17 AT THE JAIL?

18 A. THEY DO THAT ALL THE TIME. WHEN PEOPLE CALL, THEY
19 LEAVE A MESSAGE, THEY TAKE THE PHONE NUMBER DOWN AND
20 BRING IT TO YOU.

21 Q. ALL RIGHT. WELL, THIS IS A PHONE MESSAGE YOU'VE
22 IDENTIFIED.

23 MR. GRIFFITH: CAN I MARK THIS AS DEFENSE EXHIBIT
24 FOUR AND ALSO ASK THAT IT BE INTRODUCED INTO EVIDENCE?

25 (DEFENSE EXHIBIT NUMBER FOUR MARKED FOR

1 IDENTIFICATION AND MADE A PART OF THE RECORD.)

2 A. DO YOU WANT THIS?

3 Q. JAMES, I'M GOING TO SHOW YOU THREE COPIES OF THE
4 ARREST WARRANTS UNDER WHICH YOU WERE PLACED UNDER ARREST
5 ON THAT DAY. HAVE YOU SEEN COPIES OF THE ORIGINALS OF
6 THAT?

7 A. I HAVE COPIES OF ALL THESE.

8 Q. NOW, ALL THE WARRANTS CONTAIN AFFIDAVITS WHICH ARE
9 SWORN FACTS AND CIRCUMSTANCES CONCERNING YOUR ARREST. IS
10 THAT RIGHT?

11 A. THAT'S RIGHT.

12 Q. WHO SIGNED THE ARREST WARRANTS?

13 A. THEY GOT MARY BATES ON THERE.

14 Q. ON ALL THREE?

15 A. YEAH.

16 MR. GRIFFITH: JUDGE, I WOULD LIKE TO INTRODUCE
17 THESE ORIGINALS AS EXHIBIT FIVE.

18 THE COURT: NO OBJECTION.

19 MR. GRIFFITH: YOUR HONOR, THESE ARE A COPY. THE
20 ORIGINALS ARE SOMEWHERE IN THE CASE FILE, AND THEY
21 PROVIDED THEM TO US.

22 THE COURT: OKAY, NO OBJECTION.

23 MR. GRIFFITH: AND WE'LL DO THEM ALL AS ONE.

24 (DEFENSE EXHIBIT NUMBER FIVE MARKED FOR
25 IDENTIFICATION AND MADE A PART OF THE RECORD.)

1 BY MR. GRIFFITH

2 Q. JAMES, WE TALKED ABOUT THIS LETTER AND THESE MESSAGES
3 AND WHAT NOT, AND YOU CONSIDER THESE QUITE IMPORTANT.
4 WHAT DOES THIS LETTER SAY?

5 A. LET ME READ IT.

6 Q. ALL RIGHT.

7 A. "I, MARY BATES, HAVE BY WRITTEN THIS STATEMENT ON MY
8 OWN FREE WILL. I DO NOT WISH TO TESTIFY AGAINST JAMES E.
9 WISE. MARY BATES."

10 Q. IS IT DATED?

11 A. NO.

12 Q. IS THE ENVELOPE POSTMARKED?

13 A. YEAH, AUGUST 14. IT LOOKS LIKE AUGUST 14. IT'S
14 EITHER AUGUST 4 OR AUGUST 14 ONE.

15 Q. OKAY, AND OF 1998?

16 A. YEAH, 1998.

17 Q. AND SO, MS. BATES, IT'S YOUR UNDERSTANDING, HAD
18 WRITTEN YOU THAT THING, SHE DIDN'T WISH TO TESTIFY
19 AGAINST YOU?

20 A. YES.

21 Q. OKAY.

22 MR. GRIFFITH: YOUR HONOR, I'D LIKE TO PUBLISH THIS
23 TO THE JURY AND MAKE IT PART OF THE RECORD ALSO.

24 THE COURT: NO OBJECTION.

25 Q. THEY'LL BE ABLE TO LOOK AT THIS, JAMES.

1 A. ALL RIGHT.

2 Q. THAT'S ALL THE QUESTIONS I HAVE CONCERNING THAT.
3 THANK YOU.

4 MR. PEACE: JUST A COUPLE OF FOLLOW-UP QUESTIONS,
5 YOUR HONOR.

6 RE-CROSS EXAMINATION

7 BY MR. PEACE

8 Q. DEFENSE EXHIBIT THREE, IS THERE A DATE ON THAT
9 LETTER?

10 A. NO, SIR.

11 Q. THERE'S NO SALUTATION EITHER IS THERE? IT DOESN'T
12 SAY, DEAR JAMES, I HEREBY WRITE THIS STATEMENT ON MY OWN
13 FREE WILL. I DO NOT WISH TO TESTIFY AGAINST JAMES E.
14 WISE?

15 A. THAT'S NOT WHAT IT SAY.

16 Q. IT DOESN'T SAY, I, MARY BATES, HEREBY WRITE THIS
17 STATEMENT ON MY OWN FREE WILL. I DO NOT WISH TO TESTIFY
18 AGAINST JAMES E. WISE?

19 A. YOU SAID DEAR FROM THE BEGINNING.

20 Q. NO, IT SAY DOESN'T SAY DEAR JAMES, DOES IT?

21 A. NO, IT DOESN'T SAY THAT, DEAR JAMES.

22 Q. BUT SHE TESTIFIED AGAINST YOU. DIDN'T SHE?

23 A. SURE, SHE DID. WHY?

24 Q. I MEAN THIS DOESN'T SAY I, MARY BATES, HEREBY SAY
25 THAT THE WARRANTS I TOOK OUT AREN'T TRUE. DOES IT?

1 A. IT DOESN' T SAY THAT ON THAT PAPER THERE.

2 Q. OKAY, AND SHE DIDN' T SAY THAT IN COURT TODAY EITHER.
3 DID SHE?

4 A. WHEN YOU GOT THE POLICE THREATENING YOU, YOU PROBABLY
5 SAY ANYTHING.

6 Q. OKAY. SO, THE POLICE ARE THREATENING MARY BATES?

7 A. HEY, LOOK, I DON' T KNOW WHAT THEY SAID TO HER, BUT I
8 KNOW WHAT THAT STATEMENT SAY.

9 Q. OKAY, AND THE STATEMENT SAYS SHE' S NOT GOING TO
10 TESTIFY.

11 A. THAT' S WHAT THE STATEMENT SAY.

12 Q. OKAY, BUT SHE TESTIFIED. DIDN' T SHE?

13 A. SHE GOT UP HERE ON THE STAND. I DON' T KNOW WHAT YOU
14 CALL IT. I CALL IT TESTIFYING.

15 Q. ME TOO. THANK YOU.

16 MR. PEACE: NO FURTHER QUESTIONS, YOUR HONOR.

17 MR. GRIFFITH: THANK YOU, JAMES. YOUR HONOR, THAT' S
18 OUR CASE.

19 THE COURT: NOTE THE SAME MOTIONS THAT WERE HEARD.
20 IT' S NOT PREJUDICING THE RIGHTS OF THE DEFENDANT TO GO
21 FORWARD. HAVE YOU GOT ANYTHING IN REPLY?

22 MR. PEACE: YES, SIR. JUST ONE WITNESS.

23 THE COURT: ALL RIGHT.

24 MR. PEACE: THE STATE WOULD RE-CALL MARY BATES.

25 THE COURT: COME AROUND MARY. YOU' VE ALREADY BEEN

1 SWORN.

2 DIRECT EXAMINATION

3 BY MR. PEACE

4 Q. MS. BATES.

5 A. YES, SIR.

6 Q. DID YOU EVER DO ANY SNEAKING AROUND WITH THE
7 DEFENDANT AFTER 1985?

8 A. NO, SIR.

9 Q. DID YOU DO ANY SNEAKING AROUND WITH THE DEFENDANT IN
10 1996?

11 A. NO, SIR.

12 Q. DID YOU INVITE THE DEFENDANT TO YOUR HOUSE ON THE
13 EVENING OF JULY 14, 1997?

14 A. NO, SIR.

15 Q. DID THE DEFENDANT COME OVER IN SOMEBODY'S TRUCK AND
16 SPEND THE NIGHT IN THE LONG CHAIR IN YOUR HOUSE?

17 A. NO, SIR.

18 Q. WAS THERE SOMEBODY IN YOUR HOUSE THE EVENING OF JULY
19 14, 1997?

20 A. YES, THERE WAS.

21 Q. WHO WAS IN YOUR HOUSE AT THAT TIME, MS. BATES?

22 A. TWO KIDS.

23 Q. AND WHO ARE THOSE KIDS?

24 A. ONE OF THEM IS MY ADOPTED SON AND ONE WAS MY NEPHEW,

25 AND ONE WAS SIX AND ONE WAS FIVE.

1 Q. DID YOU SNEAK AROUND IN THE BUSHES AT THE CHURCH OR
2 BY THE CHURCH WITH MR. WISE AT ANY TIME?

3 A. NO, SIR.

4 Q. DID YOU SNEAK AROUND AS MANY TIMES AS YOU COULD FROM
5 1996 UNTIL THE TIME OF HIS ARREST ON JULY 15, 1997?

6 A. NO, SIR.

7 Q. HOW MANY TIMES DID A POLICEMAN HAVE TO COME TO YOUR
8 HOUSE ON JULY 15, 1997?

9 A. TWICE.

10 Q. AND WHO WERE THE POLICEMEN WHO CAME?

11 A. THE ONE WAS TESTIFIED, CAPTAIN GRIFFIN, AND THE
12 LITTLE ONE. THE GRIFFIN CAME TWICE.

13 Q. DID MR. WISE COME TO YOUR HOUSE TWICE IN THE EARLY
14 MORNING HOURS OF JULY 15, 1997?

15 A. YES, HE DID.

16 Q. DID MR. WISE THREATEN YOU WITH THIS CERAMIC PIG?

17 A. YES, HE DID.

18 Q. HOW LONG HAVE YOU HAD THIS CERAMIC PIG, MS. BATES?

19 A. EVER SINCE I'VE BEEN STAYING IN THE TRAILER. IT WAS
20 A GIFT.

21 Q. AND HOW LONG HAVE YOU BEEN STAYING IN THAT TRAILER?

22 A. ABOUT FOUR YEARS.

23 Q. THANK YOU.

24 MR. PEACE: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

25 EXCUSE ME, YOUR HONOR, I DO HAVE ONE FURTHER QUESTION.

1 Q. I SHOW YOU WHAT'S BEEN MARKED DEFENDANT'S EXHIBIT
2 THREE AND ASK YOU IF YOU WROTE THAT DOCUMENT?

3 A. NO, I DID NOT.

4 Q. YOU DID NOT WRITE I, MARY BATES, HEREBY WRITE THIS
5 STATEMENT OF MY OWN FREE WILL. I DO NOT WISH TO TESTIFY
6 AGAINST JAMES E. WISE.

7 A. NO, I DID NOT.

8 Q. YOU DID NOT SIGN IT MARY BATES?

9 A. NO, I DID NOT.

10 Q. YOU IN FACT HAVE TESTIFIED AGAINST MR. JAMES E. WISE,
11 DEFENDANT, IN THE STATE VERSUS JAMES E. WISE. HAVE YOU
12 NOT?

13 A. YES, I HAVE.

14 Q. NO FURTHER QUESTIONS.

15 CROSS EXAMINATION

16 BY MR. GRIFFITH

17 Q. MARY, WILL YOU DO ONE THING FOR ME?

18 A. YES, I WILL.

19 Q. I'M SORRY FOR CALLING YOU MARY. WILL YOU SIGN YOUR
20 NAME ON THIS PAGE?

21 A. YES, I WILL.

22 MR. GRIFFITH: YOUR HONOR, I'D LIKE THAT MARKED AND
23 INTRODUCED AS DEFENDANT'S NUMBER FIVE.

24 THE COURT: NO OBJECTION.

25 MR. GRIFFITH: OR SIX. THANK YOU, MS. BATES.

1 MRS. BATES: YOU' RE WELCOME.

2 MR. PEACE: I' D LIKE TO SEE IT FIRST, YOUR HONOR.

3 THE COURT: ALL RIGHT. LOOK AT IT. LET HIM SEE.

4 MR. GRIFFITH: SURE, SOLICITOR. I CAN TAKE A CLOSE
5 LOOK AT IT.

6 MR. PEACE: NO OBJECTION, YOUR HONOR.

7 (DEFENDANT' S EXHIBIT NUMBER SIX MARKED FOR
8 IDENTIFICATION AND MADE A PART OF THE RECORD.)

9 MR. GRIFFITH: THAT' S ALL I HAVE, JUDGE, THANK YOU.

10 MR. PEACE: NO FURTHER QUESTIONS, JUDGE.

11 THE COURT: ALL RIGHT. COME DOWN.

12 MR. PEACE: NO FURTHER REPLY FROM THE STATE, YOUR
13 HONOR.

14 THE COURT: ALL RIGHT. DOES THE STATE WAIVE
15 OPENING?

16 MR. PEACE: THE STATE WOULD LIKE TO OPEN, YOUR
17 HONOR.

18 THE COURT: OKAY. GO AHEAD AND OPEN ON THE LAW.

19 CLOSING STATEMENT

20 BY MR. PEACE

21 YOU' VE HEARD THE EVIDENCE IN THE CASE. ALL THE
22 EVIDENCE HAS BEEN PRESENTED. YOU' RE NOT GOING TO HEAR
23 ANY MORE. WHAT I WANT TO DO RIGHT NOW IS JUST QUICKLY GO
24 OVER WITH YOU WHAT THE LAW IS. IN THIS PARTICULAR CASE,
25 I WILL ADDRESS TO YOU WHAT THE LAW IS FROM THE STATE' S.

1 PERSPECTIVE. I'LL BE FOLLOWED BY MR. GRIFFITH WHO HAS AN
2 OPPORTUNITY TO HAVE CLOSING ARGUMENTS, AND THEN AFTER MR.
3 GRIFFITH HAS HIS CLOSING ARGUMENTS, I'LL COME BACK AND
4 TALK TO YOU ABOUT THE FACTS OF THE CASE THAT HAVE BEEN
5 PRESENTED BY THE STATE.

6 I SAID AT THE BEGINNING MR. WISE HAS BEEN CHARGED
7 WITH BURGLARY FIRST DEGREE AND ESCAPE FROM THE CUSTODY OF
8 AN OFFICER. BURGLARY IN THE FIRST DEGREE. REMEMBER, I
9 TOLD YOU WHAT THE ELEMENTS ARE. YOU'VE GOT TO HAVE
10 ENTERING THE DWELLING WITHOUT THE CONSENT OF THE OWNER
11 WITH THE INTENT TO COMMIT A CRIME, AND BECAUSE THIS IS
12 BURGLARY FIRST DEGREE, IT HAD TO OCCUR IN THE NIGHTTIME.
13 THOSE ARE THE THINGS THAT I ASKED YOU TO LOOK FOR DURING
14 THE TESTIMONY OF THE CASE AND MENTALLY CHECK OFF AS WE
15 WENT THROUGH THE WITNESSES.

16 ESCAPE FROM THE CUSTODY OF AN OFFICER. THE
17 INDIVIDUAL HAS TO BE IN CUSTODY, AND HE HAS TO ESCAPE.
18 HE HAS TO GO AWAY. HE HAS TO REMOVE HIMSELF FROM THE
19 PRESENCE OF THE OFFICER. SO, THAT'S THE LAW IN THE CASE.
20 THOSE ARE THE THINGS THAT YOU SHOULD BE LOOKING AT AS MR.
21 GRIFFITH ARGUES AND AS I RETURN TO ARGUE.

22 I WOULD ASK YOU TO DO ONE THING AS WE ARGUE. NOW,
23 I'LL SAY THINGS ARE A FACT. THIS IS A FACT, THIS IS A
24 FACT, THIS IS A FACT. MR. GRIFFITH IS GOING TO SAY THIS
25 IS A FACT, THIS IS A FACT, THIS IS A FACT. YOU'RE THE

1 FINDER OF FACTS. THE JUDGE GIVES THE LAW. YOU FIND THE
2 FACTS. NOTHING IN THIS CASE ARE THE FACTS UNLESS YOU
3 COLLECTIVELY AS A JURY SAY THAT IT'S A FACT. SO, WHEN
4 YOU GO BACK AND DELIBERATE AND YOU'RE SIFTING THROUGH ALL
5 THE TESTIMONY THAT YOU'VE HEARD TODAY, I'M GOING TO ASK
6 YOU TO DO THIS. I ASK YOU TO THINK. WHEN I GET UP AND
7 SAY SOMETHING IS A FACT, YOU THINK BACK IN YOUR OWN
8 MEMORY TO THE TESTIMONY AND THINK, OKAY, DID THE WITNESS
9 SAY THAT OR DID JERRY PEACE SAY THAT OR DID JERRY PEACE
10 TRY TO GET THE WITNESS TO SAY THAT? AND IF THE WITNESS
11 SAID THAT, YOU CAN USE THAT AS A FACT. IF I SAID IT OR
12 TRIED TO GET THE WITNESS TO SAY IT BUT THE WITNESS REALLY
13 DIDN'T SAY IT, DON'T USE THAT AS A FACT.

14 LIKewise, WHEN MR. GRIFFITH GETS UP AND HE SAYS
15 SOMETHING IS A FACT, THINK BACK IN YOUR OWN MIND AS TO
16 HOW YOU REMEMBERED THE TESTIMONY, AND IF THE WITNESS SAID
17 THAT, THEN USE THAT AS A FACT, BUT CORRESPONDINGLY, IF
18 IT'S SOMETHING MR. GRIFFITH HAS SAID OR SOMETHING THAT HE
19 TRIED TO GET A WITNESS TO SAY, I'M ASKING YOU TO DISCOUNT
20 THAT, AND I THINK IF YOU USE THAT AS YOUR GUIDE AND USE
21 THAT AS THE STANDARD, THEN YOU'RE GOING TO COME TO THE
22 RIGHT DECISION IN THIS CASE, AND I APPRECIATE THE
23 OPPORTUNITY TO COME BACK BEFORE YOU AGAIN AFTER MR.
24 GRIFFITH. IF YOU WILL LISTEN TO HIS CLOSING ARGUMENT IN
25 THE CASE.

1 MR. GRIFFITH: IF IT PLEASE THE COURT.

2 THE COURT: YES, SIR.

3 CLOSING STATEMENT

4 BY MR. GRIFFITH

5 LADIES AND GENTLEMEN, AS I TOLD YOU EARLIER, Y' ALL
6 ARE HERE TODAY TO MAKE A DECISION. Y' ALL HAVE HEARD THE
7 TESTIMONY FROM RIGHT HERE LIKE MR. PEACE SAID. THAT'S
8 WHERE 'Y' ALL GOT THE JOB --- YOU'RE ALSO THE FINDERS OF
9 THE FACTS. YOU'RE THE FACT FINDERS IN THIS CASE. Y' ALL
10 HAVE HEARD SOME DIVERSE STORIES. MS. BATES TOLD ONE
11 VERSION, AND MY CLIENT TOLD A DIFFERENT ONE. NOW, Y' ALL
12 SAW THEM SITTING THERE. Y' ALL LISTENED TO THEM. Y' ALL
13 HEARD THEM JUST AS WELL AS I DID.

14 MR. WISE WAITED A LONG TIME TO SPEAK HIS PEACE AND
15 TELL HIS SIDE OF THE STORY. THEY BRING CHARGES AND UNTIL
16 YOU HAVE A DAY IN COURT, YOU DON'T GET TO SAY YOUR SIDE
17 OF THE STORY. THEY DIDN'T GIVE HIM AN OPPORTUNITY. NOW,
18 HE TOLD Y' ALL WHAT HAPPENED THAT NIGHT, AND I SUGGEST TO
19 YOU THAT WHAT HE SAID HE BELIEVES TO BE THE TRUTH. HE
20 HAD INCREDIBLE FACTS AND DETAILS HE SAID HAPPENED THAT
21 NIGHT. HE DIDN'T GET THEM CONFUSED. I DON'T RECOLLECT -
22 -- I WAS TAKING SOME NOTES EARLIER, AND I TALKED WITH HIM
23 REPEATEDLY. HIS STORY DIDN'T CHANGE A BIT.

24 NOW; THIS CASE COMES DOWN TO BELIEVABILITY. MS.
25 BATES --- MR. WISE. MR. WISE IS ON TRIAL. HE HAS A LOT

1 TO LOSE. IF HE'S A CROOK, THE JUDGE HAS TO DEAL WITH
2 HIM. THAT'S HIS PROBLEM. MS. BATES HAD SOMETHING TO
3 HIDE IF YOU BELIEVE MR. WISE. IF THAT'S TRUE, SHE
4 WOULDN'T WANT IT TO COME OUT.

5 NOW, I ASKED A FEW QUESTIONS ABOUT THE EVENTS AS THE
6 STATE GAVE THEM, AND I WAS SURPRISED AT SOME OF THE
7 ANSWERS I GOT. I REALLY WAS. PARTICULARLY ABOUT HOW HE
8 GOT IN THE HOUSE. MR. WISE, ACCORDING TO MS. BATES IS
9 BEATING ON THE DOOR, COMING IN, BEATING LOUD. HERE'S THE
10 DOOR. Y' ALL HAVE SEEN IT. THE GLASS BREAKS OUT. THE
11 INSIDE DOOR AIN'T OPEN YET. HE KICKED THAT ONE IN, BUT
12 I ASKED HER, "WHAT KIND OF DOOR WAS THAT?" "YOU KNOW,
13 IT'S ONE OF THOSE LITTLE FLIMSÝ DOORS". IF HE KICKED IT
14 HARD ENOUGH TO KNOCK IT OPEN, THAT LITTLE HOLE IN THAT
15 GLASS SURE DOESN'T LOOK TO ME LIKE A FOOT WENT IN IT. I
16 SUGGEST TO YOU THAT IF HE KICKED HARD ENOUGH, HE WOULD
17 HAVE KNOCKED THAT WHOLE PANE, THAT WHOLE SEAL, ALL THAT
18 THROUGH THAT DOOR TO GET IN THERE. IT DOESN'T ADD UP.
19 IT'S A LITTLE HOLE. Y' ALL WILL HAVE THIS BACK IN THE
20 JURYROOM. Y' ALL LOOK AT IT.

21 THE THING THAT KIND OF STRUCK ME IN THE MIDDLE OF
22 THEIR TESTIMONY --- HE GOT A BLOODY HAND, CUT HIS HAND.
23 CUT HIS HAND. IT GOT ON THE POLICE. IT GOT ON HER. HE
24 KICKED THE DOOR IN. THAT LITTLE HOLE. USED HIS FOOT TO
25 KICK WITH. TOO HIGH. IF HE KICKED, THAT'S ABOVE THE

1 DOORKNOB. IT'S A NORMAL DOOR. Y' ALL SEE THE TRAILER.
2 Y' ALL SEE THE DOOR. HE'S A PRETTY LIMBER MAN IF HE
3 KICKED THAT THING THAT HIGH. JUST THAT. I WASN'T THERE
4 THAT NIGHT. NONE OF US WERE THERE THAT NIGHT OTHER THAN
5 MS. BATES, MR. WISE --- NONE OF US. WE'VE GOT TO
6 DETERMINE WHAT HAPPENED BASED ON WHAT COME FROM RIGHT
7 HERE.

8 WE DO HAVE A LITTLE PEEK AS TO SOME THINGS WE CAN
9 PUT OUR HANDS ON. NOBODY TESTIFIED THE HOLE WAS THAT
10 HIGH OR THIS HIGH. WE CAN KIND OF SEE THAT. THIS IS
11 GOOD HARD EVIDENCE.

12 THIS LETTER THAT WE INTRODUCED THAT MR. WISE SAYS HE
13 GOT IN THE MAIL. THE ENVELOPE IS RIGHT HERE TOO. A
14 PIECE OF EVIDENCE. Y' ALL GET TO SEE ALL OF THIS. Y' ALL
15 LOOK AT THAT HANDWRITING. SHE SAYS SHE DIDN'T SEE IT,
16 SIGN IT. SHE DIDN'T SEND IT. THREE ARREST WARRANTS WITH
17 HER SIGNATURE ON ALL THREE. HER SIGNATURES. COMPARE
18 THEM. I DON'T KNOW WHAT'S GOING ON. THEY GOT SOMETHING
19 TO HIDE.

20 WELL, THE JUDGE WILL INSTRUCT YOU LATER ON --- IT'S
21 HIS DUTY TO INSTRUCT YOU ON THE LAW. THE STATE HAS TO
22 PROVE ALL THE ELEMENTS OF BURGLARY FIRST AND ESCAPE
23 BEYOND A REASONABLE DOUBT. WELL, HIS FOOT IN THE DOOR
24 AND THAT LITTLE HOLE IS REASONABLE DOUBT. THAT SIGNATURE
25 ON THAT LETTER SHE CAN'T EXPLAIN. WELL, Y' ALL READ IT

1 AND Y' ALL LOOK AT IT. THAT CAN BE A REASONABLE DOUBT.

2 MR. WISE HAS GOT NOTHING TO PROVE, NOTHING TO
3 DISPROVE. HE'S HERE. HE GAVE HIS VERSION. HE DIDN'T DO
4 ANY OF THIS. HE DIDN'T TAKE THOSE PICTURES. HE DIDN'T
5 SIGN THOSE WARRANTS. HE DIDN'T SIGN THIS PAPER.

6 I SUGGEST TO YOU ALL THREE OF THOSE THINGS I JUST
7 POINTED OUT ARE REASONABLE DOUBT. I DON'T KNOW WHAT
8 HAPPENED. I DON'T HAVE TO TELL YOU WHAT HAPPENED. IT'S
9 NOT MY JOB TO TELL YOU, WELL, THIS IS ACTUALLY WHAT
10 HAPPENED. IS IT SOMETHING --- A TOTALLY DIFFERENT
11 VERSION. THEY GAVE YOU A VERSION OVER HERE. WE GAVE A
12 VERSION OF THE STORY OVER HERE AND THERE'S ACTUALLY
13 SOMETHING --- A THIRD VERSION. I DON'T DO THAT. MR.
14 WISE DOESN'T HAVE TO DO THAT. IT'S NOT HIS JOB. THAT'S
15 THE SOLICITOR'S JOB. THE SOLICITOR HAS PRESENTED HIS
16 WITNESSES. FINE SOLICITOR. HIS WITNESSES TESTIFIED.
17 THIS ISN'T TESTIMONY. THESE ARE EXHIBITS. LOOK AT THEM.
18 REASONABLE DOUBT. THE KIND OF DOUBT THAT CAUSES AN
19 ORDINARY PERSON TO HESITATE TO ACT. THOSE ARE THE FACTS.
20 IT CAUSES ME CONCERN. IT CAUSES ME TO HESITATE AND TO
21 WONDER. IF Y' ALL HESITATE AND Y' ALL WONDER, THE STATE
22 FAILED TO MEET THE BURDEN OF PROOF.

23 NOW, MR. WISE SAT THERE AND HE SAID, "YEAH, I'VE
24 DONE BAD THINGS. I'VE DONE ASSAULT AND BATTERY WITH
25 INTENT TO KILL. I SERVED MY TIME. YES, SIR, I PLED."

1 THEY INTRODUCED THIS OTHER RECORD. IT'S UP HERE
2 SOMEWHERE. "I PLED GUILTY TO ASSAULT AND BATTERY FOR
3 THAT NIGHT." HE'S NOT ON TRIAL FOR ASSAULT AND BATTERY.
4 HE'S ALREADY PLED TO THAT. HE'S ALREADY ADMITTED HE DID
5 THAT. THEY GOT INTO A FIGHT AND THEY EXCHANGED BLOWS.
6 IT'S NOT A FAIR FIGHT. HE'S PLED TO THAT. HE'S NOT ON
7 TRIAL HERE TODAY FOR ASSAULT AND BATTERY. ALREADY DONE
8 THAT. ALREADY ADMITTED IT.

9 HE'S ON TRIAL FOR BURGLARY FIRST AND ESCAPE, NOT
10 ASSAULT AND BATTERY. Y'ALL PUT EVERYTHING TOGETHER.
11 THINK ABOUT IT WHEN YOU GO IN THE JURY ROOM.
12 CONSIDER ALL THE TESTIMONY. Y'ALL CAN DISMISS PART OF
13 SOME AND ACCEPT SOME OF IT. IT'S Y'ALL'S JOB TO EVALUATE
14 WHAT YOU HEARD, EVALUATE WHAT YOU'VE SEEN. THAT'S WHAT
15 WE'VE GOT TO WORK WITH, BECAUSE WE WEREN'T THERE.
16 PUTTING EVERYTHING OUT TO YOU, PULLING IT TOGETHER.
17 IT CAUSES ME TO HESITATE TO ACT. I SUGGEST TO YOU THAT
18 THE STATE HAS FAILED TO MEET ITS BURDEN OF PROOF. THEY
19 LEFT SOME REASONABLE DOUBTS OUT THERE THEY'VE NOT BEEN
20 ABLE TO EXPLAIN. IT'S THEIR JOB TO EXPLAIN IT. IT'S NOT
21 MY JOB. THEY'VE NOT BEEN ABLE TO EXPLAIN. THEY JUST
22 LEFT YOU ON YOUR OWN.

23 MR. WISE HAS NOTHING TO PROVE, NOTHING TO DISPROVE.
24 HE COMES INTO COURT, CLOAKED, COVERED WITH THE
25 PRESUMPTION OF INNOCENCE. THEY'VE GOT TO REMOVE EVERY

1 SINGLE BIT OF IT TO HAVE YOU HAVE NO REASONABLE DOUBT.
2 A FEW THINGS I FORGOT. QUESTIONS THAT ALERTED ME. THE
3 DOCTOR BILL. MS. BATES HAS A DOCTOR BILL FOR \$25. THAT
4 GOES WITH ASSAULT AND BATTERY. HE IS NOT ON TRIAL FOR
5 THAT. HE' S NOT ON TRIAL FOR THAT. SHE ALSO TESTIFIED
6 THAT SHE CALLED --- THEY CALL HIM SLOP --- ON THE
7 TELEPHONE WHEN HE CAME BACK TO HER HOUSE, WHY DIDN' T SHE
8 CALL THE POLICE THEN? I DON' T KNOW. REASONABLE DOUBT
9 CAUSES ORDINARY PEOPLE TO HESITATE TO ACT.

10 I SUGGEST TO YOU THAT THE STATE HAS FAILED TO MEET
11 ITS BURDEN. THE STATE' S FAILED WITH IT' S BURDEN. BEAR
12 WITH ME BEFORE I FINISH. I MAY BE FINISHED.

13 THANK YOU, LADIES AND GENTLEMEN.

14 THE COURT: SOLICITOR.

15 CLOSING STATEMENT

16 BY MR. PEACE

17 THANK YOU, YOUR HONOR. IF IT PLEASE THE COURT, MR.
18 GRIFFITH. LADIES AND GENTLEMEN OF THE JURY, MADAM
19 FOREMAN, THE STATE ARGUES LAST IN THIS CASE BECAUSE WE
20 HAVE THE BURDEN OF PROOF. WE' VE GOT TO COME IN AND SHOW
21 BEYOND A REASONABLE DOUBT THAT THIS DEFENDANT COMMITTED
22 THESE CRIMES WITH WHICH HE IS CHARGED, THE BURGLARY FIRST
23 AND THE ESCAPE FROM CUSTODY.

24 NOW, MR. GRIFFITH SAYS THAT --- LET' S SEE, HE SAID
25 "THE DEFENDANT IS ON TRIAL. HE HAS A LOT TO LOSE."

1 YOU' D BETTER BELIEVE THAT THOSE STATEMENTS ARE CORRECT.
2 THOSE STATEMENTS ARE CORRECT. HE' S ON TRIAL. HE HAS A
3 LOT TO LOSE.

4 LET' S TALK ABOUT THE EVIDENCE IN THE CASE, THE
5 EVIDENCE THAT WAS PRESENTED THROUGH THE WITNESSES WHO
6 TESTIFIED. THE EVIDENCE IS ON JULY 15, 1997, THE
7 DEFENDANT, JAMES EDWARD WISE, CAME TO THE HOME UNINVITED
8 OF MARY BATES. HE COMES UP AND SAYS, "HEY, IS YOUR
9 BOYFRIEND HOME? I WANT TO TALK TO HIM ABOUT BEING A
10 PALLBEARER AT MY SISTER' S FUNERAL." SHE TELLS HIM TO
11 LEAVE. HE DOESN' T LEAVE. SHE CALLS THE POLICE.

12 MAJOR GRIFFIN COMES UP AND CONVINCES THE GUY TO
13 LEAVE. HE STARTS WALKING OFF. MARY BATES SAYS, "HEY,
14 MAKE HIM TAKE THAT VAN WITH HIM." SO, HE MAKES HIM GET
15 IN THE VAN AND LEAVE. THEN WHAT HAPPENS? WITHIN A SHORT
16 PERIOD OF TIME, AND THE TESTIMONY OF MARY BATES IS WITHIN
17 TEN MINUTES, THE TESTIMONY OF MAJOR GRIFFIN IS HE DIDN' T
18 EVEN GET DOWN --- WELL, HE JUST BARELY GOT DOWN TO BOYD
19 CROSSING IN THE HIGHWAY WHEN HE GOT ANOTHER CALL. "HEY,
20 THAT GUY' S BACK AND HE' S BREAKING IN."

21 NOW, WHAT DID HE BREAK IN? HE BROKE IN THAT DOOR.
22 HOW DID HE GET CUT? HE GOT CUT WHEN HE SMASHED THE GLASS
23 ON THE OUTER DOOR TO OPEN IT. HE SMASHED THE GLASS. HE
24 GOT CUT. HE UNLOCKED THE INNER DOOR, AND THEN WHAT DID
25 HE DO? HE KICKED THE OTHER DOOR IN. IS THE DOOR DENTED?

1 WHO CAN KICK THAT HIGH? WHO CAN KICK THAT HIGH? AND HE
2 BREAKS THE GLASS. WOULD IT DO MORE DAMAGE? NO. THAT'S
3 THE DAMAGE THAT IT DID. THEN WHAT DID HE DO? HE WENT
4 INSIDE THE HOUSE AND STARTED ASSAULTING THE VICTIM, MARY
5 BATES. HE STARTED BEATING HER UP.

6 AS A MATTER OF FACT, HE PLED GUILTY TO BEATING HER
7 UP. WHAT'S ONE OF THE ELEMENTS IN THIS CRIME? THE
8 BURGLARY FIRST --- WITH THE INTENT TO COMMIT A CRIME.
9 WAS A CRIME COMMITTED? THE DEFENDANT PLED GUILTY TO
10 ASSAULT AND BATTERY. CHECK THAT ONE OFF. WHILE HE'S
11 THERE BREAKING THE GLASS ON THAT DOOR, AND WHILE HE'S
12 KICKING THE DOOR IN, MARY BATES WHO WAS SCARED, CALLS
13 JAMES GALLMAN AND TELLS HIM HE'S BREAKING IN. HE'S
14 COMING IN THE DOOR, AND WHAT WAS JAMES GALLMAN'S
15 TESTIMONY? "I HEARD GLASS BREAKING. I HEARD A COMMOTION
16 AND I HEARD SCREAMS." AND WHAT DID HE DO? HE HUNG UP
17 AND CALLED THE POLICE, AND WHAT DID THE POLICE DO? THEY
18 CAME BACK, AND WHAT DID JAMES GALLMAN DO AFTER THAT? HE
19 CALLED BACK AND WHAT HAPPENS THEN? SHE ANSWERS THE PHONE
20 AT THE DIRECTION OF THE DEFENDANT AND JAMES GALLMAN SAYS
21 "ARE YOU OKAY?" AND SHE'S BEEN TOLD "ANSWER THAT PHONE
22 AND IF YOU TELL HIM I'M BEATING YOU UP I'M GOING TO KILL
23 YOU."

24 WHAT INDEPENDENT EVIDENCE DO WE HAVE OF THAT? WHAT
25 DID MAJOR GRIFFIN SAY? "I GOT BACK TO THE HOUSE. I WENT

1 UP AND I SAW THE DEFENDANT WITH HIS BACK TO ME WITH
2 SOMETHING RAISED. I DON'T KNOW WHAT IT WAS." WHAT'S THE
3 LOGICAL CONCLUSION? YOU'VE GOT THE TESTIMONY OF MARY
4 BATES AND YOU HAVE THIS PIG. YOU'VE GOT THE TESTIMONY OF
5 MAJOR GRIFFIN THAT HE'S HOLDING IT UP.

6 MAJOR GRIFFIN GOES IN, PUTS THE GUY IN CUSTODY.
7 OFFICER CLAY BABB, THE BACKUP, COMES UP, HANDCUFFED
8 BEHIND HIS BACK AND THEY PUT HIM IN THE PATROL CAR --- IN
9 THE FRONT SEAT OF THE PATROL CAR IS THE TESTIMONY OF
10 MAJOR GRIFFIN AND OFFICER BABB, AND OFFICER BABB IS
11 TAKING HIM TO JAIL. HIS TESTIMONY IS SOMEHOW THE
12 DEFENDANT MANEUVERS, UNFASTENS THE SEAT BELT, SCOOTs HIS
13 ARMS OVER, OPENS THE DOOR AND STARTS TO LEAVE.

14 OFFICER BABB REACHES FOR HIM BUT HE GETS AWAY AND HE
15 TAKES OFF AND THEY FIND HIM LATER. HE'S IN CUSTODY.
16 CHECK THAT ONE OFF. HE ESCAPED. CHECK THAT ONE OFF.
17 OFFICER BABB SAYS HE WENT OFF. MAJOR GRIFFIN SAYS THEY
18 SPENT A BIT OF TIME, A LOT OF PEOPLE SPENT A GOOD BIT OF
19 TIME LOOKING FOR HIM, EVEN THE TESTIMONY OF THE
20 DEFENDANT. HE'S ADMITTED THE ESCAPE. HE ADMITTED THE
21 ESCAPE. OFFICER BABB SAID, "NO, I DIDN'T GIVE HIM
22 PERMISSION TO LEAVE. HE LEFT." EVEN IF YOU BELIEVE THIS
23 STORY THE DEFENDANT HAS CONCOCTED, IT'S AN ESCAPE, EVEN
24 IF YOU BELIEVE THE GUY WHO HAS A LOT TO LOSE.

25 SO, THAT IS THE EVIDENCE PRESENTED FROM THE STATE.

1 NOW, WHAT HAS THE DEFENSE PRESENTED? A COMPLETELY
2 DIFFERENT STORY. HE AND MARY BATES HAVE BEEN SNEAKING
3 AROUND. THEY'VE BEEN SNEAKING AROUND AT HER HOUSE.
4 LOOK, YOU KNOW, I'VE TOLD FOLKS THIS BEFORE YOU DON'T
5 LEAVE YOUR COMMON SENSE OUTSIDE WHEN YOU COME IN HERE.
6 IF SOMEBODY IS GOING TO SNEAK AROUND, ARE THEY GOING TO
7 SNEAK AROUND AT THEIR HOUSE? ARE THEY GOING TO SNEAK
8 AROUND AT THE PLACE WHERE THEY'RE LIVING WITH THEIR
9 BOYFRIEND? ARE THEY GOING TO SNEAK AROUND IN THE BUSHES
10 NEXT TO THE ROAD BY A CHURCH? GIVE ME A BREAK. HAVE YOU
11 EVER HEARD SUCH AN IMPROBABLE STORY?

12 "MR. WISE, HOW MANY TIMES DID THE POLICE COME?"
13 "ONLY ONCE." "DIDN'T COME TWICE?" "NO, DIDN'T COME
14 TWICE. THAT YOUNG GUY CAME AND HANDCUFFED ME AND TOOK ME
15 AWAY." I GUESS MAJOR GRIFFIN WAS JUST IN HERE LYING.
16 NONE OF THIS EVER HAPPENED. HE DIDN'T SEE THE GLASS. HE
17 DIDN'T ARREST THE DEFENDANT. HE DIDN'T HELP PUT HIM IN
18 THE CAR. HE DIDN'T HAVE BLOOD ALL OVER HIM. HE DIDN'T
19 GO THERE TWICE. ACCORDING TO THE DEFENDANT, HE DIDN'T GO
20 THERE AT ALL. IT WAS THE YOUNG GUY. THE DEFENDANT HAS
21 ALL THESE FRIENDS OVER, NONE OF WHOM HE CAN NAME. DID
22 YOU HEAR ANY NAMES OF THESE FRIENDS? HE WENT HOME FROM
23 WORK. HE TOOK A BATH. HAD ALL THESE FRIENDS COME OVER.
24 THEN HE RUNS OVER TO THE TELEPHONE NEXT TO A LIQUOR STORE
25 TO CALL MARY BATES SO THEY CAN SNEAK AROUND.

1 "WELL,, HOW DID YOU GUYS DO THIS SNEAKING AROUND?"
2 "WELL, I HAVE BUDDIES THAT DRIVE ME OUT THERE." THAT'S
3 SOME SNEAKING AROUND. ISN'T IT? THAT'S SOME SNEAKING
4 AROUND. THE STORY THAT THE DEFENDANT HAD TOLD YOU TODAY
5 IS JUST ABSOLUTELY LUDICROUS. IF YOU'RE GOING TO SNEAK
6 AROUND, YOU CERTAINLY WOULDN'T SNEAK AROUND LIKE THAT.

7 MARY BATES GOT BACK ON THE STAND. "DID YOU HAVE A
8 RELATIONSHIP WITH THE DEFENDANT AFTER 1985?" "NO, I DID
9 NOT." "DID YOU HAVE A RELATIONSHIP WITH THE DEFENDANT
10 AFTER 1996?" "NO, I DID NOT." "HAVE YOU BEEN SNEAKING
11 AROUND WITH THE DEFENDANT?" "NO, I HAVE NOT." "WAS
12 THERE ANYBODY IN THE HOUSE ON THE NIGHT OF JULY 14,
13 1997?" "YES." "WHO WAS THERE" "TWO KIDS WERE THERE."
14 "WHAT DID THE DEFENDANT SAY?" "NO, WASN'T ANYBODY THERE
15 THAT NIGHT. WE WERE SNEAKING AROUND. WE SLEPT IN THAT
16 LONG CHAIR. NOBODY ELSE THERE."

17 "REMEMBER WHAT HIS DEFENSE COUNSELOR SAID --- HE HAS
18 A LOT TO LOSE. HE HAS A LOT TO LOSE. WOULD SOMEBODY
19 WITH A LOT TO LOSE LIE? DO YOU THINK?"

20 "HE WAS IMPEACHED WITH PRIOR CONVICTIONS. HE HAD TWO
21 PRIOR CONVICTIONS, AND YOU'LL BE ABLE TO TAKE THOSE
22 INDICTMENTS BACK WITH YOU. THEY'VE BEEN ENTERED INTO
23 EVIDENCE, AND YOU CAN SEE WHAT THEY ARE. IS SOMEBODY WHO
24 HAS BEEN CONVICTED LIABLE TO LIE? IS SOMEBODY WHO'S
25 SUBJECT TO GO BACK TO JAIL LIABLE TO LIE? OF COURSE THEY

1 ARE. OF COURSE THEY ARE.

2 AND WHAT ABOUT THIS LETTER? YOU' LL GET TO TAKE THIS
3 BACK WITH YOU TOO. YOU' VE GOT AN UNDATED LETTER TO
4 NOBODY THAT SAYS, I, MARY BATES, HEREBY WRITE THIS
5 STATEMENT ON MY OWN FREE WILL. I DO NOT WISH TO TESTIFY
6 AGAINST JAMES E. WISE. FIRST OF ALL, IT' S NOT TRUE. YOU
7 HEARD MARY BATES GET BACK ON THE STAND. "DID YOU WRITE
8 THIS LETTER?" "NO, I DID NOT." BUT EVEN IF SHE WROTE
9 THIS LETTER, EVEN IF SHE' D GOTTEN UP THERE AND SAID "YEP,
10 I WROTE IT." WHAT DOES IT MEAN? I HEREBY WRITE THIS
11 STATEMENT ON MY OWN FREE WILL. I DO NOT WISH TO TESTIFY
12 AGAINST JAMES E. WISE. WELL, SHE DID TESTIFY. SO, EVEN
13 IF SHE DID WRITE THIS LETTER, SO WHAT? SHE TESTIFIED.
14 SHE DOESN' T SAY I MARY BATES HAVE MADE ALL THIS UP. THAT
15 JAMES WISE DID NOT ASSAULT ME. SHE CAN' T SAY THAT,
16 BECAUSE HE' S ALREADY PLED GUILTY IN MAGISTRATE' S COURT.
17 HE DID NOT BREAK INTO MY HOUSE. SHE HASN' T SAID THAT.
18 EVEN IF THIS WERE TRUE, EVEN IF IT WERE TRUE, AND IT' S
19 NOT TRUE.

20 NOW, DOGGONE IT, ANY DEFENDANT HAS THE RIGHT TO COME
21 INTO THIS COURTROOM, AND ANY DEFENDANT CAN SAY I' M NOT
22 GUILTY. ANYBODY CAN DO THAT. THEY CAN SAY I' M NOT
23 GUILTY, AND THE STATE --- IT' S YOUR RESPONSIBILITY TO
24 PROVE THAT I' M GUILTY. YOU' VE GOT TO DO IT. ANY
25 DEFENDANT CAN DO THAT, AND I SPENT TWENTY YEARS OF MY

1 LIFE MAKING SURE THAT ANY DEFENDANT CAN DO THAT,
2 DEFENDING HIS RIGHT TO DO THAT.

3 NOW, THE JUDGE IS GOING TO TELL YOU WHAT REASONABLE
4 DOUBT IS. WE'VE GOT TO PROVE IT. THE STATE HAS TO PROVE
5 IT BEYOND A REASONABLE DOUBT, AND HE'S GOING TO DEFINE
6 THAT FOR YOU. HE'S GOING TO GIVE YOU THE DEFINITION.
7 NOW, REASONABLE DOUBT DOES NOT MEAN ONE HUNDRED PERCENT.
8 YOU DON'T HAVE TO BE, ALTHOUGH IN THIS CASE I DON'T SEE
9 HOW ANYBODY COULD BE ANY OTHER THAN ONE HUNDRED PERCENT,
10 BUT YOU DON'T HAVE TO BE ONE HUNDRED PERCENT CONVINCED.
11 YOU NEED TO BE FIRMLY CONVINCED THAT THIS DEFENDANT
12 COMMITTED THESE CRIMES.

13 NOW, WE'RE JUST ABOUT TO THE POINT, REMEMBER WHEN I
14 STARTED THIS MORNING I TOLD YOU WHERE WE WERE GOING TO
15 BEGIN, AND I TOLD YOU WHERE WE WERE GOING AND HOW WE WERE
16 GOING TO GET THERE, AND THAT'S WHERE YOU'RE GOING AND
17 YOU'RE ABOUT READY TO GO. AND WHAT DO YOU DO WHEN YOU
18 GET BACK THERE? WELL, YOU TAKE THIS DEFINITION OF
19 REASONABLE DOUBT AND YOU APPLY IT TO THE FACTS, AND
20 YOU'RE THE FINDER OF FACTS. YOU APPLY IT TO THE FACTS
21 THAT HAVE BEEN GIVEN TO YOU TODAY THROUGH THIS EVIDENCE,
22 AND THIS MORNING WHEN I --- WHEN I TALKED TO YOU IN MY
23 OPENING, I ASSURED YOU THAT WHATEVER DEFINITION THE JUDGE
24 GAVE YOU OF REASONABLE DOUBT, THAT YOU WOULDN'T HAVE ANY
25 DIFFICULTY IN FINDING THIS DEFENDANT GUILTY BEYOND A

1 REASONABLE DOUBT. I ASSURED THAT TO YOU THIS MORNING,
2 AND AS I SAY, AT THIS POINT, I GUARANTEE YOU. I
3 GUARANTEE YOU THAT WHEN YOU GO BACK INTO THAT
4 DELIBERATION ROOM THAT YOU'RE NOT GOING TO HAVE ANY
5 PROBLEM FINDING THIS DEFENDANT, JAMES WISE, GUILTY. I
6 GUARANTEE IT TO YOU TODAY, AND I GUARANTEE IT TO YOU
7 TOMORROW, AND I GUARANTEE IT TO YOU 'TIL THE COWS COME
8 HOME, THAT IF EVER THE STATE HAS PROVEN A CASE BEYOND A
9 REASONABLE DOUBT, IT'S THIS CASE, AND I'M ASKING YOU TO
10 GO BACK AND DO YOUR DUTY AND FIND THIS DEFENDANT GUILTY
11 OF BURGLARY IN THE FIRST DEGREE AND ESCAPE FROM CUSTODY.

12 I THANK YOU FOR YOUR TIME AND ATTENTION IN THIS
13 CASE. I APPRECIATE YOUR PATIENCE, AND NOW I ASK YOU TO
14 GO BACK AND DO YOUR DUTY AS THE JUDGE INSTRUCTS.

15 THANK YOU, VERY MUCH.

16 JURY CHARGE

17 BY THE COURT

18 MADAM FOREMAN, LADIES AND GENTLEMEN OF THE JURY,
19 IT'S NOW MY DUTY TO CHARGE YOU THE LAW IN THIS CASE.
20 IT'S ALWAYS GRATIFYING FOR JURORS TO SHOW AN INTELLIGENT
21 INTEREST IN THE EVIDENCE, BECAUSE THE LAW OF SOUTH
22 CAROLINA MAKES YOU AND YOU ALONE THE SOLE JUDGES OF
23 FACTS, THE TRUTH OR UNTRUTH OF THE TESTIMONY. I'M NOT
24 ALLOWED TO INTIMATE TO YOU ANY OPINION THAT I HAVE ALONG
25 THAT LINE. THAT IS YOUR SPECIAL PROVINCE UNDER THE

1 CONSTITUTION OF OUR STATE, AND IF BY CHANCE YOU GATHER
2 ANY INFERENCE WHATSOEVER FROM ANY REMARK THAT I MAKE AS
3 TO THE FACTS, YOU WILL DISREGARD THEM.

4 YOU CAN BELIEVE ONE WITNESS AGAINST ALL OR ALL
5 WITNESSES AGAINST ONE. BELIEVE A PORTION OF A WITNESS'
6 TESTIMONY, DISBELIEVE ANOTHER PORTION USING YOUR GOOD
7 JUDGMENT AND COMMON SENSE. YOU DON'T LEAVE YOUR COMMON
8 SENSE AT HOME WHEN YOU COME TO SERVE ON A JURY.

9 NOW, THIS DEFENDANT IS INDICTED WITH TWO
10 INDICTMENTS. TO THOSE INDICTMENTS, HE HAS PLED NOT
11 GUILTY. NOW, THESE INDICTMENTS ARE NOT PROOF. THESE
12 INDICTMENTS ARE ALLEGATIONS. ONE INDICTMENT IS FOR
13 BURGLARY, 16-11-311, BURGLARY IN THE FIRST DEGREE --- "A
14 PERSON IS GUILTY OF BURGLARY IN THE FIRST DEGREE IF THE
15 PERSON ENTERS A DWELLING WITHOUT CONSENT WITH INTENT TO
16 COMMIT A CRIME IN THE DWELLING AND EITHER WHEN EFFECTING
17 AN ENTRY OR IN THERE."

18 NOW, IN THE BREAKING AND ENTERING OF A DWELLING
19 HOUSE OF ANOTHER IN THE NIGHTTIME WITH INTENT TO COMMIT
20 A FELONY THEREIN WHETHER THE FELONY IS COMMITTED OR NOT,
21 IT IS AN OFFENSE AGAINST HABITATION NOT AGAINST PROPERTY.
22 ESSENTIAL ELEMENTS ARE A BREAKING. IF A DOOR IS CRACKED
23 AND YOU PUSH IT OPEN, THAT'S A BREAKING, AND IF YOU STICK
24 YOUR HAND IN A WINDOW, THAT'S A BREAKING. THE ESSENTIAL
25 ELEMENTS ARE THERE'S A BREAKING AND ENTRY OF A DWELLING

1 HOUSE OF ANOTHER IN THE NIGHTTIME WITH INTENT TO COMMIT
2 A FELONY THEREIN. NIGHTTIME WITHIN THE MEANING OF COMMON
3 LAW, THE DEFINITION OF BURGLARY MEANS THE PERIOD BETWEEN
4 SUNSET AND SUNRISE DURING THERE IS NOT ENOUGH DAYLIGHT TO
5 DISCERN A MAN' S FACE. THE TERM MAY BE OTHERWISE DEFINED
6 BY STATUTE. IN THE ABSENT AND CONTRARY, NIGHTTIME WITHIN
7 A DEFINITION OF BURGLARY IT WAS HELD THAT THE PERIOD FROM
8 SUNSET TO SUNRISE DURING WHICH THERE IS NOT DAYLIGHT
9 ENOUGH FOR WHICH TO DISCERN A MAN' S FACE, ALTHOUGH UNDER
10 STATUTE NIGHTTIME MAY BE OTHERWISE DEFINED.

11 NOW, ESCAPE, SECTION 24-13-410 --- ESCAPE AND
12 ATTEMPTED ESCAPE FROM PRISON OR POSSESSION OF WEAPONS
13 THEREOF. "IT SHALL BE UNLAWFUL FOR ANY PERSON BEING
14 LAWFULLY CONFINED IN ANY PRISON OR UPON THE PUBLIC WORKS
15 OF ANY COUNTY OR WHILE IN THE CUSTODY OF ANY
16 SUPERINTENDENT, GUARD OR OFFICER TO ESCAPE, TO ATTEMPT TO
17 ESCAPE OR TO HAVE IT IN HIS MIND TO ESCAPE OR DOES
18 ESCAPE, IS GUILTY OF ESCAPING IF HE' S IN THE CUSTODY OF
19 AN OFFICER."

20 NOW, AS I SAID, THE STATE HAS CHARGED THIS DEFENDANT
21 IN THESE INDICTMENTS WITH --- HAS CHARGED IN THESE TWO
22 INDICTMENTS FOR THESE TWO CRIMES WHICH IS BURGLARY AND
23 ESCAPE. NOW, WHEN THE STATE CHARGES SOMEONE, THE BURDEN
24 OF PROOF IS UPON THE STATE TO PROVE THE GUILT OF THE
25 ACCUSED BEYOND A REASONABLE DOUBT BEFORE THERE CAN BE A

1 CONVICTION. THE DEFENDANT IN THIS CASE AS IN ALL CASES
2 IS PRESUMED TO BE INNOCENT. THAT PRESUMPTION OF
3 INNOCENCE CONTINUES THROUGHOUT THE ENTIRE TRIAL UNLESS
4 AND UNTIL IT IS REMOVED BY EVIDENCE SATISFYING EACH OF
5 YOU OF GUILT BEYOND A REASONABLE DOUBT.

6 NOW, THE TERM REASONABLE DOUBT MEANS WHAT THE WORDS
7 IMPLY, NOT ANY DOUBT, NOT A FANCIFUL DOUBT, BUT A
8 REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A
9 REASONABLE PERSON TO HESITATE TO ACT, AND YOU ARE THE
10 SOLE JUDGES OF FACTS, THE CREDIBILITY OF THE WITNESSES,
11 THE BELIEVABILITY OF THE WITNESSES. AS I'VE SAID, YOU
12 CAN BELIEVE A PORTION OF A WITNESS' TESTIMONY AND
13 DISBELIEVE ANOTHER PORTION. YOU MAY DISBELIEVE A
14 WITNESS' TESTIMONY IN ITS ENTIRETY, PROVIDED THERE'S A
15 SOUND REASON AND DIRECTION FOR SO DOING. YOU JUST CANNOT
16 DO THAT ARBITRARILY BUT USING YOUR GOOD JUDGMENT AND
17 COMMON SENSE.

18 (NOW) THERE ARE TWO FORMS OF VERDICT IN EACH
19 INDICTMENT. THE MANNER IN WHICH I GIVE THEM TO YOU HAS
20 NOTHING WHATSOEVER TO DO WITH MY FEELINGS. IT'S JUST
21 THAT I HAVE TO GIVE THEM TO YOU.

22 MADAM FOREMAN, IN THE RIGHT HAND CORNER, YOUR LEFT
23 HAND CORNER IS PRINTED THE WORD 'VERDICT'. VERDICT COMES
24 FROM A LATIN PHRASE WHICH MEANS TO SPEAK THE TRUTH.
25 WHATEVER YOUR VERDICT IS IT MUST BE UNANIMOUS. ALL

1 TWELVE MUST AGREE. ONE FORM OF VERDICT WOULD BE GUILTY.
2 THE OTHER FORM OF VERDICT WOULD BE NOT GUILTY ON EACH
3 INDICTMENT.

4 ANYTHING FURTHER FROM THE STATE?

5 MR. PEACE: YOUR HONOR, MAY WE APPROACH?

6 THE COURT: YES, SIR.

7 (A BENCH CONFERENCE WAS HELD AT THIS TIME IN THE
8 PRESENCE OF THE JURY BUT OUTSIDE THE HEARING OF THE
9 JURY.)

10 THE COURT: WELL, IF I DIDN'T COVER THIS, I WILL
11 COVER IT. THE DEFENDANT MUST HAVE AN INTENT TO COMMIT A
12 CRIME. HE DOES NOT HAVE TO COMMIT IT. THERE HAS TO BE
13 AN INTENT TO COMMIT A CRIME THEREIN IN BURGLARY.

14 SO, WHATEVER YOUR VERDICT IS, WRITE IT OUT AND SIGN
15 YOUR NAME AS FOREMAN. I'LL ASK THE THIRTEENTH JUROR TO
16 REMAIN SEATED. THE OTHER JURORS CAN GO OUT AND BEGIN
17 DELIBERATION.

18 (JURY TO JURY ROOM.)

19 THE COURT: THIRTEENTH JUROR, YOU CAN STAY WITH US
20 AS LONG AS YOU LIKE, OR YOU CAN LEAVE AND BE BACK AT TEN
21 O' CLOCK IN THE MORNING.

22 (JURY TO COURTROOM.)

23 MADAM CLERK: MADAM FORELADY, HAVE YOU REACHED A
24 VERDICT?

25 MADAM FORELADY: YES, WE HAVE.

VERDICT

1
2 MADAM CLERK: INDICTMENT NUMBER 98-GS-36-402, THE
3 STATE V. JAMES EDWARD WISE, INDICTMENT FOR BURGLARY.
4 VERDICT OF THE JURY IS GUILTY, SIGNED SHARON BOYCE,
5 FOREMAN.

6 97-GS-36-480, THE STATE V. JAMES EDWARD WISE,
7 INDICTMENT FOR ESCAPING CUSTODY OF AN OFFICER. THE
8 VERDICT OF THE JURY IS GUILTY, SIGNED SHARON BOYCE,
9 FOREMAN.

10 MADAM FORELADY, LADIES AND GENTLEMEN, IS THIS YOUR
11 VERDICT? IF SO, PLEASE INDICATE BY RAISING YOUR RIGHT
12 HAND.

13 (ALL ANSWERED IN THE AFFIRMATIVE.)

14 THE COURT: OKAY. COME AROUND.

15 MR. GRIFFITH: YOUR HONOR, I'D LIKE THE JURY POLLED,
16 PLEASE.

17 THE COURT: POLL THE JURY.

18 MADAM CLERK: MEMBERS OF THE JURY, AS I ASK YOU THE
19 QUESTION IF THIS WAS YOUR VERDICT AND IS IT STILL YOUR
20 VERDICT; PLEASE INDICATE YOUR ANSWER.

21 KIM BARTELLE, WAS THIS YOUR VERDICT AND IS IT STILL
22 YOUR VERDICT?

23 JUROR: YES.

24 MADAM CLERK: PLEASE RAISE YOUR HAND AS I CALL YOUR
25 NAME. REBECCA PITTS, WAS THIS YOUR VERDICT AND IS IT

1 STILL YOUR VERDICT?

2 JUROR: YES.

3 MADAM CLERK: SHARON BOYCE, WAS THIS YOUR VERDICT
4 AND IS IT STILL YOUR VERDICT?

5 JUROR: YES.

6 MADAM CLERK: RICHARD JOHNSON, WAS THIS YOUR VERDICT
7 AND IS IT STILL YOUR VERDICT?

8 JUROR: YES.

9 MADAM CLERK: RICHARD BOWERS, WAS THIS YOUR VERDICT
10 AND IS IT STILL YOUR VERDICT?

11 JUROR: YES.

12 MADAM CLERK: STEPHANIE NANCE, WAS THIS YOUR VERDICT
13 AND IS IT STILL YOUR VERDICT?

14 JUROR: YES.

15 MADAM CLERK: RONALD CURRY, WAS THIS YOUR VERDICT
16 AND IS IT STILL YOUR VERDICT?

17 JUROR: YES.

18 MADAM CLERK: KEITH LEOPARD, WAS THIS YOUR VERDICT
19 AND IS IT STILL YOUR VERDICT?

20 JUROR: YES.

21 MADAM CLERK: ANDREA DEWALT, WAS THIS YOUR VERDICT
22 AND IS IT STILL YOUR VERDICT?

23 JUROR: YES.

24 MADAM CLERK: VICKIE HENDRIX, WAS THIS YOUR VERDICT
25 AND IS IT STILL YOUR VERDICT?

1 JUROR: YES.

2 MADAM CLERK: PEGGY SHULL, WAS THIS YOUR VERDICT AND
3 IS IT STILL YOUR VERDICT?

4 JUROR: YES.

5 MADAM CLERK: LATICUS DAVIS, WAS THIS YOUR VERDICT
6 AND IS IT STILL YOUR VERDICT?

7 JUROR: YES.

8 THE COURT: YES, SIR?

9 MR. GRIFFITH: YOUR HONOR, AT THIS TIME, I'D LIKE TO
10 RENEW MY MOTION FOR DIRECTED VERDICT OF NOT GUILTY AND
11 ALSO JUDGMENT NOTWITHSTANDING THE VERDICT OF NOT GUILTY,
12 BASED UPON THE SAME REASONING AS, IN CASE LAW WE OUTLINED
13 PRETRIAL DURING THE STATE'S CASE AND AT THE END OF THIS
14 TRIAL BEFORE THE JURY WAS --- THE CASE WAS SUBMITTED TO
15 THE JURY.

16 THE COURT: I OVERRULE THOSE OBJECTIONS. TELL ME
17 HIS RECORD.

18 MR. PEACE: YOUR HONOR, FIRST OF ALL, THE DEFENDANT,
19 JAMES EDWARD WISE, WAS NOTIFIED THAT BEING CONVICTED OF
20 THE BURGLARY FIRST OFFENSE SUBJECTS HIM TO LIFE WITHOUT
21 PAROLE. THIS IS A MANDATORY REQUIREMENT UNDER THE SOUTH
22 CAROLINA STATUTE 17-25-45(H).

23 THE COURT: YES, SIR.

24 MR. PEACE: AND YOUR HONOR, NOTICE GIVEN BY MR.
25 WOOLSTON, DEPUTY SOLICITOR IN OUR OFFICE.

1 THE COURT: YES, SIR.

2 MR. PEACE: YOUR HONOR, THE DEFENDANT'S RECORD,
3 SEPTEMBER 24, 1997, HE HAD A CHARGE OF SEXUAL ASSAULT,
4 SECOND DEGREE. HE RECEIVED A Y.O.A. SENTENCE FOR THAT.

5 MR. GRIFFITH: '77 OR '97?

6 MR. PEACE: '77.

7 MR. GRIFFITH: YOU SAID '97.

8 MR. PEACE: 1977, SEPTEMBER, 1977.

9 THE COURT: YES, SIR.

10 MR. PEACE: IN MARCH OF 1985, HE HAD A CHARGE OF
11 ASSAULT AND BATTERY WITH INTENT TO KILL, RECEIVED SEVEN
12 YEARS CONFINEMENT ON THAT PARTICULAR CHARGE. IN MAY OF
13 1985, THERE IS AN ASSAULT ON A POLICEMAN WHILE RESISTING
14 ARREST. HE RECEIVED TWO YEARS CONCURRENT ON THAT
15 PARTICULAR CHARGE. MAY OF 1990, HE HAD AN ASSAULT AND
16 BATTERY, ATTEMPTED BURGLARY THIRD DEGREE, AND HE RECEIVED
17 ONE YEAR SUSPENDED TO ONE YEAR PROBATION ON THAT CHARGE.
18 THAT'S THE RECORD, YOUR HONOR.

19 THE COURT: YES, SIR.

20 MR. GRIFFITH: YOUR HONOR, HE'D LIKE TO MAKE, HAVE
21 HIM UP HERE, STANDING HERE ---

22 THE COURT: HE CAN COME AROUND. I'VE GOT TO WAIT
23 'TIL THEY FIX IT. Y' ALL GOT THE SENTENCE SHEET?

24 (DISCUSSION WITH CLERK AND JUDGE)

25 THE COURT: THERE WASN'T BUT TWO INDICTMENTS.

1 MR. PEACE: YOUR HONOR, IF I COULD, I'LL HAND YOU
2 THE TWO INDICTMENTS ---

3 THE COURT: YEAH, HERE THEY ARE.

4 MR. PEACE: --- OF THE PREVIOUS CONVICTIONS TO GO
5 ALONG WITH THE LETTER OF THE NOTICE OF LIFE WITHOUT
6 PAROLE.

7 THE COURT: YEAH, WELL, HERE PUT A SENTENCE SHEET
8 AND ALL THAT. MR. GRIFFITH, YOU GOT THIS LETTER ON
9 AUGUST 17, 1998. DID YOU READ IT TO THE DEFENDANT?

10 MR. GRIFFITH: YOUR HONOR, I GOT A LETTER FROM MR.
11 WOOLSTON DATED AUGUST 17, 1998, A DAY, 18TH OR 19TH ALONG
12 IN THERE SOMEWHERE.

13 THE COURT: YEAH. YOU READ IT TO THE DEFENDANT?

14 MR. GRIFFITH: OH, YES, SIR, YOUR HONOR. WE WENT
15 OVER THIS THING IN GREAT DETAIL. JUDGE, ONE OF THE
16 OFFENSES THEY ALLUDE TO IN 1977, I BELIEVE THAT MR. WISE
17 WAS 16 OR 17 YEARS OLD. I'M NOT SURE WHICH, BUT IT
18 HAPPENED IN 1977. HE'S ONLY 38 YEARS OLD RIGHT NOW. I'M
19 NOT TRYING TO BELITTLE ANY OF THAT THAT ENGAGED A CHILD
20 WITH A MINOR CHARGE, BUT HE WAS BUT A TEENAGER AT THAT
21 TIME. TWO OF THE CHARGES, THE BURGLARY THIRD DEGREE IS
22 NOT A SERIOUS OFFENSE AS OUTLINED BY THE STATUTE AND
23 ALLUDED TO BY MR. PEACE, BUT THE ASSAULT WITH INTENT TO
24 KILL HERE IN 1990, WE WOULD CONCEDE THAT AS A MOST
25 SERIOUS OFFENSE.

1 MR. PEACE: YOUR HONOR, I'M SORRY. I APOLOGIZE TO
2 THE COURT. THIS COPY WAS HARD TO READ. THERE IS ALSO
3 1991, POINTING AND PRESENTING AND ASSAULT WITH INTENT TO
4 KILL.

5 THE COURT: ALL RIGHT.

6 SENTENCE
7 BY THE COURT

8 ALL RIGHT. CASE NUMBER GS-97-36-402, THE SENTENCE
9 OF THE COURT IS YOU, JAMES EDWARD WISE, BE COMMITTED TO
10 THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR THE
11 PERIOD OF YOUR NATURAL LIFE.

12 CASE NUMBER 480, THE SENTENCE OF THE COURT IS SIX
13 MONTHS CONCURRENT.

14 MR. PEACE: YOUR HONOR, JUST FOR THE RECORD IS THAT
15 LIFE WITHOUT PAROLE ON THE BURGLARY FIRST?

16 THE COURT: THAT'S WHAT I WOULD THINK. WHAT THE
17 STATUTE SAYS, YES, SIR.

18 MR. PEACE: YES, SIR. THANK YOU, YOUR HONOR.

19 THE COURT: ABOUT THREE YEARS FROM NOW, WE' LL FIND
20 OUT IF WE' RE RIGHT OR NOT.

21 MR. PEACE: WE WOULD ASK TO SUBSTITUTE A PHOTOGRAPH
22 OF THE PIG, THE CERAMIC PIG ENTERED INTO EVIDENCE AS
23 STATE' S EXHIBIT TWELVE, AND RETURN THE CERAMIC PIG TO MS.
24 BATES.

25 THE COURT: ALL RIGHT. TELL HER TO SAVE IT IF THEY

1 HAVE APPEAL SO. ---

2 MR. GRIFFITH: I DON'T MIND IF SHE LOSES IT.

3 THE COURT: OKAY. LET'S SEE IT. THAT'S PRETTY
4 GOOD. I GIVE MY BOY A PIG EVERY CHRISTMAS. THAT'S A
5 GOOD ONE. LET'S DO THAT.

6 MR. PEACE: OKAY, I'LL PREPARE AN ORDER FOR YOUR
7 SIGNATURE. I'LL DO THAT.

8 THE COURT: YEAH, YEAH.

9 *****END OF TRANSCRIPT*****

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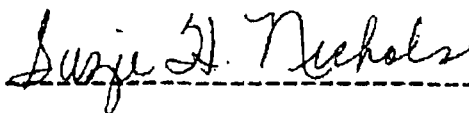
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

I, THE UNDERSIGNED, SUZIE H. NICHOLS, OFFICIAL COURT REPORTER FOR THE EIGHTH 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, RELATIVE TO APPEAL, IN THE CRIMINAL COURT FOR NEWBERRY COUNTY, SOUTH CAROLINA, ON THE EIGHTH DAY OF OCTOBER, 1998.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL OR INTEREST TO ANY PARTY HERETO.

A handwritten signature in cursive script that reads "Suzie H. Nichols". The signature is written in dark ink and is positioned above a horizontal dashed line.

SUZIE H. NICHOLS

MY COMMISSION EXPIRES: 3/13/2000

172 WITNESSES

Todd Johnson

WARRANT NUMBERS

on info.
offence code 0079

Alfred B. ...
Foreman of the Grand Jury

Date: *8-3-98*

VERDICT

guilty
ALICE BILLY

Sharon Boyce
Foreman

IP-Entered of 77-479

THE STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

August Term, 1998

Indictment # 98GS36-402

THE STATE

vs.
JAMES EDWARD WISE

INDICTMENT FOR

BURGLARY, 16-11-311(A)(1)(a)(b)(c)(d)(3)

THE STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

INDICTMENT FOR

173

BURGLARY, 16-11-311(A)(1)(a)(b)(c)(d)(3)

At a Court of General Sessions, convened on the 3rd day of August, 1998, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

That JAMES EDWARD WISE, did in Newberry County, state aforesaid, on or about the 15th day of July, 1997, wilfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, when in effecting entry or while in immediate flight therefrom, he or another participant in the crime; was armed with a deadly weapon or explosive; or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument; or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, or the entering or remaining occurred in the nighttime, the said dwelling being owned and/or occupied by Mary Bates, in violation of Section 16-11-311 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 cases made and provided.

Jackie S. Roberts, Clerk of Court
County of Newberry
AUG 06 1998
Clerk of Court

W. Thomas Jones

Solicitor

17A

WITNESSES

Todd Johnson

WARRANT NUMBERS

on info.

offense code 0079

Alphay B. Jr.
Foreman of the Grand Jury

Date: *8-3-98*

VERDICT

Guilty
~~TRUE BILL~~

Sharon Boyce
Foreman

re-indict of 97-479
THE STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

August Term, 1998

Indictment # *98GS36-402*

THE STATE

VS.

JAMES EDWARD WISE

INDICTMENT FOR

BURGLARY, 16-11-311(A)(1)(a)(b)(c)(d)(3)

**THE STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY**

INDICTMENT FOR

175

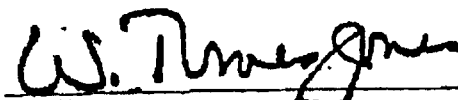
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Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 10th, 1999.



Robert M. Pachak
Assistant Appellate Defender

South Carolina Office, of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT.

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

JAMES EDWARD WISE#250411
Full name and prison number
(if any) of Applicant,

-vs-

STATE OF SOUTH CAROLINA
Name of Respondent.
CHARLIE CONDON

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
00 SEP 26 AM 9:11
CLERK OF COURT

Instructions - Read Carefully

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

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. 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 applicant was convicted.

1. Place of detention EVANS CORRECTIONAL INSTITUTION, P.O. BOX, 29512-02
BENNETTSVILLE, SOUTH CAROLINA, 29512-5202
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS
NEWBERRY SOUTH CAROLINA
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 98-GS-36-402 (Burglary)
 - (b) 97-GS-36-480 (Escaping custody of officer.)
 - (c) _____

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

(a) October, 8, 1998 (Life without-parole)

(b) October, 8, 1998 (six months concurrent)

(c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty Not Guilty

(c) after a plea of nolo contendere _____

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

YES

7. If you answered "yes" to (6), list

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Appeals denied

ii. _____

iii. _____

(c) the date of each such result:

i. April 25, 2000

ii. _____

iii. _____

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

- i. Unknown
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A
- (b) N/A
- (c) N/A

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

- (a) (INEFFECTIVE ASSISTANCE OF COUNSEL)
- (b)
- (c)

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a)
- (b)
- (c)

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature hereof:

180

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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State or Federal, in any petition, motion or application with respect to any ground you have filed?

NO

181

14. If you answered "yes" to (13), 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

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) First time filing for relief
- (b)
- (c)

16. 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? NO

17. If you answered "yes" to one or more parts of (16), list:

SCRCP APP-29

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

- i. EUGENE GRIFFITH, ESQ.
NEWBERRY SOUTH CAROLINA
- ii. ROBERT M. PACHAK
ASSISTANT APPELLATE DEFENDER
- iii. _____

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

- i. TRIAL
- ii. APPEAL
- iii. _____

18. State clearly the relief you seek in filing this application.

NEW TRIAL

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

NO

STATE OF SOUTH CAROLINA)

COUNTY OF Newberry)

VERIFICATION

I, James E. Wise, 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.

James E. Wise

SWORN to and subscribed
before me this 25th
day of Sept, 2000

Oscar W. Burch (L.S.)
Notary Public

My Commission Expires: 08-06-2009

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

I, James E. Wise, 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 therefor.

James E. Wise
Applicant

SWORN or affirmed to and subscribed before me this

25th Day of September 2000

D. Scott Bundy
NOTARY PUBLIC

My Commission Expires: 08-06-2009

IN THE COURT OF COMMON PLEAS
FOR NEWBERRY COUNTY

APPLICATION FOR POST CONVICTION RELIEF

JAMES EDWARD WISE#250411

PETITIONER,

-VS-

THE STATE OF SOUTH CAROLINA
CHARLIE CONDON: ATTORNEY GENERAL

RESPONDENT,

APPLICATION BROUGHT PURSUANT TO S.C. CODE ANN: §17-27-20
THROUGH §17-27-120

SUBMITTED BY,

James E. Wise
JAMES EDWARD WISE#250411
EVANS CORR. INST.
P.O. BOX, 29512-02
BENNETTSVILLE, S.C.
29512-5202

SUBMITTED THIS 25 DAY OF

September 2000.

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"CONSTITUTIONAL ISSUES"

Sixth Amendment of the United States Constitution.

Fourteenth Amendment of the United States Constitution.

"ISSUES PRESENTED"

ISSUE (A) Did the Court lack subject matter jurisdiction to put Petition on trial for First Degree Burglary, in light of the fact that Petition had already plead guilty to assault and battery, arising out of the same offense, thus violating Petitioner's rights to be protected against Double Jeopardy?

ISSUE (B) Was counsel ineffective for failure to ask the Court to hold Preliminary Hearing, where such Hearing had been requested by Petitioner?

ISSUE (C) Was counsel ineffective for failure to conduct a thorough investigation of the facts surrounding the charges against Petitioner and the possible defenses?

ISSUE (D) Was counsel ineffective for failure to investigate the facts of the case and prepare an adequate defense?

ISSUE (E) Was counsel ineffective for failure to subpoena Investigator Edward Salazar, who was a material witness, and who could have possibly given testimony in support of his clients version of events?

ISSUE (F) Was counsel ineffective for failure to ask the Court for a continuence until the witness became available?

ISSUE (G) Was counsel ineffective for failure to object to the admissibility of evidence that was presented by the prosecution to prove a fact of the case, when this evidence had not been held in police custody prior to trial, and was not admitted to SLED for fingerprinting, or other types of testing to tie it to the crime scene?

ISSUE (H) Was counsel ineffective for failing to have the state establish a chain of custody as to evidence that was introduced during trial?

ISSUE (I) Was counsel ineffective for pursuing a line of questioning that was highly prejudicial to the defense, and destroyed his clients character in the eyes of the jury?

ISSUE (J) Was counsel ineffective for failure to object to hearsay testimony from the witness stand?

ISSUE (K) Was counsel ineffective for failure to ask the Court to charge the lesser included offense of Statutory Criminal Trespass, since all the required elements of this offense were presented during the trial for First Degree Butglary?

ISSUE (L) Was counsel ineffective for failure to object to the reading of the Indictments to the jury that related to prior crimes, and the entering of these indictment into evidence for the jury to view during deliberation?

IN THE STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

JAMES EDWARD WISE#250411
PETITIONER

CASE NUMBER: _____

-VS-

APPLICATION FOR POST CONVICTIN
RELIEF BROUGHT PURSUANT TO:
S.C.CODE ANN:§17-27-20, THROUGH
§17-27-120

THE STATE OF SOUTH CAROLINA
ATTORNEY GENERAL CHARLIE CONDON
RESPONDENT

Now Comes Petitioner, James Edward Wise, pro-se, seeking relief in this Court from Constitutional violation that occurred during his trial. This Court has jurisdiction to hear this complaint pursuant to South Carolina Code Ann:§17-27-20 through §17-27-120.

Petitioner alleges in this PCR Application that his rights protected by the Fifth, Sixth, and Fourteenth Amendment to the United States Constitution were violated at his trial. That Petitioner Statement of Facts, citations of authorities, and argument presented will justify this Court Granting the requested relief sought in this Petition (That being that Petitioner be Granted a New Trial..

"STATEMENT OF FACTS"

Petitioner was arrested in Newberry County, South Carolina, on July 15, 1997 and charged with, Burglary 1st degree, Assault & Battery, Malic Injury to property, and Escape, at which time he was placed in the County Jail, where he remained until trial on October 8, 1998.

During this time, Petitioner was first appointed Mr. William L. Pyatt to represent him at trial, due to a conflict of interest counsel asked to be relieved as counsel, that request was granted and Petitioner was appointed Mr. Harry T. Heizer Jr. to represent him during trial, still again due to a conflict of interest Mr. Heizer was relieved as counsel by the Court, and Mr. Eugene C. Griffith appointed to represent Petitioner during his upcoming trial. This appointment occurred on 8/10 and trial was held on 10/8/98, thus giving counsel a total of (58) days to prepare for trial. During this (58) day time period counsel (Eugene C. Griffith) did nothing to prepare for trial, no pretrial motions were filed, and no time spent with Petitioner preparing a defense, are discussing what trial strategy would be employed during trial, no discussion of any witnesses that should be present during trial. Counsel even wrote a letter to Mrs. Lorlene Whitt, of the Appellate Defense, stating that he had filed no pretrial or post trial Motions. No Preliminary Hearing was held to determine what evidence the state would present at trial. As a whole, counsel took the attitude that Petitioner should plead guilty to all charges and take a (15) year plea agreement that had been proposed by the prosecution. As in conversation with Petitioner, counsel gave the impression that he had conceded Petitioner's guilt, when counsel said (the state has enough evidence for a conviction, why don't you just plead guilty to this).

Petitioner submits the following arguments in support of each issue presented, in his effort to show unto this Court that his Sixth Amendment right to the effective assistance of counsel was violated before and during trial.

THE STANDARD FOR EFFECTIVE
ASSISTANCE OF COUNSEL

The right to effective assistance of counsel is found in the Sixth Amendment to the United States Constitution. The Sixth Amendment states: "In all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense." This right was comprehensively discussed in *Strickland v. Washington*, 104 S.Ct. 2052, 80 L.Ed. 674 (1984).

In the *Strickland* case, the U.S. Supreme Court observed that the right to counsel is crucial to a fair trial because "access to counsel skill and knowledge is necessary to accord defendants the ample opportunity to meet the case of the prosecution. 104 S.Ct. at 2063. Any claim of ineffective assistance must be judged against this benchmark, "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland* at 686; 104 S.Ct. at 2064. The court established a two-part test to make this determination; to be successful the defendant must shift his burden of proof on both parts.

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is unreliable.

(1) DEFICIENCY OF PERFORMANCE:

To succeed on the first part of the test, referred to as "deficiency of performance" (Mak-V-Blodgett, 970 F.2d 614, 618 (9th Cir. 1993)) the defendant must show that "counsel's representation fell below an objective standard of reasonableness, considering all the circumstances under prevailing professional norms". Strickland, 466 U.S. at 587-88, 104 S.Ct. at 2064-65;

(2) PREJUDICE TO DEFENSE:

To succeed on the second part of the test, referred to as the "prejudice to defense" (Mak, 970 F.2d at 619) the petitioner must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. Reasonable probability is defined as "a probability sufficient to undermine confidence in the outcome."

The ABA's description of the role of defense counsel is instructive.

The basic duty the lawyer for the accused owes to the administration of justice is to serve as the accused counselor and advocate with courage, devotion and to the utmost of his or her learning and ability and according to law.

ABA Standard 4-1.1(b). In the commentary, it is stated, "[o]nce a case has been undertaken, a lawyer is obliged not to omit any essential step in the defense, without regard to compensation or the nature of the appointment."

ISSUE (A) Did the Court lack subject matter jurisdiction to put petitioner on trial for first degree burglary, in light of the fact that Petitioner had already plead guilty to assault and battery, arising out of the same offense, thus violating Petitioner's rights to be protected against double jeopardy?

Petitioner argues that the indictment for burglary in the first degree (98-GS-36-402) violated his right against double jeopardy because it was a reindictment of indictment (97-GS-36-479) The older indictment had one count of burglary in the first degree and one count of assault and battery of a high and aggravated nature, (ABHAN). Appellant pled guilty in magistrate's court to the lesser included offense of assault and battery on the ABHAN charge. Because this charge was part of the burglary charge, it would constitute double jeopardy to try him for burglary. Kelly v. state 274 S.C. 613; 266 S.E.2d 417 (1980)

The Fifth Amendment prohibits placing an accused in jeopardy of life or limb twice for the same offense. Specifically, the double jeopardy clause protects against; (1) a second acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. The premise of the double jeopardy clause is that an accused should not be tried or punished twice for the same offense. J. Sigler, Double Jeopardy, 1-16 (1969). State v. Walsh, 388 S.E.2d 777 (S.C.1988). See also Benton v. Maryland, 395 U.S. 711 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969). Thus, if an accused will be subjected to either multiple punishment or successive prosecutions for the same offense, a potential double jeopardy violation exists. See e.g. United States v. Wilson, 420 U.S. 332, 95 S.Ct. 1013, 43 L.Ed.2d 232 (1975).

The South Carolina Supreme Court states that section 17-23-20 bars prosecution for an unlawful act when the defendant was previously tried for the same act in municipal or magistrate court. The section is generally applied to prevent the prosecution of a greater offense after the defendant has been convicted or acquitted of a lesser offense involving the same unlawful act. State v. Grampus, 288 S.C. 395, 343 S.E.2d 26 (1986).

Also in the State v. Raymond Magazine, 393 S.E.2d 385 (1990), the Appellant was ordered to serve one year in prison or pay to the Court a fine of \$1500 for contempt of a Family Court order. Three months later Appellant was charged with ABHAN, allegedly taking place on the day of the Court order violation. Before trial he moved to quash the indictment on the ground of double jeopardy based on his prior sanction for contempt. The motion was denied. After evidence proved a beating took place, Appellant was convicted as charged. In this case the South Carolina Supreme Court made the following ruling in overturning the conviction:

The double jeopardy clause protects against a second prosecution for the same offense, after conviction or acquittal, and multiple punishment for the same offense. United States v. Harper, 490 U.S. 435, 109 S.Ct. 1892 104 L.Ed.2d 487 (1989); North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969). We first consider whether the prior contempt sanction was criminal in nature before considering the double jeopardy bar against successive prosecution.

In determining the nature of a contempt sanction, the focus is whether the punishment is remedial, for the benefit of the complainant, or punitive, to vindicate the authority of the Court. Hicks v. Feilock, 485 U.S. 624, 108 S.Ct. 1423, 99 L.Ed.2d 721 (1988). If the sanction is imprisonment, it is punitive when the sentence is limited to imprisonment for a definite period rather than conditioned on compliance with the Court's order. *Id.* at 631, 108 S.Ct. at 1429, 99 L.Ed.2d at 731. If the sanction is a fine, it is punitive if paid to the Court, unless the contemnor can purge himself by compliance with the Court's order, and remedial if paid to the complainant. *Id.* at 631-33, 108 S.Ct. at 1429-30, 99 L.Ed.2d at 731. The critical inquiry is whether the contemnor can avoid a sanction or purge himself of it by complying with the terms of the original order. *Id.* at 635 n. 7, 108 S.Ct. at 1431 n. 7, L.Ed.2d at 733 n. 7; cf. Phillips v. Phillips, 288 S.C. 185, 341 S.E.2d 132 (1986).

Appellant was ordered to serve one year in prison or pay to the Court a fine of \$1500. He could not purge himself of the contempt by merely complying with the protective order. We conclude Appellant's contempt sanction was criminal in nature and proceed to address the merits of Appellant's double jeopardy claim.

In Illinois v. Vitale, 447 U.S. 410, 100 S.Ct. 2260, 65 L.Ed.2d 228 (1980), The South Carolina Supreme Court recognized an alternative to the traditional Blockburger Test for determining a double jeopardy claim in successive prosecutions cases. See State v. Johnson, 299 S.C. 130, 382 S.E.2d 909 (1989); State v. Carter, 291 S.C. 385, 353 S.E.2d 875 (1987); State v. Carter, 291 S.C. 385, 353 S.E.2d 875 (1987); State v. Grampus, 288 S.C. 395, 343 S.E.2d 26 (1986). Recently the United States Supreme Court adopted the suggested analysis set forth in Vitale, in Grady v. Corbin, 495 U.S. 508, 110 S.Ct. 2084, 109 L.Ed.2d 548 (1990). It held that to avoid a double jeopardy bar a subsequent prosecution must do more than merely survive the Blockburger Test. Corbin expressly held the double jeopardy clause bars a subsequent prosecution if, to establish an essential element of the offense charged, the State will prove conduct that constitutes an offense for which the defendant has already been prosecuted. 110 S.Ct. at 2084. The critical inquiry is what conduct the State will prove and not the specific evidence the State will use to prove that conduct. Id. at 2092.

In the case at bar, at Petitioner's trial for burglary, the State proved the same conduct for which Appellant was previously criminally sanctioned by the Magistrate Court. Under the Corbin Test, the successive prosecution in this case violated the double jeopardy clause.

ISSUE (B) Was counsel ineffective for failure to ask the Court to hold a Preliminary Hearing, where such Hearing had been requested by Petitioner.

During the few brief times that Petitioner met with Counsel prior to trial, (at the County jail where Petitioner was being held) Petitioner asked that counsel asks the Court to hold a Preliminary Hearing. As Petitioner had made such a request at his bond hearing (without counsel). As Petitioner felt this necessary in order to prepare for trial. (Yet counsel main concern seem to be to try and get Petitioner to plead guilty, and accept a (15) year plea bargain the prosecution had offered.

While the right to a Preliminary Hearing does not attach when the charge is initiated by the Grand Jury. S.C.R. Crim.P.2.(b): State-V-Allen 224 S.E.2d 881 (1976); State-V-Nesmith, 48 S.E.2d 595 (1948). The Jury has already found probable cause in returning a true bill, and no further pretrial showing is necessary. The "Superventing Indictment" by which prosecutors in some states can defeat the right to a Preliminary Examination by obtaining a true bill from the Grand Jury, after the defendant has requested a Hearing, but before the proceeding has begun is not available to solicitors in South Carolina. S.C. Code Ann: §22-5-320 (Law Co-Op 1989) State-V-Porcher, 257 S.E.2d 505 (1979) Jurisdiction in the General Session Court is precluded until a Preliminary Hearing is held if the request is timely made. State-V-Fortner, 222 S.E.2d 508 See S.C. Code Ann: §22-5-320 (Law Co-Op 1984).

Under Section 22-5-320 of the 1976 Code of laws, Petitioner was entitled to a Preliminary Hearing if demand was made therefore in writing at least ten days before convening of the next term of Court for General Sessions. When a timely demand is made for a Preliminary Hearing, the Court of General Sessions is deprived of jurisdiction until such hearing is held

State-V-Porcher, 257 S.E.2d 505.

When Petitioner had made a request at his bond hearing that a pre-trial hearing be held, and requested of counsel that such hearing be held, Petitioner was entitled to such a hearing under South Carolina Law, and the failure of counsel to request such a hearing was ineffective assistance of counsel. Especially since Petitioner had requested that counsel make available to him all evidence the state plan to produce at trial against him.

The Sixth Amendment to the United States Constitution provides that in "all criminal", the accused shall enjoy the right to be informed of the nature and cause of the accusation [and] to be confronted with the witnesses against him. U.S. Const. VI. These guarantees are applicable to the state under the Fourteenth Amendment. Pointer-V-Texas, 85 S.Ct. 1065 (1967). They are also specifically mandated by the South Carolina State Constitution. Art. 1§14. Moreover, these rights are personal to the accused. It is the accused, not counsel, who must be informed of the nature and cause of the accusation, who must be "confronted with the witnesses against him". See Faretta-V-California, 95 S.Ct. 2525 (1975).

Petitioner is not implying that he wasn't informed of the nature and cause of the action against him, only that due process of law was violated by counsel, when counsel failed to take advantage of one of the rights afforded Petitioner under S.C. Law, that would have better helped prepare Petitioner case for trial, and better informed Petitioner and counsel of how to defend Petitioner at trial, by making both aware of what the state plan to produce at trial.

Here counsel was clearly ineffective for violation of Petitioner's due process rights, protected by the Fourteenth Amendment to the U.S. Constitution, when counsel failed to put the Court on notice that

Preliminary Hearing had been requested by his client, and the law of South Carolina provided for such a hearing, when requested.

Petitioner was prejudiced by the failure of counsel to request a Preliminary hearing, because valuable evidence was lost, such as possible impeachment testimony by the witnesses for the prosecution, and the fact that knowing what the state plan to produce at trial, would have helped to better prepare a defense, counsel could have learned the strength and weaknesses of the prosecutions case. The simple fact of the matter is: Petitioner requested of counsel that a Preliminary Hearing be held, and counsel failed to advise the Court of his clients request, when such a hearing was a valuable tool in the defense of his client, and available under South Carolina Law. This neglect by counsel violated Petitioner's due Process rights, and the right to effective assistance of counsel before trial and at trial.

ISSUE (C) was counsel ineffective for failure to conduct a thorough investigation of the facts surrounding the charges against Petitioner and the possible defenses?

Petitioner argues that his trial counsel did not conduct an adequate or thorough investigation of the facts surrounding the charges against him including possible defenses. Further that counsel did not conduct an independent investigation of the events before, or during the alleged crime, especially the relationship between Petitioner, and the victim, and the number of hours Petitioner spent in Mary Bates home with her (cuddled on a couch) the night of the alleged event. Counsel never brought out during trial the fact that no investigation was done by the police the night of the alleged crime, such as fingerprints, or pictures of the crime scene, no evidence taken by the police that a crime had even been committed, (pictures were taken one month later by the police that were entered as evidence during the trial) that counsel failed to object to. Counsel never visited the crime scene himself to see, or observe any evidence that may have helped him prepare his case for trial. Counsel never hired an investigator to interview any witnesses that lived in the area of the alleged crime, or to interview the mother of the victim who lived next door, who may have been able to offer some evidence on the time that Petitioner arrived at the home of the Mary Bates, (which Petitioner contends was 11:00 P.M. the night before). The fact that the victim was not transported to the hospital or even seen a doctor the night of the alleged event was not brought out during trial by counsel. Petitioner contends that, as a result of this inadequate trial preparation, counsel had no theory of defense, that counsel was

unprepared for effective cross examination, filed no pretrial Motions, which resulted in counsel being deficient in every aspect or phase of the trial.

The duty to investigate is part of a defendant's right to reasonable competent counsel. The principle is so fundamental that failure to conduct a reasonable pretrial investigation may in itself amount to ineffective assistance of counsel. United States-V-Tucker, 716 F.2d 576. The ABA states the duty as follows:

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exist regardless of the accused admission or statement to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty.

ABA Standard 4-4.1 The investigatory process should begin immediately on appearance as counsel for a defendant. ABA Standard 4-3.2(a) states:

As soon as practicable the lawyer should seek to determine all relevant facts known to the accused. In so doing, the lawyer probe for all legally relevant information without seeking to influence the direction of the clients's responses.

The commentary to this standard states:

An adequate defense cannot be framed if the lawyer does not know what is likely to develop at trial. In criminal litigation as in other matters, information is the key guide to decisions and actions. The lawyer who is ignorant of the facts of the case cannot serve the client effectively.

The duty to investigate is not eliminated by the client's own conclusion or admission of guilt, because the client's beliefs may not coincide with the necessary elements of proof to establish guilt in law. The client may not be aware of the significance of facts regarding intent, mitigation, suppression of evidence, or impeachment of witnesses that only an independent investigation can uncover. ABA Standard 4-4.1 Commentary at 4.54.

This obligation cannot be short cut because of counsel's professional experience or his prior personal experience with the defendant. Counsel's experience and knowledge are not admissible evidence. The most able and competent lawyer in the world can not render effective assistance in the defense of his client if his lack of preparation for trial results in his failure to learn of readily available facts which might have afforded his client a legitimate justicable defense." McQueen-V-Swenson, 498 F.2d 207. The effectiveness of advocacy is not to be measured solely by what the lawyer does at trial; without careful preparation, the lawyer cannot fulfill the advocate's role. Commentary to A.E.A. Standard 4-4.1.

Because this issue brings many allegations of ineffective assistance of counsel, it will be necessary to address each issue in a separate argument, in order to bring out all the facts of each issue, so that the Petitioner and the Court will be given the opportunity to address each issue on an individual basis. Petitioner simply brings up some of the deficiencies in the performance of counsel in order to prove in this issue before the Court, that counsel did not conduct an independent investigation of the facts of Petitioner's case in order to prepare a defense. This failure of counsel to prepare for trial, did prejudice Petitioner, because it left many areas of fact unresolved at trial, such as the exact time Petitioner arrived at Mary Bates' house, as an investigation might have uncovered the fact that Petitioner arrived at 11:00 P.M. on the night in question to continue an ongoing relationship that Petitioner had with Mary Bates, and that the fight between Petitioner and Mary Bates did not occur until 4:00 A.M. the following morning, when Mary Bates and Petitioner got into an argument over a girl that Petitioner was now seeing, who was to be a flower girl at the funeral of Petitioner's sister the following day. (If the issue of whether or not a flower girl is accepted at a funeral, as testified to by Petitioner at trial, that argument will have to be debated

another time). Still this witness and this testimony may have been helpful to counsel, as it would have proven Petitioner's own testimony during trial, that both existed, as Petitioner stated in his testimony.

Also Mary Bates testified that her mother lived next door to her, counsel should have either ask the court for funds to hire an investigator or went out and spoke with Mary Bates mother him self, to see if she might possibly provide any information on what happen the night in question.

Also what about the many witnesses who might have provided some type of information on the fact that petitioner and the victim had once went to prison for being involved in the same crimes, and that a partial relationship had been maintained since the early release of both Mary Bates and Petitioner from prison.

What about the fact that the alleged crime took place on July 15, 1997, and the crime pictures that were entered during Court were not taken until August 15, 1997, more than a month after the alleged incident.

What about the fact that the victim Mary Bates was allowed to keep in her possession a pig, that was suppose to have been the alleged weapon that Petitioner used to hit her with on the night in question.

What about the fact that Mary Bates was not taken to the hospital on the night in question, by the police, nor was an ambulance called.

What about the facts that no crime scene investigation was done the night in question, or any time later.

If this was a burglary, and not a lover's quarrel, why did the police not rush Petitioner to the police station or jail house, instead of taking Petitioner to meet some Drug detective that Petitioner had ask to meet, before being taken to jail. Where Petitioner escaped from police once the police car stoped and Petitioner was allowed to exit the car. Why

could such a meeting not have waited until Petitioner was taken to police station, and booked, if in fact the police believed that they had a desperate burglar in their custody at the time of arrest. Here their was just so many unanswered questions, that counsel should have investigated and known the answers to prior to taking his client to trial and subjecting him to a life sentence without the possibility of parole.

Petitioner was definitely prejudiced by the lack of any investigation by counsel to prove the arrival time of Petitioner at Mary Bates home, as well as other errors committed by counsel prior to trial and during trial, as these deficiencies by counsel did prejudice the defense there should be no question here that counsel performance fell below the objective standards of reasonableness, and amounted to a deficient performance, as there is a reasonable probability that but these deficiencies by counsel, the results of the trial would have been different, that is the deficiencies of counsel undermine confidence in the outcome.

ISSUE (D) Was counsel ineffective for failure to investigate the facts of the case and prepare an adequate defense?

Petitioner was charged with First Degree Burglary of Mary Bates home, in Newberry South Carolina, on July 15, 1997. After a trial was held Petitioner was found guilty as charged, and sentenced to life in prison without parole.

During the trial of Petitioner, Mary Bates contended that around 4:30 A.M. in the morning of July 15, 1997, Petitioner arrived at her home asking if her boyfriend would be a Pall Bearer at Petitioner's sister's funeral. Mary Bates informed Petitioner that her boyfriend was not at home, and that Petitioner should leave, before she called the police. The police were called and Petitioner asked to leave at some point, only Mary Bates had the police make Petitioner come back and get the Van he had arrived in. Mary Bates further testified that once Petitioner left he returned later (walking) and that when she would not let him in, that she called her boyfriend (James Gallman) and informed him that Petitioner was at her door making accusations against her, that during this call to her boyfriend, Petitioner broke a glass and came into her home, where a fight ensued.

Officer William Griffin testified that he arrived on the scene after receiving a call from dispatch that a hang up call had come in to 911. (Tr.p.69,L.14) That upon his arrival he found Petitioner at Mary Bates home, and ask her if she wanted Petitioner to leave and she said yes, at which time Petitioner agreed to leave, or walk to Mary Bates mother home who lived next door. (Tr.p.69,L.16/24).

Later, some twenty to thirty minutes another call came in that

a breakin was occurring at the same residence that Officer Griffin had just left. (Tr.p.70,L.20/22) Officer Griffin testified that he returned to the scene and found Petitioner in Mary Bates home, and that blood was on Mary Bates neck.

Petitioner was arrested and placed in a police car for transportation to the Newberry County jail.

Petitioner testified that he and Mary Bates had an ongoing affair that had lasted from an earlier relationship, which had ended when Petitioner and Mary Bates were both convicted of certain crimes and sent to prison.

Mary Bates gave testimony that this relationship ended in 1985 and was never resumed.

Petitioner further testified that he had called Mary Bates earlier that night from a phone booth at a liquor store near his home, and ask for permission to come see her, and that Mary Bates said yes. Petitioner further testified that he arrived at Mary Bates Home at quarter till eleven the night before and spent the night with Mary Bates. (Tr.p.114/115). That he was invited to her home, (Tr.p.116,L.2/6).

Here we have two entirely different stories presented by the two people who were present. Petitioner saying that he arrived at quarter till eleven on the the night in question, and Mary Bates saying that Petitioner arrived at 4:00 A.M. in the morning.

Here there are just too many holes in this entire case without more, to prove that petitioner is guilty of the crime charged.

First we have Petitioner saying that he arrived at 11:00 P.M. on the night in question. This could have been very well proven if counsel had investigated this issue. As it was testified to that Mary Bates mother lived next door,, and possibly some neighbors lived close

by. So the possibility existed that testimony could have been provided either from Mary Bates mother, or from some of the neighbors as to the time that the Van was first seen sitting in Mary Bates yard on the night of July 15, 1997. Surely Mary Bates mother would have made a good witness and could possibly have shed some light on what time the Van was first seen sitting at her daughters house, since it was testified to that she lived next door.

Second, why wasn't Mary Bates taken to the hospital on the night in question, by the police in accordance with police procedure, so that evidence of any struggle that had taken place that night could be recorded and preserved for future evidence in any charges that may be brought as a result of what took place on the night of July 15, 1997. The record that was admitted did not say when the knots on Mary Bates head may have been inflicted, and Mary Bates gave testimony that she and her boyfriend were not living together due to a recent fight that had taken place between the two. It is quite possible that Mary Bates could have received some injuries from this fight.

Third, Why was Mary Bates allowed to keep the ceramic pig until the day of trial, with no test performed on it what so ever to prove that Petitioner actually picked this pig up the night in question. Counsel did not even ask the court to establish a chain of custody related to this object that was introduced against his client. Counsel didn't even ask why the ceramic pig was not sent to SLED for testing, to prove a very important element of the state case. Counsel did not even object to this evidence being introduced at trial, against his client, when the state offered no proof that Petitioner even picked this article up on the night in question, other than Mary Bates testimony.

Fourth, why weren't pictures of the crime scene taken the night in question, instead of waiting until one month later on August 15, 1997, to send a officer out to take pictures of the door that Mary Bates alleged was broken the night in question. Counsel did not investigate this nor did he raise a question about this during trial. The same with why were any pictures taken of Mary Bates that night, the glass that was suppose to be on the floor, and why weren't pictures taken of Petitioner that night, since it was testified to that Petitioner cut himself when breaking the glass in the door. Counsel completely overlooked these issues that could have very well ment the difference in a guilty verdict, or not guilty verdict.

Fifth, why wasn't Investigator Edward Salazar interviewed by counsel prior to trial, and subpoenaed to give testimony as to whether or not he received a call, the morning in question, (July 15, 1997) confirming or denying Petitioner's testimony that Salazar had agreed to meet with him on the way to jail, and that the officer transporting Petitioner actually stopped for this meeting, taking Petitioner out of the car, when Petitioner for some reason got scared and ran away.

Sixth, why wasn't the local phone company contacted and records subpoenaed to confirm or deny the testimony of Petitioner that he had call Mary Bates from this phone booth earlier in the day, thus the reason why Petitioner was at her home. Here this information would have been very important, as it would have proved the length of time that Petitioner and Mary Bates talked, plus it would have possibly distorted the picture that Mary Bates gave, that she ask Petitioner to leave as soon as he arrived at her home.

Seventh, why did counsel not contact any witness that could have proven the existents of a relationship between petitioner and Mary Bates.

since Petitioner had told counsel that Mary Bates whole family as well as others knew of this relationship.

Petitioner contends that the reason counsel was unprepared for trial, is that counsel done nothing prior to trial to confirm or deny any of the facts that Petitioner had discussed with counsel prior to trial.

Counsel even tells the court that he has discussed all these facts with Petitioner prior to trial, and that Petitioner version of events differ greatly from the the victims. As counsel stated to the court as follows; (Tr.p.92,L.9/16)

YOUR HONOR, I'VE ALSO EXPLAINED TO MY CLIENT THE NECESSITY OF HIM TO TESTIFY TRUTHFULLY WHEN HE TAKES THE STAND, AND IT'S MY UNDERSTANDING BASED ON CONVERSATIONS WITH HIM THAT HE WANTS TO TESTIFY. HE WANTS TO EXPLAIN HIS VERSION OF THE FACTS AND HIS VERSION OF THE FACTS MAY DIVERGE QUITE A GREAT DEAL FROM THE STATE'S FACTS, AND HE AND I DISCUSSED THAT, AND SO I WANT HIM TO BE INFORMED OF THAT FACT ALSO.

Here counsel admits that he knows Petitioner version of events differ greatly from the state's version of events. Yet it seems that counsel has no interest in Petitioner's version of events, and has accepted the state's version of events as the truth of the matter. For counsel done absolutely nothing to confirm or deny Petitioner version of events. As counsel presented no evidence what so ever to confirm or deny Petitioner version of events.

Petitioner contends that counsel must at the very least, conduct a basic factual and legal investigation to determine if a defense is available or can be developed. Sneed-V-Smith, 670 F.2d 1348 (4th Cir.1982). "At the heart of effective representation is the independent duty to investigate and prepare." Goodwin-V-Balkcom, 684 F.2d 794 (5th Cir.1982)..

"Informed evaluation of potential defenses to criminal charges and meaningful discussion with one's client of the realities of his case are cornerstones of effective assistance of counsel." Gaines-V-Hopper 575 F.2d 1147 (5th Cir.1978). Counsel has a duty to conduct an independent investigation of his clients case or to articulate a strategic reason for his failure to do so. Montgomery-V-Peterson , 846 F.2d 407 (7th Cir.1988).

Petitioner alleges that in this case there is no strategic reason for counsel's complete failure to pursue various leads in this case. The fact that counsel did not even try to contact Mary Bates mother who lived next door, violated his obligations as attorney. Here a more thorough investigation could easily have developed leads affecting the credibility of the issues involved. Because investigation into matters relating to Petitioner defense might have revealed evidence bearing upon Mary Bates credibility (which was the whole of the states case) the failure to at least do some investigation was not objectively reasonable. Chambers-V-Armontrout, 907 F.2d 825 (8th Cir.) (counsel's decision not to interview and present witnesses that supported defendants's theory of defense was a deficient performance). 111 S.Ct. 369.

The prejudice prong of the Strickland test is easily met here as there can be no doubt that Petitioner was prejudiced by the failure of counsel to contact witnesses, subpoena telephone records, and question neighbors of Mary Bates to determine if any one had seen a Van in her yard on the night of the alleged offense, and if so, what time it might have been. As there is a reasonable probability that but for this deficiency by counsel, the results of the trial would have been different. That is the deficiency by counsel undermines confidence in the outcome.

ISSUE (E) Was counsel ineffective for failure to subpoena Investigator Edwardo Salazar, who was a material witness, and who could have possibly given testimony in support of his clients version of events?

ISSUE (F) Was counsel ifeffective for failure to ask the court for a continuence until the witness became available?

For the ease of the Court, these two issues will be argued together since they both encompass basically the same theory of ineffectiveness by counsel.

During the trial of Petitioner, it was brought out in testimony, that on the morning of arrest, while in route to jail, that a meeting was possibly arranged between Petitioner and Investigator Edwardo Salazar.

The following testimony was given concerning the whereabouts of Investigator Edwardo Salazar on the morning of trial, by Officer Todd Johnson. (Tr.p.93,L.15/25, and Tr.p.94, and Tr.p.95,L.1/8).

Q. OKAY. NOW, TODD, I SPOKE TO YOU PRIOR TO LUNCH REGARDING A DUPTY WHO WORK UNDER YOU. I BELIEVE HE'S A NARCOTIC'S INVESTIGATOR?

A. THAT'S CORRECT.

Q. INVESTIGATOR EDWARD SALAZAR?

A. CORRECT.

Q. DID I SPEAK WITH YOU ABOUT HIM?

A. THAT'S CORRECT.

Q. NOW, HAD I PRODUCED A SUPOENA FOR HIS PRESENCE IN THE COURT, WHICH I DIDN'T. I DID NOT HAVE A SUPOENA IN MY HAND TO GIVE TO YOU. I ASKED YOU COULD YOU FIND HIM. DID I NOT?

A. YOU DID.

Q. NOW, DID YOU SEARCH FOR HIM ON MY BEHALF AND MY CLIENT'S?

A. I DID AT THAT POINT. APPROXIMATELY TWO DAYS AGO, I WAS INFORMED INVESTIGATOR SALAZAR---THAT HE WAS EN ROUTE TO KENTUCKY FOR AN ONGOING INVESTIGATION INVOLVING FEDERAL PRISONERS IN KENTUCKY IN THE FEDERAL CORRECTIVE SYSTEM.

Q. DO YOU HAVE KNOWLEDGE THAT HE IS BACK IN NEWBERRY RIGHT NOW?

A. I DO NOT.

Q. DO YOU THINK HE'S STILL IN KENTUCKY?

A. AS FAR AS I KNOW, HE IS.

Q. IS HE UNAVAILABLE TODAY TO TESTIFY?

A. THAT'S---AS FAR AS I KNOW HE IS.

Q. THANK YOU.

CROSS EXAMINATION

BY MR. PEACE

Q. WHEN WERE YOU APPROACHED ABOUT THIS PARTICULAR WITNESS?

A. THIS AFTERNOON?

Q. WHAT TIME THIS AFTERNOON?

A. I DON'T RECALL?

MR. GRIFFITH: IT WAS BETWEEN TWELVE AND ONE O'CLOCK.

Q. WAS IT ONE O'CLOCK?

A. IT WAS THIS AFTERNOON AFTER LUNCH. I DON'T RECALL THE EXACT TIME.

Q. DO YOU KNOW HOW LONG THIS CASE HAS BEEN ON THE TRIAL DOCKET?

A. NO, SIR, I DON'T. IT'S QUITE SOME TIME.

Q. THANK YOU, NO FURTHER QUESTIONS.

Petitioner gave the following testimony regarding the meeting with Investigator Salazar. (Tr.p.103,L.20/25, and Tr.p.104,L.1/25 and Tr.p.105,L.1/16).

Q. WHAT HAPPEN NEXT AFTER HE PUT YOU IN THE CAR?

A. WE LEFT. I GOT TO TALK TO HIM.

Q. THE POLICE?

A. GOT TO TALK TO THE POLICE, AND AFTER WE LEFT HER HOUSE AND TURNED OUT THERE, I TOLD HIM TO CALL SALAZAR.

Q. OKAY, AND WHO IS SALAZAR?

A. HE'S THE DUDE RIGHT THERE AT THE POLICE DEPARTMENT .HE'S A DRUG DEALER.

Q. DID YOU HEAR ME EARLIER WHEN I WAS TALKING TO DEPUTY JOHNSON AND I ASKED HIM ABOUT EDUARDO SALAZAR ---I UNDERSTAND THAT'S HOW YOU PRONOUNCE IT. IS THAT THE GENTLEMAN YOU'RE REFERRING TO?

A. YEAH, HE'S AN INVESTIGATOR OUT THERE OVER THE DRUGS.

Q. ALL RIGHT. NOW, YOU WERE ASKING THE POLICE OFFICER DRIVING THE CAR YOU WERE IN---

A. YEP.

Q. TO CALL---

A. CALL SALAZAR?

Q. INVESTIGATOR SALAZAR?

A. YEP.

Q. DID HE CALL HIM FOR YOU?

A. YEAH, HE CALLED SALAZAR.

Q. WHAT DID Y'ALL DO AFTER HE CALLED HIM?

A. WE STOPPED RIGHT THERE AT THE STOP SIGN WAITING ON SALAZAR TO COME, AND I WAS EXPLAINING TO HIM WHY THAT I WANTED TO SEE SALAZAR. THE GUYS IN PROSPERITY THEY WANTED ME TO SET IT UP.

Q. WHAT DO YOU MEAN SET UP? WHO'S TALKING ABOUT?---

A. BUST HIM, BE WIRED UP TO BUST HIM.

Q. YOU MEAN, LIKE TRY TO BUY DRUGS FROM HIM?

A. THAT'S RIGHT.

Q. OKAY.

A. AND WE WERE OUT THERE AND HE HAD LET ME RIGHT OUTSIDE THE CAR, AND THEN ANOTHER CAR CAME UP. I DIDN'T KNOW WHO IT WAS, AND I RAN BECAUSE SALAZAR DRIVE A BLAZER, A BRONCO. IT WASN'T HIM, AND I RAN.

Q. YOU DON'T TRUST EVERYBODY AROUND YOU? IS THAT RIGHT?

A. I DIDN'T TRUST THEM NO WAY. I WASN'T GOING TO DO THAT NO WAY.

Q. WELL, WHAT DID YOU CALL FOR?

A. I WANTED TO GET OUT OF JAIL. MY SISTER WAS BEING BURIED THAT DAY AND I WANTED TO GO TO THE FUNERAL.

Q. OKAY. SO, YOU THOUGHT OFFICER SALAZAR---SALAZAR COULD HELP YOU REMAIN OUT OF CUSTODY FOR THE FUNERAL TIME?

A. IF I HELPED HIM BUST SOMEBODY, HE WOULD. HE'D BE DOING IT.

Petitioner stated further in his testimony that Officer Salazar did arrive on the scene (AND SALAZAR CAME AND HE WANTED TO FIGHT ME).

(Tr.p. 106,L.3).

Here the testimony of Petitioner clearly established that Salazar was a witness to the events that took place on the morning of July 15, 1997, and could have possibly given testimony that a call had been placed to him on the morning of July 15, 1997, to meet with the officer that was transporting Petitioner to Jail. Counsel even admits himself that he does not try to contact this witness until the day of trial. Due to Counsel neglect, an ineffectiveness, valuable testimony has been lost that could have corroborated Petitioner's testimony that a meeting had been arranged the morning of July 15, 1997. It can not be disputed by counsel that he did not even try to telephone this witness prior to trial, or to arrange any type of a meeting with officer Salazar, to confirm or deny Petitioner

version of events. It could also be said, that counsel knew that Petitioner's sole defense was based on Petitioner's version of events, since Petitioner version of events differed so much from that of the prosecution, yet counsel did nothing to confirm Petitioner's version of events. Did not contact any witness in the neighborhood to see if anyone could support Petitioner's version of the time of arrival at Mary Bates home. Did not contact anyone to see if testimony could be had to confirm Petitioner version of the relationship between Mary Bates and himself. Did not contact officer Salazar prior to trial to confirm or deny Petitioner's version of events on the night of July 15, 1997.

Here there should be no question as to the deficiency and ineffectiveness of counsel, when counsel is well aware of the fact that his client is going to take the witness stand, and is going to be testifying to a totally different version of events than what the prosecution is going to put forth, and counsel does nothing to substantiate his clients version of events when this testimony is available, with just a little effort on counsel part. In Grier-V-State, 384 S.E.2d 722 (1989) The South Carolina Supreme Court found counsel ineffective for failure to call witnesses constituted a deficient performance, as this deficiency did prejudice the defense. Also in Thomas-V-State, 417 S.E.2d 513 (1992) (counsel was found deficient in failing to call witnesses that would have put fourth a different statement of events that occurred). In Pauling-V-State, 503 S.E.2d 468 (counsel was ineffective for failing to call a defense witness (a nurse) whos notes would have supported the defense version of events).

Petitioner argues that in looking at counsel performance, that ineffective assistance of counsel based on the failure to secure witness testimony is disfavored. See Sherrill-V-Wyrick, 524 F.2d 186 (because

presentation of evidence is a matter of trial strategy). Schwander-V-Blackburn, 750 F.2d 494 (Defense counsel's failure to request a continuance to secure Anderson as a witness, however, cannot be attributed to trial strategy).

In the case at bar, counsel attempt to have contacted Officer Salazar to testify, but followed improper procedures to obtain this witness, and the failure to subpoena this witness, and ask the court for a continuance until the witness became available, when he could have given testimony that would have supported the defense, was clearly ineffective assistance of counsel. Moreover the failure of counsel to even interview this witness, counsel could not have strategically decide a witness would be unnecessary or harmful without even investigation the nature of this testimony. Wade-V-Armontrout, 798 F.2d 304 (1986). (holding that investigation is an essential component of the adversary process). This is especially true, assuming that Officer Salazar would have testified that he was called the morning of July 15, 1997, to meet with Petitioner and the officer that was transporting him to jail. Which would have tended to rebut the state's case on the issue of the events of the morning of July 15, 1997.

In this case there can be no doubt that the preformance of counsel was deficient, and that this deficiency by counsel did prejudice the defense, and denied Petitioner the right to effective assistance of counsel, and his due process rights to a fair trial, as protected by the Sixth and Fourteenth Amendment to the United States constitution.

ISSUE (G) was counsel ineffective for failure to object to the admissibility of evidence that was presented by the prosecution to prove a fact of the case, when this evidence had not been held in police custody prior to trial, and was not admitted to SLED for fingerprinting, or other types of testing to tie it to the crime scene?

During the trial of petitioner, the prosecution was allowed to introduce to the jury, (without objection from counsel), a ceramic pig that Mary Bates alleged the petitioner had used to strike her the night of the alleged crime of first degree burglary, (Tr.p., 38, L. 24-25) and (Tr.p., 39, L. 1-25).

Mary Bates admitted on the witness stand that she had the ceramic pig in her possession since the night of the alleged incident. (Tr.p., 39, L., 18-20) as follows; Q. Has that ceramic pig been in your possession since July 15, 1997? A. Yes, Sir.

Trial counsel failed to object to this evidence being admitted. (Tr.p., 39 L., 25) (Mr. Griffith: Your Honor, I have no objection). Even after the witness Mary Bates had admitted on the witness stand that she had the pig in her possession ever since the night of the alleged incident. (July 15, 1997).

Here counsel has let the state make a highly prejudicial allegation, (to wit, that petitioner became armed with a ceramic pig, of which he used to threaten his accuser, Mary Bates, an extremely important element of proving first degree burglary). And counsel fails to object, fails to ask why the police did not take the ceramic pig as evidence the night of the alleged incident, fails to ask why no test for fingerprints was performed to see if petitioner actually did pick this pig up, fails to have the state establish the burden of proof that petitioner actually did possess the

pig the night in question.

Here highly prejudicial testimony was allowed to be entered against counsel's client, with no proof offered by the state that the ceramic pig was even present the night in question, or that petitioner became armed with it, only the testimony of Mary Bates; this unchallenged testimony without more proof that petitioner actually became armed with it, was highly prejudicial, and a clear cut path to the type of assistance of counsel that petitioner received during trial, (meaning that counsel allowed error after error), without objection. For surely the police should have taken any evidence that proved a crime had been committed, and sent this to SLED for various testing to prove the state's case in chief.

Counsel in effect said; (My client is guilty, and the evidence the state has submitted proves one element of this offense without a doubt), when counsel failed to object, or contest the evidence submitted by the state, and no other proof of the matter was offered by the state to prove actual possession by petitioner at any time during the alleged crime.

There can be no doubt that petitioner was prejudiced by the deficient performance of counsel, (counsel failing to object), as this performance by counsel fell below the standard of reasonableness of professional conduct of attorneys in criminal cases, as there is a reasonable probability that for this deficiency by counsel, the result of the trial would have been different. Here there can be no doubt that Petitioner was denied his Sixth Amendment right to the effective assistance of counsel, and that the inaction of counsel at trial further violated Petitioner's Fourteenth Amendment right to due process of law and a fair trial.

ISSUE (H) Was counsel ineffective for failing to have the state establish a chain of custody as to evidence that was introduced during trial?

Petitioner argues that counsel was ineffective for failing to object to prosecution's admission of a ceramic pig without a chain of custody being established by the state that this pig was actually in possession of petitioner on the night in question as being a weapon held over Mrs. Bates while on the phone with her boyfriend, James Evan Gallman, AKA (Slop). Mrs. Bates stated to the police that petitioner threatened to strike her on the head with the pig if she were told "Slop" of petitioner's presence in the house during the early morning phone call on July 15, 1997. The arresting officer never did a crime scene investigation of alleged broken front door and surrounding area of Mrs. Bate's trailer following the removal of petitioner from Bate's front lawn on July 15, 1997, nor did they examine the pig or take pictures of it's presence in Mrs. Bate's home, or send it to SLED for fingerprints. It remained in her possession until the first day of petitioner's trial when she brought it to court for introduction as state's exhibit (1) against the petitioner. The police never photographed or fingerprinted said pig or catalogued it's existence as an evidence exhibit. It was never given a control number accompanied by a form (B), (certificate of proof of chain of physical custody or control) as required by South Carolina Rules of Criminal Procedure. *(SEE EXHIBIT (O)).*

Petitioner denied ever having seen the pig during questioning at trial. (See cross examination by Mr. Peace; T. Pg., 132.

- Q. You did not threaten her with this pig?
 A. No, I did'nt. I never seen that.
 Q. Never seen this?
 A. Never seen it 'til today.
 Q. How many times did you sneak around in her house?
 A. I've been in her house more than once.
 Q. How many?
 A. I did'nt keep count.
 Q. Ten?
 A. I don't know.
 Q. More or less?
 A. I don't know.
 Q. But you never saw this pig?
 A. No, until today.

From State v. Newton; S.C. 262 S.E.2d 906 "This court held in Benton v. Pellum, 232 S.C. 26 at 27, 100 S.E.2d 534 at 537 (1957) that:"

While proof need not negative all possibility of tampering (citations omitted), it is generally held that the party offering such specimen is required to establish, at least as far as practicable, a complete chain of evidence. Also see Raino v. Goodyear Tire and Rubber Co., 442 S.E.2d (1992). "The identity of the persons who have handled the evidence must be established."

Petitioner contends while citing above cases as law, that counsel was ineffective for not objecting to the introduction of evidence lacking any established chain of custody. The evidence (consisting of one ceramic pig), was shown and described to the jury as a potential weapon to be used on Mrs. Bates, thus becoming or constituting an essential element of the first degree burglary charge.

Petitioner also contends that he was prejudiced by the fact that Mrs. Bates was allowed to contend that she was threatened with evidence (pig), that was never proven that it came from the crime scene other than the testimony of the victim. This allowed the jury to infer that a weapon was present the night in question, without the prosecution having to prove a fact of the case. There can be no doubt that petitioner was prejudiced by the deficient performance of counsel, (counsel failing to object), as this performance by counsel fell below the standard of reasonableness of professional conduct of attorneys in criminal cases. Petitioner argues that had it not been for counsel's deficiency as to the evidence's (chain of custody) coupled with other substandard areas of representation, there would have been a completely different outcome of the trial, showing petitioner's innocence of

the burglary first charge. That is the deficiencies by counsel, that allowed evidence to be introduced, without the proper standards of law being followed, amounted to deficiencies that fell below the professional performance of criminal attorneys, without this deficiency by counsel, there is probability that the results of the trial would have different. For the state would have lacked proof of one of the necessary elements of the offense charged.

For the reason set forth in this issue, petitioner's conviction and sentence should be overturned and a new trial granted.

ISSUE (D) Was counsel ineffective for pursuing a line of questioning that was highly prejudicial to the defense, and destroyed his clients' character in the eyes of the jury?

During the questioning of Petitioner, counsel was questioning Petitioner concerning the subject of officer Salazar, and events that had taken place on the morning of July 15, 1997, during an escape from police custody. During this questioning of Petitioner, Petitioner happened to mention that he had been in prison, on a prior occasion, and counsel completely abandoned the line of questioning and pursued a line of attack upon Petitioner that had nothing to do with the issues at hand, and only destroyed Petitioner's credibility in the eyes of the jury. In the following examination of Petitioner during trial (Tr. p. 106, L. 10/25.)

Q. ALL RIGHT. YOU JUST MENTIONED SOMETHING. YOU HAD DONE SOME PRISON TIME BEFORE?

A. YEAH.

HOW LONG---WHY WERE YOU IN JAIL---WHAT HAD YOU BEEN IN JAIL FOR THAT YOU'VE BEEN RELEASED? WHAT WAS THAT?

A. WELL, I'VE BEEN TO JAIL A NUMBER OF TIMES, PRISON.

ALL RIGHT. THE MOST RECENT TIME?

A. ABOUT THREE TIMES, ASSAULT AND BATTERY WITH INTENT TO KILL.

Q. ALL RIGHT. NOW, WAS THAT INVOLVING ANYBODY IN THIS, WHAT WE'RE DEALING WITH TODAY, ANY OF THE OFFICERS OR ANY OF THE VICTIMS OR ANYTHING?

A. NO.

Q. IT INVOLVED NONE OF THEM?

A. NO.

This line of questioning by counsel was highly prejudicial to the defense, as it destroyed any credibility that Petitioner may have had in the eyes of jury. It set up the bad man theory, for the jury to use in reaching their verdict. That if anyone had committed these crimes in the past, surely they were a bad person, who should be convicted, in for no other reason than the fact that they are a bad person who should be removed from the community. This evidence led the jury to an erroneous view of Petitioner's criminal history, which was capitalized on by the prosecution without objection.

There can be no showing by counsel that this line of questioning was based on a reasonable decision, or that his line of questioning by counsel did not prejudice the defense. Counsel simply boosted the state's case, (as he showed that Petitioner was a bad person who had committed crimes in the past, with elements that were essential to the crime that Petitioner was on trial for)As a result his representation fell below the objective standard of reasonableness. Such is violative of the Sixth Amendment.Strickland-V-Washington, 104 S.Ct. 2052. Here the performance by counsel amounted to a deficient performance, as there is a reasonable probability that but for this deficiency, combined with others, that the results of the trial would have been different.

ISSUE (J) Was counsel ineffective for failure to object to hearsay testimony from the witness stand?

During the course of Petitioner's trial James Gallman took the witness stand and testified as follows: (Trp. 67, L. 20/26)

(Q). DID SHE TELL YOU WHO WAS THERE?

(A). YEAH.

(Q). AND WHO DID SHE SAY WAS THERE?

(A) SAP.

(Q). AND SAP IS---IS SAP JAMES WISE, THE DEFENDANT?

(A). YEAH.

Counsel failed to object to this testimony as "hearsay testimony" as to what Mary Bates had said. And this testimony was highly prejudicial to Petitioner, since it placed Petitioner at the scene of the crime in a confrontation with the victim. When the victim was available, an in Court and could have testified to what was said between her and any other part. This violated Petitioner's right to Confrontation, protected by the due process clause of the Fourteenth Amendment to the United States Const.

This is basically two arguments before the Court as to counsel's ineffective assistance: (1) That counsel should have objected to what the person testifying said as hearsay, and therefore its admission is prohibited by the Rule against Hearsay. And (2) Admission of James Gallman's testimony as to what Mary Bates said violated Petitioner's right to be confronted with witnesses against him.

The rule against hearsay prohibits the admission of testimony or other evidence of a statement made out of Court, offered in Court to prove the truth of the matter asserted. State-V-Williams, 331 S.E.2d 354 (C.App. (1985)).

The admission of hearsay constitutes reversible error only if its admission is prejudicial to the accused. 331 S.E.2d at 385.

Petitioner's second argument is inextricably linked to his first. As the rule against hearsay is closely related to the Constitutional right of confrontation. See California-V-Green, 399 U.S. 149 155 90 S.Ct. 1930, 1932. (1970) (Hearsay rules and the Confrontation Clause are generally designed to protect similar values) Dutton-V-Evans; 91 S.Ct. 210, 218. (1970) (The rule against hearsay and the right of confrontation "stem from the same roots"). The Confrontation Clause of the Federal Constitution provide "In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him." U.S. Constitution Amend VI. The South Carolina Constitution gives an accused the same right: (Any person charged with an offense shall enjoy the right to be confronted with the witnesses against him. S.C. Const. Art I, §14.

Counsel should have objected to this line of testimony, especially in light of the fact that the person who made the statement was in the courtroom and available to testify.

In State-V-Williams, 331 S.E.2d at 359. (Prejudice is presumed if the hearsay had some probative value on a material fact of the case).

While the facts in this case do not stand on all fours with State -V-Pollard, 196 S.E.2d 839 (1973) (IN which, a police officer was permitted to testify, over objection, regarding information he had received from other persons which led to the defendants arrest. The officer testified in effect that he had received information from some other source or witnesses as basis for his signing the warrant [for the defendant]. Id at 460 196 S.E.2d at 840. The Supreme Court reversed holding: (The testimony of the officer, that he signed the warrant upon the basis of information received from witnesses who did not testify, was clearly hearsay and

and inadmissible.) The Court also rejected arguments that the defendant was not prejudiced by the testimony.

The right of the defendant not to be convicted based on hearsay (to say it another way, the right of a defendant to be confronted by the witnesses for the prosecution, is a precious right. It is perhaps the most important right given innocent people. State-V-williams, 331 S.E.2d 354. Also See State-V-Dennison, 406 S.E.2d 383 at 386.

In the case at bar, counsel should have objected to the hearsay testimony, as the testimony was highly prejudicial in the course of Peti trial. The failure of counsel to do so was ineffective assisatnce of co thus falling within the standards set forth in Strickland-V-Washington, 104 S.Ct. 2052. In which the Court said; that in order to satisfy the second prong of the test (the defendant must show that the deficient performance prejudiced the defense).

ISSUE (K) Was counsel ineffective for failure to ask the Court to charge the lesser included offence of "Statutory Criminal Trespass" since all the required elements of this offence were presented during the trial for First Degree Burglary?

During the trial of Petitioner, Mary Bates testified that she had seen Petitioner pull up in her yard, in a Van, and blow the horn. That Petitioner came to the door and ask her where her boyfriend was, and that she told Petitioner he was in Prosperity. (Tr.p.34/35) That Petitioner then told her that he wanted her boyfriend to be a Pall Bearer at his sister funeral. Also that she wanted Petitioner to leave her residence, or she would call 911. (Tr.p.36) That Petitioner told her she wouldn't do that, and she assured Petitioner that she would, and did do so according to her testimony. (Tr.p.36, L.1/20). When the Officer arrived Petitioner was made to leave, but without his Van, and she (Mary Bates) ask the officer to make Petitioner take his Van with him. Petitioner returned and left in the Van, only to return later, by means of walking, and started banging on the door wanting in. That Petitioner started making accusations about her (Mary Bates) not wanting to talk to Petitioner, and that she in turn called her boyfriend, and told him Petitioner (James Wise) was standing on her porch making accusations against her. (Tr.p.37). That during this conversation with her boyfriend, Petitioner knocked a hole in the front door and came in. (Tr.p.38).

While Petitioner does not agree with all the facts as submitted by the trial record, non the less, the law still supports his allegation that counsel was ineffective for failure to request that the Court charge the lesser included offense of Statutory Criminal Trespass.

First degree burglary requires the entry of a dwelling without consent with the intent to commit a crime therein, as well as the existence of an aggravating circumstance. S.C. Code Ann §16-11-311 (Supp. 1993). Statutory criminal trespass involves either (1) the entry of a dwelling house, place of business or the premises of another within six months after being warned against such entry or (2) the failure to leave a dwelling house, place of business or premises of another after having been requested to leave. S.C. Code Ann. §16-11-620 (1976).

An indictment will sustain a conviction for a lesser offense if the lesser offense is included within the greater charged offense. See State v. Fennell, 209 S.E.2d 433 (1974). The test for determining when a crime is a lesser included offense of the crime charged is whether the greater offense includes all the elements of the lesser offense. See State v. Suttles, 302 S.E.2d 338 (1983). If the lesser offense includes an element not included in the greater offense, then the lesser offense is not included in the greater.

In this instance Statutory Trespassing, is a lesser included offense of First Degree Burglary. As Statutory Trespass requires a prior warning against entry or a request to leave. All these elements were present in Petitioner's case. (As Mary Bates testified; AND SO, I SAID "WELL, THE BEST THING TO DO IS GET OFF MY PORCH BEFORE I CALL 911". (Tr. p. 36). (AND I, YOU KNOW, AND I SAID "WELL, JUST LEAVE, AND SO, I CALLED JAMES GALLMAN, MY BOYFRIEND, AND I TOLD HIM HE WAS ON THE PORCH MAKING ALL KINDS OF ACCUSATIONS). (Tr. p. 37)

There was also present the elements of Common law Trespass, and counsel failed to ask the Court to charge the jury as to this lesser included offense. As Common law Criminal Trespass requires either malice

injury or entry after notice See State-V-Bradley, 120 S.E. 240 (1923). Because all the elements of proof were present for this charge as well to the jury, counsel was ineffective for failure to ask the court to charge the jury as to Common law Criminal Trespass.

There can be no doubt that Petitioner was prejudiced by the inactions of counsel, for it gave the jury no choice but to convict on on the Greater offense of first Degree Burglary. Since the elements were present for the two lesser included offenses, counsel was highly ineffective for failure to request the lesser included offenses, as this deficient performance by counsel undermines confidence in the outcome, since there is a reasonable probability that the out come of the trial would have been different had the Court charged the two lesser included offenses, upon counsel request. For the reasons set forth Petitioner was denied his Sixth Amendment right to the effective assistance of counsel, and his Fourteenth Amendment right to due process of law and a fair trial, by the failure of counsel to request the lesser included offenses, where the elements were present for such a charge.

ISSUE (L) Was counsel ineffective for failure to object to the reading of the indictment to the jury that related to prior crimes, and the entering of these indictments into evidence for the jury to view during deliberation?

During the trial of Petitioner the prosecution was allowed to read to the jury indictments of Petitioner's prior conviction's, and to enter these indictment into evidence as exhibits (six) and (seven) with out objection from counsel. (Tr.p.131,L.2/6).

During the questioning of Petitioner, the prosecution was allowed to question Petitioner in the following manner without objection from counsel. (Tr.p.129,L.13/25, Tr.p.130,L.1/25, and Tr.p.131,L.1/9).

Q. NOW, YOU TESTIFIED YOU'D BEEN IN TROUBLE BEFORE. DIDN'T YOU?

A. YES, I DID.

Q. AS AMATTER OF FACT, IN AUGUST OF 1990, YOU PLEAD GUILTY TO BURGLARY THIRD, DIDN'T YOU?

A. IN 90?

Q. AUGUST OF 1990.

A. I DIDN'T LOOK AT THE RECORD AGAIN. I DON'T REMEMBER.

Q. OKAY. NOW, I'LL SHOW YOU WHAT'S BEEN MARKED AS STATES EXHIBIT SIX FOR IDENTIFICATION AND ASK YOU WHAT THAT DOCUMENT IS? DOES THAT DOCUMENT HAVE YOUR NAME ON IT? DOES THAT SAY THE STATE VERSES JAMES EDWARD WISE?

A. DON'T SAY ATTEMPT BURGLARY, THIRD DEGREE?

Q. IT DOES. IS THAT WHAT YOU WERE SENT TO JAIL FOR, ATTEMPTED BURGLARY, THIRD DEGREE?

A. I DIDN'T GO TO JAIL. I GOT PROBATION.

Q. YOU GOT PROBATION. OKAY, BUT THAT'T THE OFFENSE YOU WERE CONVICTED OF?

A. I WASN'T CONVICTED OF IT. I'M TELLING YOU I GOT PROBATION FOR IT. WELL, YOU CAN CALL THAT CONVICTION BECAUSE I PLEADED GUILTY TO IT, AND I WOULDN'T HAVE PLEADED GUILTY TO IT THEN IF I WASN'T UNDER PRESSURE WITH THE LAW ENFORCEMENT HERE IN NEWBERRY COUNTY BECAUSE THEY WANTED TO USE ME TO SET UP PEOPLE WITH DRUGS.

Q. OKAY, I SEE. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT SEVEN FOR IDENTIFICATION AND ASK YOU WHAT THAT DOCUMENT IS? IS THAT THE STATE VERSES JAMES EDWARD WISE?

A. YES, IT DO.

Q. ALL RIGHT. WHAT CRIMES DID YOU PLEAD GUILTY TO OR WERE YOU CONVICTED OF?

A. I WAS CONVICTED OF THESE CHARGES, ASSAULT AND BATTERY WITH INTENT TO KILL, POINTING AND PRESENTING A FIREARM, CARRYING A PISTOL UNLAWFULLY.

Q. OKAY. THANK YOU. MAY I HAVE THIS BACK?

MR. PEACE: YOUR HONOR, I HAVE CERTIFIED COPIES OF THE EXHIBITS. I WOULD REQUEST THAT STATE'S EXHIBIT SIX FOR IDENTIFICATION AND SEVEN FOR IDENTIFICATION BE ADMITTED AS STATE'S EXHIBIT SIX AND SEVEN.

MR. GRIFFIN: THAT'S WITHOUT OBJECTION, YOUR HONOR.

THE COURT: NO OBJECTION.

MR. PEACE: THANK YOU, YOUR HONOR.

(STATE'S EXHIBIT NUMBER SIX AND SEVEN MADE A PART OF THE RECORD).

While Petitioner has not been able to find any case law in South Carolina that says this judgement call by counsel was ineffective assistance Petitioner has found one case that is directly on point. In Lombard-v-Lynaugh, 868 F.2d 1475 (5th Cir.1989) the court said;

As noted, Lombard contends that he was denied effective assistance of counsel at trial because Cahoon, as trial counsel, failed to object to: (1) the habitual offender comments by the trial court and the prosecution's relying to the jury of the indictment which contained several allegations of Lombard's prior convictions. (the Texas Court of Criminal Appeals found that reversal of a conviction

is required where the trial court permits the jury to learn, at the commencement of the guilt or innocent stage of the trial, that the defendant has been convicted of one or more prior felony offenses alleged for enhancement, provided the defendant timely objects. Thus Cahoon's failure to object at trial to the reference to Lombard's prior convictions may well have been a costly error.

Petitioner contends that he was prejudiced by the prosecution reading to the jury, the indictments of his prior convictions, as this gave the jury a easy hook on which to hang a guilty verdict, just because Petitioner had been cast in the eyes of the jury as a bad person, who, if for no other reason should be removed from the community, because of his past record as a bad person.

Counsel was deficient for failing to object to the reading of the indictments, and for failing to object to the indictment being presented to jury as evidence that Petitioner had been convicted of prior crimes in the past that established the same type of evidence that the prosecution needed to establish the conviction that petitioner was on trial for.

Petitioner contends that his due process right pursuant to the Fifth and the Fourteenth Amendment were violated by the admission of his prior convictions. The Fifth Amendment states, in pertinent part, No person shall be deprived of life, liberty, or property, without due process of law. The fourteenth Amendment, in pertinent part, states: nor shall any State deprive any person of life, liberty, or property, without due process of law.

Evidence must be relevant, that is "having any tendency to make the existence of any fact is of consequence to the determination the action more probable or less probable than it would be without the evidence. Not all relevant evidence will be admitted, however, Although relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by consideration of undue delay, waste of time, or needless

presentation of cumulative evidence. F.R.C.P. (403)

Consideration of the validity of the prior convictions based on guilty pleas should have been made in a pretrial hearing in the trial court. The fact that such a pretrial hearing was not held in this case would deprive any reviewing court of the benefit of determination of facts

For the reasons stated in this issue Petitioner contends that his Sixth and Fourteenth Amendment rights to due process of law and a fair trial were violated at his trial and that counsel was ineffective for failure to object to this evidence being introduced, without objection because it was presented with only part of the record pertaining to the conviction. As a result of this constitutional error by counsel, there was a substantial and injurious effect or influence on the jury's verdict.

Counsel failure to object fell below the objective standard of reasonableness and amounted to a deficient performance by counsel. As there is a probability that but for this deficiency the results of the trial would have been different. That is the deficiency undermines the confidence in the outcome.

"CONCLUSION"

For the reason set forth in this Application for Post Conviction Relief, Petitioner submits that he was not provided the effective assistance of counsel during trial, thus resulting in a denial of Petitioner due process rights to fair trial, and the effective assistance of counsel before and during trial. For the reasons set forth in this Application, Petitioner is entitled to a New Trial under the Constitution of the United States, Sixth Amendment. For this relief Petitioner will forever pray.

RESPECTFULLY,

James E. Wise
JAMES EDWARD WISE

"CERTIFICATE OF SERVICE"

I, James Wise do swear under penalty of perjury, that I have mailed a copy of this Application For Post Conviction Relief to those persons whos addresses appear below, by first placing a copy of this Application in a prepaid envelope, then taking that envelope to the mail room here at the Evans Correctional Institution in Bennettsville, South Carolina, and placing that envelope in the U.S.Mail.

Jackie S. Bowers
Clerk of Court
P.O. Box, 278
Newberry, S.C. 29108

RESPECTFULLY,

James E. Wise
JAMES EDWARD WISE#250411
EVANS CORR. INST.
P.O. BOX, 29512-02
BENNETTSVILLE, S.C.
29512-5202

Office of Attorney General
Charles Condon
P.O. Box, 11549
Columbia, South Carolina
29211

Sworn to and subscribed before me

this 25th day of Sept, 2000.

D. Scott Brund
NOTARY PUBLIC

08-06-2009

MY COMMISSION EXPIRES

Submitted this 25 day of September 2000.

(52)

EXHIBIT (A)

The State of South Carolina

County of Newberry

INDICTMENT FOR

- (1) BURGLARY, 16-31-311(A) (1) AND (a) (b) (c) (d) (3)
- (2) ASSAULT AND BATTERY OF A HIGH AGGRAVATED NATURE

At a Court of General Sessions, convened on the 15th day of Newberry 1997, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

That JAMES EDWARD WISE

did in the county and state aforesaid, on or about the 15th day of July 19 97, wilfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein and either, when, in effecting entry or while in the dwelling or in immediate flight therefrom, he or another participant in the crime was armed with a deadly weapon or explosive; or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument; or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, or the entering or remaining occurred in the nighttime, the said dwelling being occupied by Mary Bates

COUNT TWO

That JAMES EDWARD WISE

did in the county and state aforesaid, on or about the 15th day of July 19 97 commit an assault and battery upon the victim, Mary Bates, constituting an unlawful act of violent injury to the person of the said victim, accompanied by circumstances of aggravation, to wit: the said violent injury being caused by the use of the hands and/or fists of the said JAMES EDWARD WISE which were used or intended to be used in a manner known to be capable of causing serious bodily injury or death, and the use of his hands and/or fists did cause serious bodily injury upon the said victim, Mary Bates

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

238 *J. T. [Signature]*

Custody

Witnesses

Mary Bates

Todd Johnson

DOA 7-15-97

Verdict

Foreman

The State of South Carolina,

County of NEWBERRY

SEPTEMBER Term, 19 97
97GS36-479

THE STATE

vs.

JAMES EDWARD WISE

3 counts, 1 in P.C.

INDICTMENT FOR

- (1) BURGLARY, 16-11-311 (A) (1)
- (a) (b) (c) (d) (3)
- (2) ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

Joseph R. ...
Foreman of Grand Jury

F-491604
TRUE BILL

THE DEFENDANT IN MY OWN PROPER PERSON, COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND VOLUNTARILY PLEAD GUILTY TO THE CHARGES OF:

THIS DAY OF A.D. 19 ATTEST:

CLERK OF COURT, NEWBERRY, S. C.

Handwritten signature

EXHIBIT (B)

241

WITNESSES

SEE FORMS

WARRANT NUMBERS

officer No. 6079

[Signature]

8-2-97

VERDICT

guilty
GUILTY

Wm. B. ...
FORWARD

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

August Term, 1999

Indictment # 98GS00402

THE STATE

vs

JAMES EDWARD ATSE

INDICTMENT FOR

BURGLARY, 16-11-31 (A)(X)(B)(X)(C)(X)

243

Exhibit (c)

243

ARREST WARRANT

F-491606

STATE OF SOUTH CAROLINA

County/ Municipality of

NEWBERRY COUNTY

THE STATE

against

WISE, JAMES EDWARD

Address: [REDACTED]

PROSPERITY, SC 29123

Phone: [REDACTED] SSN: [REDACTED]

Sex: [REDACTED] Race: [REDACTED] Height: 5' 05" Weight: 162

DL State: [REDACTED] DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0260000

Prosecuting Agency: NEWBERRY CO SHERIFF

Prosecuting Officer: ANY LAW ENFORCEMENT OFFICER

Offense: MALIC INJURY TO PROP

Offense Code: 632

Code Ordinance Sec: 16-11-520

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to law.

Signature of Judge (L.S.)

Date

RETURN

A copy of this arrest warrant was delivered to

Defendant: WISE, JAMES EDWARD

on [REDACTED]

Entered in Computer

Signature of Constable/Law Enforcement Officer

Signature of Sheriff

RETURN WARRANT TO: NEWBERRY COUNTY SHERIFF'S OFFICE

CENTRAL COURT

3269 LOUIS RICH RD

NEWBERRY, SC 29108

STATE OF SOUTH CAROLINA

County/ Municipality of

NEWBERRY COUNTY

Personally appeared before me the affiant MARY BATES

being duly sworn deposes and says that defendant WISE, JAMES EDWARD

did within this county and state on 07/15/97

violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of NEWBERRY)

in the following particulars:

DESCRIPTION OF OFFENSE: MALIC INJURY TO PROP

16-11-520 MALI. INJURY TO REAL PROP.

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts:

ON 7-15-97 AT OR ABOUT 94:56 AM THE DEFENDANT, JAMES EDWARD WISE DID ENTER THE RESIDENCE OF MARY BATES LOCATED AT 1182 BOYD CROSSING IN NEWBERRY COUNTY BY BREAKING OUT THE FRONT DOOR GLASS AND WHILE INSIDE THE DEFENDANT JAMES EDWARD WISE DID STRIKE MARY BATES SEVERAL TIMES CAUSING INJURY TO MARY BATES AFTER DEPUTY CLAY BABB ARRIVED AT ABOVE LOCATION AND PLACED JAMES EDWARD WISE UNDER ARREST. THE DEFENDANT DID RESIST ARREST BY RUNNING AWAY FROM ARRESTING OFFICER. ALL THE ABOVE IS IN VIOLATION WITH THE 1976 CODE OF LAWS, AS AMENDED. SAID OFFENSE OCCURRED IN NEWBERRY COUNTY.

Sworn to and subscribed before me

on [REDACTED]

Signature of Issuing Judge (L.S.)

Mary Bates

Signature of Affiant

Affiant's Address: 1182 BOYD CROSSING

NEWBERRY, SC 29108

Affiant's Telephone: 803 276 0592

STATE OF SOUTH CAROLINA

County/ Municipality of

NEWBERRY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 07/15/97 defendant WISE, JAMES EDWARD

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of NEWBERRY) as set forth below:

DESCRIPTION OF OFFENSE: MALIC INJURY TO PROP

16-11-520 MALI. INJURY TO REAL PROP.

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before

me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the

defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Judge's Address: 3269 LOUIS RICH DRIVE

NEWBERRY, SC 29108

Judge's Telephone: 803 276 2144

Judge Code: 432

Issuing Court: [X] Magistrate [] Municipal [] Circuit

245

Form Approved by SC Attorney General July 28, 1990 SCCA 818

ARREST WARRANT

F-491606

STATE OF SOUTH CAROLINA

County/ Municipality of NEWBERRY COUNTY

THE STATE against

WISE, JAMES EDWARD

Address: ROSEBURY SC 29108

SSN: [REDACTED]

Sex: M Race: A Height: 5'10" Weight: 160

Agency ORI #: SC0260000

Prosecuting Agency: NEWBERRY CO. SHERIFF

Prosecuting Officer: BRY LAWRENCE

Offense: MALICIOUS INJURY TO PROP

Offense Code: 16-11-520

Code/Ordinance Sec. 16-11-520

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant WISE, JAMES EDWARD 7-15-97

Entered in Computer

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: NEWBERRY COUNTY SHERIFF'S OFFICE

CENTRAL COURT

3639 LOUIS RICH RD

NEWBERRY, SC 29108

STATE OF SOUTH CAROLINA

County/ Municipality of

NEWBERRY COUNTY

Personally appeared before me the affiant MARY BATES who being duly sworn deposes and says that defendant WISE, JAMES EDWARD did within this county and state on 07/15/97 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of NEWBERRY) in the following particulars:

DESCRIPTION OF OFFENSE: MALICIOUS INJURY TO PROP 16-11-520 MALICIOUS INJURY TO REAL PROP.

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON 7-15-97 AT OR ABOUT 04:50 AM THE DEFENDANT, JAMES EDWARD WISE DID ENTER THE RESIDENCE OF MARY BATES LOCATED AT 1132 BOYD CROSSING IN NEWBERRY COUNTY BY BREAKING OUT THE FRONT DOOR GLASS AND WHILE INSIDE THE DEFENDANT JAMES EDWARD WISE DID STRIKE MARY BATES SEVERAL TIMES CAUSING INJURY TO MARY BATES AFTER DEPUTY CLAY BARR ARRIVED AT ABOVE LOCATION AND PLACED JAMES EDWARD WISE UNDER ARREST. THE DEFENDANT DID RESIST ARREST BY RUNNING AWAY FROM ARRESTING OFFICER. ALL THE ABOVE IS IN VIOLATION WITH THE 1976 CODE OF LAWS, AS AMENDED. SAID OFFENSE OCCURRED IN NEWBERRY COUNTY.

Sworn to and subscribed before me on

Signature of Issuing Judge (L.S.)

Signature of Affiant

Affiant's Address

Affiant's Telephone

Signature of Affiant

Affiant's Address 1132 BOYD CROSSING

NEWBERRY, SC 29108

Affiant's Telephone 803-276-2502

STATE OF SOUTH CAROLINA

County/ Municipality of

NEWBERRY COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 07/15/97 defendant WISE, JAMES EDWARD did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of NEWBERRY) as set forth below:

DESCRIPTION OF OFFENSE: MALICIOUS INJURY TO PROP 16-11-520 MALICIOUS INJURY TO REAL PROP.

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Signature of Judge

Judge Code: 432

Judge's Address

Judge's Telephone

Judge's Address 3639 LOUIS RICH DRIVE

NEWBERRY, SC 29108

Judge's Telephone 803-281-2144

Issuing Court: [X] Magistrate [] Municipal [] Circuit

BARRY S. KOON

ORIGINAL

EXHIBIT (D)

APPENDIX OF FORMS

FORM A. (Rule 6). AFFIDAVIT OF CHEMIST OR CHEMICAL ANALYST

Control No: _____

Print All Information Except Where Signature Is Required

RE: Report Number _____

I, _____ am a (Chemist)(Chemical Analyst)
(Name):

employed by _____
(Name of Employing Agency)

and certified by SLED as qualified to perform testing and analysis for controlled substances or other substances regulated by Title 44, Chapter 53 of the Code of Laws or Rule 61-4 of the Department of Health and Environmental Control.

I have had _____ years and _____ months experience as a (Chemist)(Chemical Analyst). During that period, I have been qualified as an expert witness and testified in court no fewer than _____ times. I have received the following training as a (Chemist) (Chemical Analyst):

(List schools or courses attended; other training received; organizations and honors received.)

I certify that I tested the items listed in the above referenced report using laboratory procedures approved by SLED and that the report accurately reflects my opinion regarding the results of the test or tests performed.

Sworn before me this _____ day of _____ 19____

(Signature of Chemist or Analyst)

(Place)

Notary Public for South Carolina
My Commission expires: _____

(Date)

[Amended effective July 1, 1994.]

FORM B. CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL (INITIAL CUSTODY)

CONTROL NO. _____

Print All Information Except Where Signature Is Required

FORM B (RULE 6)
CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL
(Initial Custody)

This is to certify that I _____ am employed by _____
(Name) (Name of Agency
or Department) and that on _____, 19____, I seized from _____
(Date) (Name)
pursuant to _____ at or
(State Whether Subject to a Warrant, Lawful Arrest or Otherwise)
near _____ the following substance(s) or container(s):
(Place Where Seized)
(Describe substance or container with sufficient particularity to distinguish it.)

On _____, 19____, I made delivery of the above described substance(s) or con-
(Date)
tainer(s) to _____ of _____ in
(Name) (Law Enforcement Agency)
substantially the same condition as when I received it.

(Signature)

Place: _____
Date: _____
Sworn before me this ____ day of _____, 19____

Notary Public for South Carolina
My Commission expires: _____
(Amended effective July 12, 1990.)

Form C

RULES OF CRIMINAL PROCEDURE

FORM C. CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL (SUBSEQUENT CHANGE OF CUSTODY)

CONTROL NO. _____

Print All Information Except Where Signature Is Required

FORM C (RULE 5)
CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL (Subsequent Change of Custody)

This is to certify that I _____ am employed by _____

(Name)

(Name of Agency)

and that on _____ 19____ I

received _____ from _____

(Specify Whether by Mail or in Person) (Name of Person)

_____ the following substance(s) or container(s)

which were originally seized by _____

(Name of Person Making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

On _____ 19____ I made delivery of the above described substance(s) or con-

(Date)

tainer(s) to _____ of _____ in

(Name)

(Law Enforcement Agency)

substantially the same condition as when I received it.

(Signature)

Place: _____

Date: _____

Sworn before me this _____ day of _____ 19____

Notary Public for South Carolina

My Commission expires: _____

[Amended effective July 12, 1990.]

Monday 25, 2000

249

JACKIE S. BOWERS
CLERK OF COURT, NEWBERRY COUNTY
P.O. BOX 278
NEWBERRY, S.C. 29108

FILED
00 SEP 26 AM 9:11
CLERK OF COURT

RE: PCR Application

DEAR JACKIE S. BOWERS,

I RECEIVED A LETTER FROM YOU DATED SEPT. 15, 2000, IN WHICH YOU STATED THAT YOU HAD NEVER RECEIVED MY PCR APPLICATION. I CAN ASSURE YOU THAT IT WAS MAILED FROM THIS INST. TOT. IN JULY OF THIS YEAR. NONETHELESS I HAVE ENCLOSED TWO ORIGINALS, OF MY PCR APPLICATION. PLEASE FILE ONE, AND RETURN THE OTHER STAMPED, TO ME FOR MY FILES, WITH THE CHECKED IN DATE AND PCR FILING NUMBER.

THANKING YOU IN ADVANCE FOR ANY HELP IN GETTING THIS FILED.

Respectfully



STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)
)
 James E. Wise, S.C.D.C.)
 No. 250411,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 00-CP-36-370

FILED
 NEWBERRY COUNTY
 01 JUL -6 AM 11:01
 JACQUELINE B. JOHNSON
 CLERK OF COURT

RETURN AND MOTION TO DISMISS

In response to the post-conviction relief application filed September 26, 2000, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Newberry County Clerk of Court's orders of commitment. The Newberry County Grand Jury indicted the Applicant at the August 1998 term of General Sessions for burglary first degree and the September 1997 term of General Session for escape. Eugene Griffith, Esq. represented the Applicant. The Applicant proceeded to a jury trial and was found guilty of the charges. He was sentenced by the Honorable Judge Frank Eppes to life imprisonment without parole for the burglary first degree charge and 6 months concurrent for the escape charge.

The Applicant appealed his conviction and sentence. The South Carolina Court of Appeals Court affirmed the conviction and sentence on April 19, 2000.

In his application for post conviction relief the Applicant alleges that he is being held in

 98-GS-36-402 and 97-GS-36-480.

custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Lack of subject matter jurisdiction.

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

II.

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

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry v.

State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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

The Applicant's allegation that the Court of General Sessions lacked subject matter jurisdiction to convict him because he had already pled to another offense that arose from the same facts is without merit. A circuit court has subject matter jurisdiction if: (1) there has been an indictment which sufficiently states the offense; (2) there has been a waiver of indictment; or (3) the charge is a lesser included charge of the crime charged in the indictment. Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998). An indictment is sufficient to convey jurisdiction if it apprizes the defendant of the elements of the offense intended to be charged and informs the defendant of the circumstances he must be prepared to defend. Granger v. State, 333 S.C. 2, 507 S.E.2d 322 (1998). Respondent would respectfully submit that the double jeopardy clause has not been violated. The Double Jeopardy Clauses of both the United States and South Carolina Constitutions protect against multiple punishments for the same offense and second prosecutions

for the same offense after an acquittal, a conviction, or an improvidently-granted mistrial. When there are multiple punishments imposed in the same trial, the Double Jeopardy Clause does no more than prevent the sentencing judge from prescribing greater punishment than the legislature intended. Missouri v. Hunter, 459 U.S. 359 (1983); State v. Wilson, 311 S.C. 382, 429 S.E.2d 453 (1993). Accordingly, Respondent moves for a summary dismissal of the lack of subject matter jurisdiction allegation.

III.

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

IV.

The State places the Applicant on notice that, should the Applicant make any false claims, commit perjury, or abuse the legal process during the course of these proceedings, the State reserves the right to seek punitive and remedial sanctions. These include but are not limited to: the forfeiture of all earned work, education, and good time credits earned by the Applicant through the date of the hearing or final disposition of this matter. See S.C. Code 24-27-200 (Supp. 1999); AJ-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

WHEREFORE, the Respondent moves for a summary dismissal of the allegation of lack of subject matter jurisdiction and requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

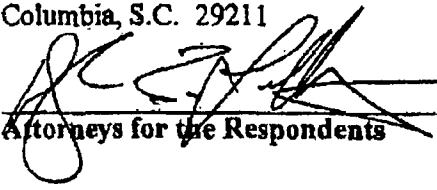
CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

ALLEN BULLARD
Assistant Deputy Attorney General

DOUGLAS E. LEADBITTER
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for the Respondents

Columbia, South Carolina
July 5, 2001

STATE OF SOUTH CAROLINA)
) THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY)

JAMES EDWARD WISE,)
)
) APPLICANT,) TRANSCRIPT OF RECORD
)
) -VS-) NOS. 00-CF-36-260, 370
)
STATE OF SOUTH CAROLINA,) APPLICATION FOR POST-
) CONVICTION RELIEF
RESPONDENT.)

FEBRUARY 4, 2002
GREENWOOD, SOUTH CAROLINA

B E F O R E :

THE HONORABLE WYATT T. SAUNDERS, JUDGE.

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

SAMUEL M. PRICE, JR., ESQUIRE
POST OFFICE DRAWER 836
NEWBERRY, SOUTH CAROLINA 29108

HENRY P. BUFKIN, ESQUIRE
POST OFFICE DRAWER 419
PROSPERITY, SOUTH CAROLINA 29127

ATTORNEYS FOR THE APPLICANT

DAVID A. SPENCER, ASSISTANT ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549

ATTORNEY FOR THE RESPONDENT

MARGARET F. BRIGGS
CIRCUIT COURT REPORTER
211 LAKESHORE DRIVE
GREENWOOD, SOUTH CAROLINA 29649

FORWARDED BY FEDERAL BUREAU OF INVESTIGATION

I N D E X

WITNESSES FOR THE APPLICANT

JAMES EDWARD WISE

DIRECT EXAMINATION BY MR. BUFKIN	17
CROSS-EXAMINATION BY MR. SPENCER	31
REDIRECT EXAMINATION BY MR. BUFKIN	34

WITNESSES FOR THE RESPONDENT

EUGENE C. GRIFFITH, JR., ESQUIRE

DIRECT EXAMINATION BY MR. SPENCER	37
CROSS-EXAMINATION BY MR. BUFKIN	48
REDIRECT EXAMINATION BY MR. SPENCER	69

FORM 722 © PERCINO • 1-800-521-0888

1 THE COURT: WE'LL OPEN THE RECORD,
2 PLEASE, AND WE'RE IN SESSION IN THE MATTER OF --
3 ACTUALLY OF JAMES WISE AS PETITIONER VERSUS STATE
4 OF SOUTH CAROLINA AS RESPONDENT IN TWO DIFFERENT
5 POST-CONVICTION RELIEF APPLICATIONS. THEY ARE
6 CASES NO. 2000-CP-36-260 AND 2000-CP-36-370. IN 260,
7 HENRY P. BUFKIN, ESQUIRE, WAS APPOINTED TO REPRESENT
8 MR. WISE; AND IN 370, SAMUEL M. PRICE, JR., ESQUIRE,
9 WAS APPOINTED TO REPRESENT MR. WISE.

10 THE ATTORNEYS APPROACHED THE COURT IN
11 CHAMBERS PRIOR TO THE CALL OF THE CASE, INDICATED
12 THAT NEITHER OF THEM WAS AWARE OF THE OTHER'S
13 INVOLVEMENT ON BEHALF OF MR. WISE PRIOR TO THIS
14 MORNING AND THAT EACH OF THEM HAD TRAVELED TO
15 BENNETTSVILLE, WHICH IS QUITE SOME DISTANCE FROM
16 NEWBERRY TO INTERVIEW MR. WISE THIS PREPARATION OF
17 THESE PROCEEDINGS. EACH OF THEM HAS CONCLUDED THAT
18 THE ISSUES IN EACH OF THESE SEPARATE POST-CONVICTION
19 RELIEF ACTIONS ARE SIMILAR OR THE SAME, AND THEREFORE
20 THE COURT HAS ISSUED AN ORDER WHICH REFLECTS THAT IT
21 APPEARS THAT THE TWO CASES INVOLVE THE SAME ISSUES
22 AND WERE ASSIGNED TWO CASE NUMBERS IN ERROR AND TWO
23 DIFFERENT ATTORNEYS WERE ASSIGNED TO REPRESENT
24 MR. WISE IN THE TWO PETITIONS WHICH HE FILED. THE
25 COURT HAS BY THIS ORDER CONSOLIDATED THE PETITIONS,

1 AND MR. PRICE AND MR. BUFKIN ARE ASSIGNED TO
2 REPRESENT HIM IN BOTH. THAT IS, WE'RE CONSOLIDATING
3 THE PETITIONS, AND MR. WISE NOW HAS THE UNUSUAL
4 PRIVILEGE OF HAVING TWO ATTORNEYS REPRESENT HIM IN
5 THE MATTER.

6 NOW, WHO SPEAK ABOUT THE MATTER FIRST,
7 MR. PRICE OR MR. BUFKIN?

8 MR. PRICE: YES, SIR, MAY IT PLEASE THE
9 COURT, MR. BUFKIN AND I'D HAVE BIFURCATED THE
10 RESPONSIBILITIES. I'M GOING TO ARGUE THE ISSUE OF
11 DOUBLE JEOPARDY FIRST. THEN AT THE CONCLUSION -- AND
12 MINE WILL NOT BE BASED ON TESTIMONY, BECAUSE IT'S
13 SIMPLY A MATTER OF LAW WHETHER OR NOT THERE WAS IN
14 FACT DOUBLE JEOPARDY. DOUBLE JEOPARDY WAS RAISED AT
15 A PRETRIAL MOTION BY MR. GRIFFITH. AT THAT TIME THE
16 COURT DENIED THAT MOTION.

17 BUT TO BRING THE COURT'S ATTENTION TO
18 THE FACTS, MR. WISE WAS INDICTED FIRST OF ALL -- HE
19 WAS INDICTED TWICE, BUT FIRST OF ALL IS INDICTMENT
20 NO. 97-GS-36-479, IN WHICH HE WAS INDICTED FOR
21 BURGLARY FIRST DEGREE AND ASSAULT AND BATTERY OF A
22 HIGH AND AGGRAVATED NATURE. FOR WHATEVER REASON, AND
23 I'M NOT SURE, THAT CASE OR A PART OF IT WAS REMANDED
24 BACK TO MAGISTRATE'S COURT, WHERE HE PLEADED GUILTY
25 TO SIMPLE ASSAULT AND BATTERY AND WAS SENTENCED TO

1 TIME SERVED AND ALSO WAS SENTENCED FOR MALICIOUS
2 INJURY TO REAL PROPERTY. FROM WHAT I CAN DETERMINE
3 ABOUT THE FACTS, THE DAMAGE TO THE REAL PROPERTY WAS
4 ALLEGEDLY THE -- THERE'S A STORM DOOR TYPE OF DOOR
5 THAT HE WAS ALLEGED TO HAVE BROKEN INTO, AND AS FAR
6 AS I CAN TELL, THAT OR ANY DAMAGE INSIDE THE HOUSE
7 WAS WHAT HE PLED GUILTY TO. THEREAFTER THERE WAS A
8 SECOND INDICTMENT ISSUED IN WHICH HE WAS CHARGED WITH
9 BURGLARY FIRST DEGREE AND ESCAPE. THE CONTROLLING
10 LAW ON THIS IS SECTION 16-11-311, WHICH OUTLINES THE
11 ELEMENTS OF BURGLARY IN THE FIRST DEGREE, AND I'LL
12 SAY THAT AGAIN FOR THE COURTS BENEFIT. IT'S
13 16-11-311, AND IT'S IN THE SUPPLEMENT:

14 THE COURT: 16-11 WHAT?

15 MR. PRICE: 16-11-311.

16 THE COURT: ALL RIGHT SIR.

17 MR. PRICE: AND IF YOU JUST FOLLOW THE
18 PLAIN LANGUAGE OF THE STATUTE, IT STATES THAT A
19 PERSON IS GUILTY OF BURGLARY IN THE FIRST DEGREE
20 IF A PERSON ENTERS A DWELLING WITHOUT CONSENT AND
21 WITH INTENT TO COMMIT A CRIME IN THE DWELLING AND
22 EITHER -- AND THEN THE FIRST SUBPARAGRAPH, NO. 1,
23 OUTLINES THOSE ELEMENTS OF AGGRAVATION, "WHEN IN
24 EFFECT ENTERING OR WHILE IN THE DWELLING OR IN
25 IMMEDIATE FLIGHT, HE OR ANOTHER PARTICIPANT IN THE

1 CRIME, NO. A, IS ARMED WITH A DEADLY WEAPON OR AN
 2 EXPLOSIVE." THERE'S NO TESTIMONY THAT HE WAS ARMED
 3 WITH A DEADLY WEAPON. THERE IS SOME TESTIMONY THAT
 4 WHILE IN THERE HE PICKED UP A CERAMIC PIG AND
 5 ALLEGEDLY THREATENED TO BASH IN THE HEAD OF THE
 6 VICTIM. WE TAKE THE POSITION THAT IF THAT IS A FACT,
 7 THEN THAT WOULD CERTAINLY BE AN ASSAULT. THERE'S
 8 ALSO SOME ALLEGATION -- SUBPARAGRAPH B, "CAUSES
 9 PHYSICAL INJURY TO A PERSON WHO IS NOT A PARTICIPANT
 10 IN THE CRIME." THERE IS SOME TESTIMONY AND THERE IS
 11 SOME EVIDENCE THAT THERE WAS PHYSICAL PROBLEMS
 12 SUFFERED BY THE VICTIM AND SHE SOUGHT MEDICAL
 13 TREATMENT FOR IT. NO. C, "USES OR THREATENS THE USE
 14 OF A DANGEROUS INSTRUMENT." THE ONLY TESTIMONY ABOUT
 15 DANGEROUS INSTRUMENT WAS THIS CERAMIC PIG THAT WE'VE
 16 HEARD ABOUT IN THE TRANSCRIPT. NO. D, "DISPLAYS WHAT
 17 IS OR APPEARS TO BE A KNIFE, PISTOL, REVOLVER, RIFLE,
 18 SHOTGUN, MACHINE GUN, OR OTHER FIREARM," AND I'M NOT
 19 AWARE OF ANY TESTIMONY IN THE TRANSCRIPT THAT RELATES
 20 TO THAT.

21 SO THAT BRINGS US DOWN TO THE ELEMENTS
 22 IN SUBSECTION 1, WHICH IS EITHER ARMED WITH DEADLY
 23 WEAPON, AND THE QUESTION WOULD BE WHETHER OR NOT THIS
 24 CERAMIC PIG IS A DEADLY WEAPON AND CAUSES PHYSICAL
 25 INJURY. AND THE NEXT QUESTION COMES, WELL, IS THAT

FORN FED © PERIOD. 1-800-871-088

1 PART OF THIS SIMPLE ASSAULT AND BATTERY CHARGE THAT
2 HE PLED TO TOGETHER WITH THIS MALICIOUS INJURY TO
3 REAL PROPERTY, WHICH HE PLED TO IN MAGISTRATE'S COURT
4 PRIOR TO THE TRIAL OF THIS CASE.

5 PETITIONER ARGUES THAT THE SECOND
6 INDICTMENT AND TRIAL VIOLATED THE DOUBLE JEOPARDY
7 CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES
8 CONSTITUTION AND ARTICLE I, SECTION 12 OF THE SOUTH
9 CAROLINA CONSTITUTION. OUR SUPREME COURT HAS STATED
10 IN STATE VERSUS LAWSON, WHICH IS A 1983 CASE, "THE
11 STATE AND FEDERAL CONSTITUTIONS GUARANTEE FREEDOM
12 FROM DOUBLE JEOPARDY AND PROTECT A CRIMINAL DEFENDANT
13 FROM PUNISHMENT FOR BOTH AN OFFENSE AND A LESSER
14 INCLUDED OFFENSE WHEN THEY ARE ESTABLISHED BY THE
15 VERY SAME ACTS."

16 IN THE LAWSON CASE, THE DEFENDANT WAS
17 CONVICTED OF ROBBERY, GRAND LARCENY, AND AGGRAVATED
18 ASSAULT AND BATTERY. HE RECEIVED THREE CONSECUTIVE
19 TEN-YEAR SENTENCES, WHICH WERE SUSPENDED UPON SERVICE
20 OF TEN YEARS AND THREE 'YEARS' PROBATION. THE COURT
21 REVERSED THE SENTENCE FOR GRAND LARCENY, FINDING THAT
22 THE SENTENCE FOR GRAND LARCENY VIOLATED APPELLANT'S
23 CONSTITUTIONAL RIGHT NOT TO BE PUNISHED TWICE FOR THE
24 SAME OFFENSE. THE COURT WENT ON TO SAY, "IT IS PLAIN
25 FROM THE FACTS RECITED THAT THE APPELLANT COMMITTED

1 BOTH ROBBERY AND THE LESSER INCLUDED OFFENSE OF
2 LARCENY, " BUT THEY WERE AT THE SAME TIME, SO FOR THAT
3 REASON HE COULD NOT BE CONVICTED OF BOTH OF THEM.

4 THE STATE VERSUS CARTER, WHICH IS A
5 CASE WHICH IS VERY SIMILAR TO THE FACTS OF THIS CASE
6 IN TERMS OF THE LEGAL IMPACT, THIS IS A CASE WHERE
7 THE DEFENDANT WAS CHARGED WITH A D.U.I. AND RECKLESS
8 HOMICIDE ARISING OUT OF THE SAME FACTS. HE WAS
9 CONVICTED OF THE FIRST -- HE WAS CONVICTED OF D.U.I.
10 FIRST IN MUNICIPAL COURT. THEN HE WAS TRIED FOR
11 RECKLESS HOMICIDE IN GENERAL SESSIONS COURT AND
12 CONVICTED. THE COURT STATED IN PART THAT, "THE
13 FIFTH AMENDMENT FORBIDS SUCCESSIVE PROSECUTIONS
14 AND CUMULATIVE PUNISHMENTS FOR GREATER AND LESSER
15 INCLUDED OFFENSES." THE PRINCIPAL TEST FOR
16 DETERMINING WHETHER TWO OFFENSES ARE THE SAME FOR
17 THE PURPOSE OF BARRING SUCCESSIVE PROSECUTIONS IS
18 WHETHER, QUOTE, "EACH PROVISION REQUIRES PROOF OF AN
19 ADDITIONAL FACT THAT THE OTHER DOES NOT," CLOSE
20 QUOTES. THE COURT WENT ON TO SAY THAT, "IN OUR VIEW
21 THE TRIAL ON RECKLESS HOMICIDE WAS IN EFFECT A
22 RETRIAL OF THE D.U.I. OFFENSE. THE ONLY SIGNIFICANT
23 DISTINCTION WAS THAT THE STATE WAS NOT REQUIRED TO
24 ESTABLISH THE DEATH OF A VICTIM AS AN ELEMENT OF
25 THE D.U.I. THE D.U.I. VIOLATION WAS CRITICAL IN,

1 ESTABLISHING THE RECKLESS HOMICIDE."

2 THE CASE AT BAR IS SQUARELY ON ALL
3 FOURS WITH THE CARTER CASE AS FAR AS THE LAW. IF YOU
4 LOOK AT THE STATUTE AND YOU TAKE AWAY THE ASSAULT AND
5 BATTERY ASPECT OF THIS STATUTE, THEN THE DETAILS --
6 WHICH DETAILS THE ELEMENT OF BURGLARY -- IF YOU TAKE
7 THE ASSAULT AND BATTERY AWAY, THE STATE WOULD HAVE TO
8 FAIL TO MEET IT'S BURDEN OF PROOF. NOW, THE THING
9 THAT PERPLEXES ME ABOUT THIS, JUDGE, I CAN'T IMAGINE
10 WHY YOU WOULD CHARGE A MAN WITH BURGLARY AND THEN LET
11 HIM PLEAD GUILTY TO ASSAULT AND BATTERY -- SIMPLE
12 ASSAULT AND BATTERY, LET HIM PLEAD GUILTY IN
13 MAGISTRATE'S COURT TO MALICIOUS INJURY TO PERSONAL
14 PROPERTY, KNOWING THAT YOU'VE GOT A BURGLARY CHARGE
15 YOU'RE GOING TO REINDICT HIM ON. THE ONLY THING I
16 CAN THINK OF THAT THE STATE WOULD PERMIT THAT TO BE
17 DONE IS TO BUILD A RAP SHEET AND A CRIMINAL RECORD.
18 OUR POSITION ON THIS THING IS THAT THE STATE TOOK
19 THEIR CHANCES, THEY TRIED TO RUN UP CHARGES ON THIS
20 MAN, THEY MIGHT HAVE GOT AWAY WITH IT, BUT IN FACT,
21 IF THIS IS NOT DOUBLE JEOPARDY, I DON'T KNOW THAT I
22 WOULD EVER RECOGNIZE DOUBLE JEOPARDY. HAVING SAID
23 THAT, THE BURDEN OF PROOF FOR CONVICTION -- THE TRIAL
24 OF BURGLARY FIRST IS IN FACT A RETRIAL OF THE LESSER
25 INCLUDED OFFENSES OF ASSAULT AND BATTERY AND

1 MALICIOUS INJURY TO PERSONAL -- TO REAL PROPERTY.
2 THIS IS A CASE THAT CAUSES PETITIONER TO BE TRIED
3 TWICE ON THESE ASSAULT AND BATTERY ISSUES AND
4 MALICIOUS INJURY TO PERSONAL PROPERTY.

5 THE CARTER CASE, WHICH IS THIS D.U.I.
6 AND RECKLESS HOMICIDE CASE, SAYS THAT, "IN OUR VIEW
7 THE TRIAL ON RECKLESS HOMICIDE WAS IN EFFECT A
8 RETRIAL OF THE D.U.I. OFFENSE. THE ONLY SIGNIFICANT
9 DISTINCTION WAS THAT THE STATE WAS REQUIRED TO
10 ESTABLISH THE DEATH OF A VICTIM AS AN ELEMENT OF
11 RECKLESS HOMICIDE. THE D.U.I. VIOLATION WAS CRITICAL
12 TO ESTABLISH THE RECKLESS HOMICIDE." THE COURT GOES
13 ON TO SAY THAT, "TO THE CONTRARY, BOTH OFFENSES COULD
14 HAVE BEEN TRIED TOGETHER IN GENERAL SESSIONS COURT,
15 AND A CONVICTION MIGHT HAVE BEEN SUSTAINED. WE HOLD
16 ONLY THAT APPELLANT'S SUBSTANTIAL CLAIM TO DOUBLE
17 JEOPARDY PROHIBITS HIS SUBSEQUENT PROSECUTION FOR
18 RECKLESS HOMICIDE, BECAUSE THE STATE RELIED ON AND
19 PROVED THE SAME FACTS OF THE ADJUDICATED D.U.I.
20 OFFENSE TO ESTABLISH THE RECKLESS ACT NECESSARY TO
21 PROVE RECKLESS HOMICIDE."

22 I THINK THE COURT IS CORRECT IN THAT
23 IF MR. WISE HAD BEEN TRIED AT ONE TIME IN GENERAL
24 SESSIONS COURT FOR THESE OFFENSES SIMULTANEOUSLY, WE
25 MAY NOT BE HERE ARGUING THIS ISSUE BEFORE THE COURT

1 TODAY; BUT FOR WHATEVER REASON, THE STATE CHOSE TO
2 LET HIM PLEAD TO THESE LESSER INCLUDED OFFENSES, AND
3 I BELIEVE THEY HAVE PREJUDICED THEMSELVES FROM BEING
4 ABLE TO MAINTAIN THIS SECOND PROSECUTION.

5 THERE'S ANOTHER CASE THAT I WOULD LIKE
6 TO SPEAK TO THE COURT, AND I HAVE COPIES OF THESE.
7 I'LL BE GLAD TO HAND THEM UP, JUDGE. BEAR WITH WITH
8 ME JUST A MOMENT. THIS IS THE CASE OF STATE VERSUS
9 DOBSON. AND STATE VERSUS DOBSON DEALS WITH TWO
10 INDICTMENTS. THIS TOO IS A DOUBLE JEOPARDY CASE.
11 THIS IS A CASE IN WHICH APPELLANT, TOMMY DOBSON, WAS
12 CONVICTED OF ATTEMPTED BURGLARY AFTER THE TRIAL JUDGE
13 REFUSED HIS PLEA OF AUTREFOIS ACQUIT. THEY VACATED
14 THE APPELLANT'S CONVICTION AND SENTENCE. THE COURT
15 GOES ON TO SAY, "THE APPELLANT WAS FIRST INDICTED FOR
16 ATTEMPTED HOUSEBREAKING. AT TRIAL THE JUDGE DIRECTED
17 A VERDICT OF ACQUITTAL ON THE GROUND THAT THE STATE'S
18 EVIDENCE ESTABLISHED A BREAKING OCCURRED AT NIGHT, IF
19 AT ALL. APPELLANT WAS REINDICTED FOR ATTEMPTED
20 BURGLARY FOR THE SAME ACT. THE TRIAL JUDGE REFUSED
21 THE APPELLANT'S PLEA OF AUTREFOIS ACQUIT. APPELLANT
22 WAS CONVICTED AND SENTENCED TO SIX YEARS'
23 IMPRISONMENT SUSPENDED UPON SERVICE OF NINE MONTHS
24 AND THREE YEARS' PROBATION. APPELLANT ARGUES THAT
25 THE SECOND INDICTMENT AND TRIAL VIOLATED THE DOUBLE

1 JEOPARDY CLAUSES OF THE FIFTH AMENDMENT TO THE UNITED
 2 STATES CONSTITUTION AND ARTICLE I, SECTION 12 OF THE
 3 SOUTH CAROLINA CONSTITUTION. WE AGREE. THIS COURT
 4 HELD IN STATE VERSUS SUTTLES THAT HOUSEBREAKING IS A
 5 LESSER INCLUDED OFFENSE OF BURGLARY AND THAT A
 6 DEFENDANT COULD PLEAD GUILTY TO HOUSEBREAKING UNDER A
 7 BURGLARY INDICTMENT. LIKEWISE, A DEFENDANT MAY BE
 8 CONVICTED OF HOUSEBREAKING UNDER A BURGLARY
 9 INDICTMENT. ONE CANNOT, HOWEVER, BE CONVICTED OF
 10 BURGLARY UNDER AN INDICTMENT FOR HOUSEBREAKING." THE
 11 COURT WENT ON TO SAY THAT, "A LESSER INCLUDED OFFENSE
 12 REQUIRES NO PROOF BEYOND THAT WHICH IS REQUIRED FOR
 13 CONVICTION OF THE GREATER OFFENSE. THE FIFTH
 14 AMENDMENT TO THE UNITED STATES CONSTITUTION FORBIDS
 15 SUCCESSIVE PROSECUTIONS FOR A GREATER OR LESSER
 16 OFFENSES. IF THE TWO OFFENSES ARE THE SAME FOR
 17 PURPOSES OF BARRING CONSECUTIVE SENTENCES AT A SINGLE
 18 TRIAL, THEY NECESSARILY WILL BE THE SAME FOR PURPOSES
 19 OF BARRING SUCCESSIVE PROSECUTIONS."

20 AND WE WOULD SUBMIT -- AND WE'LL HAND
 21 UP THESE CASES, JUDGE -- BUT WE WOULD SUBMIT ON THE
 22 LAW, THAT -- AND THIS ISSUE WAS RAISED IN THE TRIAL,
 23 SO THERE IS NO ISSUE OF WAIVER. WE WOULD JUST SUBMIT,
 24 TO THE COURT THAT DOUBLE JEOPARDY SHOULD CAUSE THIS
 25 CASE TO HAVE NEVER BEEN TRIED, AND IF THAT IS THE

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1 CASE, THEN I WOULD SUBMIT TO THE COURT THAT THE
2 SECOND CONVICTION SHOULD BE REVERSED AND MR. WISE GO
3 FREE.

4 THE COURT: THANK YOU, MR. PRICE.

5 MR. SPENCER, DO YOU CARE TO RESPOND
6 NOW OR WAIT?

7 MR. SPENCER: YOUR HONOR, I DO HAVE A BRIEF
8 RESPONSE TO THAT.

9 THE COURT: ALL RIGHT, SIR.

10 MR. SPENCER: AS I UNDERSTAND THE WAY THE
11 ISSUE HAS BEEN FRAMED, THERE'S NO ALLEGATION THAT
12 COUNSEL WAS INEFFECTIVE. IN FACT, COUNSEL DID ARGUE
13 THIS ISSUE AT TRIAL. IT WAS PRESERVED FOR THE
14 RECORD. YOUR HONOR, BASICALLY THE APPLICANT IS
15 ASSERTING A DIRECT APPEAL ISSUE, AND A P.C.R. IS NOT
16 A SUBSTITUTE FOR A DIRECT APPEAL. THEREFORE THE
17 STATE WOULD ARGUE THAT WE'RE ENTITLED TO A DIRECTED
18 VERDICT ON THAT ISSUE. I GUESS AT THIS STAGE IT
19 WOULD BE A SUMMARY JUDGMENT.

20 THE COURT: WELL, NOW THEN, MR. PRICE, WILL
21 YOU SPEAK TO THAT, THAT THE MATTER WAS APPEALED AND
22 THE COURT OF APPEALS DISMISSED THE APPEAL ON THE 16TH
23 DAY OF OCTOBER, 1998. WELL, IT WAS ACTUALLY SIGNED BY
24 THE CLERK ON THE 15TH, FILED WITH THE CLERK OF COURT
25 IN REMITTITUR ON THE 16TH OF OCTOBER, 1998. WASN'T

1 THAT ON THIS GROUND THAT YOU NOW REFER TO?

2 MR. PRICE: SIR, I WOULD IMAGINE -- I WAS
3 NOT INVOLVED IN THAT PROCESS -- I WOULD IMAGINE THAT
4 ALL THINGS THAT MR. WISE COULD HAVE THOUGHT TO RAISE
5 WOULD HAVE BEEN RAISED, AND I'M NOT CERTAIN WHAT
6 HAPPENED WITH THE APPEAL. BUT AS A PRACTICAL MATTER,
7 MR. WISE HAS BEEN CONFINED DURING THIS ENTIRE
8 PROCESS, AND WE WOULD REVERT BACK TO IF HE RAISED
9 THAT CONSTITUTIONAL ISSUE AT TRIAL AND IF THAT TRIAL
10 COURT MADE AN ERROR OF LAW, THEN IT SHOULD BE CURED,
11 AND HIS LAST CHANCE IS THIS COURT. HE HAS BEEN A
12 VICTIM OF THE SYSTEM IN TERMS OF APPOINTED COUNSEL.
13 HE DOES NOT HAVE THE FAMILY NOR THE FUNDS TO EMPLOY
14 RETAINED COUNSEL, AND AS THE COURT KNOWS, WE DO AS
15 GOOD A JOB AS WE CAN. HOWEVE, SOMETIMES THERE'S A
16 SLIP BETWEEN THE CUP AND THE LIP, AND WE WOULD
17 SUGGEST TO THIS COURT THIS IS ONE OF THOSE CASES IN
18 WHICH, IF THIS COURT DOES BELIEVE THAT THE LAW SHOWS
19 THAT HE HAS BEEN TRIED TWICE FOR THE SAME OFFENSES,
20 THAT WE WOULD ASK THAT THE COURT REVERSE. THE SHORT
21 ANSWER, JUDGE, IS THAT I CANNOT SPEAK TO THE APPEAL
22 ISSUE, BUT I THINK PROBABLY IT WAS DISMISSED ON
23 PROCEDURAL ISSUES RATHER THAN MERITS.

24 THE COURT: THE COURT UNFORTUNATELY,
25 MR. SPENCER, DOES NOT HAVE THE ACTUAL APPEAL AS FILED

1 WITH THE CLERK OF THE COURT OF THE SUPREME COURT HERE
2 WITH THESE RECORDS IN THESE TWO POST-CONVICTION
3 RELIEF APPLICATIONS.

4 MR. SPENCER: YES, YOUR HONOR. IT APPEARS
5 THAT WASN'T MADE FOR THE JUDGE'S PACKET. I HAVE JUST
6 PULLED OUT THE FINAL ANDERS BRIEF, AND IT DOES APPEAR
7 THAT THE ISSUE RAISED --

8 THE COURT: WELL, SHOW IT TO MR. PRICE,
9 BECAUSE IF THAT WERE THE ISSUE RAISED, THEN THAT
10 WOULD BE DISPOSITIVE OF THE ISSUE MR. PRICE NOW
11 ARGUES.

12 MR. SPENCER: IT DOES APPEAR THAT ISSUE WAS
13 RAISED. ADDITIONALLY, YOUR HONOR, I WOULD ARGUE THAT
14 EVEN IF IF WASN'T RAISED, IF IT'S AN ANDERS BRIEF
15 SITUATION, THE SUPREME COURT REVIEWS THE WHOLE
16 RECORD -- IN THIS CASE THE COURT OR APPEALS REVIEWS
17 THE WHOLE RECORD TO SEE IF THERE ARE ANY ARGUABLE
18 ISSUES OF LAW, SO EVEN IF APPELLANT COUNSEL FAILED TO
19 RAISE THE ISSUE, THE COURT OF APPEALS WOULD BE
20 RESPONSIBLE FOR FINDING THAT ISSUE AND THEN DENYING
21 THE MOTION AND APPELLATE COUNSEL BRIEF THE ISSUE.

22 THE COURT: ALL RIGHT. LET'S LET MR. PRICE
23 COMPLETE HIS REVIEW.

24 MR. PRICE: JUDGE, WHAT WAS HANDED TO ME
25 WAS THE ANDERS BRIEF FOR APPELLANT JAMES EDWARD WISE,

1 AND THE ARGUMENT IS A ONE-PARAGRAPH ARGUMENT THAT
 2 STATES, "DEFENSE COUNSEL MOVED TO QUASH THE
 3 INDICTMENT FOR FIRST DEGREE BURGLARY BECAUSE IT WAS A
 4 REINDICTMENT, OF AN EARLIER INDICTMENT," AND IT QUOTES
 5 THE NUMBERS, "THE OLDER INDICTMENT HAD ONE COUNT OF
 6 BURGLARY IN THE FIRST DEGREE AND ONE COUNT OF ASSAULT
 7 AND BATTERY OF A HIGH AND AGGRAVATED NATURE.
 8 APPELLANT PLEADED GUILTY IN MAGISTRATE'S COURT TO THE
 9 LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY OF A
 10 HIGH AND AGGRAVATED NATURE. BECAUSE THIS CHARGE WAS
 11 PART OF THE BURGLARY CHARGE, IT WOULD CONSTITUTE
 12 DOUBLE JEOPARDY TO TRY HIM NOW FOR BURGLARY." IT
 13 QUOTES KELLY VERSUS STATE, A 1980 SOUTH CAROLINA,
 14 CASE. THAT'S THE ARGUMENT. SO IT DOES NOT APPEAR
 15 THAT THE ARGUMENT WAS WAIVED.

16 THE COURT: WHAT WAS THAT LAST REMARK?

17 MR. PRICE: IT DOES NOT APPEAR THE ARGUMENT
 18 WAS WAIVED BY THE APPELLANT.

19 THE COURT: WOULD YOU HAND UP THAT, PLEASE.

20 MR. SPENCER: THERE IS A LITTLE BIT OF
 21 PROCEDURAL CONFUSION, I THINK, WITH THE APPEAL FROM
 22 THAT. INITIALLY IT WAS DISMISSED FOR A PROCEDURAL
 23 GROUND. I CAN'T RECALL WHAT IT IS OFF THE TOP OF MY
 24 HEAD. MR. GRIFFITH DID MOVE TO REINSTATE THE APPEAL.
 25 THE APPEAL WAS REINSTATED, AND THEN IT WAS SUBJECT TO

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1 AN ANDERS REVIEW.

2 THE COURT: SAY THAT AGAIN, MR. SPENCER?

3 MR. SPENCER: INITIALLY THIS APPEAL WAS
4 DISMISSED ON A PROCEDURAL GROUND. I THINK IT WAS --
5 IT HAD SOMETHING TO DO WITH FAILURE TO HAVE AN
6 AFFIDAVIT OF SERVICE ON THE NOTICE OF APPEAL.
7 MR. GRIFFITH THEN DID MOVE TO REINSTATE THE APPEAL.
8 THE COURT OF APPEALS REINSTATED THE APPEAL, AND THEN
9 WHAT HAPPENED AFTER THAT WAS THAT THE APPELLATE
10 COUNSEL DID SUBMIT AN ANDERS BRIEF, SO THE MERITS
11 WERE RULED ON. I DON'T KNOW -- I WAS STARTING TO
12 LOOK FOR IT JUST A SECOND AGO, BUT I DON'T KNOW
13 WHETHER THE COURT OF APPEALS OPINION WAS MADE PART OF
14 THE RECORD OR NOT, WHETHER I INCLUDED IT IN THE
15 JUDGE'S PACKET OR NOT, BUT I CAN CHECK THAT.

16 THE COURT: THE COURT OF APPEALS OPINION IS
17 HERE. IT MIGHT TAKE SOMETIME TO LOCATE IT AGAIN. IT
18 WAS JUST REFERRED TO MOMENTARILY. THE DATE OF IT AND
19 THE DATE IT WAS FILE WITH THE CLERK OF COURT WAS
20 PLACED ON THE RECORD. MR. WISE HAS FILED A NUMBER OF
21 PAPERS. BOTH FILES ARE VOLUMINOUS. THE RECORD WILL
22 SPEAK FOR ITSELF. THE COURT DID REFER EARLIER TO THE
23 OPINION OF THE COURT OF APPEALS, WHICH WAS REMITTED
24 TO THE CLERK, AND IT DOES APPEAR IN THE FINAL ANDERS
25 BRIEF OF THE APPELLANT THAT THE DOUBLE JEOPARDY ISSUE

1 WAS RAISED CLEARLY, AND IT APPEARS IN THE TRANSCRIPT
2 OF RECORD THAT IT WAS RAISED BY TRIAL COUNSEL AT
3 TRIAL BEFORE THE TRIAL COURT.

4 SO IN ALL DUE RESPECT, UNLESS THERE
5 IS SOMETHING FURTHER, MR. PRICE, THAT ARGUMENT IS
6 DISMISSED AS BEING ONE THAT WAS DETERMINED ON DIRECT
7 APPEAL.

8 LET'S HAVE THE NEXT GROUNDS.

9 MR. BUFKIN: YOUR HONOR, MR. WISE HAS HAD
10 A SIGNIFICANT AMOUNT OF TIME TO THINK ABOUT THESE
11 TRIALS. IN THE PROCESS OF DOING THAT, HE BELIEVES
12 THAT HE WAS INADEQUATELY REPRESENTED AT THE TRIAL BY
13 MR. GRIFFITH. HE HAS OUTLINED AND GONE THROUGH IN
14 SOME DETAIL WHERE THOSE INADEQUACIES WERE. WHAT I
15 WOULD LIKE TO DO IS GO THROUGH THEM. I BELIEVE THAT
16 THEY'RE IN THE PACKET THAT YOU HAVE. I'D LIKE TO PUT
17 MR. WISE ON THE STAND AND GET THROUGH THOSE ISSUES.

18 THE COURT: ALL RIGHT. MR. WISE, COME UP,
19 PLEASE, SIR.

20 MR. BUFKIN: WE'D LIKE FOR HIM TO BRING
21 WITH HIM HIS DOCUMENTARY THINGS TO REFRESH HIS
22 RECOLLECTION.

23 THE COURT: YES, SIR. THE COURT HAS HIS
24 PETITION. RIGHT HERE.

25

* * * * *

JAMES EDWARD WISE
DIRECT EXAMINATION BY MR. BUFKIN

1 JAMES EDWARD WISE,
2 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

3 THE COURT: YOU MAY EXAMINE.

4 MR. BUFKIN: THANK YOU, YOUR HONOR.

5 DIRECT EXAMINATION BY MR. BUFKIN:

6 Q. MR. WISE, WOULD YOU GIVE YOUR FULL NAME TO THE
7 COURT, AND GIVE YOUR AGE.

8 A. JAMES EDWARD WISE. FORTY-ONE.

9 Q. ARE YOU THE JAMES WISE THAT WAS INVOLVED IN THE
10 ACTION IN NEWBERRY COURT ABOUT WHICH THIS
11 POST-CONVICTION RELIEF IS SOUGHT?

12 A. YES.

13 Q. CAN YOU SAY WHEN THAT TRIAL TOOK PLACE?

14 A. OCTOBER 8, 1998.

15 Q. AND HOW LONG HAD YOU BEEN INCARCERATED AT THAT
16 TIME?

17 A. FOURTEEN MONTHS.

18 Q. WAS MR. GRIFFITH YOUR SOLE DEFENSE COUNSEL?

19 A. I BEEN APPOINTED TWO OTHER ATTORNEYS BEFORE
20 MR. GRIFFITH. CONFLICT OF INTEREST ---

21 Q. BUT YOUR ALLEGATIONS AND CONCERNS HERE ABOUT
22 INADEQUATE COUNSEL RELATE PRIMARILY TO
23 MR. GRIFFITH'S ACTIONS, IS THAT CORRECT?

24 A. THAT'S CORRECT.

25 Q. WHAT HAPPENED TO COUNSELS NUMBER ONE AND TWO?

JAMES EDWARD WISE
DIRECT EXAMINATION BY MR. BUFKIN

- 1 A. CONFLICT OF INTEREST. THEY FAILED TO INVESTIGATE
2 MY CASE. FAILED TO COME UP AND TALK TO ME AND
3 PREPARE MY CASE FOR TRIAL.
- 4 Q. SO YOU DISMISSED THEM, IS THAT CORRECT?
- 5 A. THAT'S CORRECT.
- 6 Q. WHEN WAS IT -- IF THE TRIAL TOOK PLACE IN OCTOBER
7 OF 1998, WHEN DID MR. GRIFFITH FIRST COME AND
8 INTERVIEW YOU?
- 9 A. I DON'T HAVE THE DATE THAT MR. GRIFFITH CAME TO
10 SEE ME.
- 11 Q. HOW MUCH TIME PRIOR TO THE TRIAL DID YOU AND
12 MR. GRIFFITH HAVE TO BE PREPARED?
- 13 A. FIFTY-EIGHT DAYS.
- 14 Q. FIFTY-EIGHT DAYS. IN YOUR REQUEST FOR
15 POST-CONVICTION RELIEF, YOU HAVE LISTED SEVERAL
16 REASONS FOR YOUR REQUEST, AND I'D LIKE TO GO
17 THROUGH THEM, IF I COULD, SO THAT WE CAN KEEP
18 THAT IN ORDER AND ADDRESS THEM ONE AT A TIME.
19 WOULD THAT BE ACCEPTABLE?
- 20 A. YES.
- 21 Q. OKAY. THE SECOND ISSUE YOU RAISE AFTER THE
22 DOUBLE JEOPARDY ISSUE HAS TO DO WITH HIS FAILING
23 TO ASK FOR A PRELIMINARY HEARING WHERE YOU
24 REQUESTED THAT PRELIMINARY HEARING. WHEN DID
25 YOU REQUEST THAT PRELIMINARY HEARING?

- 1 A. I WENT FOR MY BOND HEARING.
- 2 Q. SAY THAT AGAIN?
- 3 A. I WENT UP FOR A BOND HEARING.
- 4 Q. OKAY. AND WHO WAS YOUR COUNSEL AT THAT TIME?
- 5 A. MR. WILLIAM L. PYATT.
- 6 Q. DID YOU AND MR. GRIFFITH EVER DISCUSS THE ISSUE
- 7 OF A PRELIMINARY HEARING?
- 8 A. I TOLD HIM ABOUT IT, THAT I NEVER HAD NAIRN.
- 9 Q. THAT YOU HAD NOT HAD ONE?
- 10 A. YES, AND I WANTED ONE.
- 11 Q. AND WHAT WAS IT YOU THOUGHT WAS GOING TO HAPPEN
- 12 AT THE PRELIMINARY HEARING THAT HAD NOT HAPPENED
- 13 THUS FAR?
- 14 A. THAT HE WOULD KNOW WHAT THEY WERE CHARGING
- 15 ME WITH AND HE COULD GO OUT AND TALK TO THE
- 16 WITNESSES IN THE NEIGHBORHOOD AND FIND OUT ABOUT
- 17 THIS CASE.
- 18 Q. OKAY. SO WHAT YOU BELIEVED IS THAT MR. GRIFFITH
- 19 WAS NOT ADEQUATELY INFORMED CONCERNING THE
- 20 CHARGES AGAINST YOU AND THAT HE DIDN'T, DURING
- 21 THAT FIFTY-EIGHT-DAY PERIOD, PROPERLY
- 22 INVESTIGATE; IS THAT CORRECT?
- 23 A. THAT'S CORRECT.
- 24 Q. OKAY. THE NEXT ALLEGATION -- MANY OF THESE
- 25 ALLEGATIONS REVOLVE AROUND THE SAME GENERAL

1 ALLEGATION OF INADEQUATE COUNSEL, AND SO I'M
2 GOING TO GO AT THEM ONE AFTER THE OTHER, WITH THE
3 IDEA THAT THEY WOULD BE CUMULATIVE. YOUR NEXT
4 ALLEGATION WAS THAT YOU DIDN'T THINK THAT HE
5 THOROUGHLY INVESTIGATED THE CHARGES AGAINST YOU
6 AND THE POSSIBLE DEFENSES. HOW DO YOU FEEL AS
7 THOUGH HE WAS INADEQUATE IN THAT INVESTIGATION
8 AND PREPARATION OF PROPER DEFENSES?

9 A. HE DIDN'T INVESTIGATE MY CASE. WHEN I ASKED HIM
10 TO FILE MOTIONS ON MY BEHALF, HE DIDN'T DO IT. I
11 ASKED HIM TO GO TALK TO WITNESSES. HE DIDN'T DO
12 IT.

13 Q. SO PRIOR TO THE TRIAL HE DIDN'T SPEAK TO ANY OF
14 THE WITNESSES ON YOUR BEHALF, IS THAT CORRECT?

15 A. NO. HE JUST SERVED SUBPOENAS AND NEVER HAD THEM
16 SENT OUT. HE JUST GIVE THEM TO ME ON THE DATE OF
17 THE TRIAL.

18 Q. SAY THAT AGAIN, PLEASE. I DIDN'T UNDERSTAND.

19 A. HE SERVED SUBPOENAS AND NEVER DID SEND THEM OUT
20 TO THE PEOPLE. HE JUST GIVE THEM TO ME AT THE
21 DAY OF THE TRIAL. HE DIDN'T TALK TO NOBODY. HE
22 DIDN'T GO OUT TO THE CRIME SCENE AND TALK TO NO
23 ONE IN THE NEIGHBORHOOD. AND IF HE'D HAVE HAD
24 THE PRELIMINARY HEARING, HE WOULD HAVE KNOWN MORE
25 ABOUT MY CASE, HOW TO PREPARE MY CASE. ALL THE

1 EVIDENCE THAT THEY PRESENTED, HE WOULD HAVE
2 KNOWED THAT. IT WASN'T NEVER ON FILE.

3 Q. HOW MANY TIMES DID YOU AND HE MEET PRIOR TO THE
4 ACTUAL TRIAL?

5 A. I DON'T KNOW. SOMETIMES HE MIGHT COME BY TWO
6 DAYS -- TWO TIMES IN THE SAME DAY, YOU KNOW. HE
7 WASN'T DOING NOTHING. MAYBE FIVE MINUTES OR SO,
8 HE'D TALK TO ME, AND GO SEE OTHER PEOPLE. HE
9 WASN'T DOING NOTHING.

10 Q. AND IT'S YOUR UNDERSTANDING THAT HE DIDN'T TALK
11 TO -- DID YOU GIVE HIM THE NAMES OF THOSE
12 WITNESSES?

13 A. YES.

14 Q. AND IT'S YOUR UNDERSTANDING THAT HE DIDN'T SPEAK
15 TO ANY OF THOSE WITNESSES, IS THAT CORRECT?

16 A. THAT'S MY UNDERSTANDING.

17 Q. OKAY. DO YOU THINK THAT YOU WOULD HAVE BEEN
18 BETTER REPRESENTED IF SOMEBODY HAD PROPERLY
19 INVESTIGATED THIS CRIME AND WOULD HAVE SPOKEN TO
20 THE WITNESSES THAT YOU RECOMMENDED?

21 A. YES.

22 Q. DO YOU BELIEVE THAT ONE OF THE REASONS THAT YOU
23 WERE FOUND GUILTY WAS BECAUSE OF THAT INADEQUATE
24 REPRESENTATION?

25 A. CORRECT.

JAMES EDWARD WISE
DIRECT EXAMINATION BY MR. BUFKIN

1 Q. THE NEXT ISSUE THAT RESTS DIRECTLY ON THAT SAME
2 THEME PERTAINS TO FAILURE TO ISSUE A SUBPOENA TO
3 INVESTIGATOR SALAZAR, WHO WAS A MATERIAL WITNESS.
4 HOW WAS -- WAS INVESTIGATOR SALAZAR A WITNESS TO
5 THE CRIMES ABOUT WHICH YOU WERE CHARGED?

6 A. NO, HE WASN'T A WITNESS TO THAT AT THAT
7 PARTICULAR TIME. I HAD ASKED HIM EARLY IN THE
8 POLICE CAR TO CALL SALAZAR.

9 Q. ALL RIGHT. AND SO IF INVESTIGATOR SALAZAR HAD
10 BEEN CALLED, HE WOULD HAVE BEEN ABLE TO TESTIFY
11 WITH REGARDS TO YOUR GOOD CHARACTER, OR WAS HE
12 GOING TO PROVIDE AN ALIBI FOR YOU AS TO WHERE YOU
13 WERE GOING TO BE OR --

14 A. I WANTED THEM TO CONTACT HIM FOR OTHER REASONS.

15 Q. ALL RIGHT.

16 A. TO BE ABLE TO STAY OUT OF JAIL UNTIL AFTER THE
17 FUNERAL. I WANTED TO GO TO MY SISTER'S FUNERAL.

18 Q. IS IT YOUR UNDERSTANDING THAT MR. GRIFFITH NEVER
19 CONTACTED INVESTIGATOR SALAZAR WITH REGARD TO
20 THIS MATTER?

21 A. WHEN I GOT OUT OF THERE HE TRIED TO CONTACT
22 HIM DURING THE COURSE OF THE TRIAL. WHEN HE
23 TESTIFIED THAT HE ASKED ONE OF THE OFFICERS ABOUT
24 SALAZAR, THAT'S THE ONLY KNOWLEDGE I HAVE OF HIM
25 TRYING TO CONTACT HIM.

FOOTNOTED • PENDING • RECORDED

- 1 Q. COULD HE HAVE SPOKEN TO INVESTIGATOR SALAZAR
2 SOMEWHERE ELSE WITH REGARD TO THIS?
- 3 A. IF HE HAD WENT OUT AND INVESTIGATED, HE PROBABLY
4 COULD HAVE.
- 5 Q. AND IT'S YOUR UNDERSTANDING THAT YOU ASKED HIM TO
6 CONTACT INVESTIGATOR SALAZAR AND THAT HE DID NOT
7 DO THAT AND THEREFORE THAT LACK OF INFORMATION
8 MATERIALLY AFFECTED YOUR CONVICTION?
- 9 A. IN SOME SENSE, YES.
- 10 Q. OKAY. THERE WAS SOME QUESTION IN THE ORIGINAL
11 TRIAL ABOUT THE THREAT OF HARM THAT WAS MADE BY
12 YOU, A THREAT WAS MADE AGAINST YOU, THAT YOU HAD
13 THREATENED I BELIEVE MS. MARY BATES, AND ONE OF
14 THE -- THE INSTRUMENT OF THAT THREAT WAS A
15 CERAMIC PIG; IS THAT CORRECT?
- 16 A. THAT'S CORRECT.
- 17 Q. ALL RIGHT. ONE OF THE ALLEGATIONS THAT YOU HAVE
18 MADE CONCERNING MR. GRIFFITH IS THAT HE DIDN'T
19 HAVE THAT CERAMIC PIG -- HAVE ANY FORENSIC WORK
20 DONE ON IT OR ESTABLISH A CHAIN OF CUSTODY ON
21 THAT PIG AND THAT WHEN IT WAS BROUGHT TO TRIAL IT
22 HAD NOT BEEN IN ANYBODY'S CUSTODY OTHER THAN THE
23 VICTIM; IS THAT CORRECT?
- 24 A. THAT'S CORRECT.
- 25 Q. DID YOU ASK MR. GRIFFITH ABOUT THE CERAMIC PIG

1 SEEN IT IN HIS FOLDER -- MY FOLDER, RATHER -- AND
2 I ASKED HIM WHAT WAS IT, AND HE SAID A PICTURE.
3 I SAID, "WHERE YOU GET IT FROM," AND HE SAID FROM
4 THE CRIME SCENE, HE GETS STUFF FROM OFFICER THAT
5 OTHER LAWYER COULDN'T GET.

6 Q. WHO SAID THAT? MR. GRIFFITH?

7 A. MR. GRIFFITH.

8 Q. DO YOU THINK IF HE HAD BEEN MORE EFFECTIVE AS
9 COUNSEL AND INVESTIGATED FURTHER HE WOULD HAVE
10 KNOWN MORE ABOUT THE CERAMIC PIG?

11 A. YES.

12 Q. IS IT YOUR TESTIMONY THAT YOUR LACK OF ADVANCE
13 KNOWLEDGE OF THAT MADE IT SO THAT YOU COULD NOT
14 ADEQUATELY PRESENT A DEFENSE?

15 A. CORRECT.

16 Q. OKAY. THERE WAS A QUESTION DURING THE TRIAL
17 ABOUT BRINGING UP ISSUES OF PRIOR CONVICTIONS
18 THAT YOU HAD. YOU'VE RAISED THE ISSUE THAT YOU
19 BELIEVE YOUR COUNSEL WAS INEFFECTIVE IN THAT HE
20 RAISED ISSUES FOR THE COURT THAT WOULD NOT HAVE
21 OTHERWISE BEEN PRESENTED, PRIOR CONVICTIONS?

22 A. CORRECT.

23 Q. OKAY. DID YOU AND MR. GRIFFITH DISCUSS THIS
24 MATTER BEFORE THE TRIAL?

25 A. ABOUT THE QUESTION THAT --

JAMES EDWARD WISE
DIRECT EXAMINATION BY MR. BUFKIN

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1 Q. ABOUT THE PRIOR CONVICTIONS.

2 A. -- HE WAS GOING TO BE ASKING ME?

3 Q. RIGHT.

4 A. HE TOLD ME THAT MY RECORD WILL BE BROUGHT UP IF I
5 CHOOSE TO TAKE THE STAND, AND I TOLD HIM THAT WAS
6 THE ONLY WAY THEY WOULD KNOW MY SIDE OF THE
7 STORY. I HAVE TO TAKE THE STAND.

8 Q. AND SO YOUR PRIOR RECORD WAS BROUGHT OUT. WHO
9 BROUGHT YOUR PRIOR RECORD OUT, JUST MR. GRIFFITH
10 OR ANYBODY ELSE?

11 A. THE PROSECUTOR ATTACKED ME ON IT. HE ASKED ME
12 THE QUESTION, AND I ANSWERED IT.

13 Q. OKAY. WHY IS IT THAT YOU THINK THAT IT WAS
14 FAILURE -- THAT IT WAS IMPROPER FOR MR. GRIFFITH
15 TO ASK YOU ABOUT THAT IF IT WAS ALREADY IN FRONT
16 OF THE COURT?

17 A. BECAUSE HE HAD OPENED UP THE LINE FOR THE JURY TO
18 SEE THAT, "WELL, HE'S BEEN CONVICTED IN THE PAST,
19 SURE HE'S A BAD PERSON AND NEEDS TO BE OFF THE
20 STREET." HE JUST OPENED UP SO THE PROSECUTOR
21 COULD BUILD A CASE AGAINST ME.

22 Q. I'M A LITTLE BIT CONFUSED. I THOUGHT YOU JUST
23 SAID THAT THE PROSECUTOR BROUGHT UP YOUR PAST
24 CONVICTIONS?

25 A. WE ALL TALK ABOUT IT. MR. GRIFFITH OPENED IT UP

1 FOR HIM TO ATTACK ME ON THAT WHEN HE ASKED ME
2 WHAT WAS I CONVICTED FOR.

3 Q. OKAY.

4 A. AND OPENED IT UP SO THE PROSECUTOR COULD ATTACK
5 ME ON IT. MADE ME LOOK BAD IN FRONT OF THE JURY,
6 LIKE I'M A BAD PERSON IN SOCIETY, I NEED TO BE
7 OFF THE STREET. HE KNEWED WHAT HE WAS DOING WHEN
8 HE OPENED THAT LINE OF QUESTIONING UP. HE ASKED
9 ME TO GET UP HERE AND TELL THE TRUTH, SO HE ASKED
10 ME AND I TOLD HIM.

11 Q. OKAY.

12 A. SO HE HELPED THE STATE TO BUILD A CASE AGAINST ME
13 BY ASKING ME THOSE QUESTIONS.

14 Q. ALL RIGHT. DO YOU THINK THAT THOSE ARE -- NEVER
15 MIND. DID HE APPRISE YOU THAT YOUR RECORD WOULD
16 COME UP IF YOU TOOK THE STAND?

17 A. HE HAD TOLD ME THAT THEY WOULD BRING MY RECORD
18 UP. I HAD NO PROBLEM WITH THAT. BUT THE LINE
19 OF QUESTIONING, THE WAY HE ADDRESS IT, SO THE
20 PROSECUTOR CAN ATTACK ON THAT TO MAKE IT LOOK
21 BAD IN FRONT OF THE JURY, LIKE I'M A BAD PERSON.

22 Q. OKAY. PRIOR TO THE TRIAL DID MR. GRIFFITH TALK
23 TO YOU ABOUT HOW HE WAS GOING TO PRESENT YOUR
24 CASE AND WHETHER OR NOT HE UNDERSTOOD YOUR CASE?

25 A. WE TALKED -- HE TOLD ME IF WE GET A BLACK JURY

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1 THAT I WOULD BE FOUND NOT GUILTY, BECAUSE WHITE
2 FOLK DID NOT UNDERSTAND WHEN IT WAS A LITTLE OLD
3 FIGHT, BECAUSE THEY DIDN'T ARGUE, AND HE SAID WE
4 NEED A BLACK JURY. THAT'S WHY WE PICKED THE ONE
5 THAT WE PICKED, THINKING THAT THEY WOULD BE
6 UNDERSTANDING. HE'S THE ONE TOLD ME TO PICK THE
7 JURY LIKE THAT.

8 Q. ALL RIGHT. DID IT APPEAR TO YOU AS THOUGH
9 MR. GRIFFITH HAD EVER REPRESENTED ANYBODY AT
10 COURT BEFORE?

11 A. I HEARD PEOPLE TALK ABOUT HIM REPRESENTING OTHER
12 PEOPLE.

13 Q. MY REAL QUESTION IS, DID HE APPEAR TO BE
14 EXPERIENCED OR INEXPERIENCED TO YOU?

15 A. INEXPERIENCED.

16 Q. DO YOU BELIEVE THAT THAT INEXPERIENCE, AS YOU
17 PERCEIVED IT, RESULTED IN HIS INEFFECTIVE COUNSEL
18 TO YOU?.

19 A. YES, I DO.

20 Q. WAS THERE EVIDENCE THAT WAS BROUGHT INTO PLAY
21 THAT YOU BELIEVE SHOULD NOT HAVE BEEN BROUGHT IN?

22 A. (NO RESPONSE.)

23 Q. ONE OF THE ALLEGATIONS THAT YOU HAVE MADE IS THAT
24 THERE WAS HEARSAY TESTIMONY THAT WAS BROUGHT IN
25 FROM THE WITNESS STAND.

- 1 A. OH, YES.
- 2 Q. HOW WAS THAT?
- 3 A. WHEN THE WITNESS HAD TESTIFIED AND MR. GRIFFITH
4 COULDN'T CROSS-EXAMINE HIM PROPERLY, OR HE DIDN'T
5 KNOW ABOUT ALL THIS UNTIL THE DAY OF THE TRIAL.
6 IF HE'D KNOWED AND HAD A STATEMENT WHAT THE
7 PROSECUTOR WOULD KNOW SOMETHING ABOUT THE CASE,
8 HE COULD HAVE BEEN PREPARED TO CROSS-EXAMINE THIS
9 PERSON. AND WHEN I ASKED HIM EARLIER, "HOW YOU
10 GOING TO CROSS-EXAMINE HIM, THERE'S NO STATEMENT
11 OR NOTHING," HE SAID, "WHEN HE GET ON THE STAND."
12 AND QUESTIONS THAT HE SHOULD HAVE BEEN ASKING, HE
13 DIDN'T ASK.
- 14 Q. OKAY. AND THAT'S IN YOUR OPINION, IS THAT RIGHT,
15 THAT HE DIDN'T ASK ADEQUATE QUESTIONS?
- 16 A. RIGHT.
- 17 Q. SO THE ISSUES ABOUT THE INEFFECTIVE ASSISTANCE
18 OF COUNSEL RELATE PRIMARILY TO INADEQUATE
19 INVESTIGATION OF THE FACTS PRIOR TO THE TRIAL
20 AND THEN A POOR PRESENTATION OF THOSE FACTS AT
21 THE TRIAL, IS THAT RIGHT?
- 22 A. BEFORE AND AFTER AND DURING THE COURSE OF THE
23 TRIAL.
- 24 Q. AT THE TIME OF THE TRIAL, DID HE RAISE THE DOUBLE
25 JEOPARDY ISSUE THAT WAS DISCUSSED EARLIER?

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1 A. YES, HE BROUGHT IT UP AT THE BEGINNING WHEN HE
2 WAS MENTIONING ABOUT THE INDICTMENT. AND WE ALSO
3 TALKED ABOUT THAT AT THE COUNTY JAIL WHEN HE CAME
4 TO SEE ME. IT'S THE DOUBLE JEOPARDY STANDARD,
5 AND HE WAS GOING AROUND THERE AND SEE WHAT THEY
6 WANTED TO DO ABOUT THAT.

7 Q. DO YOU BELIEVE THAT THE REASON THAT YOU WERE
8 FOUND GUILTY AT THE TRIAL WAS BECAUSE OF THE
9 INADEQUATE REPRESENTATION OF MR. GRIFFITH?

10 A. CORRECT.

11 Q. OKAY... AND THAT THAT INADEQUATE REPRESENTATION
12 VIOLATED YOUR CONSTITUTIONAL RIGHT TO ACTIVE AND
13 PROPER COUNSEL, IS THAT CORRECT?

14 A. THAT'S CORRECT.

15 Q. IS THERE ANYTHING ELSE YOU WOULD LIKE TO BRING UP
16 NOW WHILE WE'RE HERE?

17 A. I LIKE TO RESOLVE ALL MY ISSUES THAT I HAVE
18 RAISED IN MY P.C.R.

19 Q. I HAVE GONE THROUGH ALL OF THOSE ISSUES THAT YOU
20 HAVE RAISED IN YOUR P.C.R. WE'VE GONE THROUGH
21 THEM ONE BY ONE THROUGH THIS.

22 A. ALL RIGHT. OKAY.

23 Q. THIS WOULD BE A TIME FOR YOU TO SAY SPECIFICALLY
24 IN ADDITION TO THOSE THINGS THAT WE'VE ADDRESSED
25 HERE, HOW IT WAS THAT YOU FELT THAT MR. GRIFFITH

REPRODUCED BY PERIODICALS DEPARTMENT

1 DIDN'T REPRESENT YOU PROPERLY IN ADDITION TO
2 THOSE SPECIFIC THINGS WE HAVE JUST TALKED ABOUT?
3 A. HE DID NOT GO OUT AND INVESTIGATE MY CASE AT ALL.
4 AND I FEEL IF HE HAD DID IT, HE WOULD HAVE KNOWED
5 MORE ABOUT THE CASE. HE WOULD HAVE PREPARED A
6 DEFENSE FOR ME, AND HE WOULD HAVE SHOWED TO THE
7 COURT THAT WHAT THE STATE PRESENTED TO THEM IS
8 NOT TRUE, AND HE WOULD HAVE OBJECTED TO THE
9 EVIDENCE THAT THEY CLAIM WAS USED IN THE CRIME
10 SCENE AND THIS CRIME, AND IT WASN'T NEVER ON
11 FILE. HE DIDN'T DO NOTHING AS FAR AS
12 REPRESENTING ME AS REQUIRED BY LAW.

13 Q. OKAY. IS THERE ANYTHING ELSE?

14 A. NOTHING THAT I CAN THINK OF RIGHT NOW.

15 Q. ALL RIGHT. THANK YOU.

16 MR. BUFKIN: I HAVE NO FURTHER QUESTIONS.

17 THE COURT: THANK YOU, COUNSEL.

18 CROSS-EXAMINATION, PLEASE,

19 MR. SPENCER.

20 MR. SPENCER: THANK YOU, YOUR HONOR.

21 CROSS-EXAMINATION BY MR. SPENCER:

22 Q. MR. WISE, I FIRST WANTED TO ASK YOU ABOUT --
23 YOU MENTIONED THAT YOU HAD FELT COUNSEL WAS
24 INEFFECTIVE FOR NOT OBJECTING TO SOME HEARSAY
25 TESTIMONY?

JAMES EDWARD WISE
CROSS-EXAMINATION BY MR. SPENCER

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- 1 A. YES, SIR.
- 2 Q. WHOSE TESTIMONY WAS THAT?
- 3 A. JAMES GALLMAN.
- 4 Q. MR. GALLMAN'S TESTIMONY?
- 5 A. UH-HUH.
- 6 Q. IS THAT THE TESTIMONY CONCERNING STATEMENTS
7 MADE BY MARY BATES WHEN THEY WERE ON THE PHONE
8 TOGETHER?
- 9 A. YES. RELATING TO THAT.
- 10 Q. IS THAT THE TESTIMONY THAT SHE CALLED
11 MR. GALLMAN AND TOLD HIM THAT YOU WERE OUTSIDE
12 BAMMING ON THE DOOR? IS THAT THE TESTIMONY
13 YOU'RE TALKING ABOUT?
- 14 A. YES.
- 15 Q. HOW MANY BLACK JURORS WERE THERE ON THE JURY AT
16 TRIAL?
- 17 A. NINE.
- 18 Q. I WANTED TO JUST GO OVER AGAIN YOUR SECOND
19 ALLEGATION. YOU FELT YOUR ATTORNEY DID NOT
20 THOROUGHLY INVESTIGATE THE CASE, IS THAT CORRECT?
- 21 A. THAT'S CORRECT.
- 22 Q. AND YOU WOULD HAVE WANTED HIM TO TALK TO SOME
23 WITNESSES?
- 24 A. YES.
- 25 Q. AND YOU SAID YOU WANTED HIM TO FILE A MOTION AND

- 1 HE DIDN'T FILE IT. WHAT MOTION IS THAT?
- 2 A. RULE 5 AND MOTION FOR TO REPRESS THE EVIDENCE.
- 3 Q. AND THAT'S TO SUPPRESS THE CERAMIC PIG?
- 4 A. ANY EVIDENCE THAT THEY PLANNED TO PRESENT DURING
- 5 THE COURSE OF THE TRIAL.
- 6 Q. SUPPRESS ANY EVIDENCE THAT CAME IN?
- 7 A. ANY THAT WAS CONDUCTED FROM THE INVESTIGATION
- 8 THAT THEY PLANNED TO USE AT THE COURSE OF MY
- 9 TRIAL.
- 10 Q. NOW, YOU MENTIONED YOU HAD TWO ATTORNEYS
- 11 BEFOREHAND?
- 12 A. YES.
- 13 Q. AND WHO IS YOUR FIRST ATTORNEY?
- 14 A. MR. WILLIAM L. PYATT.
- 15 Q. AND NOW WHY WAS HE RELEASED AGAIN?
- 16 A. CONFLICTS OF INTEREST.
- 17 Q. WHAT WAS THE CONFLICT?
- 18 A. HE DIDN'T REPRESENT ME PROPER.
- 19 Q. SO YOU JUST DIDN'T FEEL HE WAS DOING A GOOD JOB?
- 20 A. HE WASN'T.
- 21 Q. AND YOU ASKED THE JUDGE FOR A NEW ATTORNEY
- 22 BECAUSE YOU DIDN'T FEEL THAT HE WAS DOING A GOOD
- 23 JOB?
- 24 A. YES, SIR.
- 25 Q. WHO WAS YOUR SECOND ATTORNEY?

JAMES EDWARD WISE
CROSS-EXAMINATION BY MR. SPENCER

1 A. MR. HARRY T. HEIZER.

2 Q. AND NOW WHY WAS HE RELEASED?

3 A. HE HAD LITTLE EXPERIENCE IN THE CRIMINAL FIELD.

4 HE WAS A REAL ESTATE LAWYER, AND HE DIDN'T

5 REPRESENT ME PROPER, SO I DIDN'T WANT HIM.

6 Q. AND SO YOU ASKED THE COURT TO HAVE HIM RELIEVED

7 AND HAVE ANOTHER ATTORNEY APPOINTED?

8 A. YES, SIR.

9 MR. SPENCER: YOUR HONOR, I HAVE NO FURTHER

10 QUESTIONS.

11 THE COURT: REDIRECT.

12 MR. BUFKIN: YOUR HONOR, THERE'S AN ISSUE

13 IN THE P.C.R. THAT I FAILED TO ADDRESS THAT I WOULD

14 LIKE TO PICK UP. IT'S THE NEXT TO THE LAST ONE,

15 CONCERNING THE FAILURE TO ASK THE COURT TO CHARGE

16 A LESSER INCLUDED OFFENSE OF STATUTORY CRIMINAL

17 TRESPASS.

18 THE COURT: YES, SIR.

19 MR. BUFKIN: IN THIS CASE MR. WISE BELIEVES

20 THAT HIS COUNSEL WAS INEFFECTIVE BECAUSE THE ELEMENTS

21 OF STATUTORY CRIMINAL TRESPASS WERE NOT -- IT WAS NOT

22 REQUESTED THAT A CHARGE OF THE JURY BE MADE.

23 REDIRECT EXAMINATION BY MR. BUFKIN:

24 Q. MR. WISE, IS THAT CORRECT?

25 A. WOULD YOU REPEAT THAT AGAIN?

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1 Q. ONE OF THE ISSUES THAT YOU'VE RAISED IN YOUR
2 POST-CONVICTION RELIEF ARGUMENT IS THAT THE
3 OFFENSE OF STATUTORY CRIMINAL TRESPASS, WHICH
4 WAS A LESSER OFFENSE, WAS NOT REQUESTED BY
5 MR. GRIFFITH. HE DID NOT ASK THE JUDGE TO CHARGE
6 THE JURY THAT LESSER INCLUDED OFFENSE, AND IF HE
7 HAD, THEN IT MIGHT BE THAT THE JURY MIGHT HAVE
8 FOUND YOU GUILTY OF THAT LESSER OFFENSE AS
9 OPPOSED TO THE BURGLARY. IS THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. OKAY. WHY DO YOU BELIEVE THAT THAT LESSER
12 INCLUDED OFFENSE MORE ADEQUATELY REFLECTS WHAT IT
13 WAS THAT YOU DID?

14 A. BECAUSE THE ELEMENTS WERE PRESENTED, AND DURING
15 THE COURSE OF THE TRIAL, TESTIMONY FROM THE
16 OFFICER AND THE VICTIM, WHEN HE SAID THAT I WAS
17 RUNNING TO LEAVE FROM THERE, AND IT'S DERIVED
18 FROM THE SAME INCIDENT, SO --

19 Q. WAS THERE ANY REQUESTED INSTRUCTIONS CONCERNING
20 OTHER LESSER INCLUDED OFFENSES? WAS SOME OTHER
21 LESSER INCLUDED OFFENSES OTHER THAN THE BURGLARY
22 REQUESTED?

23 A. NO, NOT DURING THE TRIAL.

24 Q. ALL RIGHT. AND SO ONE OF THE ISSUES THAT YOU
25 HAVE RAISED HERE IS THAT IF MR. GRIFFITH HAD

JAMES EDWARD WISE
REDIRECT EXAMINATION BY MR. BUFKIN

1 PROPERLY ASKED FOR THIS STATUTORY CRIMINAL
2 TRESPASS, THE JURY MIGHT HAVE FOUND YOU GUILTY OF
3 THAT LESSER OFFENSE, WHICH WOULD NOT HAVE BROUGHT
4 YOU HERE TODAY OR WOULD NOT HAVE BROUGHT THE
5 MANDATORY LIFE SENTENCE. IS THAT CORRECT?

6 A. THAT'S CORRECT.

7 Q. THANK YOU.

8 MR. BUFKIN: SORRY, YOUR HONOR, I MISSED
9 THAT EARLIER.

10 THE COURT: THANK YOU.

11 MR. SPENCER: I HAVE NO FURTHER QUESTIONS.

12 THE COURT: MR. BUFKIN, THANK YOU VERY
13 MUCH.

14 COME DOWN, PLEASE, SIR.

15 ANYTHING ELSE FROM THE PETITIONER, OR
16 THE APPLICANT?

17 MR. BUFKIN: NO, YOUR HONOR.

18 THE COURT: THAT'S THE APPLICANT'S CASE.
19 WE TURN TO THE STATE.

20 ARE THERE ANY MOTIONS?

21 MR. SPENCER: I APOLOGIZE, YOUR HONOR?

22 THE COURT: ARE THERE ANY MOTIONS? IF
23 THERE ARE NONE, CALL YOUR FIRST WITNESS.

24 MR. SPENCER: I HAVE NO MOTIONS, YOUR
25 HONOR. YOUR HONOR, I CALL MR. GRIFFITH TO THE STAND.

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EUGENE C. GRIFFITH, JR., ESQUIRE
DIRECT EXAMINATION BY MR. SPENCER

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EUGENE C. GRIFFITH, JR., ESQUIRE,
FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SPENCER:

Q. MR. GRIFFITH, I FIRST WANTED TO ASK YOU ABOUT
MR. WISE'S PRIOR ATTORNEYS. DO YOU KNOW WHY
EITHER OF THOSE ATTORNEYS WERE RELIEVED?

A. I KNOW WHAT JAMES TOLD ME.

Q. AND WHAT DID JAMES TELL YOU AS TO WHY MR. PYATT
WAS RELIEVED?

A. IT'S MY RECOLLECTION THAT THERE WAS SOME
INCIDENT IN THE COURTROOM THAT MR. WISE CAME IN
THE COURTROOM AND MADE ACCUSATIONS THAT MR. PYATT
CONDUCTED HIMSELF IMPROPERLY, AND I THOUGHT --
WHEN I HEARD IT, I BELIEVED IT TO BE A JOKE,
BUT THE COURT RELIEVED -- BECAUSE THERE WAS A
CONFLICT THERE, THE COURT RELIEVED MR. PYATT OF
ANY FURTHER RESPONSIBILITY. THE COMMENT WAS
QUITE INSULTING.

Q. WHAT WAS THAT COMMENT?

A. THE COMMENT WAS THAT --

MR. PRICE: YOUR HONOR, I OBJECT TO THIS.
THIS IS HEARSAY TESTIMONY.

THE COURT: SUSTAINED.

BY MR. SPENCER:

Q. I WANTED TO ASK ABOUT THE ISSUE OF --

EUGENE C. GRIFFITH, JR., ESQUIRE
DIRECT EXAMINATION BY MR. SPENCER

1 THE COURT: EXCUSE JUST A MINUTE. DID THE
2 QUESTION ASK THIS WITNESS TO SAY WHAT MR. WISE SAID?
3 WAS THAT THE QUESTION?

4 MR. SPENCER: YES, YOUR HONOR. SO I THINK
5 IT WOULD BE ADMISSIBLE AS TO --

6 MR. PRICE: YOUR HONOR, MY UNDERSTANDING
7 WAS THAT THE WITNESS WAS TESTIFYING WHAT OTHERS HAD
8 TOLD HIM ABOUT SOMETHING THAT HAPPENED IN THE
9 COURTROOM. OBVIOUSLY HE CAN TESTIFY TO ANY
10 CONVERSATIONS THAT HE HAD WITH THE PETITIONER.

11 THE COURT: THE RULING WILL BE WITHDRAWN
12 WITH THE UNDERSTANDING THAT THE WITNESS CAN TESTIFY
13 ABOUT ANYTHING THAT HE HEARD MR. WISE SAY, IF HE
14 HEARD HIM SAY ANYTHING. WHATEVER THING -- ANYTHING
15 MR. WISE SAID TO THIS WITNESS, THIS WITNESS CAN
16 TESTIFY TO THAT.

17 BY MR. SPENCER:

18 Q. WHAT WAS THE REASON MR. WISE TOLD YOU?

19 A. NOW, I WASN'T IN THE COURTROOM WHEN THE
20 COMMENT WAS MADE BY MR. WISE TO MR. PYATT, SO I
21 DIDN'T -- I WASN'T PRESENT FOR THAT, BUT MR. WISE
22 AND I HAD A CONVERSATION --

23 Q. OKAY. I'M --

24 A. -- SEVERAL MONTHS LATER ABOUT THAT.

25 Q. OKAY? I MISUNDERSTOOD. I'M SORRY, YOUR HONOR.

1 I'LL MOVE ON. NOW, I WANTED TO ASK ABOUT THE
2 RULE 5, AN ISSUE AS TO RULE 5 OF DISCOVERY.
3 DID YOU FILE ANY RULE 5'S OR ANY MOTIONS FOR
4 DISCOVERY?

5 A. NO, I DIDN'T. IT WAS MY UNDERSTANDING BASED
6 UPON CONVERSATIONS WITH THE SOLICITOR'S OFFICE,
7 INCLUDING TIM WOOLSTON AND JERRY PEACE, THAT
8 MR. PYATT HAD FILED A RULE 5 ON MR. WISE'S
9 BEHALF. SO I WENT TO THE SHERIFF'S OFFICE, WHO
10 MAINTAINS THE INVESTIGATION AND TRIAL FILE FOR
11 THE SOLICITOR, AND I SAID, "LET ME SEE THE FILE,"
12 AND THEY TURNED IT OVER TO ME, AND I WENT THROUGH
13 THE ENTIRE FILE AND MADE COPIES OF EVERYTHING
14 THAT I WANTED TO HAVE. SO I ACTUALLY DIDN'T FILE
15 A RULE 5, BUT I HAD ACCESS TO EVERYTHING THEY
16 HAD.

17 Q. I WANTED TO ASK YOU ABOUT THE CERAMIC PIG. I
18 BELIEVE THE ALLEGATION IS THAT YOU SHOULD HAVE
19 MOVED TO HAVE THE CERAMIC PIG SUPPRESSED. DID
20 YOU SEE ANY GROUNDS TO SUPPRESS THE CERAMIC PIG?

21 A. MY RECOLLECTION OF THE CERAMIC PIG, THEY HAD A
22 PICTURE OF IT IN THE FILE, AND I ASKED THE
23 DETECTIVE ABOUT IT, AND HE SAID, "WELL, THE
24 VICTIM HAD A CERAMIC PIG AT HER HOUSE, AND THIS
25 IS A PICTURE OF IT, AND THAT'S WHAT SHE'S GOING

EUGENE C. GRIFFITH, JR., ESQUIRE
DIRECT EXAMINATION BY MR. SPENCER

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1 TO CLAIM WAS THREATENED HER WITH." IT WASN'T IN
2 THE SHERIFF'S OFFICE POSSESSION AT THE TIME, AND
3 SO IT WAS MY UNDERSTANDING SHE STILL HAD IT, AND
4 I BELIEVE SHE STILL DOES. IT WAS -- A PICTURE
5 MAY HAVE BEEN SUBSTITUTED IN THE RECORD AT THE
6 END OF THE TRIAL, AND SHE MAINTAINED POSSESSION
7 OF THE PIG THE ENTIRE TIME.

8 Q. SO IT WAS IN THE VICTIM'S POSSESSION UNTIL THE
9 TRIAL?

10 A. AS FAR AS I KNOW.

11 Q. NOW, DID MR. WISE ASK YOU TO INTERVIEW ANY
12 WITNESSES?

13 A. OH, YES, A BUNCH OF WITNESSES.

14 Q. AND DID YOU ATTEMPT TO INTERVIEW THOSE WITNESSES?

15 A. I MADE SEVERAL CALLS TO SEVERAL OF THEM, BUT
16 TECHNICALLY -- OR I GUESS IN MY ASSESSMENT OF THE
17 FACTS, THE INCIDENT OCCURRED BETWEEN MARY BATES
18 AND JAMES WISE, AND THERE WERE NO OTHER PARTIES
19 THERE, AND SO THERE WERE NO PARTICULAR PEOPLE
20 THAT I COULD DISCERN THE STATE WAS GOING TO USE
21 THAT MR. WISE CLAIMED WERE THERE AND OVERHEARD
22 THERE WAS TWO PEOPLE IN THE HOUSE, AND THAT WAS
23 IT, SO I DIDN'T FIND ANY EYEWITNESSES THAT I
24 THOUGHT TO BE USEFUL IN HIS DEFENSE. THERE WERE
25 PEOPLE WHO TALKED TO HIM THE DAY BEFORE AND THIS

1 SORT OF THING, BUT I DIDN'T FIND THAT VERY
2 RELEVANT TO THESE CHARGES.

3 Q. I WANTED TO ASK YOU ABOUT THE TESTIMONY
4 CONCERNING PRIOR OFFENSES. WHEN MR. WISE
5 TESTIFIED, YOU ASKED HIM ABOUT HIS PRIOR RECORD?

6 A. SURE I DID.

7 Q. AND WHY DID YOU DO THAT?

8 A. BEFORE THE TRIAL WE WENT OVER HIS RIGHTS TO
9 TRIAL, RIGHTS TO HOW THE JURY TRIAL SYSTEM IS
10 GOING TO WORK, HIS PRIOR RECORD, MS. BATES'
11 PRIOR RECORD, WHO WAS THE VICTIM. THEY'VE
12 BEEN INVOLVED IN SOMETHING TOGETHER, A SIMILAR
13 INCIDENT WHERE BOTH OF THEM SERVED SOME TIME, AND
14 YOU UNDERSTAND, MY ADVICE TO HIM WAS IF YOU WERE
15 CALLED TO TESTIFY AND YOU HAVE TO -- IF YOU'RE
16 GOING TO GO TO TRIAL, LIKELY YOU WOULD WANT TO
17 TESTIFY, AND THE STATE IS GOING TO TAKE YOUR
18 PRIOR RECORD AND ATTEMPT TO MAKE YOU LOOK BAD BY
19 IMPEACHING YOU WITH IT, AND HE UNDERSTOOD THAT.
20 I WROTE A LETTER TO THAT EFFECT TO HIM JUST PRIOR
21 TO TRIAL, AND I ALWAYS FIND IT TO BE MORE
22 EFFECTIVE OR AT LEAST IT SEEMS MORE PALATABLE IF
23 SOMEONE HAS A BAD RECORD FOR ME TO BRING IT OUT
24 AS DEFENSE COUNSEL, IN A TRIAL STRATEGY OF TRYING
25 TO APPEAR TO THE JURY WE HAD NOTHING TO HIDE.

EUGENE C. GRIFFITH, JR., ESQUIRE
DIRECT EXAMINATION BY MR. SPENCER

1 "YES, WE HAVE A PRIOR RECORD. IF WE'VE DONE
2 SOMETHING WRONG, WE PLEAD GUILTY TO IT, BUT IN
3 THIS CASE WE WANTED A TRIAL BECAUSE WE DON'T
4 BELIEVE WE'RE GUILTY OF IT." THAT'S KIND OF MY
5 ASSESSMENT OF WHAT I WAS ATTEMPTING TO CONVEY TO
6 THE JURY, KNOWING ALL THE TIME THAT MR. WISE
7 APPEARED TO THINK THAT HAD I NOT GONE INTO IT,
8 THE STATE WOULDN'T HAVE, BUT I HAD THE LETTERS
9 FROM THE STATE, FROM TWO DIFFERENT SOLICITORS,
10 THAT THEY WERE GOING TO USE IT SHOULD HE DECIDE
11 TO TESTIFY. THEY WOULD HAVE DROPPED THE FILE AND
12 SHOWN THAT THE RECORD WAS TEN FEET LONG. I MEAN,
13 I'VE SEEN THAT TRICK PLAYED BEFORE, AND I DIDN'T
14 WANT THEM TO HAVE THAT OPPORTUNITY TO DROP THE
15 PRIOR RECORD AND LET IT CASCADE ON THE FLOOR,
16 BECAUSE I'VE BEEN CAUGHT WITH THAT BEFORE AND
17 IT'S EMBARRASSING. IT DIDN'T HAPPEN THIS DAY.

18 Q. SO IN A SENSE YOU WERE BRINGING THAT OUT TO SORT
19 OF STEAL THE STATE'S THUNDER?

20 A. YES.

21 Q. DO YOU RECALL THE TESTIMONY BY MR. GALLMAN ABOUT
22 A PHONE CONVERSATION WITH MARY BATES?

23 A. SURE, THERE WAS ALLEGEDLY A CONVERSATION.

24 MS. BATES CALLED HER BOYFRIEND, I BELIEVE HIS
25 NICKNAME WAS SLOP, CALLED HIM ON THE PHONE WHEN

1 WISE CAME TO THE DOOR THE FIRST TIME, AND "COME
2 OVER HERE," OR "COME HELP ME," OR "I WANT YOU TO
3 KNOW," AS AN ALERT FOR HELP, AND IT WAS A VERY
4 SHORT CONVERSATION, IF I REMEMBER CORRECTLY.

5 Q. AND DID YOU OBJECT TO THAT TESTIMONY?

6 A. I'M NOT CERTAIN IF I DID OR NOT. I THINK I MAY
7 HAVE.

8 MR. SPENCER: I BEG THE COURT'S INDULGENCE.

9 THE COURT: IT'S IN THE RECORD. PAGE 64.

10 MR. SPENCER: THANK YOU, YOUR HONOR. YOUR
11 HONOR, I BELIEVE THE RECORD WILL SPEAK FOR ITSELF ON
12 THAT.

13 THE COURT: THE OBJECTION AT THE BOTTOM
14 OF PAGE 63, AND THE COURT ALLOWED IT UNDER THE RES
15 GESTAE RULE, AS THE COURT REFERRED TO AT PAGE 10 ON
16 LINE 64.

17 MR. SPENCER: I THINK THE RECORD SPEAKS
18 FOR ITSELF.

19 THE COURT: I'M SORRY, I GOT MY VERBIAGE
20 WRONG. PAGE 64, LINE 10 WAS THE COURT'S RULING. I'M
21 SORRY.

22 MR. SPENCER: THANK YOU, YOUR HONOR.

23 BY MR. SPENCER:

24 Q. I WANTED TO ASK YOU ABOUT THE POSSIBILITY OF
25 CHARGING THE LESSER INCLUDED OFFENSE OF CRIMINAL

1 TRESPASS. DID YOU CONSIDER REQUESTING A CHARGE
2 ON CRIMINAL TRESPASS AS A LESSER INCLUDED OFFENSE
3 TO BURGLARY?

4 A. ACTUALLY I DIDN'T. I DIDN'T WANT ANY OF THE
5 LESSER INCLUDED IN THERE, BECAUSE I FELT THAT
6 IF WE CAN BEAT THE BURGLARY FIRST, THEN THERE
7 WOULDN'T BE SOMETHING TO COME DOWN TO. LIKE AN
8 ALL-OR-NOTHING TYPE OF SITUATION. SO I DIDN'T
9 CONSIDER THAT.

10 Q. NOW, DID MR WISE HAVE THE OPPORTUNITY TO PLEAD
11 GUILTY TO BURGLARY SECOND?

12 A. YES, SIR, HE DID. I INFORMED HIM RIGHT PRIOR TO
13 THE TRIAL THAT THERE WAS A FIRM OFFER TO A PLEA
14 OF BURGLARY SECOND.

15 Q. WAS THAT OFFER STILL ON THE TABLE THE DAY OF THE
16 TRIAL?

17 A. OH, YES. IT SURE WAS, BECAUSE I WROTE A DETAILED
18 LETTER REGARDING THE OFFER ON THE TABLE, THE TIME
19 THAT THEY WOULD RECOMMEND TO THE JUDGE, THE DUTY
20 TO TELL THE TRUTH, BECAUSE MY PERCEPTION OF WHAT
21 I UNDERSTOOD THE FACTS AND TESTIMONY WOULD BE, I
22 WAS VERY CONCERNED THAT THE STORIES AND TESTIMONY
23 WOULD DIVERGE GREATLY AND THAT THE CASE WAS GOING
24 TO TURN INTO A BELIEVABILITY CONTEST, AND THAT
25 CONCERNED ME A GREAT DEAL, AND I INFORMED.

1 MR. WISE OF MY CONCERN FOR THAT AND THAT THAT
 2 WOULD BE BASICALLY THE ENTIRE CASE, IS THEY
 3 BELIEVE MARY BATES OR THEY BELIEVE HIM, AND THAT
 4 WAS A BIG RISK TO TAKE, BECAUSE THERE WAS NOTHING
 5 OTHER THAN HE SAID-SHE SAID.

6 Q. AND YOU ADVISED HIM -- DID YOU ADVISE HIM, TOO,
 7 AS TO WHETHER OR NOT HE SHOULD TAKE THE STAND?

8 A. OH, YES. IN THE SAME LETTER, THAT IF HE TOOK THE
 9 STAND, THAT HE COULD BE IMPEACHED WITH HIS PRIOR
 10 RECORD AND THE RISK THAT UNDERTOOK IS PEOPLE WILL
 11 THINK, "WELL, IF YOU'VE DONE IT ONCE, YOU'VE
 12 PROBABLY DONE IT A SECOND TIME AND YOU'D PROBABLY
 13 DO IT A THIRD TIME." THAT'S JUST HUMAN NATURE.
 14 I THINK THAT'S IN MY LETTER ALSO TO HIM.

15 Q. NOW, YOU'VE TOUCHED ON SOMETHING I WAS HOPING YOU
 16 COULD EXPAND ON A LITTLE BIT. I THINK IT MIGHT
 17 BENEFIT THE COURT IF YOU COULD EXPLAIN THE --
 18 SORT OF THE DIVERGING STORIES BETWEEN WHAT
 19 MR. WISE TESTIFIED TO AS OPPOSED TO WHAT THE
 20 STATE PRESENTED.

21 A. WELL, THERE WERE TWO DIFFERENT INSTANCES. THE
 22 BURGLARY WAS ONE, AND THE ESCAPE WAS THE OTHER.
 23 REGARDING THE BURGLARY, I RECOLLECT THE POLICE
 24 OFFICER TESTIFIED HE WENT TO MS. BATES' HOUSE ONE
 25 TIME AND TALKED TO MR. WISE, SAID, "YOU NEED TO

EUGENE C. GRIFFITH, JR., ESQUIRE
DIRECT EXAMINATION BY MR. SPENCER

1 LEAVE," AND HE LEFT. DIDN'T KNOW WHERE HE WENT.
2 SOME TIME PERIOD LATER THE OFFICER CAME BACK,
3 AFTER I BELIEVE MR. GALLMAN CALLED 911 AS A
4 RESULT OF MS. BATES' CALL TO HIM. THE DEPUTY
5 GOES BACK OUT THERE AND GETS INTO SOME SORT OF
6 ALTERCATION WITH WISE INSIDE MS. BATES' HOUSE,
7 AND MR. GALLMAN'S -- I MEAN MR. WISE'S STORY WAS
8 ALL THIS TOOK PLACE OUTSIDE THE HOUSE. SO WE HAD
9 TWO PEOPLE SAYING INSIDE AND ONE PERSON SAYING
10 THE OUTSIDE. MS. BATES SAYING, "HE BROKE IN AND
11 THREATENED ME," AND ALL THIS, AND MR. WISE
12 SAYING, "SHE LET ME IN AND WE TALKED FOR THREE
13 HOURS AND WATCHED T.V. AND HAD A RELATIONSHIP
14 FOR SOME PERIOD OF TIME." THEN WE GO INTO THE
15 ESCAPE: THE STORY, AS I UNDERSTAND MR. WISE, AS
16 HE EXPLAINED IT TO ME, WAS THAT ON THE WAY TO THE
17 JAIL IN BACK OF THE PATROL CAR, MR. WISE SAYS,
18 "DEPUTY, WILL YOU PLEASE CALL DETECTIVE SALAZAR,
19 THE DRUG AGENT. I'VE WORKED WITH HIM BEFORE,
20 AND HE'LL COME OUT HERE AT FOUR-THIRTY IN THE
21 MORNING, AND WE'LL SET UP A DRUG DEAL HERE IN
22 A FEW MINUTES, AND I WON'T HAVE TO GO TO JAIL,"
23 AND SO THEY STOPPED ON THE CORNER OF 34 BY-PASS
24 AND 395. WELL, DETECTIVE SALAZAR MAY OR MAY NOT
25 HAVE SHOWN UP, AND WISE RAN OFF BECAUSE SALAZAR

FORM FED 1-60-01-085

EUGENE C. GRIFFITH, JR., ESQUIRE
CROSS-EXAMINATION BY MR. BUFKIN

1 MR. BUFKIN: THANK YOU.

2 CROSS EXAMINATION BY MR. BUFKIN:

3 Q. MR. GRIFFITH, WE HAVE A DETAILED AND WELL
4 PREPARED REQUEST FOR POST-CONVICTION RELIEF
5 HERE.

6 A. YES, SIR. THE LONGEST ONE I'VE EVER SEEN.

7 Q. AND SO WHAT I'M GOING TO DO IS -- I HAVE TWO
8 AREAS THAT I'M GOING TO ADDRESS. ONE, I'M GOING
9 TO ADDRESS THE ISSUES THAT ARE DIRECTLY PRESENTED
10 IN THE POST-CONVICTION REVIEW, AND I WOULD LIKE
11 FOR YOU TO RESPOND TO THEM.

12 A. OKAY.

13 Q. AND THEN SECOND OF ALL, I HAVE SOME SPECIFIC
14 QUESTIONS THAT I'D LIKE YOU TO RESPOND TO. LET
15 ME GO THROUGH THE POST-CONVICTION RELIEF FIRST.

16 A. OKAY.

17 Q. OKAY. THE ISSUE WAS RAISED BY MY CO-COUNSEL
18 CONCERNING THE DOUBLE JEOPARDY ISSUE, OKAY? TELL
19 ME YOUR UNDERSTANDING OF THE DOUBLE JEOPARDY
20 ISSUE AND HOW YOU TRIED TO PRESENT THAT TO THE
21 COURT.

22 MR. SPENCER: YOUR HONOR. I OBJECT. I
23 BELIEVE THIS ISSUE HAS ALREADY BEEN DEALT WITH.

24 THE COURT: OVERRULED. COUNSEL MAY RESPOND
25 TO IT.

EUGENE C. GRIFFITH, JR., ESQUIRE
CROSS-EXAMINATION BY MR. BUFKIN

1 MR. BUFKIN: YOUR HONOR, I'M PUTTING THIS
2 IN FOR THE BENEFIT OF NOT THE FACTUAL OR LEGAL ISSUE
3 CONCERNING THE DOUBLE JEOPARDY BUT WHETHER OR NOT
4 MR. GRIFFITH ADEQUATELY PRESENTED IT AS COUNSEL.

5 THE COURT: YES, SIR.

6 BY THE WITNESS:

7 A. I HAD FORGOTTEN ABOUT THAT. I READ THROUGH THE
8 TRANSCRIPT AND I WAS -- I RECOLLECTED IN MY
9 ANALYSIS OF THE SITUATION, WHEN I FOUND OUT AFTER
10 BEING APPOINTED IN AUGUST THAT HE PLED TO SIMPLE
11 ASSAULT AND MALICIOUS INJURY TO REAL PROPERTY, I
12 WAS ASTOUNDED, AND SO I WENT BACK AND READ THE
13 INDICTMENT AND SAW AGGRAVATED ASSAULT IN THERE
14 ALONG WITH THE BURGLARY, AND I HEARD FROM
15 DIFFERENT ATTORNEYS, PARTICULARLY I CALLED MY
16 FATHER-IN-LAW, AND I SAID, "TELL ME ABOUT THIS."
17 HE AND I DISCUSSED IT, AND HE SAID, "I THINK
18 YOU'VE GOT THEM." I WAS VERY AGGRESSIVE IN MY
19 APPROACH TO THIS, AND I HAD THREE OR FOUR CASES.
20 I THINK I HAVE A FILE ON THAT DESK RIGHT THERE
21 THAT'S ENTITLED "DOUBLE JEOPARDY" WHEREIN I HAD
22 THREE OR FOUR CASES THAT I CARRIED WITH ME IN
23 FRONT OF JUDGE EPPES TO ARGUE THIS ISSUE, AND I
24 EXPLAINED TO WISE THAT WE COULDN'T ARGUE THAT
25 UNTIL WE GOT IN FRONT OF A JURY. IT WASN'T

1 SOMETHING YOU COULD -- I MEAN, WE COULD ARGUE
2 IT ALL WE WANTED, BUT IT WASN'T GOING TO BE
3 CONSIDERED UNTIL THEN, AND SO --

4 Q. YOU MEAN PRIOR TO THE TRIAL?

5 A. CORRECT. I BELIEVE -- I STILL BELIEVE THAT IT
6 WAS A GOOD ARGUMENT, AND I WAS DISAPPOINTED WHEN
7 THE COURT OF APPEALS DIDN'T AGREE WITH ME, BUT
8 THAT'S THE WAY IT WENT DOWN. BUT THE SIMPLE
9 ASSAULT I THOUGHT WOULD PREJUDICE AND TAKE AWAY
10 THE EARLIER INDICTMENT OF BURGLARY AND AGGRAVATED
11 ASSAULT, AND THERE WOULD BE NO WAY THEY COULD
12 COME BACK ON BURGLARY AGAIN, BUT THEY SEPARATED
13 IT, RE-INDICTED ON BURGLARY FIRST AND ESCAPE,
14 WHICH HAD NOTHING TO DO WITH THE ASSAULT, AND I
15 WOULD HAVE TAKEN SIX MONTHS ON THE ESCAPE, AND
16 I'M CERTAIN MR. WISE WOULD HAVE.

17 Q. DID YOU DISCUSS THE ISSUE OF THE PRELIMINARY
18 HEARING? WHY DIDN'T YOU ASK FOR A PRELIMINARY
19 HEARING?

20 A. IT WAS TOO LATE. HE HAD ALREADY BEEN INDICTED
21 WHEN I GOT HIM, SO YOU CAN'T -- I DON'T BELIEVE
22 YOU'RE ENTITLED TO A PRELIMINARY HEARING AFTER
23 INDICTMENT HAS TAKEN PLACE. THE RULE 5 WOULD
24 HAVE ALLOWED ME TO LOOK THROUGH THE DETECTIVE'S
25 FILES, THE PROSECUTOR'S FILES, FOR WHATEVER

1 INFORMATION I WANTED, SO I DIDN'T FIND THAT
2 TRYING TO PUSH FOR A PRELIMINARY HEARING WOULD BE
3 OF ANY BENEFIT. IT WOULD ACTUALLY HAVE BEEN A
4 WASTE OF TIME.

5 Q. SO THE PURPOSE OF A PRELIMINARY HEARING WOULD BE
6 FOR THE PURPOSE OF INVESTIGATING AND FINDING OUT
7 MORE ABOUT THE FACTS?

8 A. YES, BUT I DON'T -- IT'S MY UNDERSTANDING YOU'RE
9 NOT ENTITLED TO A PRELIMINARY HEARING AFTER A
10 PERSON HAS BEEN INDICTED. WHEN THE CASE WAS
11 APPOINTED TO ME, HE'D ALREADY BEEN INDICTED.

12 Q. AT THE TIME THAT YOU WENT TO TRIAL WITH MR. WISE,
13 DID YOU FEEL AS THOUGH YOU HAD ADEQUATELY
14 INVESTIGATED THE CRIME?

15 A. OH, YES. I KNEW WHAT WAS GOING ON.

16 Q. HAD YOU SPOKEN TO THE WITNESSES?

17 A. I HAD SPOKEN WITH MS. BATES. I HAD SPOKEN WITH
18 MR. GALLMAN. I HAD SPOKEN WITH THE POLICE
19 OFFICERS WHO WERE INVOLVED IN THE ARREST AND THE
20 ESCAPE INCIDENT. OUTSIDE OF THAT, THERE WERE TWO
21 OR THREE OTHER PEOPLE THAT I WROTE NAMES DOWN
22 THAT MR. WISE ASKED ME TO SPEAK TO, AND I TOLD
23 HIM I DID NOT BELIEVE THOSE PEOPLE COULD PROVIDE
24 ANYTHING THAT WOULD BE USEFUL REGARDING THE
25 INCIDENT THAT OCCURRED THAT NIGHT. THERE WAS

1 INFORMATION REGARDING PRIOR CONVERSATIONS AND
2 THIS KIND OF THING, BUT NOT REGARDING THIS
3 INCIDENT. THERE WAS, AS I REMEMBER, ONLY SOME
4 POTENTIAL KNOWLEDGE THAT MS. BATES AND MR. WISE
5 HAD SOME SORT OF RELATIONSHIP, KNOWLEDGE OF THAT.
6 Q. DURING THIS FIFTY-EIGHT-DAY PERIOD THAT YOU WERE
7 INVOLVED IN THIS CASE, DID YOU MEET WITH THE
8 DEFENDANT ON MORE THAN ONE OCCASION?

9 A. OH, YES. I COULDN'T TELL YOU HOW MANY TIMES WE
10 MET AT THE DETENTION CENTER.

11 Q. OKAY. DID YOU AND HE GO OVER THE FACTS?

12 A. I THINK I HAVE NOTES TO THAT EFFECT, YES. I
13 MEAN, HE EDUCATED ME TO THE FACTS.

14 Q. YES. OUR DEFENDANT HERE IS PARTICULARLY
15 ARTICULATE AND IS ABLE TO EXPRESS HIS FEELINGS
16 TO YOU. IS THERE ANY QUESTION THAT HE ADEQUATELY
17 PRESENTED TO YOU THE FACTS THAT HE WANTED YOU TO
18 INVESTIGATE?

19 A. WELL, I THINK HE DID, AND PLUS I WAS ABLE TO GET
20 OUT OF THE SHERIFF'S FILE A COPY OF THE PICTURE
21 OF THE CERAMIC PIG, WHICH HE WOULD KNOW WHAT THAT
22 WAS, AND I ADMIT MAYBE THE ONLY THING I MISSED
23 WAS NOT ARGUING THAT WAS NOT A DEADLY WEAPON, AND
24 I DIDN'T ARGUE THAT.

25 Q. WOULD YOU PLEASE ADDRESS ONCE AGAIN THE ISSUE OF

1 INVESTIGATOR SALAZAR AND WHY YOU DID NOT SUBPOENA
2 HIM. WOULDN'T HE HAVE BEEN A MATERIAL WITNESS?
3 A. WELL, UNDERSTANDING MR. WISE'S STORY THAT HE TOLD
4 ME THAT HE REQUESTED -- I BELIEVE IT WAS CLAY
5 BABB, WHO WAS THE DEPUTY DRIVING THE PATROL CAR
6 WHERE HE WAS IN HANDCUFFS IN THE BACK SEAT. ON
7 THE WAY TO THE JAIL -- THEY CAME FROM PROSPERITY
8 AND CAME TO NEWBERRY ON 34 -- SOMEWHERE ALONG ON
9 THE 34 BY-PASS, THE CONVERSATION BETWEEN BABB AND
10 WISE WAS, "WILL YOU PLEASE CALL SALAZAR. I WANT
11 TO TALK TO HIM ABOUT DOING A DRUG DEAL FOR HIM.
12 I'VE DONE THEM IN THE PAST," OR MAYBE "I'D LIKE
13 TO START DOING THEM NOW." AND SO I TALKED WITH
14 SALAZAR PRIOR TO THE TRIAL, AND HE SAID HE WAS
15 NEVER CONTACTED. NOW, SALAZAR DROVE SOME KIND OF
16 S.U.V. -- I DON'T KNOW IF IT WAS A FORD BRONCO OR
17 A BLAZER OR SOMETHING OR OTHER, BUT ALLEGEDLY
18 WHEN BABB STOPS AT THE STOP SIGN AT 395, WHICH IS
19 NANCE STREET, TO TURN RIGHT TO GO TO THE JAIL IS
20 WHEN -- THERE'S AN S.U.V. OUT THERE THAT'S NOT
21 SALAZAR'S AND SALAZAR IS NOT THERE, AND JAMES IS
22 SCARED AND SO HE RUNS. I DON'T KNOW HOW HE GOT
23 OUT OF THE CAR, BUT SOMEHOW HE DID, AND SO
24 SALAZAR TOLD ME THAT HE WASN'T CALLED BY BABB.
25 I DIDN'T THINK THAT WOULD BE BENEFICIAL TO BRING

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HIM INTO COURT.

Q. SHOULDND'T YOU HAVE ASKED FOR A CONTINUANCE AT THAT TRIAL UNTIL INVESTIGATOR SALAZAR WOULD HAVE BEEN AVAILABLE?

A. MAYBE SO, BUT MY THINKING WAS IF SALAZAR TOLD ME WHEN I ASKED, "WHAT ARE YOU GOING TO SAY IF I ASK YOU THIS QUESTION, 'WERE YOU CALLED TO COME THERE THAT NIGHT,'" "ABSOLUTELY NOT, I WAS NOT," I DIDN'T WANT HIM TO COME SAY THAT, BECAUSE IT APPEARS TO ME THAT CONTRADICTS WHAT MR. WISE IS SAYING GREATLY, AND I PROBABLY WOULD RATHER NOT HAVE HIM THERE. THAT WAS MY TAKE ON WHETHER TO CALL HIM OR NOT.

Q. OKAY. SO YOU PURPOSELY DID NOT CALL INVESTIGATOR SALAZAR, IS THAT CORRECT?

A. YES, AND THAT WAS MY DECISION. JAMES DISAGREED WITH IT, AND THAT WAS WHY I CALLED DETECTIVE JOHNSON, BECAUSE I WAS GOING TO DEFER TO HIM, AND THEN THAT'S WHEN I FOUND OUT THAT SALAZAR WAS UNAVAILABLE, AND DETECTIVE JOHNSON TOLD ME ABOUT HIM BEING ON AN INVESTIGATION SOMEWHERE OUTSIDE OF OUR JURISDICTION. THAT'S WHY IT CAME UP.

Q. OKAY. LET ME DIRECT YOUR ATTENTION NOW TO ANOTHER MATERIAL ISSUE THAT WE ALLEGE THAT YOU DIDN'T ADEQUATELY HANDLE, AND THAT'S THE ISSUE OF

1 THE CERAMIC FIG.

2 A. OKAY.

3 Q. OKAY. DURING THE TRIAL THERE WAS TESTIMONY THAT
4 THERE WAS A THREAT MADE AND THAT THIS CERAMIC FIG
5 WAS THE ITEM BY WHICH SIGNIFICANT DAMAGE WAS
6 GOING TO BE INCURRED. IT WAS USED AS A WEAPON.
7 IS THAT CORRECT?

8 A. I RECOLLECT MS. BATES TESTIFIED THAT HE PICKED IT
9 UP AND THREATENED HER WITH IT, BUT WHETHER IT WAS
10 USED TO HIT HER OR NOT; I DON'T BELIEVE THAT CAME
11 OUT. IT WAS A THREAT OF THIS TYPE, THAT "I'M
12 GOING TO HIT YOU IF YOU DON'T DO WHAT I SAY," OR
13 SOMETHING ALONG THOSE LINES, BUT I DON'T BELIEVE
14 SHE EVER TESTIFIED HE HIT HER WITH THE CERAMIC
15 FIG.

16 Q. WOULDN'T IT HAVE BEEN MATERIAL FOR YOU TO HAVE
17 SEEN, LOOKED AT, INVESTIGATED, HAD FORENSIC
18 INVESTIGATION DONE WITH REGARD TO THAT FIG?

19 A. I DON'T KNOW I CAN HONESTLY ANSWER THAT. IT WAS
20 MY UNDERSTANDING FROM TALKING WITH THE DETECTIVE
21 IN CHARGE OF THE INVESTIGATION THAT HE DIDN'T
22 TAKE POSSESSION OF IT. DURING HIS INVESTIGATION
23 HE HAD TAKEN A PICTURE OF -- HE'D TAKEN A PICTURE
24 OF IT IN THE HOUSE, WHERE IT WAS ON THE TABLE OR
25 THE FLOOR OR SOMETHING OF THAT SORT, AND I DON'T

1 KNOW, MAYBE IT DIDN'T OCCUR TO ME THAT IT MIGHT
2 HAVE FINGERPRINTS OR MAY NOT. I JUST DIDN'T
3 THINK IT WAS -- I DIDN'T FOLLOW THAT LINE OF --
4 AGAIN, IT WAS BELIEVABILITY, HER WORD VERSUS HIS
5 WORD, AND I DIDN'T THINK THAT WAS AS IMPORTANT
6 AS -- I DON'T BELIEVE THE STATE MADE A BIG DEAL
7 OF IT EITHER, BUT --

8 Q. SAY THAT AGAIN?

9 A. I DON'T BELIEVE THE STATE MADE A BIG DEAL OF IT.
10 THERE WAS MORE GOING ON THAN JUST THE PIG. THERE
11 WAS A FIGHT AND THE KICKING OF THE DOOR AND THE
12 BREAKING OF THE GLASS, AND THE CERAMIC PIG WAS
13 JUST --

14 Q. BUT THERE WAS TESTIMONY CONCERNING THE PIG BEING
15 USED IN A THREAT?

16 A. YES.

17 Q. AND YOU DID NOT FOLLOW THAT UP AND HAVE THAT
18 FINGERPRINTED OR CALL ANY WITNESSES FOR A CHAIN,
19 OF CUSTODY OR ANYTHING LIKE?

20 A. I GUESS I KIND OF FIGURED THAT SINCE IT HAD BEEN
21 MORE THAN A YEAR SINCE IT HAD HAPPENED, IT WOULD
22 LIKELY HAVE NOTHING ON IT. I MEAN, IT HAD BEEN
23 IN MS. BATES' POSSESSION FOR FOURTEEN MONTHS
24 PRIOR TO ME BEING APPOINTED. IT WASN'T SECURED
25 AT THE SCENE BY THE DEPUTIES, SO NO, I DIDN'T.

1 Q. DO YOU THINK THAT FAILURE TO SECURE THAT AT THE
2 SCENE WAS MATERIAL TO YOUR CASE?
3 A. NO, I DON'T.
4 Q. AT THE TRIAL -- YOU ADDRESSED THIS ISSUE IN
5 PASSING BEFORE, BUT AT THE TRIAL YOU RAISED THE
6 ISSUE OF PRIOR CONVICTIONS BY THE DEFENDANT?
7 A. YES, I DID.
8 Q. OKAY. DOESN'T THAT HAVE THE EFFECT OF PUTTING
9 THE JURY ON NOTICE OF PRIOR MISCONDUCT AND
10 THEREFORE PREJUDICING THE ACCUSED?
11 A. IT CAN, BUT I THINK THAT IT DOES -- IT'S THE
12 ATTEMPT TO CONVEY TO THE JURY THAT "MY CLIENT
13 WISHES TO TELL YOU EVERYTHING HE'S DONE BAD AND
14 HE'LL PLEAD GUILTY AND HE'S DONE HIS PUNISHMENT,
15 BUT HE STANDS HERE IN TRIAL AND WANTS A FAIR
16 TRIAL. HE'LL OWN UP TO WHAT HE'S DONE, AND HE
17 DIDN'T DO THIS. LISTEN TO HIM." IF THE STATE
18 GETS A SHOT AT IT WITHOUT ME PREVIEWING IT WITH
19 THEM, IT APPEARS AS THOUGH MAYBE MY CLIENT HAS
20 SOMETHING TO HIDE. "WELL, WHY DIDN'T HE TELL US
21 THAT, IS IT SOMETHING HE WAS ASHAMED OF." I LIKE
22 TO RUN IT OUT FRONT AS AN ATTEMPT TO DEFUSE THE
23 STATE'S "LOOK AT WHAT YOU'VE DONE IN THE PAST,
24 WOULDN'T YOU DO IT AGAIN." SO I LIKE TO KIND OF
25 POOH-POOH IT, SO TO SPEAK, WITH A PREVIEW ON OUR

1 SIDE OF THE TABLE. SO THAT WAS AN INTENTIONAL
2 TRIAL STRATEGY ON MY PART.

3 Q. SO IS IT MY UNDERSTANDING THAT YOU PURPOSELY AND
4 INTENTIONALLY PUT THAT INFORMATION IN FRONT OF
5 THE JURY?

6 A. ABSOLUTELY. I MEAN, THE STATE WAS GOING TO USE
7 IT. NO QUESTION IN MY MIND THEY WERE GOING TO
8 STICK IT TO HIM WITH IT. SO I TRIED TO TAKE IT
9 AWAY FROM THEM AND DEFUSE IT.

10 Q. WHAT ABOUT THE ISSUE ABOUT THE STATUTORY CRIMINAL
11 TRESPASS AS A LESSER INCLUDED OFFENSE? WHY
12 DIDN'T YOU REQUEST AN INSTRUCTION ON THAT?

13 A. I DON'T KNOW. I DID NOT, AND I DON'T REMEMBER
14 CONSIDERING IT.

15 Q. OKAY. WOULDN'T THAT HAVE BEEN RELEVANT AS A
16 LESSER INCLUDED OFFENSE, HAVING LESS IMPACT AND
17 MIGHT NOT CALL INTO EFFECT THE LIFE SENTENCE?

18 A. IN RETROSPECT, POSSIBLY, YES, BUT I DIDN'T
19 CONSIDER THAT AS A POTENTIAL -- I CONSIDERED
20 THE BURGLARIES, OTHER DEGREES OF BURGLARY, TO BE
21 LESSER INCLUDED, AND I DIDN'T WANT BURGLARY
22 BEFORE THE JURY EITHER. I WANTED AN ALL OR
23 NOTHING, AND I KIND OF THOUGHT THE MOST SEVERE
24 WOULD BE THE BEST ONE TO LET THEM MESS WITH.

25 Q. WHY DID YOU WANT AN ALL-OR-NOTHING PRESENTATION

1 TO THE JURY?

2 A. BECAUSE IF HIS STORY IS BELIEVED AND HE WAS LET
3 IN THE HOUSE WITH PERMISSION, NONE OF THE OTHER
4 SHOULD HAVE -- I DIDN'T WANT THEM TO HAVE
5 SOMETHING TO FALL BACK AND GET HIM ON. I THOUGHT
6 WE WERE GOING TO BEAT IT. I THOUGHT THAT DESPITE
7 THE DIVERGING TESTIMONY, HE MADE A PRETTY GOOD
8 WITNESS.

9 Q. I WANT TO ASK YOU SOME QUESTIONS IN PARTICULAR
10 WITH REGARDS TO THIS, AND I'D LIKE YOU TO ANSWER
11 THEM AS BEST YOU CAN.

12 A. OKAY.

13 Q. OKAY. ONCE AGAIN, I HAVE MENTIONED THIS BEFORE,
14 BUT YOUR PRIOR CLIENT AND MY CURRENT CLIENT,
15 WHO'S AN ARTICULATE GENTLEMAN WHO HAS THOUGHT
16 AND HAS HAD A LOT OF TIME TO THINK THIS OUT, HE
17 BELIEVES THAT YOU INADEQUATELY REPRESENTED HIM,
18 AND THESE ARE QUESTIONS IN PARTICULAR THAT HE'S
19 ASKED THAT I ASK YOU.

20 A. SURE.

21 Q. NOW, DID YOU PREPARE AN ADEQUATE INVESTIGATION
22 OF THE CASE PRIOR TO THE TIME THAT YOU WENT TO
23 TRIAL?

24 A. IN MY OPINION, YES. IN HIS OPINION -- I HEARD
25 HIS TESTIMONY -- HE BELIEVES NOT.

1 Q. OKAY. DID YOU ASK FOR A PRELIMINARY HEARING
2 PRIOR TO THE TRIAL?

3 A. NO, I DID NOT.

4 MR. BUFKIN: YOUR HONOR, RATHER THAN
5 ASKING HIM TO ELABORATE WHERE HE'S ALREADY ANSWERED A
6 QUESTION LIKE THAT, I'M GOING TO JUST LET IT GO WITH
7 HIS ANSWER OF YES OR NO.

8 THE COURT: THE RECORD WILL REVEAL. THANK
9 YOU.

10 BY MR. BUFKIN:

11 Q. DID YOU RECEIVE ANY INVESTIGATORY REPORTS OR THE
12 INFORMATION IN THE SHERIFF'S FILE PRIOR TO GOING
13 TO TRIAL?

14 A. ABSOLUTELY. WHEN I WENT TO TALK WITH DETECTIVE
15 JOHNSON, IT'S CUSTOMARY WITH MY RELATIONSHIP WITH
16 THE SHERIFF'S OFFICE AND DOING AS MUCH CRIMINAL
17 WORK AS I DO, THEY HAND ME THEIR FILE, AND I CAN
18 GO THROUGH IT AT MY PLEASURE IN THEIR OFFICE, AND
19 I DO SO.

20 Q. IS THAT THE REASON THAT YOU DIDN'T REQUEST A
21 RULE 5?

22 A. WELL, MR. PYATT ALREADY HAD, AND SO I RECEIVED
23 THE BENEFIT OF HIS. SO THERE WAS NO REASON FOR
24 ME TO DUPLICATE THAT.

25 Q. WAS THE INFORMATION FROM THAT RULE 5 IN THE

EUGENE C. GRIFFITH, JR., ESQUIRE
CROSS-EXAMINATION BY MR. BUFKIN

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PACKET THAT WAS PRESENTED TO YOU?

A. I DON'T REMEMBER IF I GOT A COPY OF PYATT'S OR HEIZER'S FILE. I BELIEVE I GOT A COPY OF HARRY HEIZER'S FILE AND WE STARTED FROM THERE, BUT BASICALLY, WHEN I WENT AND ASKED THE SHERIFF'S OFFICE, AS MR. WISE SAID, I GOT AN ADDITIONAL PEEK AT ADDITIONAL DOCUMENTS THAT THEY, FOR WHATEVER REASON, HAD NOT SEEN.

Q. DID YOU SUBPOENA ANY DISPATCH RECORDS FROM THE SHERIFF'S OFFICE CONCERNING WHETHER OR NOT INVESTIGATOR SALAZAR HAD BEEN CALLED THAT NIGHT?

A. NO.

Q. WHY DIDN'T YOU?

A. I TALKED TO HIM, AND HE TOLD ME HE WASN'T CALLED.

Q. DID YOU TALK TO MR. TODD JOHNSON? I BELIEVE HE'S CAPTAIN JOHNSON, WHO WAS THE INVESTIGATING OFFICER AT THAT TIME?

A. SURE. I TALKED TO HIM SEVERAL TIMES ABOUT THIS CASE. I THINK HE WAS THE LEAD INVESTIGATOR ON THIS CASE.

Q. WHAT ABOUT THE DIVERGENT TESTIMONY THAT THE ACCUSED GAVE COMPARED WITH THOSE OTHER WITNESSES? HOW DID YOU MAKE THOSE TWO COMPATIBLE?

A. THAT WAS DIFFICULT. IT WAS A HE SAID-SHE SAID CASE ALL THE WAY DOWN THE LINE, AND THAT'S HOW I

EUGENE C. GRIFFITH, JR., ESQUIRE
CROSS-EXAMINATION BY MR. BUFKIN

1 TRIED TO PORTRAY IT, IS SHE WAS TRYING TO HIDE
2 THEIR RELATIONSHIP AND SO SHE HAD TO SAY WHAT
3 SHE SAID, WHEREAS HE SAID WHAT HE SAID. THAT'S
4 HOW I TRIED TO PORTRAY IT, IS SHE DIDN'T WANT
5 THE BOYFRIEND TO FIND OUT ABOUT THE ONGOING
6 RELATIONSHIP AND SO SHE HAD TO DENY THE
7 RELATIONSHIP AND EVERYTHING THAT HAPPENED, AND I
8 THOUGHT WE DID THAT, BUT THE JURY DIDN'T BUY IT.

9 Q. WHAT ABOUT EVIDENCE THAT WAS OR SHOULD HAVE BEEN
10 COLLECTED FROM THE CRIME SCENE? WAS THERE ANY
11 KIND OF FORENSIC WORKUP THAT WAS DONE AT THE
12 CRIME SCENE CONCERNING THE BROKEN GLASS OR THE
13 BROKEN WINDOW OR BLOOD ON THE SCENE OR ANYTHING?

14 A. I DON'T BELIEVE THEY COLLECTED MUCH EVIDENCE OF
15 ANY TYPE. I KNOW THEY DIDN'T PICK ANY GLASS UP.
16 THEY MAY HAVE TAKEN A PICTURE OF THE GLASS OR THE
17 WINDOW OR THE STORM DOOR OR THAT TYPE OF THING,
18 BUT I DON'T REMEMBER. I REMEMBER VERY LITTLE
19 INVESTIGATION DONE AT THE SCENE REGARDING THAT
20 INCIDENT.

21 Q. WAS THERE ANY MEDICAL EVIDENCE IN THE FILE THAT
22 WOULD INDICATE THAT THE DEFENDANT HAD CUT HIS
23 HAND IN BREAKING THE GLASS, AS WAS ALLEGED?

24 A. I'M THINKING THAT BILL GRIFFIN TESTIFIED IT WAS
25 BLOOD ON HIS AND WISE'S AS WELL AS BATES' AND

1 KNOTS ON HER HEAD. THERE WAS TESTIMONY IN THAT
2 REGARD, BUT WHETHER HE RECEIVED MEDICAL
3 TREATMENT, I DON'T REMEMBER. MS. BATES, I DO
4 REMEMBER A BILL AND A TREATMENT RECORD FROM THE
5 CLINIC.

6 Q. LET ME CHANGE ONCE AGAIN AND GO BACK AND ADDRESS
7 THE CERAMIC PIG. IN RETROSPECT THAT SEEMS TO
8 HAVE BEEN A PRETTY IMPORTANT PIECE OF EVIDENCE.
9 WHY DIDN'T YOU FOLLOW AFTER THAT AND TRY AND HAVE
10 SOME FORENSIC WORK, FINGERPRINTS DONE ON IT? IF
11 THAT IS A KEY PIECE OF EVIDENCE WHERE THEIR
12 TESTIMONY WAS DIVERGENT?

13 A. WELL, UNDERSTANDING SHE HADN'T BEEN STRUCK WITH
14 IT AND THAT SHE'D HAD IT FOR FOURTEEN MONTHS, I
15 DIDN'T THINK IT WAS A KEY PIECE OF EVIDENCE, I
16 GUESS. IN RETROSPECT MAYBE IT WAS, BUT THERE WAS
17 MORE TESTIMONY REGARDING SOME SORT OF ALTERCATION
18 THAT DIDN'T INVOLVE THE PIG, AND SO IT WASN'T THE
19 KEY THEORETIC OBJECT THAT WAS USED TO THREATEN, I
20 GUESS.

21 Q. BY THE TIME YOU FOUND OUT ABOUT THE CERAMIC PIG,
22 HOW MUCH TIME HAD ELAPSED FROM THE TIME OF THE
23 INCIDENT UNTIL YOU FOUND OUT?

24 A. TWELVE OR THIRTEEN MONTHS.

25 Q. AND THAT PIG HAD BEEN IN WHOSE POSSESSION?

1 A. MS. BATES, I BELIEVE. SHE HAD IT, AND THE
2 SHERIFF'S OFFICE HAD A PICTURE OF IT.

3 Q. WAS THERE ANY PICTURES THAT WERE TAKEN AT THE
4 TIME BY WAY OF INVESTIGATION OF THE CRIME SCENE,
5 AND DID YOU HAVE ACCESS TO THEM?

6 A. OH, YES. I MEAN, THE PICTURES I THINK OF THE
7 BROKEN GLASS AND THE PIG ARE THE ONES THAT I SAW.

8 Q. OKAY. THE PICTURES AT THE SCENE SHOWED THE
9 BROKEN GLASS?

10 A. UH-HUH. WE DISCUSSED IN TESTIMONY WHETHER THE
11 GLASS WAS BROKEN INWARD OR OUTWARD AND HOW DID
12 THAT HAPPEN.

13 Q. OKAY. ONE OF THE OTHER ALLEGATIONS THAT TOOK
14 PLACE HERE WAS THAT THE ACCUSED ESCAPED. DID YOU
15 HAVE ANY DISCUSSION WITH THE OFFICER DRIVING HIM
16 AS TO HOW THAT TOOK PLACE? I BELIEVE THAT'S
17 OFFICER WILLIAM GRIFFIN.

18 A. NO, I BELIEVE THE OFFICER HE ESCAPED FROM IS CLAY
19 BABB. WILLIAM GRIFFIN WAS THE ARRESTING OFFICER,
20 AND HE WAS TAKEN TO THE JAIL BY CLAY BABB. I
21 DON'T BELIEVE I TALKED WITH CLAY, BECAUSE AT THE
22 TIME HE WASN'T EMPLOYED WITH THE SHERIFF'S OFFICE
23 AND HE NOW -- HE HAD BEEN A DEPUTY, BUT I BELIEVE
24 MY NOTES SAID I TRIED TO CALL HIM SEVERAL TIMES
25 AND NEVER GOT HIM PRIOR TO TRIAL. BUT IT WAS

1 BASICALLY THE SUMMARY IN THE FILE THAT SOMEHOW
2 WISE GOT OUT OF THE CAR AT THE INTERCHANGE OF 121
3 AND 395 AND RAN.

4 Q. AT THE TIME THAT THE INCIDENT TOOK PLACE, WHEN
5 OFFICER WILLIAM GRIFFIN WAS THE INVESTIGATING
6 OFFICER, DID HE SEARCH THE AREA FOR ANY OTHER
7 PEOPLE OR WITNESSES WHO MIGHT HAVE BEEN THERE AT
8 THE TIME THAT COULD HAVE BOLSTERED THE ACCUSED'S
9 TESTIMONY?

10 A. I DON'T BELIEVE -- I BELIEVE HE WAS CALLED OUT
11 THERE TWICE, ONCE EARLY IN THE EVENING, SOME TIME
12 PERIOD BEFORE THE ARREST, AND HE CAME BACK, WHICH
13 WAS ON THE SECOND CALL, AND HIS TESTIMONY WAS
14 THAT HE HADN'T GONE VERY FAR UP THE ROAD AND CAME
15 RIGHT BACK OUT THERE INSIDE OF TEN MINUTES OR SO,
16 AND THAT CONTRADICTED THE SEVERAL HOURS OF
17 INVOLVEMENT THAT MR. WISE CLAIMED OCCURRED
18 BETWEEN HE AND MS. BATES, AND SO HE CAME IN
19 KNOWING THERE WAS A FIGHT GOING ON IN THE HOUSE,
20 SECURED AND THEN HAD A FIGHT WITH WISE AND PUT
21 HIM IN HANDCUFFS, BACK-UP CAME IN, PUT HIM IN THE
22 CAR, AND OFF HE WENT. SO NO, I GUESS NOT. I
23 DON'T BELIEVE GRIFFIN SOUGHT OUT OTHER PEOPLE.
24 IT DIDN'T APPEAR THERE WAS ANYBODY ELSE THERE.

25 Q. MR. WISE, DURING THE PRELIMINARY TIME BEFORE THE

EUGENE C. GRIFFITH, JR., ESQUIRE
CROSS-EXAMINATION BY MR. BUFKIN

1 TRIAL, GAVE YOU THE NAMES OF SEVERAL WITNESSES
 2 THAT HE WANTED YOU TO INTERVIEW. DID YOU
 3 INTERVIEW ANY OF THOSE WITNESSES?
 4 A. I CALLED TWO OF THEM. THERE WERE FOUR OR FIVE
 5 PEOPLE. AS I SAID BEFORE, I BELIEVE THOSE PEOPLE
 6 HAD OR WOULD PROVIDE TESTIMONY THAT THERE MAY
 7 HAVE BEEN A RELATIONSHIP BETWEEN BATES AND WISE.
 8 NONE OF THEM HAD ANY KNOWLEDGE OF THE INCIDENT
 9 THAT OCCURRED THAT NIGHT, BECAUSE NOBODY WAS WITH
 10 HIM. HE DROVE IN A VAN BY HIMSELF TO THE BATES'
 11 HOUSE, AND SHE WAS THERE BY HERSELF, AND SO THERE
 12 WERE NO EYEWITNESSES, ACCORDING TO ANYBODY'S
 13 STORY.

14 Q. WOULDN'T THOSE WITNESSES HAVE GONE TO THE
 15 CREDIBILITY OF MS. BATES, WHOSE STORY WAS
 16 DIVERGENT FROM THE DEFENDANT?

17 A. MAYBE. THEY HAD PRIOR RECORDS, TOO, AND THAT
 18 KIND OF BOTHERED ME.

19 MR. BUFKIN: YOUR HONOR, IF I COULD HAVE A
 20 MOMENT, YOUR HONOR, TO CONSULT WITH MY CLIENT.

21 THE COURT: YES, SIR. TAKE YOUR TIME.

22 (PAUSE.)

23 BY MR. BUFKIN:

24 Q. WERE THERE ANY PICTURES TAKEN, AND WERE THEY PART
 25 OF THE POLICE REPORT THAT WAS GIVEN TO YOU?

REPRODUCED BY PERIODICALS DEPARTMENT

1 PICTURES OF THE SCENE OF THE ALLEGED BREAK-IN
2 BURGLARY?

3 A. I THINK SO.

4 Q. WERE THOSE PICTURES TAKEN CONTEMPORANEOUSLY WITH
5 THE INCIDENT, OR WERE THEY TAKEN SUBSEQUENT TO
6 THAT?

7 A. I'M NOT SURE. I'M THINKING IT WAS SEVERAL DAYS
8 OR A WEEK OR SO. IT WASN'T DONE THAT NIGHT. I
9 DON'T BELIEVE THERE WERE PICTURES TAKEN THAT
10 NIGHT.

11 Q. OKAY. DID THOSE PICTURES SHOW THE BROKEN GLASS,
12 OR DID THEY SHOW JUST THE SCENE?

13 A. I THINK THEY SHOWED THE SCENE. I THINK THE GLASS
14 HAD BEEN CLEANED UP, AND SO WE ONLY HAD THE WORD
15 OF HOW THE GLASS WAS BROKEN. I REMEMBER THAT
16 BEING AN ISSUE WE DISCUSSED, WAS THE GLASS BROKEN
17 INWARD OR OUTWARD OR HOW DID IT HAPPEN, AND I
18 DON'T BELIEVE THERE WAS ANY PICTURES TAKEN THAT
19 NIGHT OF THAT SCENE.

20 Q. MS. WISE SAYS THAT THERE NEVER WAS ANY BROKEN
21 GLASS. OKAY. ARE PICTURES OF THE SCENE OR THE
22 FAILURE TO INVESTIGATE RELEVANT TO THIS CRIME,
23 AND SHOULD YOU HAVE INVESTIGATED FURTHER?

24 A. WELL, I WENT INTO WITH THE SHERIFF'S DEPUTY,
25 I BELIEVE, AS TO WHY HE DIDN'T TAKE THEM

1 THAT NIGHT, BUT I DON'T KNOW WHAT GOOD AN
2 INVESTIGATION ON MY PART WOULD HAVE DONE. I
3 COULDN'T CREATE EVIDENCE. I MEAN, ONCE THE
4 SCENE WAS CLEANED UP, THERE'S LITTLE TO FIND.

5 Q. OKAY. AND SO ALTHOUGH MR. WISE WAS INDICATING
6 THAT THERE WAS NO BROKEN -- THAT HE KNEW OF NO
7 BROKEN GLASS, THERE WAS OTHER EVIDENCE TO THE
8 CONTRARY?

9 A. THERE WAS TESTIMONY FROM GRIFFIN AND FROM BATES
10 THAT THERE WAS BROKEN GLASS, BUT ACTUALLY I DON'T
11 BELIEVE THERE WERE PICTURES TAKEN THAT NIGHT OF
12 THE BROKEN GLASS AND THAT SORT OF THING. BUT
13 THIRTEEN MONTHS AFTER THE INCIDENT THERE WAS NO
14 POINT IN ME GOING OUT AND LOOKING AT THE HOUSE TO
15 SEE THE BROKEN GLASS. IT HAD BEEN CLEANED UP
16 MONTHS BEFORE.

17 Q. I HAVE A COPY OF THE INTERDISCIPLINARY CASE
18 SUMMARY HERE, AND IN THIS CASE SUMMARY IT
19 MENTIONS A MS. EARLENE CANNON AND MR. BILLY
20 WILLIAMS AS POTENTIAL WITNESSES TO THIS INCIDENT.
21 DID YOU EVER CONTACT THOSE WITNESSES?

22 A. MS. CANNON MUST BE MS. BATES' MOTHER, AND SHE
23 LIVED UP THE ROAD, AND I DIDN'T BELIEVE SHE KNEW
24 ANYTHING ABOUT WHAT HAPPENED THAT NIGHT. SHE
25 LIVED NEARBY, AND SO SHE NEVER --

1 Q. OKAY. AND HOW ABOUT BILLY WILLIAMS?

2 A. I DON'T KNOW WHO HE IS.

3 Q. OKAY. AND YOU DID NOT CONTACT MR. WILLIAMS?

4 A. NO. I'M CERTAIN ABOUT HIM, THAT I NEVER HEARD OF
5 HIM.

6 MR. BUFKIN: THANK YOU, YOUR HONOR.

7 THE COURT: THANK YOU, SIR. ANYTHING
8 FURTHER?

9 MR. BUFKIN: I HAVE NO FURTHER QUESTIONS OF
10 THIS WITNESS, YOUR HONOR.

11 THE COURT: THANK YOU, MR. BUFKIN.

12 ANYTHING FURTHER, MR. SPENCER?

13 MR. SPENCER: JUST BRIEFLY, YOUR HONOR.

14 REDIRECT EXAMINATION BY MR. SPENCER:

15 Q. DO YOU RECALL HOW BIG THE PIG WAS?

16 A. ABOUT AS BIG AS MY FIST.

17 Q. ABOUT AS BIG AS A FIST?

18 A. YES.

19 Q. IT WAS A HARD CERAMIC PIG?

20 A. AS WELL AS I REMEMBER IT, IT WAS MAYBE A LITTLE
21 BIGGER THAN MY FIRST. YOU COULD HOLD IT IN ONE
22 HAND.

23 MR. SPENCER: NO FURTHER QUESTIONS, YOUR
24 HONOR.

25 THE COURT: THANK YOU, VERY MUCH. COME

1 BATTERY IN THE MAGISTRATE'S COURT IN A MATTER ARISING
2 OUT OF THIS CASE. THE COURT HAS READ THE RECORD, AND
3 IT IS CLEAR THAT THERE WERE TWO INSTANCES, NOT ONE,
4 BUT TWO INSTANCES OF PHYSICAL CONTACT, ONE COULD SAY
5 ATTACK, OF MS. BATES BY THIS DEFENDANT, IF MS. BATES
6 IS BELIEVED, AND HE ADMITS THAT THERE WERE TWO
7 DIFFERENT INSTANCES WHERE THEY WERE SLAPPING EACH
8 OTHER, IS WHAT HE SAID. NOW, THAT COULD BE TWO
9 INSTANCES OF ASSAULT AND BATTERY.

10 BUT NOTWITHSTANDING THAT, WE HAVE A
11 CIRCUMSTANCE THAT NOT ONLY THE ASSAULT AND BATTERY,
12 BUT WE HAVE THE SUBSECTION (A) (1) (C), "USES OR
13 THREATENS TO USE A DANGEROUS INSTRUMENT." THIS IS
14 WHERE MR. BUFKIN HAS THOROUGHLY EXPLORED THE CERAMIC
15 FIG. NOW, EVEN IF (A) (1) (B) "CAUSES PHYSICAL INJURY"
16 WERE NOT A GROUND FOR THE ASSAULT AND BATTERY CHARGE
17 IN THE LOWER COURT, THEN (A) (1) (C) COULD BE. AND THE
18 RECORD WILL SHOW THAT IF NEITHER OF THOSE APPLY, THEN
19 (A) (3) WOULD APPLY TO THE BURGLARY IN THE FIRST
20 DEGREE, "WHEN THE ENTERING OR REMAINING OCCURS IN THE
21 NIGHTTIME." THAT WOULD COMPLETELY DISREGARD ANY
22 ASSAULT AND BATTERY WHATSOEVER AND NEGATE AND
23 COMPLETELY OVERWHELM ANY CLAIM OF DOUBLE JEOPARDY,
24 IT IS DULY SUGGESTED TO YOU, IF ANY WERE TO EXIST.
25 IT IS CERTAINLY NOT WITHOUT SERIOUS QUESTION AS TO

1 WHETHER IT DID IN FACT EXIST, BECAUSE OF THE REASONS
2 JUST EXPLAINED.

3 ANYTHING YOU WANT TO SAY, MR. SPENCER?

4 MR. SPENCER: YOUR HONOR, MY ARGUMENT
5 IN ADDITION TO THAT WOULD BE THAT IT'S STILL IN
6 ESSENCE NOT A PROPER ISSUE FOR P.C.R. THE SECTION
7 THAT OPPOSING COUNSEL REFERRED TO, 17-27-40, SECTION
8 (A) WAS MODIFIED BY SECTION (B), WHICH SAYS THIS IS
9 NOT A SUBSTITUTE FOR NOR DOES IT AFFECT ANY REMEDY AS
10 TO THE PROCEEDINGS OF THE TRIAL COURT OR A DIRECT
11 REVIEW OF THE SENTENCE OR A CONVICTION. ADDITIONALLY
12 I CITE SIMMONS V. STATE, WHICH IS 215 S.E.2D 883, A
13 1975 DECISION. IT BASICALLY SAYS THAT P.C.R. IS NOT
14 A SUBSTITUTE FOR APPEAL. I DO HAVE A COPY OF THAT
15 CASE IF YOU'D LIKE TO SEE IT, YOUR HONOR.

16 THE COURT: THAT CASE IS ONE WHICH IS
17 FAMILIAR. NO NEED TO HAND IT UP. THE COURT IS
18 PREPARED TO RULE THAT THERE IS NO SHOWING BY THE
19 GREATER WEIGHT OR THE PREPONDERANCE OF THE EVIDENCE
20 THAT THERE WAS INSUFFICIENT OR INADEQUATE
21 REPRESENTATION OF MR. WISE BY EITHER MR. GRIFFITH OR
22 MR. PACHAK AS ALLEGED IN THE ALLEGATIONS OF THE
23 PETITION.

24 THE COURT WILL MAKE SOME REMARKS
25 GENERALLY THAT IN THIS WHOLE TRIAL, THE CREDIBILITY

1 OF THE WITNESSES WAS THE MAIN ISSUE IN THE TRIAL, AND
2 THE JURY FOUND THE CREDIBILITY OF MS. BATES AND THE
3 SUPPORTING WITNESSES, BEING MR. GALLMAN, WHO HEARD
4 THE GLASS BREAK OVER THE TELEPHONE -- ACCORDING TO
5 HIS TESTIMONY, HE HEARD BREAKING GLASS WHILE HE WAS
6 TALKING WITH MS. GALLMAN OVER THE TELEPHONE, AND THE
7 OFFICERS, POLICE OFFICERS, SAW THE BROKEN GLASS AND
8 TESTIFIED THAT MR. WISE HAD CUT HIMSELF WITH THE
9 BROKEN GLASS. THE TESTIMONY OF THE NURSE -- I'LL
10 GIVE SOME CITES ABOUT THE GLASS BUSINESS. PAGE 60,
11 MS. BATES SAID AT LINE 17, "IT'S A HOLE IN THE
12 GLASS." THE QUESTION WAS AT LINE 20, "WAS THAT
13 HOLE KICKED THERE AS A RESULT OF THE DEFENDANT
14 KICKING THE DOOR IN." SHE SAID, "YES, SIR." ON
15 PAGE 61 AT LINE 9, SHE ANSWERS, "IT'S A HOLE IN THE
16 GLASS IN THE DOOR. IT CAME FROM WHERE HE KICKED THE
17 DOOR IN. THAT HOLE GOT THERE WHEN HE CAME IN, WHEN
18 HE ENTERED MY HOUSE THAT MORNING." AND THAT WAS IN
19 THE NIGHTTIME, BY THE WAY, BUT SHE SAYS THAT MORNING.
20 "THAT'S THE WAY THAT HOLE CAME IN THE FRONT IN THAT
21 DOOR, IN THAT GLASS OF THAT DOOR, WHEN HE CAME IN MY
22 HOUSE THAT MORNING. THAT'S HOW THAT HOLE GOT IN THAT
23 GLASS." PAGE 65, LINE 12, IS WHERE MR. GALLMAN SAID
24 THAT, "SHE TOLD ME HE WAS OUT THERE TRYING TO BREAK
25 IN THE HOUSE, AND WHILE WE WAS TALKING, I HEARD SOME

1 GLASS SHATTER AND I HEARD HER SCREAM AS THE PHONE
2 HUNG UP, AND I CALLED 911." THE NURSE TESTIFIES ON
3 PAGE 87 AT LINE 3, "WE LISTED LACERATIONS TO THE
4 RIGHT FOOT; ABRASIONS TO BOTH KNEES, TO THE LEFT
5 SHIN, BRUISE TO THE RIGHT ARM WITH ABRASIONS, A
6 HEMATOMA TO THE FOREHEAD, A SORE AREA BEHIND THE
7 RIGHT EAR, A LARGE HEMATOMA ABOVE THE RIGHT EAR, AND
8 SHE ALSO STATED SHE HAD A PIECE OF GLASS IN HER FOOT
9 BUT ELECTED TO GET THIS OUT HERSELF."

10 NOW, REGARDING THE RULE 5 -- AND WE'LL
11 JUST TOUCH ON SOME OF THE ALLEGATIONS OF MR. WISE'S
12 PETITION. RULE 5 WAS UNNECESSARY, BECAUSE COUNSEL
13 TESTIFIED HE WAS GIVEN THE PRIOR FILE AND EVEN IF IT
14 DID NOT CONTAIN EVERYTHING, HE WAS ALLOWED TO GO TO
15 THE PROSECUTION'S FILE, REMOVE ANYTHING THAT HE
16 THOUGHT WAS APPLICABLE, AND MAKE COPIES OF IT. THERE
17 WERE NO WITNESSES, BY THE WAY, IN THIS MATTER OTHER
18 THAN THE APPLICANT HERE, THE VICTIM, THE POLICE
19 OFFICERS AND MR. GALLMAN. MR. WISE WAS MADE AWARE
20 THAT THE PRIOR CRIMINAL HISTORY EXPOSED HIM TO AN
21 EXAMINATION OF IT. WE'VE TOUCHED ON THE DOUBLE
22 JEOPARDY ISSUE.

23 THE COURT FINDS THAT THE PERFORMANCE OF
24 COUNSEL WAS WELL WITHIN THAT RANGE OF PROFESSIONAL
25 PERFORMANCE EXPECTED OF AN ATTORNEY PRACTICING LAW IN

1 THIS COUNTRY IN A CASE OF THIS NATURE, A CRIMINAL
2 CASE FOR BURGLARY IN THE FIRST DEGREE AND FOR ESCAPE.
3 THE COURT WILL DISMISS THE APPLICATION.

4 IS THERE ANYTHING FURTHER?

5 MR. SPENCER: NOTHING FROM THE STATE, YOUR
6 HONOR.

7 THE COURT: FROM THE APPLICANT?

8 MR. BUFKIN: NOTHING FOR US, YOUR HONOR,
9 NO, SIR.

10 MR. PRICE: NO, SIR.

11 THE COURT: VERY WELL. MR. SPENCER, WILL
12 YOU DRAFT AN ORDER, AND THE ORDER WILL INCLUDE ANY
13 OTHER APPLICABLE FINDINGS OF FACT THAT YOU THINK
14 SHOULD BE PLACED IN THE ORDER, PLEASE, SIR.

15 MR. SPENCER: OKAY, YOUR HONOR.

16 THE COURT: THANK YOU. THE MATTER IS
17 CONCLUDED.

18 - - -END OF TRANSCRIPT OF RECORD- - -

19

20

21

22

23

24

25

CERTIFICATE

I, THE UNDERSIGNED MARGARET F. BRIGGS,
OFFICIAL COURT REPORTER FOR 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 CAPTIONED CASE IN THE COURT OF COMMON PLEAS
FOR NEWBERRY COUNTY, SOUTH CAROLINA, ON THE 4TH DAY
OF FEBRUARY, 2002.

I DO FURTHER CERTIFY THAT I AM NEITHER OF
KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

OCTOBER 25, 2002

Margaret F. Briggs
MARGARET F. BRIGGS


WEDDAY) NEWBERRY COUNTY MAGISTRATE COURT 09/02/98
 TION... UPDATE DISPOSITION B120
 ET #...F491605 OFFICER. FILE DT..07/24/97
 1/C...C CASE #.. ISSUE DT..07/15/97
 DELETED..N
WISE, JAMES EDWARD
 NBE CD.612 ASSAULT & BATTERY BOND ADV. 276.00 LDC..
 ION...COMMON LAW BOND PD.. .00 RDPF. DT.00/00/00
 ASSAULT AND BATTERY CHECK #..
 CD..2 BUILTY BEN FRI DISP DT..08/05/97 FINE AMT... .00
 CON? DT..00/00/00 FEE & COST. .00
 : .00 = TOT DUE
 ENCE.....SENTENCED TO 30 DAYS SUSPENDED TIME SERVED
 ENTS.....ALSO SEE :491605
 * (Y/N/P).N BW#70PT.Y AR WARRANT.F491605
 L JUDGE..724 CENTRAL TRAFF COURT DT.000537 09:00 AM JURY TRIAL.N
 PAYMNT... .00 DUE DATE..00/00/00 ACCOUNT#...
 NDANT....WISE, JAMES EDWARD LIC#/ST....
 TAG#/ST....
 PROSPERITY AUTO.....
 SC 29127 3000 SUC/SEC.... RACE.....B
 BIRTHDAY... SEX.....M
 HIST SENT..N DISP SENT.N
 0001 *** WARNING WARRANT *** SUSPENSION OF 500.00 ON 08/15/97

EXT (sp

DY = Enter

Caps Num

This is a true and certified copy of the disposition.


 April Gilliam - Notary Public

Commission Expires 1-21-2004

Todays Date 9-9-98



57 5 10-8-98

SENTENCE

STATE OF SOUTH CAROLINA
NEWBERRY COUNTY

Case # 97 GS-36-36-402

Ticket/Warrant # _____

Pled to/Convicted of _____

Burglary, 1st

Offense Code _____

MIN/MAX SENT.: _____

ATTEST:

(Clerk of Court/Deputy Clerk)

James Edward Wise
(Defendant)

Date Signed _____

The defendant James Edward Wise is committed to the State Department of Corrections/Newberry County Detention Center for a term of life ^{without parole} ~~months/years~~ and/or pay a fine of \$ _____

provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable the balance suspended with probation for _____ months/years

Restitution

For Physical Injury \$ _____

Yes/No

Property Damage \$ _____

to be paid _____

to Clerk for _____
Newberry County,
Other conditions: _____
copy of _____
AUG 08 1998
Jackie S. [Signature]
Clerk of Court

Date 10/8, 1998

Frank Egger
Presiding Judge

**Pay to Victim's Compensation Fund if Subrogated.

Costs and Assessments \$ _____

THE STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

INDICTMENT FOR
BURGLARY, 16-11-311(A)(1)(a)(b)(c)(d)(3)

At a Court of General Sessions, convened on the 3rd day of August, 1998, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

That JAMES EDWARD WISE, did in Newberry County, state aforesaid, on or about the 15th day of July, 1997, wilfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, when in effecting entry or while in immediate flight therefrom, he or another participant in the crime; was armed with a deadly weapon or explosive; or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument; or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, or the entering or remaining occurred in the nighttime, the said dwelling being owned and/or occupied by Mary Bates, in violation of Section 16-11-311 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 cases made and provided.

W. Thomas Jones
Soleffor

10-Indict of 97-479

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

August Term, 1998

Indictment # 98GS36-402

THE STATE

VS.

JAMES EDWARD WISE

INDICTMENT FOR

BURGLARY, 16-11-311(A)(1)(e)(b)(c)(d)(3)

WITNESSES

WITNESSES

WARRANT NUMBERS

offense code 0079

Alfred B. ...
Foreman of the Grand Jury

Date: 8-3-98

VERDICT

Guilty
ALFRED BICE

Sharon Bayne
Foreman

The State of South Carolina

County of Newberry

INDICTMENT FOR

- (1) BURGLARY, 16-11-311(A)(3) AND
- (2) ATTEMPTED BURGLARY, 16-11-311(A)(3)

At a Court of General Sessions, convened on the 27th day of August,
 1990, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

That JAMES EDWARD WISE

did in the county and state aforesaid, on or about the 29th day of May,
 1990, wilfully and unlawfully enter a dwelling without consent and
 with intent to commit a crime therein when such entering or remaining
 occurred in the nighttime, the said dwelling being occupied by Donna
 A. Bickley and Teresa Mills

COUNT TWO

That JAMES EDWARD WISE

did in the county and state aforesaid, on or about the 29th day of May,
 1990, wilfully and unlawfully attempt to enter a dwelling without
 consent and with intent to commit a crime therein when such
 attempt occurred in the nighttime, the said dwelling being occupied
 by Donna A. Bickley and Teresa Mills

Against the peace and dignity of the State, and contrary to the statute in such cases made and
 provided.

W. Townes Jones
 Solicitor

Witnesses

Donna A. Bickley

S Herbert Payton

Teresa Mills

G. L. Hunter

335

Verdict

The State of South Carolina,

County of NEWBERRY

90GS36-435

AUGUST Term, 19 90

THE STATE

JAMES EDWARD WISE

INDICTMENT FOR

- (1) BURGLARY, 16-11-311(A)(3)
- (2) ATTEMPTED BURGLARY, 16-11-311(A)(3)

W. Townes Jones

Ann G. Folks 9/27/90
TRUE BILL Foreman of Grand Jury

C 730119

I Hereby Appear in My Own Proper Person, Waive Grand Jury Trial and Plead Guilty to the Within Indictment

W. Townes Jones James Edward Wise

SOLICITOR

AUG 30 1990

STATE RECOMMENDS

FIVE

ATTEMPTED BURGLARY, 3RD DEGREE

SENTENCE

The defendant James Edward Wise is committed to the State Dept. of Corrections/County for a term of ONE (1)

month and/or to pay a fine of \$ provided upon the service of months/years and/or payment of \$ plus pay/waive costs and assessments as applicable, the balance suspended with probation for years.

Restitution * For physical injury \$ Yes / No property damage \$ to be paid while on probation

to clerk for RECRUDGE Anthony RASPERITY Other conditions 30 days P.S.E.

Date 8/31/90. Precourt Judge

*Costs and Assessments Not Waived \$ *Pay to Victim's Compensation Fund if applicable.

STATE'S EXHIBIT

12 10898

AUG 04 1990 Jackie S. Rowley Clerk of Court

rooms

The State of South Carolina

INDICTMENT FOR

County of Newberry

- (1) ASSAULT WITH INTENT TO KILL
- (2) PRESENTING AND POINTING A FIREARM
- (3) CARRYING PISTOL UNLAWFULLY

At a Court of General Sessions, convened on the 25th day of March 19 91, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

That JAMES EDWARD WISE

did in Newberry state aforesaid County on or about the 25th day of January

19 91, in and upon one J. W. Rauch

feloniously, wilfully and of his malice aforethought, did make an assault with a certain deadly weapon, to wit: a firearm

and him the said JAMES EDWARD WISE

with the said firearm

threaten to shoot with intent to wound the said

J. W. Rauch

then and there feloniously, wilfully and of malice aforethought, to kill and murder

COUNT TWO

That JAMES EDWARD WISE

did in Newberry state aforesaid County on or about the 25th day of January

19 91, wilfully and unlawfully without just cause or excuse present and point at

J. W. Rauch, a firearm

COUNT THREE

That JAMES EDWARD WISE

did in Newberry County state aforesaid on or about the 25th day of

January 19 91, wilfully and unlawfully carry about the person a

pistol

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

W. T. Jones
Solicitor

Witnesses

✓ Herbert P. Payton
 G. L. Hunter
 J. W. Rauch ✓

346

Verdict

with Court I
 with Court II
 at Verilly-Court III

with B. Moore
 3/1/91 Foreman

The State of South Carolina
 County of NEWBERRY
COURT OF GENERAL SESSIONS
 MARCH Term, 19 91
91GS36 147

THE STATE
 VS.
JAMES EDWARD WISE

INDICTMENT FOR
 16-2-620
 (1) ASSAULT WITH INTENT TO KILL
 16-23-470
 (2) PRESENTING AND POINTING A FIREARM
 (3) CARRYING PISTOL UNLAWFULLY

W. Turner Jones
 Solicitor

Reggie S. Bowers 03/25/91
 Foreman of Grand Jury

TRUE BILL

MOGAT PRINTERS, COLUMBIA, S. C. 29208

D-015550
 C 868751

Hereby Appear In My Own Proper Person, Waive Grand Jury Adversely and Plead Guilty To The Within Indictment

W. Turner Jones
 SOLICITOR
 MAR 1991

Court 112 Conc

SENTENCE
 The defendant JAMES EDWARD WISE is committed to the State Dept. of Corrections/County for a term of 2 months/years and/or to pay a fine of \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____ plus pay/waive costs and assessments as applicable, the balance suspended with probation for _____ months/years.
 Restitution For physical injury \$ _____
 For property damage \$ _____
 To be paid _____
 to clerk for _____
 Other Conditions _____

Date 3/1/91 Presiding Judge _____
 Clerk of Court _____

*Cost and Assessments \$ _____
 Non-refundable \$ _____
 Non-refundable \$ _____
 Total \$ _____
 *Pay to Victim's Compensation Fund if abrogated

STATE'S EXHIBIT
 57 10-380

I, Jackie S. Bowers, Clerk of Court, Newberry County, South Carolina, do hereby certify that this is a true copy of the original as filed in this office.
Jackie S. Bowers
 Clerk of Court

Mary Bates



Newberry S.C. 29108



341

James Wiles



Newberry S.C. 29108

DEFENDANT'S EXHIBIT

57 2nd 10.8.98

29108/1540



343

I Mary Bates have by write
this statement on my own free will
I do not wish to testify against
James E. Wise.

Mary Bates

DEFENDANT'S
EXHIBIT

571 3 10.8-48

J. Wise
276 4768
Merry Barber

DEFENDANT'S
EXHIBIT

sn 4 10-8-93

ARREST WARRANT

F- 491604

STATE OF SOUTH CAROLINA

County Municipality of NEWBERRY COUNTY

THE STATE against

WISE, JAMES EDWARD

SPERITY, SC 29127

Sex: Race: Height: Weight: 150

State: DL: Agency ORI: 437

Prosecuting Agency: HAY LEWEL OFFICER

Prosecuting Officer: MISC. CRIM. MAXIMUM

Offense: 94CM

Code/Ordinance Sec. 16-13-311

This warrant is CERTIFIED FOR SERVICE in the

County Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to law.

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to

defendant WISE, JAMES EDWARD

James Lee Foster Sheriff

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO

NEWBERRY COUNTY SHERIFF'S OFFICE

CENTRAL COURT

2239 LOUIS RICH RD

NEWBERRY, SC 29108

STATE OF SOUTH CAROLINA

County Municipality of NEWBERRY COUNTY

AFFIDAVIT CASE # F491604

Form Approved by S.C. Attorney General July 26, 1990 SCCA 318

MARY BATES

Personally appeared before me the affiant being duly sworn deposes and says that defendant did within this county and state on violate the criminal laws of the State of South Carolina for ordinance of County Municipality of

In the following particulars: DESCRIPTION OF OFFENSE: MISC. CRIM. MAXIMUM BURGLARY 1ST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 7-15-97 at or about 04:56 AM THE DEFENDANT, JAMES EDWARD WISE DID ENTER THE RESIDENCE OF MARY BATES LOCATED AT 1192 BOYD CROSSING IN NEWBERRY COUNTY BY BREAKING OUT THE FRONT DOOR GLASS AND WHILE INSIDE THE DEFENDANT JAMES EDWARD WISE DID STRIKE MARY BATES SEVERAL TIMES CAUSING INJURY TO MARY BATES AFTER DEPUTY CLAY BABB ARRIVED AT ABOVE LOCATION AND PLACED JAMES EDWARD WISE UNDER ARREST. THE DEFENDANT DID RESIST ARREST BY RUNNING AWAY FROM ARRESTING OFFICER. ALL THE ABOVE IS IN VIOLATION WITH THE 1976 CODE OF LAWS AS AMENDED. SAID OFFENSE OCCURRED IN NEWBERRY COUNTY.

DEFENDANT'S EXHIBIT

Sworn to and subscribed before me on

Signature of Affiant

1192 BOYD CROSSING

Affiant's Address NEWBERRY, SC 29108

Signature of Issuing Judge (L.S.)

Affiant's Telephone 803 276-0583

STATE OF SOUTH CAROLINA

County Municipality of NEWBERRY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that defendant WISE, JAMES EDWARD

did violate the criminal laws of the State of South Carolina for ordinance of

County Municipality of NEWBERRY as set forth below:

DESCRIPTION OF OFFENSE: MISC. CRIM. MAXIMUM BURGLARY 1ST DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address 3239 LOUIS RICH DRIVE

NEWBERRY, SC 29108

Signature of Issuing Judge Judge's Telephone 803 321-2144

Issuing Court: Magistrate Municipal Circuit

ORIGINAL 346

ARREST WARRANT

F-491605

STATE OF SOUTH CAROLINA

County/ Municipality of NEWBERRY COUNTY

THE STATE against

WISE, JAMES EDWARD

Address: [REDACTED]

City/County/State: NEWBERRY, SC 29107

SSN: [REDACTED]

Sex: [REDACTED] Race: [REDACTED] Height: [REDACTED] Weight: [REDACTED]

DL State: [REDACTED] DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: 360360000

Prosecuting Agency: NEWBERRY CO. SHERIFF

Prosecuting Officer: ANY LAWFUL OFFICER

Offense: ASSAULT & BATTERY

Offense Code: 612

Code/Ordinance Sec. COMMON LAW

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of [REDACTED]

The accused

is to be arrested and brought before me to be

dealt with according to law.

(LS.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to

defendant WISE, JAMES EDWARD on 7-15-97

on [REDACTED] entered in [REDACTED]

Case # [REDACTED]

Signature of Constable/Law Enforcement Officer [REDACTED]

Signature of Sheriff [REDACTED]

Signature of Sheriff's Office [REDACTED]

RETURN WARRANT TO:

NEWBERRY COUNTY SHERIFF'S OFFICE

GENERAL COURT

6239 LOUIS RICH RD

NEWBERRY, SC 29108

STATE OF SOUTH CAROLINA

County/ Municipality of

NEWBERRY COUNTY

AFFIDAVIT CASE # F491605

Form Approved by S.C. Attorney General July 20, 1990 SCCA 610

Personally appeared before me the affiant MARY BATES who being duly sworn deposes and says that defendant WISE, JAMES EDWARD did within this county and state on 07/15/97 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of NEWBERRY) in the following particulars:

DESCRIPTION OF OFFENSE: ASSAULT & BATTERY COMMON LAW ASSAULT AND BATTERY

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON 7-15-97 AT OR ABOUT 04:56 AM THE DEFENDANT, JAMES EDWARD WISE DID ENTER THE RESIDENCE OF MARY BATES LOCATED AT 1102 BOYD CROSSING IN NEWBERRY COUNTY BY BREAKING OUT THE FRONT DOOR GLASS AND WHILE INSIDE THE DEFENDANT JAMES EDWARD WISE DID STRIKE MARY BATES SEVERAL TIMES CAUSING INJURY TO MARY BATES AFTER DEPUTY CLAY BABB ARRIVED AT ABOVE LOCATION AND PLACED JAMES EDWARD WISE UNDER ARREST. THE DEFENDANT DID RESIST ARREST BY RUNNING AWAY FROM ARRESTING OFFICER. ALL THE ABOVE IS IN VIOLATION WITH THE 1976 CODE OF LAWS, AS AMENDED. SAID OFFENSE OCCURRED IN NEWBERRY COUNTY.

Sworn to and subscribed before me on [Signature] Signature of Affiant Affiant's Address 1102 BOYD CROSSING NEWBERRY, SC 29108 Signature of Issuing Judge (LS.) Affiant's Telephone 303 676 0523

STATE OF SOUTH CAROLINA

County/ Municipality of

NEWBERRY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 07/15/97 defendant WISE, JAMES EDWARD did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of NEWBERRY) as set forth below:

DESCRIPTION OF OFFENSE: ASSAULT & BATTERY COMMON LAW ASSAULT AND BATTERY

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (LS.) Judge's Address 3239 LOUIS RICH DRIVE NEWBERRY, SC 29108 Judge's Telephone 303 221-2104 Issuing Court: [] Magistrate [] Municipal [] Circuit

Judge Code: 347 BARRY S. [REDACTED]

ARREST WARRANT

F-491606

STATE OF SOUTH CAROLINA
County/ Municipality of
NEWBERRY COUNTY

THE STATE
against

WISE, JAMES EDWARD

Address: PROSPERITY, SC 29127

Sex: M Race: A Height: 5'05 Weight: 115
DOB: [redacted] Agency ORI #: SC0260000

Prosecuting Agency: NEWBERRY CO. SHERIFF

Prosecuting Officer: ANY LAWELL REICER

Offense: MALIC INJURY TO PROP

Offense Code: 632

Code/Ordinance Sec: 16-11-520

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to
defendant WISE, JAMES EDWARD 15-97

Entered in Computer

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
NEWBERRY COUNTY SHERIFF'S OFFICE
CENTRAL COURT
3239 LOUIS RICH RD
NEWBERRY, SC 29108

STATE OF SOUTH CAROLINA

County/ Municipality of
NEWBERRY COUNTY

Personally appeared before me the affiant MARY BATES who
being duly sworn deposes and says that defendant WISE, JAMES EDWARD
did within this county and state on 07/15/97 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of NEWBERRY
in the following particulars:

DESCRIPTION OF OFFENSE: MALIC INJURY TO PROP
16-11-520 MALI. INJURY TO REAL PROP.

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

ON 7-15-97 AT OR ABOUT 04:56 AM THE DEFENDANT, JAMES EDWARD WISE DID ENTER
THE RESIDENCE OF MARY BATES LOCATED AT 1182 ROYD CROSSING IN NEWBERRY COUNTY
BY BREAKING OUT THE FRONT DOOR GLASS AND WHILE INSIDE THE DEFENDANT JAMES
EDWARD WISE DID STRIKE MARY BATES SEVERAL TIMES CAUSING INJURY TO MARY BATES
AFTER DEPUTY CLAY SABB ARRIVED AT ABOVE LOCATION AND PLACED JAMES EDWARD WISE
UNDER ARREST. THE DEFENDANT DID RESIST ARREST BY RUNNING AWAY FROM ARRESTING
OFFICER. ALL THE ABOVE IS IN VIOLATION WITH THE 1976 CODE OF LAWS, AS
AMENDED. SAID OFFENSE OCCURRED IN NEWBERRY COUNTY.

Sworn to and subscribed before me on

Signature of Issuing Judge

Signature of Issuing Judge

Mary Bates

Signature of Affiant

Affiant's Address 1182 ROYD CROSSING

NEWBERRY, SC 29108

Affiant's Telephone 803 276-2502

STATE OF SOUTH CAROLINA

County/ Municipality of
NEWBERRY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/15/97 defendant WISE, JAMES EDWARD
did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of NEWBERRY) as set forth below:

DESCRIPTION OF OFFENSE: MALIC INJURY TO PROP
16-11-520 MALI. INJURY TO REAL PROP.

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address 3239 LOUIS RICH DRIVE

NEWBERRY, SC 29108

Signature of Issuing Judge

Judge Code: 432

Judge's Telephone

803 321-2144

Issuing Court: Magistrate Municipal Circuit

BARRY S KOON

ORIGINAL
348

Mary Carter

**DEFENDANT'S
EXHIBIT**

SN 6 10-8-98

STATE OF SOUTH CAROLINA)
)
)
 COUNTY OF NEWBERRY)
)
)
 James E. Wise, S.C.D.C.)
 No. 250411,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
)

IN THE COURT OF COMMON PLEAS
 00-CP-36-260
 00-CP-36-370

ORDER OF DISMISSAL

CLERK OF COURT
 JUL 31 2001
 11:00 AM

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed September 26, 2000. The Respondent (State) made its return on July 5, 2001. An evidentiary hearing into the matter was convened at the Greenwood County Courthouse on February 4, 2002. Applicant was present and represented by Henry P. Bufkin and Samuel Price, Jr., Esquire. The State was represented by Dave Spencer of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf. Also testifying was his trial counsel, Eugene Griffith, Esquire. This Court also had before it the transcript from the Applicant's trial, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application and the State's return.

Applicant had filed two separate applications challenging this conviction (00-CP-36-260 & 00-CP-36-370). This Court at the beginning of the hearing, with the agreement of both parties,

Page 1 of 8 *MS*

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merged the two cases. The earlier filing (00-CP-36-260) shall be the surviving action. This Court instructs the Clerk of Court to remove the contents of its file for the later filing (00-CP-36-370), close that file, and place this file in the file for the earlier file (00-CP-36-260).

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Newberry County Clerk of Court's orders of commitment. The Newberry County Grand Jury indicted the Applicant at the August 1998 term of General Sessions for burglary first degree and the September 1997 term of General Session for escape.¹ Eugene Griffith, Esq. represented the Applicant. The Applicant proceeded to a jury trial and was found guilty of the charges. He was sentenced by the Honorable Judge Frank Eppes to life imprisonment without parole for the burglary first degree charge and six months concurrent for the escape charge.

The Applicant appealed his conviction and sentence. The South Carolina Court of Appeals Court affirmed the conviction and sentence on April 19, 2000.

ALLEGATIONS

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

1. Ineffective assistance of counsel;
2. Lack of subject matter jurisdiction.

For the purpose of this Return, the Respondent incorporates the transcript, the Clerk of Court records, and the South Carolina Department of Corrections' records by reference. The

¹ 98-GS-36-402 and 97-GS-36-480.

Respondent reserves the right to amend this Return upon receipt of any relevant materials.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

Double jeopardy/direct appeal issue

Applicant alleges that his conviction violates double jeopardy. Counsel raised this issue at trial and appellate counsel raised the issue in an Anders brief. The State moved at the onset of the hearing for summary judgment on this issue, and this Court granted the State's motion, as the issue is a direct appeal issue not cognizable in PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (PCR is not a substitute for direct appeal).

Ineffective Assistance of Counsel

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance.

000001
Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address each alleged instance of ineffective assistance of counsel below:

1. Preliminary hearing

Applicant alleges counsel was ineffective for failing to hold a preliminary hearing. Counsel testified that by the time he was involved in the case, it was too late to hold a preliminary hearing. Counsel testified that he saw no benefits to a preliminary hearing because the information needed to prepare for the case could be attained from the solicitor's office through discovery or their open file policy. This Court finds that counsel was not deficient for failing to hold a preliminary hearing and that counsel gave a valid strategic reason for not seeking a preliminary hearing, even if the time had not expired. Additionally, the Applicant has failed to show what benefits would have accrued from holding a preliminary hearing that could not otherwise be attained from discovery. This allegation is denied.

2. Ceramic Pig

At trial, the State presented evidence, by way of the victim's testimony, that Applicant

threatened her by holding a large ceramic pig over her head. The pig was introduced into evidence. Applicant alleges counsel was ineffective for failing to challenge the chain of custody on the pig. The victim had kept the pig until trial. This allegation is without merit. A strict chain of custody is not required for an item that is unique and identifiable, and impervious to change. State v. Glenn, 328 S.C. 300, 492 S.E.2d 393 (Ct. App. 1997). The victim was able to identify the pig as the pig Applicant threatened to drop on her head. After all, it was her pig. No further authentication was required. Since there was not a basis to object to the pig, counsel was not deficient for failing to object. Further, Applicant was not prejudiced as the alleged deficiency is unlikely to affect the outcome of the trial. This allegation is denied.

3. Salazar

Applicant alleges that counsel was ineffective for failing to have an officer by the name of Salazar appear at trial. Applicant alleges that Salazar could provide helpful testimony that would explain his escape charges. Counsel testified that his own investigation revealed that Salazar would not corroborate the Applicant's version of events. Counsel testified that Salazar would not have been a good witness for the Applicant. This claim is without merit. First, Salazar did not testify at the hearing. The burden is on the Applicant to prove he was prejudiced by the failure of counsel to call a witness. Since Applicant has provided nothing further than his own hearsay testimony to support this claim, Applicant has failed to meet his burden of proving prejudice. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1999). Further, counsel articulated reasonable trial strategy in not attempting to have Salazar present for trial. Therefore, this allegation is denied.

4. Lesser included offense

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Applicant alleges that counsel was ineffective for failing to request a charge on criminal trespass as a lesser included offense of first degree burglary. This claim fails because criminal trespass is not a lesser included offense of first degree burglary. Under the applicable statute, S.C. Code Ann. § 16-11-620, a person is guilty of trespass if they enter a premises after being warned not to enter, or if they enter the premises and refuse to leave after being requested to leave. Neither of these elements are required under burglary. Therefore, the statute is not a lesser included offense of first degree burglary. Therefore, counsel was not ineffective for failing to request a charge on trespassing. This allegation is denied.

5. Counsel destroyed Applicant's credibility

Applicant complains that counsel destroyed his credibility when Applicant testified at trial, because counsel brought out Applicant's prior record. Counsel testified that he brought out Applicant's prior record because he knew the prosecution would bring Applicant's prior record out on cross-examination. This claim is without merit. Counsel's strategic reasons are not only reasonable, but wise. One of the most well-known tactics at trial is bringing out bad information on direct to steal the opposing side's thunder on cross-examination. Therefore, counsel was not deficient. Further, Applicant was not prejudiced since the prosecution was sure to make mention of Applicant's prior record on cross-examination. Therefore, this allegation is denied.

6. Hearsay testimony

Applicant alleges counsel was ineffective for failure to object to testimony by James Gallman that the victim called him on the phone and told him that Applicant (Sap) was trying to break into her house. Tr. pp. 64-65. This allegation is without merit. Counsel testified that he

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did not think the testimony was objectionable since it was present sense impression testimony. Counsel was reasonable in not objecting, and therefore, this Court finds that counsel was not deficient. Further, this Court finds that since the testimony was admissible, Applicant was not prejudiced by counsel's failure to object to the testimony. Therefore, this allegation is denied.

All Other Allegations

As to any and all allegations which were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds that the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds that the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by Counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

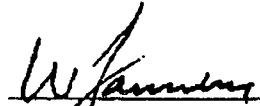
1. That the application for post-conviction relief be denied and

dismissed with prejudice; and


355

2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14th day of June, 2002.


Wyatt F. Sanders, Jr. SAUNDERS
Presiding Judge
Eighth Judicial Circuit

at Greenwood, South Carolina


Page 8 of 8

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
Eighth Judicial Circuit
00-CP-36-0260
00-CP-30-0370

James E. Wise,)
Applicant,)
vs)
State of South Carolina,)
Respondent.)

AFFIDAVIT OF SERVICE BY MAIL

CLERK OF COURT
12 JUL 01 2002

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me, Jeanette E. Ciabattari, who being first duly sworn, states:

1. That I am an employee of the Office of the Attorney General.
2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.
3. That I have this day served a copy of the Order in the above-captioned matter on the following persons by depositing same in the United States mail, postage prepaid:

Henry P. Bufkin, Esquire
Post Office Box 419
Prosperity, South Carolina 29127

Samuel Price, Jr., Esquire
1413 Main Street
Newberry, South Carolina 29108

DATED this 30th day of July, 2002.

Jeanette E. Ciabattari
JEANETTE E. CIABATTARI

SWORN to before me this
30th day of July, 2002.

Kia C Gous (L.S.)
Notary Public for South Carolina
My Commission Expires: June 7, 2007

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF NEWBERRY)

State of South Carolina,)
)
-vs-)
)
James Edward Wise,)
)
)
Defendant.)
_____)

NOTICE OF INTENT TO APPEAL
97-GS-36-480; 98-GS-36-402

Now comes the Defendant, by and through his attorney, and give notice of his intent to appeal the verdict resulting from the Jury Trial on the above charges which was held on October 8, 1998 before the Honorable Frank Eppes.

Respectfully Submitted,



Eugene C. Griffith, Jr.

October 12, 1998
Newberry, South Carolina

Post Office Box 375
1207 Friend Street
Newberry, South Carolina 29108
(803)321-0000

FORMERLY USED FOR ORIGINAL WORK

FILED
NEWBERRY COUNTY
1998 OCT 13 P 3:10
JACQUE S. BOYERS
CLERK OF COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

The Honorable Frank Eppes, Circuit Court Judge

Case No. 97-GS-36-480; 98-GS-36-402

State of South Carolina

v.


James Edward Wise

NOTICE OF INTENT TO APPEAL

Now comes the Defendant, by and through his attorney, and give notice of his intent to appeal the verdict resulting from the Jury Trial on the above charges which was held on October 8, 1998 before the Honorable Frank Eppes.

Respectfully Submitted,

RUSHING-GRIFFITH, P.C.


Eugene C. Griffith, Jr.
Attorney for Defendant
Post Office Box 375
1207 Friend Street
Newberry, South Carolina 29108
(803)321-0000

October 12, 1998
Newberry, South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

The Honorable Frank Eppes, Circuit Court Judge

Case No. 97-GS-36-480; 98-GS-36-402

State of South Carolina

v.

James Edward Wise


CERTIFICATE OF SERVICE

I, Debbie P. Turner, legal assistant to Eugene C. Griffith, Jr., hereby certify that on the 13th day of October, 1998, I served a copy of the Appellant's Notice of Intent to Appeal by mailing copies of same in the United States mail, first class postage prepaid, addressed to the following individuals at their offices shown below:

Brenda Shealy, Acting Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Jackie S. Bowers, Clerk of Court
Newberry County Courthouse
Post Office Box 278
Newberry, South Carolina 29108

Daniel T. Stacey, Chief Attorney
S.C. Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, South Carolina 29201


Debbie P. Turner, Legal Assistant

SWORN to and subscribed before me
this 15 day of Oct, 1998


Notary Public for South Carolina

My Commission Expires: 03-15-06
FORM 2005-10-01 CRIMINAL JUSTICE CERTIFICATE

S E N T E N C E

STATE OF SOUTH CAROLINA

NEWBERRY COUNTY

Case # 97 GS-36-36-402

Ticket/Warrant # _____

Filed to/Convicted of _____

Burglary, 1st

Offense Code _____

MIN/MAX SENT.: _____

ATTEST:

(Clerk of Court/City Clerk)

James Edward Wise
(Defendant)

Date Signed _____

The defendant James Edward Wise is committed to the State Department of Corrections/Newberry County Detention Center for a term of 60 ^{without parole} months/years and/or pay a fine of \$ _____

provided upon the service of _____ months/years and/or payment of \$ _____ plus pay/waive costs and assessments as applicable

the balance suspended with probation for _____ months/years.

Restitution

For Physical Injury \$ _____

Yes/No

Property Damage \$ _____

to be paid

to Clerk for _____

Other conditions _____

Date 10/27 1998

Frank Egger
Presiding Judge

**Pay to Victim's Compensation Fund if Subrogated.

Costs and Assessments \$ _____

SENTENCE

STATE OF SOUTH CAROLINA
NEWBERRY COUNTY

Case # 97 GS-36-480

Ticket/Warrant # _____

~~Pled to/~~Convicted of _____

Escaping Custody of Officer

Offense Code _____

MIN/MAX SENT.: _____

ATTEST:

(Clerk of Court/Deputy Clerk)

James Edward Wise
(Defendant)

Date Signed _____

The defendant James Edward Wise is committed to the State Department of Corrections/ Newberry County Detention Center for a term of 6 months/years and/or pay a fine of \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable the balance suspended with probation for _____ months/years

Restitution

For Physical Injury \$ _____

Yes/No

Property Damage \$ _____

to be paid _____

to Clerk for _____

Other conditions: _____

Date 10/8/1998

Frank Eggen
Presiding Judge

**Pay to Victim's Compensation Fund if Subrogated.

Costs and Assessments \$ _____

The State of South Carolina

County of Newberry

INDICTMENT FOR

VIOLATION SECTION 24-11-410

At a Court of General Sessions, convened on the 15th day of September,
1997, the Grand Jurors of Newberry County present upon their oath:

JAMES BRYANT
did in the county and state aforesaid, on or about the 15th day of July,
1997, wilfully and unlawfully attempt to escape from the custody of
Deputy Clay Babb while confined to the custody of said officer under
a lawful arrest for a charge of Burglary, 1st degree

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.

W. Thomas

Solicitor

363

Witnesses

Danny Gilliam

Todd Johnson

Clay Babb

Offense Code: 2527

A 7-15-97

Verdict

Guilty

Thomas Bayle
Foreman

The State of South Carolina

County of NEWBERRY

COURT OF GENERAL SESSIONS

SEPTEMBER Term, 1997
97GS36-480

THE STATE

vs.
JAMES EDWARD WISE

30000, 1 in PPD

INDICTMENT FOR

Obtaining Custody of Vehicle
VIOLATION SECTION 24-13-410

Jan G. Richey
9/15/97
Foreman of Grand Jury

F-491607

LABOR UNIT

365

Handwritten signature

The State of South Carolina

INDICTMENT FOR

County of Newberry

(1) BURGLARY, 16-11-111(A) (1) AND (a) (b) (c) (d) (3) (2) ASSAULT AND BATTERY OF A HIGH AGGRAVATED NATURE

At a Court of General Sessions, convened on the 15th day of Newberry 19 97, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

That JAMES EDWARD WISE

did in the county and state aforesaid, on or about the 15th day of July 19 97, wilfully and unlawfully enter a dwelling without consent and with intent to commit a crime, therein and either, when, in effecting entry or while in the dwelling or in immediate flight therefrom, he or another participant in the crime was armed with a deadly weapon or explosive; or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument; or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm; or the entering or remaining occurred in the nighttime, the said dwelling being occupied by Mary Bates

COUNT TWO

That JAMES EDWARD WISE

did in the county and state aforesaid, on or about the 15th day of July 19 97 commit an assault and battery upon the victim, Mary Bates, constituting an unlawful act of violent injury to the person of the said victim, accompanied by circumstances of aggravation, to wit: the said violent injury being caused by the use of the hands and/or fists of the said JAMES EDWARD WISE which were used or intended to be used in a manner known to be capable of causing serious bodily injury or death, and the use of his hands and/or fists did cause serious bodily injury upon the said victim, Mary Bates

Against the peace and dignity of the State, and contrary to the Statute in such cases made and provided.

W. T. [Signature]
Solicitor

Witnesses

Mary Bates ✓

Todd Johnson

Verdict

Don't 11-15-97

Formant

The State of South Carolina,

County of NEWBERRY

SEPTEMBER Term, 19 97

97GS36-479

THE STATE

JAMES EDWARD WISE

3 weeks

INDICTMENT FOR

- (1) BURGLARY, 16-11-311 (a) (1)
- (a) (b) (c) (d) (3)
- (2) ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

James L. Proctor
9/15/97 Foreman of Grand Jury

P-491604
TRUE BILL

THE DEFENDANT, IN MY OWN PRESENCE, HAVE SAID TO THE BAR OF THIS COURT, HAVE SAID TO THE COURT, AND FREELY AND VOLUNTARILY PLEAD GUILTY TO THE CHARGES OF,

THIS DAY OF _____ A.D. 19____

ATTEST:

CLERK OF COURT, NEWBERRY, S. C.

James L. Proctor

THE STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

INDICTMENT FOR
BURGLARY, 16-11-311(A)(1)(a)(b)(c)(d)(3)

At a Court of General Sessions, convened on the 3rd day of August, 1998, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

That JAMES EDWARD WISE, did in Newberry County, state aforesaid, on or about the 15th day of July, 1997, wilfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, when in effecting entry or while in immediate flight therefrom, he or another participant in the crime; was armed with a deadly weapon or explosive; or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument; or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, or the entering or remaining occurred in the nighttime, the said dwelling being owned and/or occupied by Mary Bates, in violation of Section 16-11-311 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 cases made and provided.

W. R. ...
Solicitor

296

WITNESSES

Todd Johnson

WARRANT NUMBERS

on info.

[Empty box for warrant numbers]

[Signature]
Foreman of the Grand Jury

Date: 8-3-98

VERDICT

TRUE BILL

Foreman

re-indict of 97-479
THE STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

August Term, 1998
Indictment # 98GS36-402

THE STATE
vs.
JAMES EDWARD WISE

INDICTMENT FOR
BURGLARY, 16-11-311(A)(1)(c)(b)(c)(4)(3)

I, JAMES EDWARD WISE, THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND VOLUNTARILY PLEAD _____ GUILTY TO THE CHARGE(S) OF:

THIS _____ DAY OF _____ A.D. _____

ATTEST:

DEFENDANT'S SIGNATURE

CLERK OF COURT, NEWBERRY, S.C.

SENTENCE

STATE OF SOUTH CAROLINA

NEWBERRY COUNTY

Case # 97 GS-36-36-402

Ticket/Warrant # _____

Pled to/Convicted of _____

Burglary, 1st

Offense Code _____

MIN/MAX SENT.: _____

ATTEST:

(Clerk of Court/Deputy Clerk)

James Edward Wise
(Defendant)

Date Signed _____

The defendant James Edward Wise is committed to the State Department of Corrections/ Newberry County Detention Center for a term of life ^{without parole} ~~months/years~~ and/or pay a fine of \$ _____

provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable

the balance suspended with probation for _____ months/years

Restitution For Physical Injury \$ _____

Yes/No Property Damage \$ _____

to be paid _____

to Clerk for _____

Other conditions: _____

Date 10/8, 1998

Frank Egger
Presiding Judge

**Pay to Victim's Compensation Fund if Subrogated.

Costs and Assessments \$ _____

SENTENCE

STATE OF SOUTH CAROLINA
NEWBERRY COUNTY

Case # 97 GS-36-480

Ticket/Warrant # _____

~~Pled to~~ Convicted of _____

Escaping Custody of Officer

Offense Code _____

MIN/MAX SENT.: _____

ATTEST:

(Clerk of Court/Deputy Clerk)

James Edward Wise
(Defendant)

Date Signed _____

The defendant James Edward Wise is committed to the State Department of Corrections/ Newberry County Detention Center for a term of 6 months/years and/or pay a fine of \$ _____, provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable the balance suspended with probation for _____ months/years.

Restitution

For Physical Injury \$ _____

Yes/No

Property Damage \$ _____

to be paid _____

to Clerk for _____

Other conditions: _____

Date 10/8/1998

Frank Egger
Presiding Judge

**Pay to Victim's Compensation Fund if Subrogated.

Costs and Assessments \$ _____

The State of South Carolina

INDICTMENT FOR

County of Newberry

VIOLATION SECTION 24-13-410

At a Court of General Sessions, convened on the 15th day of September 1927, the Grand Jurors of Newberry County present upon their oath:

That

JAMES EDWARD WISE

did in the county and state aforesaid, on or about the 15th day of July 1927, wilfully and unlawfully attempt to escape from the custody of Deputy Clay Babb while confined to the custody of said officer under a lawful arrest for a charge of Burglary, 1st degree

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

W. Thomas Jones

Solicitor

in early

371 **Witnesses**

Danny Gilliam

Todd Johnson

Clay Babb

Offense Code! 2527

DA 7-15-97

Verdict

Guilty

Thomas Boyce Foreman

The State of South Carolina

County of NEWBERRY

COURT OF GENERAL SESSIONS

97GS36-480 SEPTEMBER Term, 1997

THE STATE

VS.

JAMES EDWARD WISE

3 cards, 1 in PPD

INDICTMENT FOR

Escaping Custody of Officer
VIOLATION SECTION 24-13-410

Jan S. Rocks
9/15/97
Foreman of Grand Jury

W. J. ...

The State of South Carolina

INDICTMENT FOR

County of Newberry

VIOLATION SECTION 24-13-410

At a Court of General Sessions, convened on the 15th day of September 1997, the Grand Jurors of Newberry County present upon their oath:

That JAMES EDWARD WISE

did in the county and state aforesaid, on or about the 15th day of July 1997, wilfully and unlawfully attempt to escape from the custody of Deputy Clay Babb while confined to the custody of said officer under a lawful arrest for a charge of Burglary, 1st degree

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

W. Thomas Jones

Solicitor

375

Witnesses

Danny Gilliam

Todd Johnson

Clay Babb

DOA 7-15-97

Verdict

Forfeited

The State of South Carolina

County of NEWBERRY

COURT OF GENERAL SESSIONS

SEPTEMBER Term, 1997
97GS36-480

THE STATE

vs.

JAMES EDWARD WISE

30000, 112 112

INDICTMENT FOR

Expiring Outrage of Violence
VIOLATION SECTION 24-13-410

Jean G. Rector
9/15/97
Clerk of Court

THE DEFENDANT, BY MY OWN PROVER PERSONAL COUNSEL TO THE BAR OF THIS COUNTY, WAIVE TRIAL, JURY TRIAL, AND PLEAD GUILTY TO THE CHARGES ON VOLUNTARILY FILED

THIS _____ DAY OF _____ A.D. 19__
ATTORNEY

DEFENDANT'S COUNSEL
CLERK OF COURT, NEWBERRY, S. C.

Handwritten signature

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Newberry County

Wyatt T. Saunders, Jr., Circuit Court Judge

JAMES E. WISE,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

SUPPLEMENTAL APPENDIX

WANDA H. HAILE
Senior Assistant Appellate Defender

South Carolina Office
of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201

ATTORNEY FOR PETITIONER

CHARLES M. CONDON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

ALLEN BULLARD
Assistant Deputy Attorney General

P. O. Box 11549
Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

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COURT OF APPEALS UNPUBLISHED OPINION NO. 2000-UP-295 11

APPELLANT'S BRIEF

1

ORIGINAL

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TABLE OF AUTHORITIES

Cases.

Kelly v. State, 274 S.C. 613, 266 S.E.2d 417 (1980)..... 5

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to quash the indictment for burglary in the first degree when it constituted double jeopardy?

STATEMENT OF THE CASE

Appellant was indicted for burglary in the first degree at the August 1998 term of the Newberry County grand jury. He proceeded to trial on October 8, 1998, before the Honorable Frank Eppes and a jury. Appellant was found guilty as charged. He was sentenced to life imprisonment without parole.

This appeal follows.

ARGUMENT

The trial court erred in refusing to quash the indictment for burglary in the first degree because trial on that charge would constitute double jeopardy.

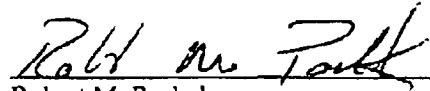
Defense counsel moved to quash the indictment for first degree burglary (98-GS-36-402) because it was a re-indictment of indictment 97-GS-36-479. The older indictment had one count of burglary in the first degree and one count of assault and battery of a high and aggravated nature (ABHAN). Appellant pled guilty in magistrate's court to the lesser included offense of assault and battery on the ABHAN charge. Because this charge was part of the burglary charge, it would constitute double jeopardy to try him now for burglary. Kelly v. State, 274 S.C. 613, 266 S.E.2d 417 (1980).

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CONCLUSION

Appellant's conviction for first degree burglary should be vacated.

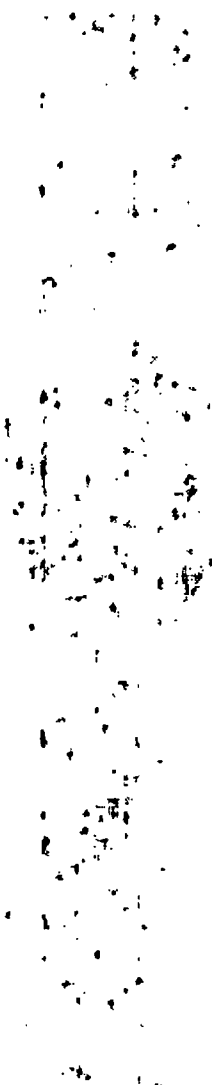
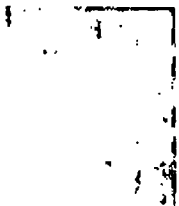
Respectfully submitted,



Robert M. Pachak
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of November, 1999.



STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County

Frank Eppes, Special Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JAMES EDWARD WISE,

APPELLANT.

PETITION TO BE RELIEVED AS APPELLATE COUNSEL
PURSUANT TO ANDERS v. CALIFORNIA

Robert M. Pachak, of the South Carolina Office of Appellate Defense, was appointed to represent appellant in this appeal and states:

1. Counsel has thoroughly reviewed appellant's lower court records in an effort to discover all arguable errors for presentation to the Court on appellant's behalf. In counsel's opinion, the record fails to demonstrate either preserved errors or other legally substantial issues to present to the Court within the context of this direct appeal.
2. In an effort to protect appellant's right to review, however, counsel has submitted a brief pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). It is counsel's understanding that this brief will prompt a full and thorough review of the record by the Court to determine errors independent of counsel's opinion of the merits of appellant's appeal. Counsel is required under Anders to submit a petition to be relieved as counsel, and

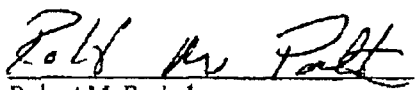
The State v. James Edward Wise
Petition to be Relieved
Page 2

attaches this petition in compliance with that procedure.

3. This office has served appellant with a copy of the Anders brief. Counsel understands that appellant will also be contacted directly by the Court and given forty-five days in which to submit any additional materials which appellant wishes the Court to consider, either by letter, document, or pro-se brief.

WHEREFORE, counsel respectfully asks the Court to accept the foregoing Anders brief and grant the petition to be relieved as appellate counsel.

Respectfully submitted,



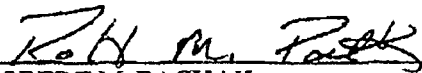
Robert M. Pachak
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of November, 1999.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 210(b), SCACR.


ROBERT M. PACHAK
Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

Attorney for Appellant.

November 23, 1999



STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County

Frank Eppes, Special Circuit Court Judge

THE STATE,

RESPONDENT,

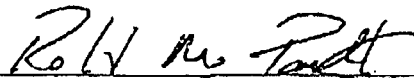
V.

JAMES EDWARD WISE,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire; a copy of the Record on Appeal and Final Anders Brief of Appellant has been served on James Edward Wise #250411, Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 23rd day of November, 1999.



Robert M. Pachak
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of November, 1999.

Sandra B. Wise (L.S.)
Notary Public for South Carolina
My Commission Expires: February 3, 2005.



**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

James Edward Wise,

Appellant.

**Appeal From Newberry County
Frank Eppes, Special Circuit Court Judge**

**Unpublished Opinion No. 2000-UP-295
Submitted March 1, 2000 - Filed April 19, 2000**

APPEAL DISMISSED

**Assistant Appellate Defender Robert M. Pachak, of South
Carolina Office of Appellate Defense, of Columbia, for
Appellant.**

**Attorney General Charles M. Condon and Chief Deputy
Attorney General John W. McIntosh, both of Columbia;
and Solicitor W. Townes Jones, IV, of Greenwood, for
Respondent.**

PER CURIAM: James Edward Wise was found guilty of first degree burglary and escape from the custody of an officer. He was sentenced to life Imprisonment without parole for the first degree burglary and six months concurrent for escape. On appeal, counsel for Wise has filed a final brief along with a petition to be relieved as counsel. Wise has not filed a pro se response with the Court.¹

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

State v. Wise

After a review of the record pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's petition to be relieved.

APPEAL DISMISSED.

CURETON, ANDERSON, and HUFF, JJ., concur.

STATE OF SOUTH CAROLINA

County of Newberry

James Edward Wise 250411
Full name and prison number (if any) of Applicant.

vs.

State of South Carolina
Name of Respondent.

Henry McMaster

In the Court of Common Pleas

FILED
NEWBERRY COUNTY
2005 APR 27 10:40
CLERK OF COURT

2005CP36 169

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. 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 applicant was convicted.

- Place of detention Lee Correctional Institution
990 Wisacky Hwy, Bishopville, SC 29010
- Name and location of Court which imposed sentence Court of General Sessions
Newberry, South Carolina
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - 98-GS-36-402 (Burglary First Degree)
 - 97-GS-36-480 (Escaping Custody of Officer)
 -
- The date upon which sentence was imposed and the terms of the sentence:
 - October 8, 1998 (Life without parole)
 - October 8, 1998 (Six Months Concurrent)
 -

I, Jackie S. Bowers, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy of the original on file in this office.
APR 28 2005
406 Clerk of Court

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____

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

Yes _____

7. If you answered "yes" to (6), list

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

- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____

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

- i. Appeals denied _____
- ii. Writ of Habeas Corpus, U.S. District Court, Oct. 25, 2004 _____
- iii. _____

(c) the date of each such result:

- i. April 25, 2000 _____
- ii. _____
- iii. _____

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

- i. Have Request Habeas Corpus Put on hold until _____
- ii. Review of present grounds by highest State _____
- iii. Court of Appeals. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) NA _____
- (b) NA _____
- (c) NA _____

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

- (a) Lack of subject matter jurisdiction (1) (Attachment) _____
- (b) Vindictive prosecution (2) (Attachment) _____
- (c) Illegal prosecution (3) (Attachment) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) See Attachment (1) (2) (3) Following _____
- (b) this page. _____
- (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? U.S. District Court
- (d) any other petitions, motions or applications in this or any other Court?
NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. See 7(b) i.ii
- ii. _____
- iii. _____
- iv. _____

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

- i. Court of Common Pleas newberry, SC
- ii. S.C. Court of Appeals
- iii. S.C. Supreme Court
- iv. U.S. District Court

(c) the disposition thereof:

- i. i, ii, iii denied
- ii. Request appeal to U.S. District Court put
- iii. on hold until present appeal to highest State
- iv. Court.

(d) the date of each such disposition:

- i. April 25 2000
- ii. Oct. 25, 2004
- iii. _____
- iv. _____

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

- i. None
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____

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

17. If you answered "yes" to one or more parts of (16), list:

- (a) the name and address of each attorney who represented you
 - i. Eugene Griffith, Esq
Newberry, S.C.
 - ii. Robert M. Pachak
Assistant Appellate Defender
 - iii. _____

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

- i. Trial
- ii. Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

New Trial

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

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of Newberry

I, James E. Wise, 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.

James E. Wise

SWORN to and subscribed before me this 27

day of April, 19 2005

Barbara Reckton (L.S.)
Notary Public

My Commission Expires: Oct 28, 2012

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, JAMES W. WISE, 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 therefor.

James E. Wise
Applicant

FILED
PROPERTY
RECORDER'S OFFICE
APR 27 10 40
NEWBERRY COUNTY

SWORN or affirmed to and subscribed before me this 27 day of April, 19 2005

Barbara Reckton
Notary Public

My Commission Expires Oct 28, 2012

①

Jurisdiction

The trial Court lacked Subject Matter jurisdiction to hold a jury trial and Convict Petitioner upon second indictment one year later in violation of due process because Petitioner had previously Pled Guilty in Magistrate Court to the lesser included offense of assault and battery on ABHAN which was part of the First Degree Burglary Charge. Subject matter jurisdiction may be raised at any time.

②

Vindictive Prosecution

It was vindictiveness for the State to come back and punish the Petitioner for having done exactly what the Law allowed him to do, Pled Guilty to a lesser included offense of assault and battery on ABHAN. However to re-indict Petitioner one year later and convicted and sentenced him to Life Without Parole imprisonment was clearly Vindictive Prosecution and should be reversed pursuant to Patrick v. State 562 S.E. 2d 609 (2002).

RECEIVED
JULY 10 1940
FBI

③ Illegal Prosecution

It was illegal and wrong for the trial judge to allow the solicitor to proceed to trial and obtain a conviction against Petitioner on re-indictment of the same First Degree Burglary charged in the first indictment because the solicitor never did move to nolle prosequere the first indictment until after Petitioner had been placed in jeopardy on second or re-indictment.

It is denial of due process when, as in this case, the solicitor failed to re-indict prior to the requiring the court to dismiss the first indictment which would have saved the solicitor the right to re-indict upon charge that had been nolle prosequere.

Here in Petitioner's case the ~~house~~ court was put before the horse and Petitioner is entitled to a reversal or new trial.

BTT/CR

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGEMENT IN A CIVIL CASE

CASE NO. 2005-CP-36-1169

PLANTIFF(S)

James Edward Rice

DEFENDANT(S)

State of SC

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED. (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN. (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgement by the Court:

Conditional Order of Dismissal

Dated at Greenwood, South Carolina, this 29 day of Aug, 2005.

W. Wyatt L. Saunders
PRESIDING JUDGE

This judgement was entered on the 31 day Aug, 2005, and a copy mailed first class this 1 day of Sept, 2005, to attorneys of record or to parties (when appearing pro se) as follows:

M. Rita Metts, Esq.
ATTORNEY(S) FOR THE PLANTIFF(S)

Julie M. Shames, Esq.
ATTORNEY(S) FOR THE DEFENDANT(S)

Jackie A. Powell
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGEMENT IN CIVIL CASE

CASE NO. 2005-CP-36-169

8 JT
PCR

PLANTIFF(S)

James Edward Wise

DEFENDANT(S)

State of SC

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED. (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN. (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other

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PRESIDING JUDGE

This judgement was entered on the 31 day Aug, 2005, and a copy mailed first class this 1 day of Sept, 2005 to attorneys of record or to parties (when appearing pro se) as follows:

M. Rita Melts, esq.
ATTORNEY(S) FOR THE PLAINTIFF(S)

Julie M. Thomas, esq.
ATTORNEY(S) FOR THE DEFENDANT(S)

St. Jackie A. Bowers BG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)
)
 James Edward Wise, No. 250411,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT
 05-CP-36-169

FILED
 NEWBERRY COUNTY
 2005 AUG 31 A 11:26
 JACKIE S. [unclear]
 CLERK OF COURT

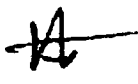
**CONDITIONAL ORDER
 OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed April 27, 2005. The Respondent made its return and motion to dismiss on August 19, 2005.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. The Newberry County Grand Jury indicted the Applicant at the September 1997 term for escaping the custody of an officer (97-GS-36-480) and at the August 1998 term for burglary, first degree (98-GS-36-402). Eugene Griffith, Esquire, represented him on the charges. The Applicant proceeded to a jury trial and was found guilty of the charges. On October 10, 1998, the Honorable Judge Frank Eppes sentenced him to life imprisonment without parole for the burglary charge and six (6) months, concurrent, for the escape charge.

The Applicant filed a timely Notice of Appeal and perfected an appeal. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Wise, Op. No. 2000-UP-295 (S.C. Ct. App. filed April 19, 2000).

The Applicant subsequently filed an application for PCR on September 25, 2000 (00-CP-36-260). The Respondent filed its return on July 5, 2001. On February 4, 2002, the Honorable Wyatt T.

Wyt 10/4 

Saunders convened a hearing at which the Applicant was present and Henry P. Bufkin and Samuel Price, Esquire, represented him. By Order dated June 14, 2002, Judge Saunders denied and dismissed the application.

Wanda H. Haile of the South Carolina Office of Appellate Defense filed a timely Notice of Appeal on the Applicant's behalf and submitted a Petition for Writ of Certiorari on January 23, 2003. On May 15, 2003, the South Carolina Supreme Court denied the petition.

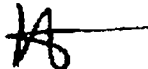
In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Lack of subject matter jurisdiction.
2. Vindictive prosecution.
3. Illegal prosecution.

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised in a previous

Page 2 of 4 

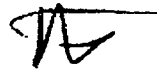
application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code §17-27-90. The Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, *supra*; Arnold v. State/Plath v. State, *supra*.

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

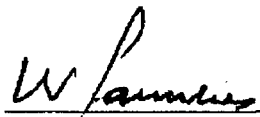
The South Carolina Supreme Court held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The court convicted the Applicant of the offenses he challenges in this application on October 10, 1998. The remittitur was sent down, after the Applicant's unsuccessful appeal, on May 11, 2000. He filed this application on April 27, 2005, almost five years after the one-year statutory filing period expired.

Page 3 of 4 


A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

Based upon its review of the pleadings in this matter, this Court expresses its intent to dismiss the matter unless the applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Newberry County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Julie M. Thames, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 29th day of August, 2005.


Wyatt T. Saunders, Jr.
Administrative Judge
Eighth Judicial Circuit

at Greenville, South Carolina.

Page 4 of 4 

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

James Edward Wise, #250411

Plaintiff

v.

State Of S.C.

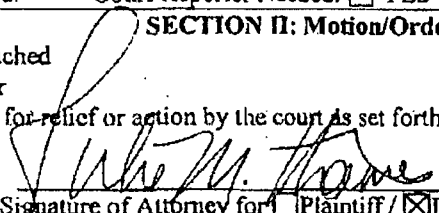
Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2005-CP-36-169

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: M. Rita Metts, Bar No. Address: P.O. Box 21023 Columbia, SC 29221-1023 phone: fax: e-mail: other:	Defendant's Attorney: Julie M. Thanics, Bar No. Address: P.O. Box 11549 Columbia, SC 29211 phone: fax: e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	August 19, 2005 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT:	
(check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCR) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions.	
Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	Date Filed: _____

FILED
 NEWBERRY COUNTY
 2005 AUG 31 A 11:20
 JACQUE BOETTIG
 CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

)
) IN THE COURT OF COMMON PLEAS
)

2005-CP-36-169

James Edward Wise, #250411

)
) Applicant,
)

vs

) AFFIDAVIT OF SERVICE BY MAIL
)


State of South Carolina,

)
) Respondent.
)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Proposed Conditional Order of Dismissal in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

M. Rita Metts
P.O. Box 21023
Columbia, SC 29221-1023

DATED this 19th day of August, 2005.


Gianandrea A. Maoli, Legal Assistant
For Respondent

JACKIE S. BOWERS
CLERK OF COURT

2005 AUG 31 A 11:26

FILED
NEWBERRY COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)
)
James E. Wise, #250411)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2005-CP-36-169

FINAL ORDER

2005 APR -5 A 10:51
CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 27, 2005. The Respondent made its Return and Motion to Dismiss on August 19, 2005, requesting that the application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated August 29, 2005, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a form 4 issued by the Greenwood County Clerk of Court, indicating service of the Order upon the Applicant's attorney on September 1, 2005.

Neither the Applicant nor his attorney has responded to the Respondent's motion to dismiss. Therefore, this Court finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.


IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203,

ps/gd
421

SCACR. The Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

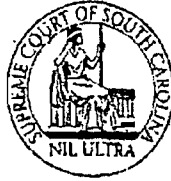
AND IT IS SO ORDERED this 03^d day of April, 2006.



Wyatt T. Saunders, Jr.,
Administrative Judge
Eighth Judicial Circuit

P. Greenwood, South Carolina.

Page 2 ~~10~~
422



JT 8 App

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1000

FAX (803) 734-1499

August 15, 2006

REMITTITUR

The Honorable Jackie S. Bowers
1226 College St Rm 7
PO Drawer 10
Newberry, SC 29108-0278

Re: Wise, James E. v. The State
2005-CP-36-169

Dear Ms. Bowers:

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

Very truly yours,



CLERK

DES/klb

cc: Appellate Defense
James E. Wise #250411
M. Rita Metts, Esquire
Assistant Attorney General Julie Thames ✓

The Supreme Court of South Carolina

James E. Wise, 250411, Petitioner

v.

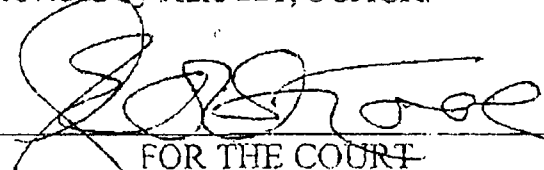
State of South Carolina, Respondent.

ORDER

By order dated August 29, 2005, the circuit court issued a conditional order of dismissal in this post-conviction relief (PCR) case. This order gave petitioner twenty days to show cause why the conditional order should not become final. According to the final order of dismissal, no response was filed to this conditional order of dismissal, and the circuit court issued the final order of dismissal on April 3, 2006. Petitioner has now served and filed a notice of appeal from this last order.

Where, as here, a PCR applicant fails to file a response to a conditional order of dismissal, this Court has held that the applicant cannot appeal. Edith v. State, S.C. Sup. Ct. Order dated May 24, 2006 (Shearouse

Adv. Sh. No. 26). Accordingly, the notice of appeal is dismissed. The remittitur will be sent as provided by Rule 221, SCACR.¹


C.J.
FOR THE COURT

Columbia, South Carolina

July 17, 2006

cc: Assistant Attorney General Julie Thames
M. Rita Metts, Esquire
James E. Wise

¹ The State has made a motion to remand to correct a clerical error in the final order. In light of this dismissal, no action will be taken on this motion. Based on the conditional order of dismissal and the common pleas docket number assigned to this case, it is clear that this is a Newberry County case, and the remittitur will be sent to Newberry County.



The South Carolina Court of Appeals

ATTORNEY GENERAL'S OFFICE

KENNETH A. RICHSTAD
CLERK

IDA R. CARSON
DEPUTY CLERK

POST OFFICE BOX 11620
COLUMBIA, S. C. 29211
(803) 734-1890

May 5, 2000

The Honorable Jackie S. Bowers
Clerk of Court, Newberry County
Post Office Box 278
Newberry, SC 29108-0278

Re: The State v. Wise, James Edward

Dear Ms. Bowers:

Enclosed is the Remittitur in the above entitled matter. A copy of this letter is being sent to all counsel.

Sincerely,

A handwritten signature in cursive script, appearing to read "Penny Baskin".

Penny Baskin
Administrative Assistant

KAR
KAR/pb

cc: Assistant Appellate Defender Robert M. Pachak
James Wise # 250411
Chief Deputy Attorney General John W. McIntosh
William Townes Jones, IV, Esq

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**The State,
Respondent,**

v.

**James Edward Wise,
Appellant.**

**Appeal From Newberry County
Frank Eppes, Special Circuit Court Judge**

**Unpublished Opinion No. 2000-UP-295
Submitted March 1, 2000 - Filed April 19, 2000**

APPEAL DISMISSED

**Assistant Appellate Defender Robert M. Pachak, of South
Carolina Office of Appellate Defense, of Columbia, for
Appellant.**

**Attorney General Charles M. Condon and Chief Deputy
Attorney General John W. McIntosh, both of Columbia;
and Solicitor W. Townes Jones, IV, of Greenwood, for
Respondent.**

PER CURIAM: James Edward Wise was found guilty of first degree burglary and escape from the custody of an officer. He was sentenced to life imprisonment without parole for the first degree burglary and six months concurrent for escape. On appeal, counsel for Wise has filed a final brief along with a petition to be relieved as counsel. Wise has not filed a pro se response with the Court.¹

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

State v. Wise

After a review of the record pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's petition to be relieved.

APPEAL DISMISSED.

CURETON, ANDERSON, and HUFF, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO NEWBERRY COUNTY
WYATT T. SAUNDERS, JR., CIRCUIT COURT JUDGE

JAMES E. WISE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. HAILE
Senior Assistant Appellate Defender

South Carolina Office
of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

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ARGUMENT.....4
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PETITION TO BE RELIEVED AS COUNSEL.....8

ISSUE PRESENTED

Trial counsel was ineffective in failing to object to the ceramic pig received into evidence in the case.

STATEMENT

Petitioner James E. Wise was found guilty of first degree burglary and the escaping custody of an officer during the October 1998 term of the Newberry County General Sessions Court before the Honorable Frank Eppes, Judge. Petitioner was sentenced to life without parole. App. 1-170. Petitioner appealed, but his convictions and sentences were affirmed.

Petitioner filed a post-conviction relief application dated September 25, 2000, with the Newberry County Office of the Clerk of Court. App. 177-249. The respondent filed a return dated July 5, 2001, requesting that an evidentiary hearing be held in the case. App. 250-254. A hearing was convened on February 4, 2002, at the Newberry County Courthouse before the Honorable Wyatt T. Saunders, Judge. App. 255-347. On June 14, 2002, Judge Saunders issued an order of dismissal in the case. App. 348-355.

Petitioner appealed. This petition follows.

ARGUMENT

Trial counsel was ineffective in failing to object to the ceramic pig received into evidence in the case.

At trial, Mary Bates testified that around 4:30 a.m. on July 15, 1997, petitioner busted a glass out of the screen door on the porch of her house, kicked the door down, came into the house and began hitting her with his fists. Bates stated that when the telephone rang during the incidence, petitioner picked up a ceramic pig, drew it back and threatened to beat and kill her if she told whoever called of his presence there at the house. Shortly thereafter, police arrived on the scene. Bates testified that she did not know who called the police on her behalf. App. 33, l. 15 – p. 42, l.

17.

The trial court gave the following burglary charge to the jury:

... "A person is guilty of burglary in the first degree if the person enters a dwelling without consent with intent to commit a crime in the dwelling and either when effecting an entry or in there."

Now, in the breaking and entering of a dwelling house of another in the nighttime with intent to commit a felony therein whether the felony is committed or not, it is an offense against habitation not against property. Essential elements are a breaking. If a door is cracked and you push it open, that's a breaking, and if you stick your hand in a window, that's a breaking. The essential elements are there's a breaking and entry of a dwelling house of another in the nighttime with intent to commit a felony therein. Nighttime within the meaning of common law, the definition of burglary means the period between sunset and sunrise during there is not enough daylight to discern a man's face. The term may be otherwise defined by statute. In the absent and contrary, nighttime within a definition of burglary it was held that the period from sunset to sunrise during which there is not daylight enough for which to discern a man's face, although under statute nighttime may be otherwise defined.

App. 160, l. 13 – p. 161, l. 10.¹

During the hearing, petitioner complained that the state introduced the ceramic pig presumably as a deadly weapon used in the case, and that trial counsel should have known it would be presented as evidence and objected to its admission as evidence. App. 279, l. 10 – p. 281, l. 11. Note that since the state had evidence of the aggravating circumstance of “nighttime” (see jury charge), there was no need to rely on the aggravating circumstances of having been “armed with a deadly weapon” or “caused physical injury to [a victim]” or “used or threatened to use a dangerous instrument.” In other words, the pig evidence was irrelevant. State v. Schmidt, 277 S.C. 368, 287 S.E.2d 488 (1982). The pig evidence was also prejudicial as this placed petitioner in a violent light and placed undue emphasis on what was alleged to have been a weapon involved during the burglary. See State v. Gullede, 288 S.C. 301, 342 S.E.2d 401 (1986). Additionally, note that counsel admitted at the hearing that there was a picture of the ceramic pig and in effect that he erred in failing to argue that the picture would have sufficient evidence to corroborate the victim's story. App. 295, l. 17 – p. 296, l. 7; App. 308, ll. 19-24; App. 317, l. 6 – p. 320, l. 2. Clearly, counsel was ineffective in failing to object to the ceramic pig received into evidence in the case. The error

¹ S.C. Code Ann. §16-11-311 reads that:

- (A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:
- (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:
 - (a) is armed with a deadly weapon or explosive; or
 - (b) causes physical injury to a person who is not a participant in the crime; or
 - (c) uses or threatens the use of a dangerous instrument; or
 - (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
 - (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or
 - (3) the entering or remaining occurs in the nighttime.

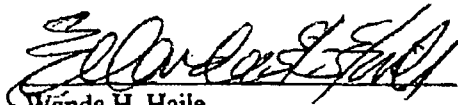
violated Strickland v. Washington, 466 U.S. 668 (1984),² and the sixth and fourteenth amendments to the United States Constitution and article 1, §14 of the South Carolina State Constitution. But for counsel's error, a reasonable probability exists that petitioner's trial might have ended differently.

² In Strickland v. Washington, 466 U.S. 668 (1984), the United States Supreme Court held that a claim that counsel's assistance was so defective as to require a reversal of a conviction dictates that the defendant show first that counsel's performance was deficient, and second, that but for counsel's errors, a reasonable probability exists that the defendant's trial would have ended differently.

CONCLUSION

By reason of the foregoing argument, petitioner's writ of certiorari should be granted in order to allow full briefing on this issue.

Respectfully submitted,



Wanda H. Haile
Senior Assistant Appellate Defender

ATTORNEY FOR PETITIONER

January 22, 2003

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO NEWBERRY COUNTY
WYATT T. SAUNDERS, JR., CIRCUIT COURT JUDGE

JAMES E. WISE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for James E. Wise states:

1. She is Senior Assistant Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on Feb. 4, 2002. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for James E. Wise.

Respectfully submitted,



Wanda H. Haile
Senior Assistant Appellate Defender

ATTORNEY FOR PETITIONER

January 22, 2003

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO NEWBERRY COUNTY
WYATT T. SAUNDERS, JR., CIRCUIT COURT JUDGE

JAMES E. WISE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

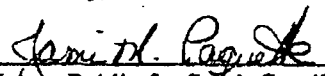
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Allen Bullard, Esquire, and James E. Wise, #250411, Evans Correctional Institution, this 22nd day of January, 2003.



Wanda H. Haile
Senior Assistant Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 22nd day
of January, 2003.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: January 8, 2011.

State of South Carolina
 IN THE SUPREME COURT

CERTIORARI TO NEWBERRY COUNTY
 WYATT SAUNDERS, JR., CIRCUIT COURT JUDGE

JAMES WISE,

Petitioner,

V.

State of South Carolina

RESPONDENT

FINAL JOHNSON PETITION FOR WRIT
 OF CERTIORARI SUBMITTED BY
 PRO-SE PETITIONER

James Wise
 JAMES WISE # 250411
 PRO-SE PETITIONER
 F.C.I. F4-B.
 P.O. Box 29512-02
 BENNETTSVILLE, S.C.

29512-5202

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ISSUES PRESENTED

ISSUE (A) Did the lower court err in failing to find counsel ineffective for failing to request any lesser included offense to the charge of Burglary First, that petitioner was on trial for?

ISSUE (B) Did the Court lack subject matter jurisdiction to convict petitioner of first degree burglary where there was a variance between the indictment and the evidence presented at trial?

ISSUE (C) Did the lower court err in failing to find that the General Session Court lacked subject matter jurisdiction to convict on the First degree Burglary, due to it being a double jeopardy issue that petitioner was brought to trial on?

ISSUE (D) Did the lower court err in failing to find that counsel was ineffective for failing to object to indictments of prior crimes being admitted into the jury room during deliberations?

ISSUE (E) Was counsel ineffective for failure to investigate the facts of this case and prepare an adequate defense?

Statement of Case History

Petitioner James E. Wise was found guilty of first degree burglary and escaping custody of an officer during the October 1998 term of the Newberry County General Sessions Court before the Honorable Frank Epps, Judge. Petitioner was sentenced to life without parole. Petitioner appealed, yet his conviction and sentences were affirmed.

Petitioner filed a P.R. relief application dated September 25, 2000, with the Newberry County Office of the Clerk of Court. The respondent filed a return dated July 5, 2001, requesting that an evidentiary hearing be held in the case. A hearing was convened on February 4, 2002, at the Newberry County Courthouse before the Honorable Wyatt T. Spender, Judge. On June 14, 2002 Judge Spender issued and order of dismissal in the case.

Counsel for Petitioner (Wanda H. Halk) submitted a Johnson Petition to this Court dated January 22, 2003. This Final Johnson Petition submitted by Petitioner follows:

I SSUE(A)

Did the lower Court error in failing to find counsel ineffective for failing to request any lesser included offense to the charge of burglary first, that petitioner was on trial for?

Petitioner presented this issue in his C.R. Application. (App. p. 227) The state addressed the issue in its Order of Dismissal (App. p. 353)

During the trial of petitioner, officer Williams Griffin testified that he received a call July 15, 1997 telling him to go to [REDACTED] as a result of a 911 hang up call. (Tr. 69.L. 4/24) Upon his arrival he found petitioner and Mary arguing on her front porch. Mary Bates told officer Griffin that she wanted petitioner to leave. As a result, officer Griffin made petitioner leave the residence. Yet once officer Griffin left, petitioner returned.

In this instance Statutory Trespassing, is a lesser included offense of First Degree Burglary, as criminal trespass requires a prior warning against entry or a request to leave. All these elements were present in petitioner case. All these facts

were presented to the trial Court during trial.
As Officer Brittin testified (Tr. 69 L. 17/20) (At which
time he was asked to leave, and he was in a van. I
went in and I asked her I said, you don't want him
here, and she said, NO. She said, I don't want
him in my house. So, he agreed to leave, at which
time he said; I'm leaving. Thus meeting the
standards as set forth in § 16-11-620 (1) (the
entry of a dwelling house, place of business or
the premises of another within six months after
being warned against such entry), many notes
testified (Tr. 36, L. 14/18) (And so, the officer
came and told Mr. Wise he had to leave. So, Mr.
Wise left walking, but I told the officer to make
him get the van out of my yard. So, he made him
get the van out of the yard too. So, the officer
left and he left.) many notes further testified
(Tr. 36 L. 18/20) (So, after while I was getting
ready for work I had to be to work at six o'clock,
and he came back, banging on the door.) Thus sat. the
part. two of criminal trespass statute, (2) § 16-11-620. (The
failure to leave a dwelling house, place of business
or premises of another after having been requested
to leave.)

In the alternative Burglary second degree
and Burglary third degree required the same

elements of burglary first, including the entering or remaining occurs in the nighttime. Nonetheless, the best counsel should have done was ask the Court to change the jury to any all lesser included offenses of burglary, in light of the evidence presented at trial.

Prisoner was prejudiced by the inaction of counsel, because it gave the jury no alternative but to convict or acquit on the first degree burglary charge. This deficiency by counsel without a doubt prejudice the defense by not giving the jury a chance to convict on lesser included offenses, should the trial court have agreed to change any lesser offense to the charge of first degree burglary, in light of the evidence presented at trial.

A trial judge is required to change the jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser, rather than the greater offense. *State v. Tyson*, 323 S.E.2d 770. (1984) *State v. Condy* 324 S.E.2d 65 (1984.)

Counsel Han ~~testified at the P.C.R. hearing as~~
(Q) Okay. Why do you believe that that lesser included offense more adequately reflects what it was that you did?

(A) Because the elements were presented, and during the course of the trial, testimony from the officer and the victim; when he said that I was running to leave from there, and it's derived from the same incident, so---

(Q) Was there any requested instruction concerning other lesser included offenses? Was some other lesser included offenses other than the burglary requested?

(A) No, not during the trial. (App. 291, 11/23).

Trial counsel testified at the P.C.R. hearing as follows; App. 314, L. 10/25 and App. 315, L. 1/8).

(Q) What about the issue about the statutory criminal trespass as a lesser included offense? Why didn't you request an instruction on that?

(A) I don't know. I did not, and I don't remember considering it.

(Q) Okay. Wouldn't that have been relevant as a lesser included offense, having less impact and might not call into effect the life sentence?

(A) In retrospect, possibly, yes, But I didn't consider that as a potential -- I considered the burglaries, other degrees of burglary, to be lesser included, and I didn't want burglary before the jury either. I wanted an all or nothing, and I kind of thought the most severe would be the best one to let them mess with.

(Q) Why did you want an all-or-nothing presentation to the jury?

(A) Because if his story is believed and he was let in the house with permission, none of the other should have -- I didn't want them to have something to fall back and get him on. I thought we were going to beat it. I thought that despite the diverging testimony, he made a pretty good witness.

It should be easy to see the error of lower court in not granting ~~in~~ a new trial on this issue alone, considering the prejudicial impact to his client who ended up with a life sentence, all because counsel decided to roll the dice for an all or nothing verdict, without discussing the impact of such a jury

change with his client.

This court has consistently held that where evidence presented at trial, would support a lesser included offense charge, the trial court should change the lesser offense. State v. Mathis, p. 541 [7]. Therefore in light of the evidence presented at trial. This court should find that the lower court erred in not granting a new trial, and order that the sentence be vacated, or that a new trial be granted in the alternative.

ISSUE (B)

Did the Court lack subject matter jurisdiction to convict petitioner of first degree burglary, where there was a variance between the indictment and the evidence presented at trial?

Issues related to subject matter jurisdiction may be raised at any time. *Browning v. State*, 320 S.C. 366, 465 S.E.2d 358 (1995). A criminal defendant is entitled to be tried only on indicted offenses. *State v. Munn*, 292 S.C. 497, 357 S.E.2d 461 (1987). In South Carolina it is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment. *State v. Gunn*, 437 S.E.2d 75 (1983). A material variance between charge and proof entitles the defendant to a directed verdict; such a variance is not material if it is not an element of the offense.

In this case, the indictment clearly alleged that petitioner committed the crime of burglary. As follows:
That James Edward Wise, did in Newberry County, State of South Carolina, on or about the 15th day of July, 1997,

willfully and unlawfully enter a dwelling, without consent and with intent to commit a crime therein, when in effecting entry or while in immediate flight therefrom, he or another participant in the crime, was armed with a deadly weapon or explosive; or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument; or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, or the entering or remaining occurred in the nighttime, the said dwelling being owned and/or occupied by Mary Bates, in violation of Section 16-11-311 of the South Carolina Code of Law, 1976, as amended,

Petitioner was charged in indictment 98-65-36 402 with Burglary in the First Degree. (App 174/175) Convicted, and sentenced to life in prison.

During the trial of petitioner officer William Griffin testified that he received a call July, 15, 1997 telling him to go to Boyd Crossing as a result of a 911 hang up call. (Tr. p. 69, L. 14/24) That upon his arrival he investigated and talked with Mary Bates (the victim) and she wanted officer Griffin to

order petitioner on off her property. That it was okay with her if petitioner went to her mother's house that sat near her property. (Tr.p. 69, L. 19/24) (Tr.p. 70, L. 13/16). As a result petitioner left, and he cleaned up from the call. (Tr.p. 70, L. 15/17). This resulting in him leaving the scene. (Tr.p. 78, L. 4/6).

Mary Bates testified that she and petitioner had a relationship back in 1985. (Tr.p. 34, L. 1/3) she further testified that she told officer Williams that the best thing petitioner could do was to get off her front porch. (Tr.p. 35, L. 24/25) and (Tr.p. 36 L. (1)) Mary Bates also stated that as a result of the conversation with petitioner that night, she called 911 and a officer arrived. (Tr.p. 36, L. 7/18) making petitioner leave. (Tr.p. 36, L. 14/15). Only to have petitioner return a few minutes later. (Tr.p. 36, L. 19/20). That petitioner stood on her front porch some ten minutes before officer Griffin arrived. (Tr.p. 46, L. 15/16).

Petitioner testified that when the police officer arrived, that he placed petitioner under arrest for disorderly conduct because he and Mary Bates were arguing in her front yard. (Tr.p. 102, L. 18/24).

Counsel for petitioner testified at the P.C.R. hearing that it was basically a case of (HE SAID - SHE SAID) (App. p. 317, L. 24/25) that he felt she was trying to hide a relationship between herself and petitioner, so she had to say what she said. That she didn't want the boyfriend to find out about the on going relationship and everything that happened that night. (App. 318, L. 1/8).

Petitioner argues that he had an off and on relationship with Mary Bates when they seen each other on a regular basis for sex. Counsel argued to the Court that he wanted to introduce evidence of a prior crime Mary Bates and petitioner were convicted of in 1985, and evidence of the relationship. (Tr. p. 22, L. 21/25 and Tr. p. 23, L. 1/7).

At the scene there was no mention of a crime being committed other than simple assault and disorderly conduct. (Tr. p. 102, L. 21/22). On the way to jail petitioner supposedly jumped out of the police car when it came to a stop at a stop sign, which pissed the officer off, and resulted in the change in the reason for arrest.

Still the bottom line to the argument presented is that first degree burglary requires the entry of a dwelling without consent with the intent to

Commit a crime therein, as well as the existence of an aggravating circumstance, S.C. Code Ann. § 16-11-311 (Supp 1993) while statutory criminal trespass involves either (1) the entry of a dwelling house, place of business or the premises of another within six months after being warned against such entry; or (2) the failure to leave a dwelling house, place of business or premises of another after having been requested to leave, S.C. Code Ann § 16-11-620 (1976)

In considering this issue it is important to consider the testimony of petitioner, whom he testified at trial. (We talked a little while and I was invited in.) (Tr. p. 98, L. (21).

The facts of case silently speaks for them. In Officer Griffin felt there was a commit of First Degree Burglary. why weren't pictures of the crime scene taken that night or the next day? why wait till months later. why wasn't a crime scene investigator called out to go over the scene for evidence, that a crime had been committed.

Petitioner argues that if an officer thought there was an evil intent on his part, why didn't he place him under arrest the first time he arrived. Thus inferring, the elements of criminal trespass (1) being warned to leave (2) failure to leave after having been requested to leave § 16-11-620.

Taking the evidence presented at trial in a light most favorable to the State, Petitioner went to home of Mary Gates to continue an on going sexual relationship she and petitioner had since his release from prison in 1996. (Tape 117, L. 131 25). Officer Griffin arrived once and warned petitioner to leave, plus Mary also testified that he had told petitioner to leave. That petitioner left after the officer arrived, only to return later. The question of entry is in conflict, since petitioner testified that he was invited in, and Mary Gates testified he broke in. Yet there is no question about the prior warning being made, thus implying the element of criminal trespass § 16-11-620.

For the reasons set forth, petitioner argues that he was only guilty of criminal

trespass, by the facts proven at trial, not the first degree burglary charge as charged in the indictment, that was the result of a gissel off police officer, after petitioner escaped his custody on the way to jail. Therefore the Court lacked subject matter jurisdiction to convict on First Degree burglary. State-v-Jones 536, S.E.2d 396.

For the reasons set forth in this issue petitioner prays that the Court will either vacate his conviction or grant a new trial as the alternative.

ISSUE (C)

Did the lower Court err in failing to find that the General Session Court lacked subject matter jurisdiction to convict on the first degree burglary due to it being a double jeopardy issue that petitioner was brought to trial on?

Petitioner raised the issue of double jeopardy during trial. (Tr.p. 19, L. 6/25) (Tr.p. 20, L. 1/24) Tr.p. 21, L. 1/20). The trial Court overruled the motion. Tr.p. 21, L. 20). Appellate Counsel raised the issue on direct appeal in an Anders brief. The Court of Appeals denied the relief. Petitioner again raised the issue of double jeopardy in his P.C.R. application, stating that facts and law had been over looked or wrongly applied. (App. 194) The Order of Dismissal from P.C.R. addressed this issue. (App. 350)''

Petitioner once again points to the error concerning this issue.

The P.C.R. order of dismissal points out that this is a direct appeal issue that is not cognizable in P.C.R. Thus overlooking the fact that this

issue is brought as a issue concerning subject matter Jurisdiction. The same ^{way} that it is now before this Court for review.

Issues related to subject matter jurisdiction may be raised at any time. *Browning v. State*, 320 S.C. 366, 465 S.E.2d 558 (1995) A criminal defendant is entitled to be tried only on indicted offenses. *State v. Munn* 357 S.E.2d 461 (1987)

Petitioner argument is simple, and contains all the facts necessary in deciding this case.

There is no argument in regards to ^{the} fact that petitioner went to home of Mary Bates on the night of July 14, 1997. There is a dispute as to the time of his arrival. Petitioner claiming that he arrived on the night of July, 14, 1997 at about 11:00 P.M. and was invited inside. (Tr.p. 115, L. (1)). Mary Bates claiming that he arrived at 4:00 A.M. in morning July 15, 1997. (Tr.p. 34, L. 9/13) Regardless of the time of arrival, Petitioner admitted to slapping Mary Bates during trial. (Tr.p. 100, L. 6) (Tr.p. 101, L. 10/14). As a result Petitioner appeared in Magistrate Court and plea guilty to simple assault (App.p. 333) and received a sentence of 30 days in jail.

In the original indictment of petitioner, it charged petitioner with (1) Burglary, (2) Assault and battery of a high aggravated nature. (App. 237)

After it was brought to the prosecution attention that the Assault and Battery as charged in Court two of the indictment would constitute a double jeopardy issue, the prosecution again indicted Petitioner on the Burglary issue only. (App. 175) Also (Trp. 20, L. 7/19).

Petitioner argues that the double jeopardy issue still attaches to the original indictment, Kelly-v- State 266 S.E. 2d 417. (Single indictment under which appellant was tried charged all three offenses: As a result, jeopardy attached on the grand larceny charge when the jury was impaneled and sworn. See Crist-v- Bretz, 98 S.Ct. 2156 (1978) State-v- Charles, 190 S.E. 466 (1937).)

The case a bar, the prosecution clearly says that the original indictment was still an active indictment (Trp. 20, L. 18/19) which charged the assault and battery as court two of the active indictment. Still the second indictment used a element that constituted double jeopardy by using the simple assault conviction as an element to prove the burglary first.

First we have the original indictment that is still an active indictment at the time of trial. (Trp 20, L. 18/19) where the prosecution says, (So, the indictment with the Burglary first and A.B.M. will be not crossed at the conclusion of this case. Petitioner submits that this indictment was sent into the jury room for viewing

during jury deliberations. (App. 364) AS well
AS the amended indictment for burglary 1st.
(App. 266)

That the jury was also allowed to ~~to~~ see two
prior indictment for conviction obtained in 1990
AND 1991. (App. 337, 339) SEE (App. 156, L. 20/22)
where the prosecution ^{SAYS} to the jury in closing argument.
(He was impeached with prior convictions. He had
two prior convictions, and you'll be able to take those
indictments back with you). What is not being said
is that the original indictment also went to the
jury room for viewing, and it was an active indictment.

Here petitioner has been placed under Jeopardy by
pleading guilty to assault and battery and the jury
being allowed to see that indictment, which was active,
even though the jury was deciding the issue of Burglary
1st, they were illegally allowed to entertain the original
Active indictment which included the same Burglary
1st, as well as the assault and battery charge.

It must also be considered that double jeopardy
~~attaches~~ attaches to common elements in
the indictment, not the charge. The original
indictment had two counts, the second indictment
required the use of a crime being committed in
the process of the burglary, thus using the assault

AN BATTERY, A second time in order to convict
Petitioner ask this Court to look at the facts
and, prays that this Court will hold that his
subsequent prosecution for assault and battery
will constitute double jeopardy.

ISSUE (D)

Did the lower court err, in failing to find that counsel was ineffective for failing to object to indictments of prior crimes being admitted into the jury room during deliberations?

Petitioner presented this issue in his P.C.R. application (App. 230) Petitioner failed to address this issue specifically at the P.C.R. hearing, but contends that the record speaks for itself. In the order of dismissal the state addressed this issue (App. 354)

During the trial of petitioner, the state entered evidence of two prior convictions of petitioner. (App. 337). (App. 339) The prosecution told the jury during closing arguments that petitioner had been impeached with prior conviction, and that they would be able to take those indictments into the jury room with them. (Tr. p 156, L. 20/22).

Petitioner contends that he has found one case that stands on all fours with him, in his argument concerning this deficiency by counsel. In *Lombard v. Lynaugh*, 868 F.2d 1475 (1989) the court said,

As noted, Lombard contends that he was denied effective assistance of counsel at trial because because Cahoon, as trial counsel,

failed to object to; (1) the habitual offender comments by the trial court and the prosecution's reading to the jury of the indictment which contained several allegations of Lombard's prior convictions. The Texas Court of Criminal Appeals found that reversal of a conviction is required where the trial court permits the jury to learn, at the commencement of the guilt or innocent stage of the trial, that the defendant has been convicted of one or more prior felony offenses alleged for enhancement, provided the defendant timely objects. Thus Cochran's failure to object at trial to the reference to Lombard's prior convictions may well have been a costly error.

Petitioner contends that the failure of counsel to object to the reading of these indictments to the jury amounted to a deficient performance by counsel. For there can be no doubt as to the prejudice incurred to the defense, when the jury learned that petitioner had also been convicted in the past for similar offenses, and was allowed to view the indictment for these offenses, during deliberation for a similar offense.

Petitioner contends that for the reasons stated in this issue, he was denied the effective assistance of trial counsel, and that due to the deficient performance of counsel he was denied his Sixth Amendment right to the effective assistance of counsel during trial. For these reasons petitioner prays that the court will reverse his convictions.

ISSUE (B)

WAS COUNSEL INEFFECTIVE FOR FAILURE TO INVESTIGATE THE FACTS OF THE CASE AND PREPARE AN ADEQUATE DEFENSE?

Petitioner presented this issue in his P.C.R. Application. (App 205) The court addressed this issue, (App 354), in its order of dismissal.

Petitioner contends that he was denied the effective assistance of trial counsel, when counsel failed to investigate the facts of case and prepare an adequate defense.

One of the Major issues in this case was the time that Petitioner arrived at the home of Mary Bates, with Petitioner testifying that he arrived at about a quarter till eleven on the night of July 14, 1997. (Tr. 114, L. 24/25) Tr. p. 115, L. 7/19. Mary Bates testified that petitioner arrived about 4:00 AM, on the morning July 15, 1997. (Tr. p. 34, L. 10/12)

During the trial of petitioner Officer William Griffin testified that Mary Bates, mother house was located next door. (Tr. p. 69, L. 20/24). Mary Bates testified that she and petitioner lived together in 1985 in her Mom's house that sat in front of her trailer. (Tr. p. 44, L. 1/17).

Petitioner contends that if counsel had

investigated and talked with Mary Bots mother, that testimony could have been entered at trial as to the time of his arrival on the night of July 14, 1997. Also testimony could have been given as to his length of stay, which would have shown that petitioner had stayed the night in the home of Mary Bots starting at 10:00 PM on the night of July 14, 1997.

Here there can be no doubt as to the prejudice done to the defense at trial, by counsels failure to investigate, and have witness to verify the facts as testified to by petitioner. This single fact alone could have possibly changed the out come of the trial, for it would have shown that petitioner spend the night in the home of Mary Bots, instead of showing up at 4:00 AM. in the morning, uninvited as she claimed.

Petitioner Prays that the Court will reverse his conviction and grant a new trial on this issue.

Certificate of Service

I James E. Wise, swear under penalty of perjury that I have sent a copy of Final Johnson petition to those persons whose addresses appear below. First by placing these copies in a prepaid envelope, and placing that envelope in the U.S. Mail, here at the Evans Correctional Institution in Bennettsville S.C.,

South Carolina Supreme Court
DANIEL H. SHEAROUSE,
Clerk of Court
P.O. Box 11330
Columbia, South Carolina, 29211

Office of Attorney General
HENRY McMASTER
P.O. Box 11549
Columbia, S.C. 29211

Respectfully

~~James Wise~~

James E. Wise #250411
F.C.I. F4-B-wing
P.O. Box 29512-02
BENNETTSVILLE, S.C.
29512-5202

INDICTMENT FOR:

The State of South Carolina

County of Newberry

- (1) VIOLATION SECTION 16-9-320(b)
- (2) ASSAULT AND BATTERY WITH INTENT TO KILL
- (3) VIOLATION SECTION 16-5-50

At a Court of General Sessions, convened on the 13th day of May
1985, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

(1) That JAMES EDWARD WISE

did in Newberry state aforesaid
County/on or about the 9th day of March

1985

while resisting a lawful arrest, wilfully and unlawfully assault, beat and wound a law enforcement officer, Joseph Roy Fulmer

COUNT TWO

(2) That JAMES EDWARD WISE, MARY CANNON BATES, CELESTE GALLMAN and LULA

WISE, aiding, abetting and assisting one another,

did in Newberry state aforesaid
County/on or about the 9th day of March

1985

in and upon one Joseph Roy Fulmer feloniously, wilfully and of their malice aforethought, did make an assault with their hands, fists and feet and they the said JAMES EDWARD WISE, MARY CANNON BATES, CELESTE GALLMAN and LULA WISE with their hands, fists and feet did stike, beat, kick, choke and wound with intent the said Joseph Roy Fulmer then and there feloniously wilfully and of malice aforethought, to kill and murder

COUNT THREE

(3) That MARY CANNON BATES, CELESTE GALLMAN and LULA WISE, aiding,
abetting and assisting one another.

did in Newberry ^{state aforesaid} County on or about the 9th day of March
1985

wilfully and intentionally interfere with the efforts of a peace officer of this State, namely: Joseph Roy Fulmer to perform lawful duties of this office, to wit: to arrest and take into custody James Edward Wise by the following unlawful acts: by presently directly and indirectly with threats and actions aid, abet and assist the said James Edward Wise in his assault upon officer Joseph Roy Fulmer and in his attempt to resist and escape arrest.

Against the peace and dignity of the State, and contrary to the statute in such case and made and provided.

W. Townes Jones
Solicitor



8
appnd

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

June 3, 2003

REMITTITUR

The Honorable Jackie S. Bowers
PO Drawer 10
Newberry, SC 29108-0278

Re: Wise, James E. v. State
2000-CP-36-260

Dear Ms. Bowers:

The above referenced matter is hereby remitted to the trial court. A copy of the judgment of this Court is attached.

Very truly yours,



CLERK

DES/klb

Enclosure

cc: Mr. James E. Wise, #250411
Senior Assistant Appellate Defender Wanda H. Haile
Assistant Attorney General David Spencer ✓

The Supreme Court of South Carolina

James E. Wise,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER

This matter is before the Court on a petition for a writ of certiorari following the denial of petitioner's application for post-conviction relief.

Petitioner's counsel asserts that the petition is without merit and requests permission to withdraw from further representation. Petitioner has filed a pro se petition.

After careful consideration of the entire record as required by Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.


C. J.
FOR THE COURT

Columbia, South Carolina

May 15, 2003

THE STATE OF SOUTH CAROLINA
In The Court of appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

Frank R. Addy, Jr. Chief Circuit Court Judge

Appellate Case No. 2013-000196

The State of South Carolina, Respondent.

VS.

James E. Wise, #250411, Appellant.

RECORD ON APPEAL

James E. Wise, #250411
Lieber Corr. Inst. E-B-49
P.O. BOX 205
Ridgeville, S.C. 29472
Appellant Pro Se

Other Counsel of Record:

Attorney General of South Carolina
Ms. Salley Elliott, Esquire
P.O. BOX 11549
Columbia, S.C. 29211-1549

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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	
COUNTY OF NEWBERRY)	CASE NO. 98-GS-36-402
)	
JAMES E. WISE, #250411,)	
)	
vs.)	
)	
STATE OF SOUTH CAROLINA)	ORDER DISMISSING MOTION TO
)	ARREST JUDGMENT
)	
)	
)	

THIS MATTER COMES BEFORE THE COURT on a motion to arrest judgment filed by James E. Wise dated November 1, 2012. This motion was forwarded to this judge for review due to a conflict which The Hon. Eugene Griffith, Jr. had in ruling upon the motion.

Having reviewed the motion and attachments, and after a review of the records of the clerk of court, the court finds that Mr. Wise's motion is without merit and should be summarily dismissed. Simply stated, double jeopardy did not prevent Mr. Wise's prosecution for Burglary 1st degree. Additionally, Mr. Wise has previously filed two (2) applications for post-conviction relief as well as a writ of mandamus. The issues addressed in his motion could have been raised in those proceedings.

WHEREFORE, Mr. Wise's motion to arrest judgment is denied.

IT IS SO ORDERED.

Frank R. Addy, Jr.
 Frank R. Addy, Jr.
 Chief Administrative Judge
 Eighth Judicial Circuit

FILED
 NEWBERRY COUNTY
 2012 JAN - 7 P 2 35

December 31, 2012
 Greenwood, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT
C/A No. 98-GS-36-402

James E. Wise, #250411
Defendant Pro se,

V.

State of South Carolina,
Respondent,

CERTIFICATE
OF
SERVICE

I James E. Wise, #250411 do hereby swear that I have served a true and correct copy of (1.) Notice of Motion & Motion to Arrest Judgment/Sentence in the above matter. On This 2 Day of November 2012. By placing a true and correct copy in the United States Postal Mail Postage prepaid, addressed to the below party and persons of interest.

1.) Clerk of Court Newberry County
Attn: Ms. Jackie S. Bowers
P.O. Drawer 10
Newberry, S.C. 29108-0010

2.) Solicitors Office
Attn: Mr. Jerry Peace, Solicitor
P.O. BOX 516
Greenwood, S.C. 29648

3.) Chief Administrative Circuit Court Judge
Honorable Eugene C. Griffith, Jr.
P.O. BOX Drawer 10
Newberry, S.C. 29108-0010

Respectfully Submitted,

James E. Wise

James E. Wise, #250411

Defendant Pro se

JACKIE S. BOWERS
CLERK OF COURT

2012 NOV - 9 A 10:48

FILED
NEWBERRY COUNTY

STATE OF SOUTH CAROLINA)
 COUNTY OF NEWBERRY.)
 James E. Wise, #250411)
 Defendant, pro se)
 vs.)
 State of South Carolina,)
 Respondent,)

IN THE COURT OF GENERAL SESSIONS
 EIGHTH JUDICIAL CIRCUIT
 C/A No. 98-GS-36-402

NOTICE OF MOTION &
 MOTION TO ARREST SENTENCE/
 JUDGMENT

FILED
 COUNTY
 2017 NOV -9 A 10:48

The Defendant James E. Wise, #250411 hereby files Notice Of Motion & Motion To Arrest Sentence/Judgment. Defendant invokes the Jurisdiction and power of General Sessions To Arrest the Sentence/Judgment in the above referenced Case/Indictments.

JURISDICTION

Arrest of Judgment. The staying of a judgment after its entry; esp., a court's refusal to render or enforce a judgment because of a defect apparent from the record. BLACK'S LAW DICTIONARY
SEE: State v. Brown, 23 S.E. 2d 301 (1942), Ruling that Arrest of Judgment should have been GRANTED where Trial Court did not have Jurisdiction to impose sentence.

FACTS

The Defendant was arrested in Newberry County, South Carolina on July 15, 1997 and charged with, Burglary 1st Degree, Assault & Battery of a high and aggravated nature (ABHAM), and Escape.

The Grand Jury indicted as charged (97-GS-36-479), and the Defendant entered/Plead Guilty in Magistrate's Court to the Lesser included offense of Assault & Battery (Simple) on the

ASHAM charge, and on the Burglary 1st Degree the Defendant Plead Guilty to Malicious Injury To Real Property. The State seeks a re-indictment for 1st Degree Burglary (98-GS-36-402) of the Original indictment (97-GS-36-479). The defendant herein went to Trial for 1st Degree Burglary on October 8, 1998 Pursuant to the above indictment, where a Jury found the defendant Guilty as charged and he received a Life sentence without the possibility of Parole. The Defendants Trial Attorney filed a timely Motion to Quash the indictment, but failed to inform the court that the Defendant had already plead guilty in Magistrates Court for Malicious injury to real property, therefore it would constitute Double Jeopardy and this Conviction CAN NOT STAND AS A MATTER OF LAW AND UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 12 OF THE SOUTH CAROLINA CONSTITUTION, because it violates the DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT TO UNITED STATES CONSTITUTION.

DISCUSSION

The Defendant argues that this court has jurisdiction to Arrest Judgment in this case. See: State V. Brown, 23 S.E. 2d 301 (1942).

The Defendant argues that the second indictment (98-GS-36-402) And Trial Violated the Double Jeopardy Clause of the 5th Amendment of the United States Constitution And Article I, Section 12 of the South Carolina Constitution. See: State V. Lawson, (1983 case Our S.C. Supreme Court has stated: [" THE STATE AND FEDERAL CONSTITUTION GUARANTEES FREEDOM FROM DOUBLE JEOPARDY AND PROTECTION A CRIMINAL DEFENDANT FROM PUNISHMENT FOR BOTH AN OFFENSE AND

8

WEDNESDAY NEWBERY COUNTY MAGISTRATE COURT 09/09/98
 ACTION... UPDATE DISPOSITION 81.00
 FILE #... F491806 OFFICER... FILE DT..07/24/97
 DELETED..N
 DELETED..N
 NAME... WISE, JAMES EDWARD
 CHRG CD.636 MALIC INJURY TO PRBOND ADV. 376.00 LOC..
 FIRM... 18-11-520 BOND PD.. .00 RCPT. DT.00/00/00
 MALI. INJURY TO REAL PROP. CHECK #..
 PR CD..2 GUILTY SENT TRI, DISP DT..00/05/97 FINE AMT... .00
 CONT DT..00/00/00 FEE & ASST. .00
 .00 = TOT DUE
 VERDICT... SENTENCED 30 DAYS SUSPENDED TIME SERVED
 COMMENTS.....
 CD (Y/N/P).N BW/#/OPT.Y AR WARRANT.F491806
 JUDGE... 724 CENTRAL TRAFF COURT DT.080597 09:00 AM JURY TRIAL.N
 PAYMNT... .00 DUE DATE..00/00/00 ACCOUNT#...
 INDIC... WISE, JAMES EDWARD LIC#/ST....
 LIC# ST TAG#/ST....
 PRUS-ERITY AUTC.....
 SC 89127 0000 SUB/SEC....
 RACE.....B
 SEX.....M
 BIRTHDAY...
 HIST SENT..N DISP SENT..N
 *** WARNING WARRANT *** SUSPENSION OF 376.00 ON 00/05/07
 EXT Key BY = Enter Date Time

This is a true and certified copy of the disposition.

April Gilliam

April Gilliam - Notary Public

Commission Expires 1-21-2004

Todays Date 9-9-98

SENTENCE

STATE OF SOUTH CAROLINA
NEWBERRY COUNTY

Case # 97 GS-36-36-402
Ticket/Warrant # _____
Filed to/Convicted of _____
Burglary, 1st
Offense Code _____
MIN/MAX SENT.: _____

ATTEST:

(Clerk of Court/Deputy Clerk)

James Edward Wise
(Defendant)

Date Signed _____

The defendant James Edward Wise is committed to the State Department of Corrections/Newberry County Detention Center for a term of life ^{without Parole} ~~months~~ years and/or pay a fine of \$ _____, provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable the balance suspended with probation for _____ months/year
Restitution For Physical Injury \$ _____
Yes/No Property Damage \$ _____
to be paid _____

to Clerk for _____
Other conditions: _____
copy of _____
AUG 08 1998
Jessie S. [Signature]
Clerk of Court

Date 10/8, 1998

Frank Egger
Presiding Judge

**Pay to Victim's Compensation Fund if Subrogated.

Costs and Assessments \$ _____

11

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FORM NEWBERRY COUNTY
Court of General Sessions

Frank R, Addy, Jr. Chief Circuit Court Judge

Case No. 98-GS-36-402

The State,.....Respondent.

v.

James E. Wise, #250411,.....Appellant.

NOTICE OF APPEAL

James E. Wise, #250411 Appeals his Conviction and Sentence in this Case, from the Order Dismissing Motion To Arrest Judgement. [This appeal is taken from the Order the Honorable Frank R. Addy, Jr. , dated December 31, 2012.]. Appellant recieved written notice of entry of the Order on January 17, 2013.

OTHER COUNSEL OF RECORD:

Solicitors Office For Newberry
ATTN: Mr. Jerry Peace
P.O. BOX 516
Greenwood, S.C. 29648

Respectfully Submitted,

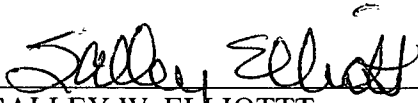
James E. Wise

James E. Wise, 250411,

11

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

July 17, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUL 17 2013
SC Court of Appeals

Appeal from Newberry County
Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2013-000196

The State,

Respondent,

v.

James E. Wise,

Appellant,

PROOF OF SERVICE

I, Angela Bennett certify that I have served the Record on Appeal on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to James E. Wise, #250411, Liber Correctional Inst. P.O. Box 205, Ridgeville, South Carolina 29472.

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

This 17th day of July, 2013.



ANGELA BENNETT
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

July 17, 2013

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: State v. James E. Wise
Appellate Case No: 2013-000196

Dear Ms. Kitchings:

Enclosed please find the original and fourteen (14) copies of Record on Appeal in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab
Enclosures

cc: James E. Wise, #2504

RECEIVED

JUL 17 2013

SC Court of Appeals