

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
HONORABLE LETITIA H. VERDIN, CIRCUIT JUDGE

FURMAN E. TAYLOR JR., #198161,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2018-001587

PRO-SE BRIEF ON JOHNSON PETITION FILED BY COUNSEL
FOR WRIT OF CERTIORARI

FURMAN E. TAYLOR, #198161
PETITIONER
PERRY CORRECTIONAL INST.
430 OAKLAWN ROAD
PELZER, S.C. 29669

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SC Court of Appeals

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16-11-311(A)(2)

RULES

RULE 5 SCR CRIM. PROC.
RULE 404(B) SCRE
RULE 403 SCRE
RULE 901(A) SCRE
RULE 1003 SCRE

STANDARD OF REVIEW

UNDER THE FIRST PRONG OF STRICKLAND V. WASHINGTON, THE DEFENDANT "MUST SHOW" THAT COUNSEL'S REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, "WHICH MUST BE JUDGED UNDER" PREVAILING PROFESSIONAL NORMS." 466 U.S. 668, 688(1984). THE FIRST PRONG-CONSTITUTIONAL DEFICIENCY- IS NECESSARILY LINKED TO THE PRACTICE AND EXPECTATIONS OF THE LEGAL COMMUNITY: "THE PROPER MEASURE OF ATTORNEY PERFORMANCE REMAINS SIMPLY REASONABLENESS UNDER PREVAILING NORMS."

BADILLA V. KENTUCKY, 559 U.S. 356, 366 (2010). IF THE STATE CONTENDS THE ALLEGED DEFICIENCY RESULTED FROM A STRATEGIC DECISION MADE AT TRIAL, COUNSEL MUST ARTICULATE A VALID REASON FOR EMPLOYING A CERTAIN STRATEGY. FREIBURGER V. STATE, 413 S.C. 243, 775 S.E.2D. 391-393 (CT. APP. 2015), AND (SEE), INGLE V. STATE, 348 S.C. 467, 560 S.E. 2D. 401, 402 (2002) DECISIONS MADE IN IGNORANCE OF RELEVANT AVAILABLE INFORMATION CAN NOT BE CHARACTERIZED AS STRATEGIC. WEIK V. STATE, 409 S.C. 214, 236, 761 S.E. 2D. 757, 768 (2014).

THE SECOND PRONG OF STRICKLAND REQUIRES A DEFENDANT ESTABLISH THIS DEFICIENCY PREJUDICED HIM. THE DEFENDANT MUST SHOW THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. *Id.* AT 69. A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME. "ID." IN DETERMINING WHETHER THE APPLICANT HAS PROVEN PREJUDICE, THE P.C.R. COURT SHOULD CONSIDER THE SPECIFIC IMPACT COUNSEL'S ERROR HAD ON THE OUTCOME OF THE TRIAL. SMALLS V. STATE, 422 S.C. 174, 188; 810 S.E.2D. 836, 843 (2018) (CITING STRICKLAND, 466 U.S. AT 695, 696 (EXPLAINING THAT THE COURT MUST ANALYZE HOW INDIVIDUAL ERRORS OF COUNSEL AFFECT THE IMPORTANT FACTUAL FINDINGS IN A PARTICULAR CASE.)). IN ADDITION, THE P.C.R. COURT SHOULD CONSIDER THE STRENGTH OF THE STATE'S CASE

IN LIGHT OF ALL THE EVIDENCE PRESENTED TO THE JURY. ID. (CITING JONES V. STATE, 332s.c.329,333;504s.e.2d.822,824(1998) (IN DECIDING WHETHER JONES WAS PREJUDICED, WE MUST BEAR IN MIND THE STRENGTH OF THE GOVERNMENT'S CASE... "AND" WE CONSIDER THE TOTALITY OF THE EVIDENCE BEFORE THE JURY"). IN GENERAL, THE STRONGER THE EVIDENCE PRESENTED BY THE STATE, THE LESS LIKELY THE P.C.R. COURT WILL FIND THE APPLICANT MET HIS BURDEN OF PROVIDING PREJUDICED." ID. ORDINARILY, THE EXISTENCE OF "OVERWHELMING EVIDENCE" DOES NOT AUTOMATICALLY PRECLUDE A FINDING OF PREJUDICE. ID., 422s.c. AT 189, 810 s.e.2d.844. FOR THE EVIDENCE TO BE OVERWHELMING SUCH THAT IT CATEGORICALLY PRECLUDES A FINDING OF PREJUDICE...THE EVIDENCE MUST INCLUDE SOMETHING CONCLUSIVE, SUCH AS A CONFESSION, DNA EVIDENCE DEMONSTRATING GUILT, OR A COMBINATION OF PHYSICAL AND CORROBORATING EVIDENCE SO STRONG THAT THE STRICKLAND STANDARD OF A REASONABLE PROBABILITY...THAT THE FACT FINDER WOULD HAVE HAD A REASONABLE DOUBT CAN NOT POSSIBLY BE MET. ID. 422s.c. AT 191, 810 s.e.2d.845. IN CRIMINAL CASES, THE APPELLATE COURT SITS TO REVIEW ERRORS OF LAW ONLY. STATE V. WILLIAMS, 386 s.c.503,509;690 s.e.2d.62,65(2010) (QUOTING STATE V. WILSON, 345 s.c.1,5-6,545s.e.2d.827,829(2001)). THUS, AN APPELLATE COURT IS BOUND BY THE CIRCUIT COURT'S FACTUAL FINDINGS UNLESS THEY ARE CLEARLY ERRONEOUS. STATE V. BACCUS, 367s.c.41,48;625s.e.2d.216 220(2006). THE ADMISSION OR EXCLUSION OF EVIDENCE IS LEFT TO THE SOUND DISCRETION OF THE TRIAL JUDGE, WHOSE DECISION WILL NOT BE REVERSED ON APPEAL ABSENT AN ABUSE OF DISCRETION. STATE V. BLACK, 400 s.c.10,16;732s.e.2d.880,884(2012), (QUOTING STATE V. SALTZ, 346s.c.114,121;551s.e.2d.240,244(2001)). EVIDENCE OF OTHER CRIMES MUST BE PUT TO A RATHER SEVERE TEST BEFORE ADMISSION. STATE V. TIMMONS, 327s.c.48,52;488s.e.2d.323,325(1997) (A FAILURE TO EXERCISE DISCRETION AMOUNTS TO AN ABUSE OF THAT DISCRETION), SAMPLES V. MITCHELL, 329s.c.105,112;495s.e.2d.213 216,(CT. APP.1997). AN ABUSE OF DISCRETION OCCURS WHEN THE CIRCUIT COURT'S RULING IS BASED ON AN ERROR OF LAW OR, WHEN GROUNDED IN FACTUAL CONCLUSIONS, IS WITHOUT EVIDENTIARY SUPPORT. BLACK, 400s.c.16;732s.e.2d.884(QUOTING STATE V. JENNINGS, 394 s.c.473,477-78;716s.e.2d.91,93(2011)). TO WARRANT A REVERSAL, AN ERROR MUST RESULT IN PREJUDICE TO THE APPEALING PARTY. ID., AT

16-17; 732s.e.2d. at 884. THERE MAY BE OTHER APPLICABLE STANDARDS TO THIS CASE OTHER THAN THE AFOREMENTIONED. PETITIONER IS A LAYMAN OF THE LAW.

STATEMENT OF THE CASE

PETITIONER, FURMAN EUGENE TAYLOR WAS INDCTED ON APRIL 23, 2013 BY THE GREENVILLE COUNTY GRAND JURY, IN THE COURT OF GENERAL SESSIONS FOR 1ST. DEGREE BURGLARY AND PETIT LARCENY. PETITIONER WAS TRIED IN GREENVILLE COUNTY GENERAL SESSIONS ON FEBUARY 11, AND 14, 2014, BEFORE THE HONORABLE R. KNOX MCMAHAN THAT RESULTED IN A HUNG JURY. SUBSEQUENTLY, PETITIONER WAS AGAIN TRIED IN GREENVILLE COUNTY GENERAL SESSIONS BEFORE THE HONORABLE D. GARRISON HILL AND WAS CONVICTED. PETITIONER WAS SENTENCED TO LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR 1ST. DEGREE BURGLARY AND THIRTY DAYS CONCURRENT FOR PETIT LARCENY. A NOTICE OF APPEAL WAS PERFECTED AND SERVED BY TRIAL COUNSEL, ALEX KORNFIELD(ESQ.) IN JANUARY 2015. A REMITTITUR DENYING HIS APPEAL WAS RETURNED ON AUGUST 19, 2016. PETITIONER FILED AND SERVED A POST CONVICTION RELIEF APPLICATION ON SEPTEMBER 23, 2016. AN EVIDENTIARY HEARING WAS HELD ON OCTOBER 27, 2017. PETITIONER RECEIVED A LETTER FROM P.C.R. COUNSEL, Ms. SUSANNAH ROSS(ESQ) STATING HIS P.C.R. WAS DENIED ON JULY 31, 2018. PETITIONER WROTE A CORRESPONDENCE REQUESTING P.C.R. COUNSEL TO FILE A 59(E) ON SEVERAL GROUNDS THAT MAY HAVE BEEN OVERLOOKED AT THE HEARING. TO WHICH, P.C.R. COUNSEL FILED A 59(E) ON CUMULATIVE ERROR ON AUGUST 7, 2018. THE 59(E) MOTION WAS DENIED ON AUGUST 15, 2018. ON FEBUARY 20TH, PETITIONER RECEIVED A CORRESPONDENCE FROM DANIEL E. SHEARHOUSE DATED FEB. 14, 2018, STATING THAT APPOINTED COUNSEL, Ms. LARA CAUDY (ESQ) HAS SUBMITTED A "JOHNSON BRIEF" FOR WRIT OF CERTIORARI INDICATING THE APPEAL IS WITHOUT MERIT AND MOVES TO BE REMOVED AS COUNSEL. NOW COMES PETITIONER, A MERE LAYMAN OF THE LAW, WITH MAYBE AVERAGE INTELLIGENCE, NO FORMAL TRAINING, WITH THIS PRO-SE RESPONSE TO THE JOHNSON PETITION FILED BY HIS APPOINTED COUNSEL. (FROM THIS POINT ON, LINE WILL BE LN. AND TRANSCRIPT WILL BE TR.

I. ARGUMENT

A. PRIOR BAD ACT(S)

IN THE POST CONVICTION RELIEF (P.C.R.) EVIDENTIARY HEARING THE COURT HAD BEFORE IT BOTH TRIAL TRANSCRIPTS, THE FEBRUARY 11 AND 14, 2014, THAT ENDED IN A HUNG JURY. (SEE; APP. 669, LNS 21 THRU 25, AND 670, LNS 1 THRU 12), AND THE SUBSEQUENT TRIAL ON JANUARY 5, THRU 7, 2015 THAT ENDED IN CONVICTION.

THE PETITIONER (DEFENDANT), FURMAN TAYLOR (TAYLOR), AFFIRMED THROUGH THE TRIAL TRANSCRIPT(S) THAT THE SECOND (APPOINTED) TRIAL COUNSEL, ALEX KORNFIELD (ESQ.), DID REQUEST A 404(B) MOTION TO EXCLUDE PRIOR BAD ACT(S) EVIDENCE. (SEE, APP. 204 LNS. 3 THRU 5). SINCE THIS MOTION WAS REQUESTED, IT CALLED INTO A FIRST STEP OF REASONING TO A LOGICAL LEGAL PROCESS OF ANALYSIS TO BE PERFORMED TO FIND IF THESE PRIOR BAD ACT(S) CAN BE PRODUCED AS EVIDENCE OR OTHERWISE IN THE STATE'S CASE IN CHIEF (GUILT, INNOCENCE PHASE) OF TRIAL. (APP. 310, LNS. 22, 23). BECAUSE TO DO SO CONTRAVENES THE WELL ESTABLISHED RULE THAT EVIDENCE THAT AN ACCUSED HAS COMMITTED OTHER CRIMES IS NOT ADMISSIBLE IN THE PROSECUTION FOR THE CRIME CHARGED. (RULÉ 404(B)); STATE V. GREGORY; 191 S.C. 212; STATE V. WILLIAMS, 31 S.C. 418; (ANY CONVICTION AT LEAST TEN (10) YEARS OLD PRESUMPTIVELY PREJUDICES" A DEFENDANT AND THE GOVERNMENT MUST MEET THE HEAVY BURDEN OF REBUTTING THE PRESUMPTION). THE PRESUMPTION IS CERTAINLY NOT REBUTTED BY THE FACTS THE CONVICTION WAS FOR THE SAME TYPE OF OFFENSE FOR WHICH THE DEFENDANT NOW STANDS ACCUSED. STATE V. COLF, 332 S.C. 313; 504 S.E.2D. 360 (1998), ALSO SEE, UNITED STATES V. BEAHM, 664 F2D. 414 (4TH. CIR. 1981) (APP. 309, LNS. 9 THRU 13). IN UNITED STATES V. BEAHM, 664 F2D. 414, 1981 U.S. APP. LEXIS 15890 (IN THE SPECIAL CASE WHERE A PRIOR CONVICTION IS FOR THE SAME OFFENSE AS THAT FOR WHICH THE DEFENDANT IS BEING TRIED, THE TRIAL COURT GENERALLY WILL NOT PERMIT THE GOVERNMENT TO PROVE THE NATURE OF THE OFFENSE ON THE GROUND THAT TO DO SO WOULD AMOUNT TO UNFAIR PREJUDICE. (ALSO SEE), UNITED STATES V. WILSON, 556 F2D. 1177, 1178, (THE JURY DESPITE

LIMITING INSTRUCTION CAN "HARDLY AVOID" DRAWING THE INFERENCE THAT THE PAST CONVICTION SUGGEST SAME PROBABILITY THAT DEFENDANT COMMITTED THE OFFENSE FOR WHICH HE IS CURRENTLY CHARGED.)

THE PROCESS OF ANALYZING PRIOR BAD ACT(S) EVIDENCE BEGINS WITH RULE 401, SCRE., SEE, STATE V. WALLACE, 384 s.c. 428, 433, 683 s.e. 2d. 275, 277 (2009), ALSO SEE STATE V. KING, 416 s.c. 108, 784 s.e.2d. 252 (2016).

IT APPEARS THAT THE STATE STANDS ON THE APPEALS COURT CASE OF TOMMY LEE JAMES, 355 s.c.25, 34, 583 s.e.2d. 745, 749-50. INSTEAD OF THE SUPREME COURT CASE. IN THE SUPREME COURT CASE, THEN CHIEF JUSTICE JEAN TOOLE HELD:

"NONE OF THE RELEVANT AUTHORITIES NULLIFY THE TRIAL COURT'S TRADITIONAL ROLE IN WEIGHING THE PROBATIVE VALUE OF EVIDENCE VERSUS IT'S PREJUDICIAL EFFECT OF SUGGEST THAT RULE 403 IS DISPLACED BY THE "OPERATION OF" A STATUTE MAKING PRIOR CRIMINAL CONVICTIONS AN ELEMENT OF A CRIME.)

ID. AT 34, 583 s.e.2d. AT 750.

THE ADMISSIBILITY OF PRIOR CONVICTIONS IS ALWAYS LIMITED BY THE TRADITIONAL RULES OF EVIDENCE. ID. AT 35, 583 s.e.2d. AT 750. (ALTHOUGH THE STATE IS ENTITLED TO SUBMIT EVIDENCE OF IT'S OWN CHOOSING, IT MUST DO SO WITHIN THE CONFINES OF THE ESTABLISHED RULES OF EVIDENCE).

THE STATE CLAIMED THIS EVIDENCE WAS EXTREMELY PROBATIVE AND PROVES THE ELEMENTS OF THIS CASE. SEE: APP. 205, LNS4-9). THE ONLY PROBATIVE VALUE IT COULD HAVE WOULD BE AS PROPENSITY EVIDENCE BECAUSE THE PAST CHARGES WERE OVER 22 YEARS PRIOR TO THIS TRIAL MAKING "RES-GESTA" INAPPLICABLE.

DURING PRE-TRIAL MOTIONS, THE COURT'S FAILURE TO PERFORM ANY ANALYSIS ON THE REQUESTED 404(B) MOTION TO EXCLUDE PRIOR BAD ACT(S) EVIDENCE DID PREJUDICE THE TAYLOR. THIS PREJUDICE FLOWED AND WAS ENHANCED WHEN THE COURT INTRODUCED PRIOR BAD ACT(S) EVIDENCE WITHOUT ANY ANALYSIS WHICH BECAME EXPONENTIALLY PREJUDICIAL TO TAYLOR WHEN IT WAS ARGUED IN THE CLOSING STATEMENTS OF THE PROSECUTION.

HOWEVER, IF IT IS BEING USED FOR THE PURPOSE OF STATUTE TO PROVE LEGAL STATUS OF A DEFENDANT, THERE IS NO NEED OF "NAME OR NATURE" OF PRIOR CONVICTIONS TO SHOW STATUS. (SEE OLD CHIEF, 519 U.S. 172, 117 S.Ct. 644, 649-656), (HELD:

"A DISTRICT COURT ABUSES IT'S DISCRETION UNDER RULE 403 IF IT SPURNS A DEFENDANT'S OFFER TO CONCEDE A PRIOR JUDGEMENT AND ADMITS THE FULL JUDGEMENT RECORD OVER THE DEFENDANT'S OBJECTION WHEN THE "NAME AND NATURE" OF PRIOR OFFENSE RAISES THE RISK OF A VERDICT TAINTED BY IMPROPER CONSIDERATIONS, AND WHEN THE PURPOSE OF THE EVIDENCE IS SOLELY TO PROVE THE ELEMENT OF PRIOR CONVICTIONS)

ALSO SEE UNITED STATES V. TAVARES, 21 F.3D.13-5 (1994)(ENBANC); U.S. V. POORE, 594 F.2D 39,40-43(1979); U.S. V. WACKER, 72 F.3D. 1453,1472-73(1995); U.S. V. JONES, 67 F.3D.320,322-325(1995), (EACH HOLDING THAT THE DEFENDANT'S OFFER TO STIPULATE TO OR ADMIT TO PRIOR CONVICTIONS TRIGGERS AN OBLIGATION OF THE DISTRICT COURT TO ELIMINATE THE "NAME AND NATURE" OF THE UNDERLYING OFFENSE FROM THE CASE BY ONE MEANS OR ANOTHER).

THEN, TRIAL COUNSEL MADE AN ARGUMENT ABOUT THE STATUTE ITSELF STATING:

"IF THE TWO PRIOR BURGLARIES GET IN, WHICH IS AN ELEMENT OF THE OFFENSE, IT CIRCUMVENTS THE JUDGE'S ABILITY TO ACTUALLY DO A 403 ANALYSIS ON WHETHER OR NOT THAT WOULD BE UNDULY PREJUDICIAL TO THE DEFENDANT BUT THAT HE HAD TO FOLLOW THE STATUTE.

SEE APP. 206, LNS 19-25.

HOWEVER, TRIAL COUNSEL MADE THE ARGUMENT TO THE TRIAL COURT THAT ALLOWING THESE PRIOR BAD ACT(S) IN WITHOUT FURTHER ANALYSIS IS PREJUDICIAL TO THE CLIENT. SEE APP. 207, LNS.1-3, ALSO SEE, STATE V. SMITH, 391 S.C.353,365; 705 S.E.2D.491, 497(EXPLAINING, IT IS THE DEFENDANT'S DUTY TO RAISE ARGUMENTS REGARDING IMPROPER 404(B) ANALYSIS TO THE TRIAL JUDGE). THE COURT SAID:

"TO THE EXTENT YOUR ASKING ME NOT TO CHARGE THE JURY AS TO THE ELEMENTS OD THE OFFENSE THAT MAY INCLUDE PRIOR CONVICTIONS I DON'T THINK I CAN GRANT THAT IN LIGHT OF THE CASES THAT HAVE BEEN RAISED BY THE STATE, WHICH I'M FAMILIAR WITH"

SEE APP. 207, LNS 9-13.

THERE WERE TWO RULINGS, ONE WAS THE COURT OF APPEALS AND THE OTHER, A SUPREME COURT RULING CONCERNING THE ADMISSIBILITY OF PRIOR BAD ACT(S) EVIDENCE. THE GENERAL INADMISSIBILITY OF PRIOR BAD ACT(S) EVIDENCE TO PROVE A DEFENDANT'S PROPENSITY TO COMMIT AN OFFENSE IS BASED ON THE DANGER THAT THIS TYPE OF EVIDENCE WILL OVERLY INFLUENCE THE FINDERS OF FACT AND THEREBY PERSUADE THEM TO PREJUDGE ONE WITH A BAD GENERAL RECORD AND DENY HIM A FAIR OPPORTUNITY TO DEFEND AGAINST A PARTICULAR CHARGE. RULE 404(B).

THUS, IT WOULD TEND TO SHOW THAT THE STATE'S INTENTION WAS TO USE THESE PRIOR BAD ACTS EVIDENCE TO ENCOURAGE THE JURY TO CONVICT ON AN IMPROPER BASIS. WHEN "EVIDENCE OF OTHER CRIMES MUST BE PUT TO A RATHER SEVERE TEST BEFORE ADMISSION." STATE V. TIMMONS, 327 S.C. 48, 52; 488 S.E.2D. 323, 325, (FAILURE TO EXERCISE DISCRETION AMOUNTS TO AN ABUSE OF THAT DISCRETION.), SAMPLES V. MITCHELL, 329 S.C. 105, 112; 495 S.E.2D. 213, 216 (CT. APP. 1997) (FINDING THE CIRCUIT COURT ERRED BY FAILING TO CONDUCT AN ON THE RECORD 403 BALANCING TEST.), STATE V. SPEARS, 403 S.C. 247, 254; 742 S.E.2D. 878, 881 (CT. APP. 2013), WHEN OF COURSE, THE PERMISSIVE LANGUAGE OF RULE 404(B) IS LIMITED BY THE PROVISIONS OF RULE 403 TO THE EFFECT THAT ALTHOUGH RELEVANT, EVIDENCE MAY BE EXCLUDED IF IT'S PROBATIVE VALUE IS OUTWEIGHED BY IT'S DANGER OF BEING USED AS PROPENSITY EVIDENCE AND PREJUDICIAL EFFECT THEREOF.

WHEN TRIAL COUNSEL HAD OBJECTED THAT IT WOULD BE UNDULY PREJUDICIAL TO SUBMIT TO A JURY A PREVIOUS ROBBERY, IF HE'S ON TRIAL FOR ROBBERY. HERE I FEEL THEY ARE ANALOGOUS. APP. 304, LNS. 25 AND 305, LNS. 1-3 RESPECTIVELY. THE COURT STATED:

"I UNDERSTAND YOUR OBJECTION, BUT I DON'T BELIEVE I'M FREE TO REPLACE THE STATUTE WITH THE 403 RULE, APP. 305, LNS. 7, 8,

THUS, REFUSING TO PERFORM ANY ANALYSIS ON THE PRIOR BAD ACT(S) EVIDENCE PRIOR TO ADMISSION, (FINDING TRIAL COURT ERRED IN TREATING THE PRIOR CRIMES AS IF THEIR SIMILARITY HEIGHTENED THEIR PROBATIVE VALUE WHEN IT ACTUALLY INCREASED THEIR PREJUDICIAL EFFECT), STATE V. COLF, 337 S.C. 622; 525 S.E.2D. 246, (NOTING THAT WHERE THE STATE OFFERS PRIOR CONVICTIONS FOR SIMILAR CRIMES THE "PREJUDICE" IS EVEN MORE EGREGIOUS); STATE V. BRYANT, 415 S.E.2D.

806, (PRIOR CRIMES ARE EITHER "SIMILAR" OR "IDENTICAL" TO THE OFFENSE CHARGED, THE LIKELIHOOD OF A HIGH DEGREE OF PREJUDICE TO THE ACCUSED IS INESCAPABLE); STATE V. SCRIVEN, 529 S.E.2D.71,

WHEN TRIAL COUNSEL STIPULATED UNDER OLD CHIEF BUT QUOTED JAMES, (SEE APP. 310, LNS. 7-11) APPEALS COURT CASE WITHOUT USING OR EXPOUNDING ON THE CONTROLLING SUPREME COURT PRESIDENT DEVELOPED AND SET THERE ON THE ADMISSIBILITY OF PRIOR BAD ACT(S) EVIDENCE AND THE ANALYSIS TO BE PERFORMED BY THE COURT DID PREJUDICE THE DEFENDANT.

THE COURT ADVISED:

"I THINK HE'S GOT A RIGHT TO PUT THEM IN AS A STATE EXHIBIT. IT'S PART OF HIS CASE IN CHIEF."
SEE APP. 310, LNS. 22,23.

THE CARDINAL RULE OF STATUTORY CONSTRUCTION IS, A COURT MUST ASCERTAIN AND GIVE EFFECT TO THE INTENT OF THE LEGISLATURE. STATE V. SCOTT, 351 S.C. 584,588; 571 S.E.2D. 700,702(2002). A STATUTE AS A WHOLE MUST RECEIVE A PRACTICAL, REASONABLE AND FAIR INTERPRETATION COGNIZANT WITH THE PURPOSE, DESIGN AND POLICY OF THE LAW MAKERS, STATE V. TISDALE, 321 S.C.153,157; 467 S.E.2D.270 271,(CT. APP. 1996)(A COURT MUST AVOID CONSTRUING A STATUTE SO AS TO LEAD TO AN ABSURD RESULT.), ID. AT 157, 467 S.E.2D. AT 271-72, BECAUSE THIS DOES SERVE TO PLACE THE JURY IN A POSITION WHERE THEY COULD "HARDLY AVOID" DRAWING THE INFERENCE THAT THE PAST CONVICTIONS SUGGEST SOME PROBABILITY THAT THE DEFENDANT COMMITTED THE OFFENSE. ESPECIALLY WHEN THE JUDGE ENCOURAGED THE PROSECUTOR TO BRING THESE PRIOR BAD ACT(S) IN HIS CLOSING ARGUMENT THAT SERVED TO MAGNIFY THE PREJUDICE EXPONENTIALLY IN THIS CASE.

THUS, THE P.C.R. COURT WENT CONTRARY TO THE WELL ESTABLISHED 403, 404(B) RULE WHEN HE ALLOWED § 16-11-311(A)(2) TO JUSTIFY NOT PERFORMING ANY BALANCING TEST IN THIS CASE. IT ALSO AMOUNTS TO AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED AT THE P.C.R. HEARING.

ARGUMENT

B) PREJUDED TESTIMONY

THE COURT HAS LONG MADE IT CLEAR THAT A DELIBERATE DECEPTION OF A COURT AND JURORS BY THE PRESENTATION OF KNOWN FALSE EVIDENCE IS INCOMPATIBLE WITH "RUDIMENTARY DEMANDS OF JUSTICE." SEE MOONEY V. HOLOHAN, 294 U.S. 103, 112 (1935). IT WAS SUBSEQUENTLY AFFIRMED IN BOTH PYLE V. KANSAS, 317 U.S. 213(1942), AND NAPUE V. ILLINOIS, 360 U.S. 264 (1959), WHERE THE COURT HELD:

"THE SAME RESULT OBTAINS WHEN THE STATE, ALTHOUGH NOT SOLICITING FALSE EVIDENCE, ALLOWS IT TO GO UNCORRECTED WHEN IT APPEARS." ID. AT 269.

CONSTITUTIONAL LAW §840 (THE CONSTITUTIONAL REQUIREMENT OF DUE PROCESS IS NOT SATISFIED WHERE A CONVICTION IS OBTAINED BY THE PRESENTATION OF TESTIMONY KNOWN TO THE PROSECUTING AUTHORITIES TO BE PERJURED.)

AS IN THESE CIRCUMSTANCES WHERE THE RECORD OF THE FIRST TRIAL IS AVAILABLE TO THE PROSECUTOR FOR RESEARCH OF PRIOR TESTIMONY, WHETHER THE NON-DISCLOSURE WAS A RESULT OF NEGLIGENCE OR DESIGN, IT WAS THE RESPONSIBILITY OF THE PROSECUTOR TO KNOW OF THE FALSE TESTIMONY AND CORRECT IT BEFORE THE JURY.

FURTHER, THE PETITIONER ASSERTS THAT HIS CONVICTION WAS BASED ON PERJURED TESTIMONY AND THE PROSECUTION KNEW OR SHOULD HAVE KNOWN OF THE PERJURY. WHEN THE INVESTIGATOR'S TESTIMONY ITSELF CHANGED DRASTICALLY, WHEN AT FIRST HE TESTIFIED:

"DAVID PERRY HAD SAID HE NEVER SAW A MALE SUSPECT AT ALL."
SEE, APP. 124, LNS 3-5.

HE ALSO TESTIFIED THAT:

"HE ADVISED THAT HE NEVER SHOWED DAVID PERRY A PHOTO LINE-UP OF THE MALE SUSPECT BECAUSE HE NEVER EVEN SAW A MALE SUBJECT. SEE APP. 125, LNS. 12-18, 21, 22; ALSO SEE (EXHIBIT B-1)

THIS IS THE REASON DAVID PERRY NEVER TOOK THE STAND AT THE FIRST TRIAL. HOWEVER, AT THE SECOND TRIAL, INVESTIGATOR CLAIMS HE SHOWED BOTH DAVID AND TANDY PERRY A PHOTO LINE-UP OF BOTH THE DEFENDANT AND AMANDA CALDWELL TO SEE IF THEY COULD IDENTIFY EITHER. DAVID PERRY TOOK THE STAND AT SECOND TRIAL AND TESTIFIED THAT HE SAW A MALE SUBJECT AT THE SCENE. SEE APP. 319, LNS. 10,11.

INVESTIGATOR MASHAK HAD ALSO SAID IN THE FIRST TRIAL:

"THEY HAD SAID SOMETHING ABOUT LONG HAIR AND A GOATEE." SO THAT'S HOW HE MATCHED THE DESCRIPTION "VEHICLE WISE" AND "SUSPECT WISE". APP. 124, 125, LNS. 20-25, 1,2 RESPECTIVELY.

INCIDENTLY, THE FIRST DESCRIPTION OBTAINED WAS ON THE INCIDENT DATE, MAY 19TH BY THE FIRST OFFICER ON THE SCENE, OFC. FRANK ABELLA, TO PUT A BOLO OUT. THE DESCRIPTION WAS AS FOLLOWS:

"WHITE MALE, 40 TO 50 YEARS OF AGE, FIVE-TEN TO SIX FEET IN HEIGHT, 190 TO 215 IN WEIGHT, GRAY HAIR, FULL BEARD, BLACK BALL CAP. APP. 67, LNS. 10-18. SEE EXHIBIT A-1, A-2.

AFTER 8 DAYS, WHEN INVESTIGATOR MASHAK TOOK A STATEMENT FROM TANDY PERRY ON JUNE 1ST. THE DESCRIPTION CHANGED TO:

"BLACK HAIR IN A LONG PONYTAIL AND A GOATEE" SEE EXHIBIT B-2.

INVESTIGATOR MASHAK ALSO TESTIFIED THAT RUSSELL DROUGHTEN HAD ADVISED THAT DEFENDANT HAD A BLUE AND WHITE VAN. APP. 418, LN 22,23; APP. 420, LN. 1,2. AND THAT HE CONFIRMED THIS INFORMATION THROUGH DMV REPORT, APP. 420, LN. 7,8; SEE EXHIBIT B-1, WENT THROUGH REGISTRATION, APP 420, LN. 10. BUT WHEN CONFRONTED WITH HIS OWN REPORT AND WAS CAUGHT IN A LIE, APP. 421, LN.6-15, TRIAL COUNSEL SAID:

"IT'S ALRIGHT, I KNOW IT'S BEEN A LONG TIME" APP. 421, LN 16
BUT WHEN DEFENSE COUNSEL ASKED:

"SO HIS DISCRIPTION WAS WHITE, AND THE OTHER DISCRIPTIONS YOU HAD WAS BLUE AND WHITE. WAS THERE ANY OTHER DISCRIPTION YOU HAD OF THE VEHICLE?"

INVESTIGATOR MASHAK: NO.

APP. 421, LN, 19-24.

DEFENSE COUNSEL MADE NO COMMENT TO THE OTHER TWO DISCRPTIONS ALREADY TESTIFIED TO BY TANDY PERRY. APP. 290 LN. 4-8(TWO TONES OF BLUE), AND OFFICER JOSEPH LOVELESS OF ALL BLUE. APP. 340, LN. 16-19.

FURTHER, INVESTIGATOR MASHAK TESTIFIED THAT AMANDA CALDWELL/CO-DEFENDANT SAID THAT IN HER FIRST STATEMENT THAT SHE GOT THE ITEMS FROM THE DEFENDANT, FURMAN TAYLOR. APP. 412, LN.5-9, BUT AMANDA CALDWELL HAD ALREADY TESTIFIED THAT IN HER FIRST STATEMENT THAT SHE GOT THE ITEMS FROM TYLER WHITMAN AND KATHRINE SASSER. APP. 364, LN.16-22, APP. 369, LN. 16-20; ALSO SEE EXHIBIT B-2.

IN ADDITION, THE PROSECUTOR TOLD THE COURT DURING PRE-TRIAL MOTIONS THAT HE HAD A CONVERSATION WITH INVESTIGATOR MASHAK AND THAT HE WAS GOING TO TESTIFY TO THE FACT THAT HE REQUESTED THE VIDEO JUST PRIOR TO AMANDA CALDWELL SHOWING UP AT THE COUNTER, SO THAT'S HOW THEY GAVE THEM TO HIM. THERE WAS NO WAY THE STATE COULD HAVE COMPLIED WITH THE REQUESTED DISCOVERY. APP. 240, LN.14-25.EVEN STILL, THAT IS NOT HOW INV. MASHAK TESTIFIED. MASHAK TESTIFIED THAT HE REQUESTED THE MANAGER MAKE A COPY OF THE VIDEO AND ASKED THEM TO MAKE A COPY FROM WHEN THEY ENTER THE STORE UNTIL THEY EXIT THE STORE. WE WANT A COPY OF THAT. APP. 403, 404, LNS. 25, AND 1-6 RESPECTIVELY. APP. 404, LN. 11-14. THAT HE BROUGHT TO HIS OFFICE, VIEWED THEM, AND BASICALLY BURNED A COPY OF THEM,AND THEN PLACED THEM IN PROPERTY AND EVIDENCE. YET, HE VIEWED THEM BEFORE MAKING COPIES. APP. 408, LN. 3-6. EVEN WHEN DEFENSE COUNSEL TRIES TO PUT THE WORBS IN HIS MOUTH, HE COMES RIGHT BACK TO: "FROM SHE WALKS IN THE STORE TIL SHE EXITS. APP. 416, LN.24,25, APP. 417 LN. 1-6. ON SIX (6) DIFFERENT OCCASIONS INV. MASHAK SAID THAT GOT THE FROM WHEN SHE WALKS IN THE STORE TILL SHE EXITS. APP. 404, LN. 1-3, 12-14; APP. 416-417, LN. 24,25 1-6, APP. 422, LN. 16,17,24,AND 25. BUT THAT IS NOT WHAT THEY HAVE.

THEY ONLY HAVE FROM THE TIME SHE IS AT THE COUNTER TIL SHE LEAVES. (EVIDENCE THAT A GOVERNMENT AGENT HAD COMMITTED PERJURY IN A DEFENDANT'S TRIAL WOULD GO BEYOND MERE IMPEACHMENT EVIDENCE AND MANDATE NEW TRIAL IN ORDER TO REMOVE TAINT FROM DEFENDANT'S CONVICTION). U.S. V. ESPINOSA-HERNANDEZ, 918 F.2d. 911 (1990)

FURTHERMORE, THE STATE'S CASE AGAINST THE DEFENDANT HINGED ON THE CREDIBILITY OF AN ALLEGED CO-DEFENDANT, AMANDA CALDWELL. HER STATEMENT AND TESTIMONIES CHANGED TRAMENDOUSLY. AT THE FIRST TRIAL SHE TESTIFIED THAT SHE COULD SEE THE SIDE DOOR AND WATCHED THE DEFENDANT BREAK INTO THE HOUSE. APP. 95, LN.5-7,21,22. BUT AT THE SECOND TRIAL, SHE TESTIFIED THAT SHE COULD NOT SEEHIM, SHE COULD ONLY HEAR HIM. APP. 352, LN.14-22. AT THE FIRST TRIAL SHE TESTIFIED THAT SHE SEEN A WHITE TRUCK PULL UP, APP. 96, LN. 5,7. BUT, AT THE SECOND TRIAL SHE TESTIFIED THAT SHE SEEN A DARK COLORED TRUCK PULL UP. APP. 374, LN. 20,21. SHE TESTIFIED AT THE FIRST TRIAL THAT WHEN HE CAME OUT OF THE HOUSE HE WAS HOLDING A PILLOW CASE IN ONE HAND AND A GUN IN THE OTHER. APP. 96, LN. 19-21. AT THE SECOND TRIAL SHE SAID WHEN HE CAME OUT THE DOOR HE HAD A PILLOW CASE AND A LAP-TOP. APP. 353, LN. 21-25. AT THE FIRST TRIAL, SHE TESTIFIED THAT HE HAD ON A BLACK JACKET. APP. 97, LN. 1-13 AND THEN CHANGED IT TO A BLACK ZIP UP HOODIE. APP. 108, LN. 12, 13. AT THE SECOND TRIAL, SHE TESTIFIED IT WAS A BLACK SHIRT, APP. 355, LN. 6-8. AT THE FIRST TRIAL, SHE CLAIMED THAT SHE HAD BEEN DROPPED OFF AT G.T.'S ON WHITE HORSE ROAD ACROSS FROM WELCOME ELEMENTRY SCHOOL, APP. 108, 109, LN. 25 AND 1 RESPECTIVELY. THEN IN THE SECOND TRIAL, SHE FIRST TESTIFIED THAT SHE WAS DROPPED OFF AT A FRIENDS HOUSE ON WHITE HORSE ROAD, APP. 359, LN. 21, 22. THEN AGAIN CHANGED THAT TESTIMONY TO A SPINX, APP. 376, LN. 2. AT THE FIRST TRIAL, SHE TESTIFIED THAT SHE SAID SHE GOT THE STUFF FROM THE DEFENDANT AND CATHERINE, APP.103, LN. 6-8, THE THINGS SHE PAWNED, APP. 103, LN. 10-12, AND TESTIFIED THAT SHE WAS THE ONE WHO BROUGHT THE DEFENDANT'S NAME INTO IT,

APP. 109, LN. 20-25. THEN SHE WAS CAUGHT IN THAT LIE BY FIRST DEFENSE COUNSEL, APP. 110, LN. 1-12. AT THE SECOND TRIAL, SHE TESTIFIED THAT SHE ORIGINALLY TOLD A LIE AND BLAMED IT ON TYLER WHITMAN AND KATHERINE, APP. 364, LN. 14-20. ALSO SEE APP. 368, LN.13-18.

TANDY PERRY AT THE FIRST TRIAL SAID THE SUBJECT HAD ON A BLACK JACKET, APP. 53, 54, LN. 25, 1 RESPECTIVELY. THEN AT THE SECOND TRIAL, HE CLAIMS IT'S A HOODIE AT FIRST, APP. 285, LN. 8-10. THEN AGAIN HE SAYS IT WAS A BLACK SHIRT, IT JUST BEEN SO LONG, APP. 292, LN. 18-23. AT THE FIRST TRIAL, HE SAID THE VAN WAS BLUE AND WHITE TWO-TONE VAN BUT COULD NOT GIVE DETAILS CAUSE HE COULDN'T REMEMBER IT THAT MUCH, APP. 60, LN. 3-10. AT THE SECOND TRIAL HE TESTIFIED THAT IT WAS TWO TONES OF BLUE, APP. 290, LN. 5-8.

AT THE FIRST TRIAL, INV. BRADY MASHAK TESTIFIED THAT WHEN HE TALKED TO DAVID PERRY, HE HAD ADVISED HIM THAT HE NEVER SAW A MALE, APP. 124, LN. 3-5, AND THAT HE DID NOT SHOW HIM THE PHOTO LINE-UP TO DAVID PERRY CAUSE HE NEVER EVEN SAW A MALE, APP. 125, LN. 16-18. BUT AT THE SECOND TRIAL, DAVID PERRY TESTIFIES THAT HE'S PRETTY SURE HE SAW A MALE.

PERJURED TESTIMONY REQUIRES A NEW TRIAL IF A CRIMINAL DEFENDANT ESTABLISHES; 1, THE STATE PRESENTED PERJURED TESTIMONY, 2, THE STATE KNEW OR SHOULD HAVE KNOWN OF THE PERJURY, AND 3, THERE IS A LIKELIHOOD THAT THE TESTIMONY COULD HAVE EFFECTED THE VERDICT. UNITED STATES V. AGURS, 427 U.S. 97, 103, 96 S.CT. 2392.

IN MOONEY, IT WAS ALLEGED THAT THE PETITIONER'S CONVICTION WAS BASED ON PERJURED TESTIMONY AND THAT THE PROSECUTION KNEW OR SHOULD HAVE KNOWN OF THE PERJURY. IN A SERIES OF SUBSEQUENT CASES, THE COURT HAS CONSISTENTLY HELD THAT A CONVICTION OBTAINED BY THE KNOWING USE OF PERJURED TESTIMONY IS FUNDAMENTALLY UNFAIR AND MUST BE SET ASIDE IF THERE IS ANY REASONABLE LIKELIHOOD THAT THE TESTIMONY COULD HAVE AFFECTED THE JUDGEMENT OF THE JURY... (MOONEY V. HOLOHAN, 294 U.S. 103, 55 S. CT. 340(JAN 21, 1935)); ALSO SEE PYLE V. KANSAS, 317 U.S. 213, GIGLIO V. U.S., 405 U.S. 150; MILLER V. PATE, 386 U.S. 1; NAPUE V. ILLINOIS, 360 U.S. 269.

ARGUMENT

C) MUGSHOT PHOTO

AT THE P.C.R. EVIDENTIARY HEARING, IT WAS BROUGHT TO THE COURT'S ATTENTION THAT TRIAL COUNSEL NEVER OBJECTED TO THE MUGSHOT PHOTO BEING INTRODUCED. APP. 663, 664, LNS. 24,25, AND 1-8. WHEN EVERY RULE THERE IS TO THE INTRODUCTION OF A MUGSHOT PHOTO WAS IGNORED. SEE STATE V. TRAYLOR, 360 S.C. 74, 84, 600 S.E. 2D. 523, 528 (2004) (EXPLAINING ADMISSION OF A MUG-SHOT PHOTO IS ERROR UNLESS, "THE STATE HAS A DEMONSTRATABLE NEED TO INTRODUCE THE PHOTOGRAPH, 2, THE PHOTOGRAPH SHOWN TO THE JURY DOES NOT SUGGEST THE DEFENDANT HAS A CRIMINAL RECORD, AND 3, THE PHOTOGRAPH IS NOT INTRODUCED IN SUCH A WAY AS TO DRAW ATTENTION TO IT'S ORIGIN OR IMPLICATION). SEE ALSO, STATE V. TATE, 288 S.C. 104; 341 S.E. 2D. 380 (1986).

WHEN AT TRIAL, JINNY MORAN SAID THAT SHE HAS WORKED IN LAW ENFORCEMENT SINCE 1982, APP. 335, LN. 3, HER TITLE WAS RECORD MANAGER, AND MANAGES THE OFFICE AND GREENVILLE CITY POLICE DEPARTMENT AND MANAGES THE RECORDS GENERATED BY THE GREENVILLE COUNTY SHERIFF'S OFFICE AS WELL AS TASKED WITH MANAGING THE DETENTION CENTER RECORDS. APP. 335, LN. 7-14, AND MAINTAIN MUG-SHOT PHOTOS THAT ARE KEPT IN A SERVER, SO THESE MUG-SHOT PHOTOS ARE ACCESSIBLE FOR LAW ENFORCEMENT PURPOSES. APP. 335, 336, LNS. 24, 25, AND 1,2, RESPECTIVELY.

MRS. MORAN INDICATED THAT SHE PULLED THIS MOST RECENT PHOTO ON MONDAY, APP. 336, LN.22. TRIAL COUNSEL HAD NO OBJECTIONS TO ANY OF THESE ADMISSIONS. APP. 337, LN. 25, WHEN: 1, THE STATE NEVER HAD ANY NEED TO PRODUCE ANY SUCH PHOTOGRAPH, NOR DID THE STATE EVER ATTEMPT TO DEMONSTRATE ANY SUCH NEED. 2, SPECIFIC ATTENTION WAS DRAWN TO THE PHOTO'S ORIGIN AND IT'S IMPLICATION, AND 3, IT DID SUGGEST THAT THE DEFENDANT HAD A CRIMINAL RECORD SINCE THE JURY WAS APPRAISED THAT THIS WAS THE MOST RECENT PHOTO. FURTHER, THERE WAS NEVER ANY BALANCING TEST PERFORMED ON THIS EVIDENCE PRIOR TO IT BEING PRODUCED THAT TRIAL COUNSEL SHOULD HAVE REQUESTED. THUS, THE P.C.R. COURT MADE AN UNREASONABLE DETERMINATION OF THESE FACTS PRESENTED AT THE HEARING BY DENYING

PETITIONER A NEW TRIAL.

ARGUMENT

D) VIDEO

WHEN IT WAS BROUGHT TO THE ATTENTION OF THE P.C.R. COURT THAT ONLY HALF OF THE VIDEO THAT THE IMPOUNDING OFFICER, INV. MASHAK CLAIMED TO HAVE RECOVERED FROM THE PAWNSHOP WAS PRESENTED TO THE COURT AND JURY. APP. 644, LN.3-9, AND WITH THE TRANSCRIPT BEFORE THE P.C.R. COURT. THERE ARE SEVERAL ISSUES THAT SHOULD NOT HAVE BEEN OVERLOOKED AND/OR IGNORED. FIRST, THE FACT THAT THE PROSECUTOR ADVISED THE COURT THAT HE HAD A CONVERSATION WITH THE IMPOUNDING OFFICER AND HE'S GOING TO TESTIFY THAT WHEN HE ASKED FOR THE VIDEO, HE STARTS IT JUST PRIOR TO THE DEFENDANT WHO IS IN THIS CASE, AMANDA CALDWELL (ALLEGED CO-DEFENDANT), WHOM THEY WERE VIDEO TAPPING. HE ASKED FOR IT JUST PRIOR TO HER SHOWING UP AT THE COUNTER TO PAWN THE GOODS. AND THEN AHE FINISHED WITH THE PAWN, AND SHE'S LEAVING...SO THAT'S HOW HE ASKED FOR THEM, AND THAT'S WHAT THEY GAVE HIM FROM THE PAWNSHOP. SO THERE'S NO WAY WE COULD COMPLY WITH THAT DISCOVERY. APP. 240, LN. 14-25. HOWEVER, INV. MASHAK TESTIFIED FIVE(5) DIFFERENT TIMES THAT HE REQUESTED THE VIDEO FROM THE TIME THEY ENTERED THE STORE UNTIL THEY EXIT THE STORE. APP. 404, LN. 1-3, 12-14; APP. 417, LN. 5,6;; APP. 422, LN.16,17; APP. 423, LN. 4,5.

THEREFORE, THE IMPOUNDING OFFICER FOR ALL INTENT AND PURPOSES HERE BEING WHAT THE PROPONENT CLAIMS HE REQUESTED AND RECEIVED THIS INCREMENT OF TIME. HOWEVER, ALL THAT S PRODUCED IS FROM THE TIME AMANDA CALDWELL IS AT THE COUNTER TIL SHE EXITS THE STORE. APP. 442, LN. 1, AND APP. 443, LN. 15. THE FACT THAT TRIAL COUNSEL BROUGHT STATE V. IVERY, CONCERNING VIDEO ADMISSIBILITY WAS IGNORED AND OVERLOOKED WHEN IT BRINGS SEVERAL RULES INTO PLAY THAT SHOULD HAVE BEEN APPLIED. RULE 901 (A) SCRE (THE REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION AS A CONDITION PRECEDENT TO ADMISSIBILITY IS SATISFIED BY EVIDENCE SUFFICIENT TO SUPPORT A FINDING THAT THE MATTER IN QUESTION IS WHAT IT'S PROPONENT CLAIMS). APP. 426, LN. 19-25, APP. 427, LN. 1-3; ALSO SEE RULE

1003, WHICH STATES:

"THAT A DUPLICATE IS ADMISSIBLE TO THE SAME EXTENT AS THE ORIGINAL, UNLESS A GENUINE QUESTION IS RAISED TO THE AUTHENTICITY OF THE ORIGINAL, OR IN THE CIRCUMSTANCES IT WOULD BE UNFAIR TO SUBMIT THE DUPLICATE IN LIEU OF THE ORIGINAL."

ALL THE DEFENDANT WANTED WAS WHAT THE PROPONENT CLAIMED TO HAVE. HOWEVER, WHEN IN PRE-TRIAL MOTIONS UPON REQUESTING THAT EITHER WHAT IS CLAIMED BE PRODUCED OR EXCLUDED UNDER KYLE V. WHITLEY, AAND RULE 5. THE COURT'S STANCE WAS THAT UNLESS DEFENSE CAN PRODUCE EVIDENCE THAT THE VIDEO IS NOT AVAILABLE DUE TO SOME BAD FAITH ON THE PROSECUTIONS' PART OR OTHER IMPROPER CONDUCT.... AND THERE'S NO PROOF THAT THE STATE EVER HAD THE LONGER VERSION, IT WOULDN'T FALL UNDERNEATH THE RULE OR CASES. APP. 240, LN.3-8. BUT, BY THE IMPOUNDING OFFICERS' TESTIMONY THEY DID HAVE THE LONGER VERSION, THAT HE VIEWED BEFORE COPYING. APP. 408, LN. 3-6.

IN BRADY V. MARYLAND, 373 U.S. 83, 87, THE COURT HELD:

"THAT THE SUPPRESSION OF MATERIAL EVIDENCE JUSTIFIES A NEW TRIAL "IRRESPECTIVE OF THE GOOD FAITH OR BAD FAITH OF THE PROSECUTION®.

THEREFORE THE P.C.R. COURT WENT CONTRARY TO WELL ESTABLISHED LAW WHERE TESTIMONY AND EVIDENCE PRESENTED AT THE HEARING BY PETITIONER WAS OVERLOOKED OR SIMPLY IGNORED. IT'S RULING IS NOT SUPPORTED BY THE FACTS THAT WAS PRESENTED.

ARGUMENT

E) BRADY VIOLATION

THE COURT DISTINGUISHED THREE (3) SITUATIONS IN WHICH A BRADY CLAIM MIGHT ARISE: (1) WHERE PREVIOUSLY UNDISCLOSED EVIDENCE REVEALED THAT THE PROSECUTION KNOWINGLY INTRODUCED PERJURED TESTIMONY, (2) WHERE THE GOVERNMENT FAILED TO ACCEDE TO A DEFENSE REQUEST FOR DISCLOSURE OF SOME SPECIFIC KIND OF EXCULPATORY EVIDENCE, AND (3) WHERE THE PROSECUTION FAILED TO VOLUNTEER EXCULPATORY EVIDENCE NEVER REQUESTED, OR REQUESTED IN A GENERAL WAY.

THEREFORE, IN THE AFOREMENTIONED PERJURY OF TESTIMONY THE PROSECUTOR VIOLATED BRADY BY FAILING TO DISCLOSE FULLY THE CHANGE IN TESTIMONY. SEE CHERRY V. STATE, 300s.c.115, ALSO SEE GIBSON V. STATE, 334 s.c.515; 514s.e.2d.320 (MATERIALITY AND PROBABLE AFFECT OF INFORMATION IN GENERAL VIOLATIONS OF BRADY V. MARYLAND CASES THAT INCLUDE NON-DISCLOSED EVIDENCE OF PERJURED TESTIMONY ABOUT WHICH THE PROSECUTOR KNEW OR SHOULD HAVE KNOWN. U.S. V. AGURS, 427u.s. 97. THUS, IT WOULD APPEAR THAT SINCE THE VIDEO DOES NOT CONTAIN WHAT THE PROPONENT PURPORTED, IT ALSO IS A BRADY VIOLATION.

FURTHERMORE, BRADY AND IT'S PROGENY PLACE THE BURDEN UPON THE PROSECUTOR TO KNOW ALL THE RELEVANT FACTS OF A CASE IN ORDER TO DECIDE WHAT INFORMATION TO DISCLOSE AS EXCULPATORY OR IMPEACHMENT EVIDENCE. KYLES V. WHITLEY, 514 U.S. 419. THE OVERRIDING THEME OF THE BRADY CASES IS THE EMPHASIS THE SUPREME COURT HAS PLACED IN "THE PROSECUTOR'S RESPONSIBILITY FOR FAIR PLAY," TO JUSTIFY TRUST IN THE OFFICE OF THE PROSECUTOR AS A REPRESENTATIVE OF THE GOVERNMENT, AND AS SUCH, IT SHOULD BE THAT JUSTICE BE DONE NOT JUST THAT HE SHOULD WIN A CASE. KYLES V. WHITLEY, 514 U.S. AT 438-40; BERGER V. U.S., 295 U.S.78

THE P.C.R. COURT MADE AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF EVIDENCED PRESENTED .

ARGUMENT
F) CUMULATIVE ERROR

THIS COURT SHOULD ALSO APPLY A CUMULATIVE PREJUDICE ANALYSIS, SEE KYLES V. WHITLEY, 514 U.S. AT 436 (THE PREJUDICE MUST BE CONSIDERED COLLECTIVELY), WHILE THE APPLICATION OF THE CUMULATIVE ERROR DOCTRINE IS AN UNSETTLED ISSUE IN THIS STATE, SOUTH CAROLINA RECOGNIZES THE DOCTRINE IN OTHER CONTEXT. THE CUMULATIVE ERROR DOCTRINE PROVIDES RELIEF TO A PARTY WHEN A COMBINATION OF ERRORS THAT ARE INSIGNIFICANT BY THEMSELVES HAVE THE EFFECT OF PREVENTING A PARTY FROM RECEIVING A FAIR TRIAL AND IT REQUIRES THE CUMULATIVE EFFECT OF THE ERRORS TO AFFECT THE OUTCOME OF THE TRIAL. STATE V. JOHNSON, 334 S.C.78,93; 512S.E.2D.795,803 (1999)

MOREOVER, THE STAT'S CASE WAS NOT OVERWHELMING. FOR THE EVIDENCE TO BE OVERWHELMING SUCH THAT IT CATEGORICALLY PRECLUDES A FINDING OF PREJUDICE...THE EVIDENCE MUST INCLUDE SOMETHING CONCLUSIVE, SUCH AS A CONFESSION, DNA EVIDENCE DEMONSTRATING GUILT, OR A COMBINATION OF PHYSICALLY AND CORROBORATING EVIDENCE SO STRONG THAT THE STRICKLAND STANDARD OF REASONABLE DOUGHT CAN NOT POSSIBLY BE MET. STATE V. SMALLS, 422 S.C. 174,191; 810 S.E. 2D. 836, 845. SUCH IS NOT THE CASE HERE WHEN FIRST TRIAL ENDED IN A HUNG JURY AND THE ARGUMENT THAT HE WAS PREJUDICED BECAUSE IN THIS CIRCUMSTANTIAL EVIDENCE CASE, CREDIBILITY WAS A CENTRAL ISSUE FOR THE JURY TO DETERMINE. OUR APPELLATE COURTS FOUND PREJUDICE. SEE STATE V. ANDERSON, 413 S.C.212; 776 S.E.2D.76(2015) (PREJUDICE FOUND WHEN CASE TURNED SOLELY ON CREDIBILITY AND THERE WAS NO PHYSICAL EVIDENCE OF SEXUAL ABUSE); STATE V. JENNINGS, 394 S.C.473; 716 S.E.2D.91, (PREJUDICE FOUND WHEN CREDIBILITY WAS THE MOST CRITICAL DETERMINATION OF THE CASE.); STATE V. BERRY, 332 S.C.214; 503 S.E.2D.770 (1998) (THE CREDIBILITY QUESTIONS AND INCONSISTENCIES IN THE WITNESS' TESTIMONY MAKE IT IMPOSSIBLE FOR THE COURT TO CONCLUDE THAT

WITHOUT REFERENCE TO POLITE INCIDENT, THE EVIDENCE OF BERRY'S GUILT IS OVERWHELMING OR THAT BERRY'S GUILT IS THE ONLY RATIONAL CONCLUSION THAT COULD BE REACHED FROM THE EVIDENCE PRESENTED).

IN THIS CASE, THE P.C.R. ORDER OF DISMISSAL NEVER ADDRESSES THE CUMULATIVE ERROR EFFECT OF THE COMBINED ERRORS OF TRIAL COUNSEL, PROSECUTION, AS WELL AS THE INCONSISTENT-CONFUSING TESTIMONIES OF WITNESSES CALL UPON BY THE PROSECUTOR, AND IT'S AFFECT ON THE JURY IN A TOTALITY OF THE CIRCUMSTANCES EVALUATION THSAT SHOULD BE CONSIDERED HERE WHEN THE COMBINATION OF ERRORS TURNED AN ARGUBALE CASE INTO A CLEAR ONE:

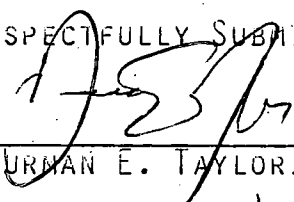
AGAIN, THE P.C.R. COURT MADE AN UNREASONABLE DETERMINATION OF THE FACTS OF THIS CASE IN LIGHT OF THE EVIDENCE PRESENTED TO IT.

CONCLUSION

PETITIONER, FURMAN TAYLOR IS A LAYMAN OF THE THE LAW AND BRINGS THESE CLAIMS BEFORE THIS COURT, REQUESTING A REVERSAL OF HIS CONVICTION AND SENTENCE BECUSE HE DID NOT RECEIVE A FAIR TRIAL AS WELL AS UNFAIR TREATMENT AT SEVERAL STAGES OF PRE-TRIAL, TRIAL, POST TRIAL (DIRECT APPEAL) AND AT THE P.C.R. PROCEEDINGS. BECAUSE PETITIONER IS A POOR MAN OR IS UNABLE TO AFFORD ADEQUATE COUNSEL, EACH APPOINTED COUNSEL DID NOTHING SHORT OF DRAGGING THEIR FEET IN THEIR REPRESENTING MY INTEREST OR BEING EFFECTIVE. IF I WERE A RICH MAN, THIS PROBABLY BE A NON ISSUE, BUT BECAUSE I'M NOT, I PETITION FOR RELIEF.

RESPECTFULLY SUBMITTED,

/s/


FURMAN E. TAYLOR, #198161

PRO-SE PETITIONER

Exhibit A-1

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

GREENVILLE COUNTY SHERIFF'S OFFICE

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

Incident Report

Agency I.D.
SC0230000

RTA
[]

220C

Case Number

12000072917

Adult/Juv

[]

EVENT	INCIDENT TYPE		OFFENSE COMPLETED	FORCED ENTRY	PREMISE TYPE		UNITS ENTERED	TYPE VICTIM					
	S011 - Burglary		Y	Y	20 - Residence/Home		0	<input checked="" type="checkbox"/> Individual Business <input type="checkbox"/> Financial Inst <input type="checkbox"/> Government <input type="checkbox"/> Religious Org. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Officer					
	0480 - Larceny: Petit		Y	Y	20 - Residence/Home		0						
	Incident Location (Subdivision, MO Village, Apartment & Number, Street Name & Number)					Closest Intersection		Zip Code					
10706 Old White Horse Rd Travelers Rest SC							29690						
Incident Date		Time	To	Date	Time	Weapon Type	Time Arrived	Time Completed	Patrol District				
05/19/2012		13:00		05/19/2012	15:00	95	16:09	17:34	10				
Complainants Name (Last, first, Middle)				Resident	Race	Sex	Age	Primary Phone	Business Phone	Patrol District			
Perry, Tandy Rice				J	W	M	37	(864)434-7027		10			
Victim's Name (Last, first, middle)				Victim Relationship To Subject	Resident	Ethnicity	Race	Sex	Age	Primary Phone	Business Phone	Patrol District	
Taylor, Renna				RU	J	N	W	F	66			10	
Visible Injury (Vict 1) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Explain:				Complaint of any Non-Visible Injuries <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No									
Victim (No.1) Using Alcohol <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unk. Drugs <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unk Type:													
Two-Man Veh <input type="checkbox"/> One Man Veh <input type="checkbox"/> Detective/SPLASMT <input type="checkbox"/> Other <input type="checkbox"/> ALONE <input type="checkbox"/> ASSISTED <input type="checkbox"/>				Jurisdiction: -									
SUBJECT	<input checked="" type="checkbox"/> Suspect	Subject's Name (Last, first, Middle)			Ethnicity	Race	Sex	Age	Date of Birth	Height	Weight	Hair	Eyes
	<input type="checkbox"/> Runaway	UNKNOWN			N	W	M	40 to 50		510 to 600	190 to 215	Gry	XXX
	<input type="checkbox"/> Wanted	Address			SSN								
	<input type="checkbox"/> Arrest	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.			City State Zip Code Patrol District								
<input type="checkbox"/> Missing	SHIRT:Black, TROUSERS:Blue Jeans			Subject (No.1) Using Alcohol <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unk Drugs <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unk Type									
Arrestee Armed <input type="checkbox"/> Yes <input type="checkbox"/> No Weapon Type				Arrested Near Offense Scene <input type="checkbox"/> Yes <input type="checkbox"/> No				Date/Time of Offense		Date of Arrest			
Juvvenile Disposition <input type="checkbox"/> Handled Released <input type="checkbox"/> Referred To Other Authority				Total Arrested 0				05/19/2012 15:00					
Arrest Location				Gang Affiliation: NG - Not Gang Related									
NARRATIVE	I arrived at the incident location in response to a theft.												
	Jurisdiction of Theft: Primary Jurisdiction						Jurisdiction of Recovery:						
VEHICLE	<input type="checkbox"/> Towed	Tag Number	State	Year	VIN			Value					
	<input type="checkbox"/> Stolen	Year	Make	Model	Style	Color							
<input type="checkbox"/> Recovered	Additional Vehicle description												
<input type="checkbox"/> Suspect	Tag Only <input type="checkbox"/>												
<input type="checkbox"/> Victim													
PROPERTY	Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value					
	Stol		1	Hewlett Packard		Laptop		500					
	Stol	26 - Radios/TVs/VCRs	1	Sony		DVD Player		100					
	Stol	13 - Firearms	1	Colt		.38 revolver		500					
Stol	17 - Jewelry/Precious Metals	1	Toy		Watch		350						
ADMIN	Subject Identified		Subject Located		<input checked="" type="checkbox"/> Active <input type="checkbox"/> Admin Closed		<input type="checkbox"/> Arrested Under 18		<input type="checkbox"/> Ex-Cleared Under 18				
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Unfounded		<input type="checkbox"/> Arrested 18 and Over		<input type="checkbox"/> Ex-Cleared 18 and Over				
	Reason For Exceptional Clearance <input type="checkbox"/> Offender Death <input type="checkbox"/> No Prosecution <input type="checkbox"/> Victim Declines Cooperation <input type="checkbox"/> Extradition Denied <input type="checkbox"/> Juvenile No Arrest												
	Reporting Officer(s)		Date	Unit#/Star#	Approving Officer		Date	Unit#/Star#					
ABELLA, FRANK		05/19/2012	B20 / 01259	RHEA, STEVEN		05/19/2012	B03 / 00712						
Follow Up Investigation				<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		CSD - Property Crim		/00000					

Exhibit A-2

Agency I.D.
SC0230000

GREENVILLE COUNTY SHERIFF'S OFFICE

Case Number

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

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

12000072917

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

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

I.D. OVERFLOW	<input type="checkbox"/> Complainant	Subject's Name (Last, first, Middle)		Victim Relationship To Subject		Ethnicity	Resident	Race	Sex	Age	Date of Birth
	<input type="checkbox"/> Victim	UNKNOWN				N	U	W	F	20 to 30	
	<input checked="" type="checkbox"/> Subject # 2	Address		City	State	Zip Code	Patrol District	Day Phone	Evening Phone		
	<input type="checkbox"/> Runaway	Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.					

502 to 505 130 to 150 Brn XXX SHIRT:White; TROUSERS:Gray/Blue

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

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

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

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

Arrestee Armed Yes No Weapon Type On View Arrest Summoned Custody

Juvenile Disposition Handled Released Referred To Other Authority

Arrest Location

Overflow:

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

Perry Tandy Rice: Complainant 1

██████████

Taylor Renna: Victim 1

██████████

UNKNOWN: Subject 1
 Subject Types: Suspect

Physical Description
 FACIALHAIR: Full Beard

PECULIARITIES: Black baseball cap

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

Items Stolen:

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

Total Value: \$1520

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

ADMIN	Subject Identified		Subject Located		<input checked="" type="checkbox"/> Active <input type="checkbox"/> Admin Closed	<input type="checkbox"/> Arrested Under 18	<input type="checkbox"/> Ex-Cleared Under 18
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			<input type="checkbox"/> Unfounded	<input type="checkbox"/> Arrested 18 and Over	<input type="checkbox"/> Ex-Cleared 18 and Over
	Reason For Exceptional Clearance <input type="checkbox"/> Offender Death <input type="checkbox"/> No Prosecution <input type="checkbox"/> Victim Declines Cooperation <input type="checkbox"/> Extradition Denied <input type="checkbox"/> Juvenile No Arrest						
	Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#	
	ABELLA, FRANK	05/19/2012	B20 / 01259	RHEA, STEVEN	05/19/2012	B03 / 00712	
				Follow Up Investigation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (officer) CSD - Property Cit			

Agency I.D.
SC0230000

GREENVILLE COUNTY SHERIFF'S OFFICE

EC5 06/05/2012-09:10:07

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

Case Number

12000072917

<input type="checkbox"/> Original Report	<input checked="" type="checkbox"/> Status Change	<input type="checkbox"/> Additional Victims	<input type="checkbox"/> Additional Stolen Property	Incident Type <u>S011 - Burglary</u>
<input checked="" type="checkbox"/> Supplemental Report	<input type="checkbox"/> Other Report	<input type="checkbox"/> Additional Defendants	<input type="checkbox"/> Additional Recovered Property	Patrol District <u>10</u> Page <u>2</u> of <u>7</u> Pages

I. D. OVERFLOW	<input type="checkbox"/> Complainant	Subject's Name (Last, first, Middle)		Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth	
	<input type="checkbox"/> Victim	Address		City	State	Zip Code	Patrol District	Day Phone	Evening Phone		
	<input type="checkbox"/> Subject	Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.					
	<input type="checkbox"/> Runaway	<input type="checkbox"/> Victim No. _____	Visible Injury <input type="checkbox"/> Yes <input type="checkbox"/> No	Complaint of any Non-Visible Injuries <input type="checkbox"/> Yes <input type="checkbox"/> No	Victim Using Alcohol <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unk	Two-Man Veh <input type="checkbox"/>	One Man Veh <input type="checkbox"/>	ALONE <input type="checkbox"/>			
	<input type="checkbox"/> Wanted	Explain:		Drugs <input type="checkbox"/> No <input type="checkbox"/> Yes Type:	Detective <input type="checkbox"/>	Other <input type="checkbox"/>	ASSISTED <input type="checkbox"/>				

Arrestee Armed <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Weapon Type	<input type="checkbox"/> On View Arrest	<input type="checkbox"/> Summoned	<input type="checkbox"/> Custody
--	-------------	---	-----------------------------------	----------------------------------

Juvenile Disposition <input type="checkbox"/> Handled Released <input type="checkbox"/> Referred To Other Authority	Gang Affiliation: <u>NG - Not Gang Related</u>
---	--

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

Charges
CHARGE 1: BURGLARY-1ST DEGREE WARRANT #: N-201214
CHARGE 2: PETIT LARCENY-3RD OR ABOVE WARRANT #: N-201215

Vehicles
Vehicle #1
COLOR: white, MAKE: Ford; MODEL: AEROSTAR, MAKE: Van-Mini, VEHICLE YEAR: 1993, TAG #: HQ185, TAG STATE: SC, TAG YEAR: 2013, PROPERTY LOSS CODES: Suspect, VIN NUMBER: 1FMDA31X7PZB31407

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

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

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

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

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

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

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

Subject Identified <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Subject Located <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Active <input type="checkbox"/> Admin Closed <input type="checkbox"/> Unfounded	<input type="checkbox"/> Arrested Under 18 <input checked="" type="checkbox"/> Arrested 18 and Over	<input type="checkbox"/> Ex-Cleared Under 18 <input type="checkbox"/> Ex-Cleared 18 and Over	
Reason For Exceptional Clearance	<input type="checkbox"/> Offender Death	<input type="checkbox"/> No Prosecution	<input type="checkbox"/> Victim Declines Cooperation	<input type="checkbox"/> Extradition Denied	<input type="checkbox"/> Juvenile No Arrest
Reporting Officer(s) MASHAK, BRADY	Date 06/04/2012	Unit#/Star# 450 / 01025	Approving Officer SGT SMITH, O.B.	Date 06/04/2012	Unit#/Star# 402 / 00313
Follow Up Investigation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		MASHAK, BRADY		Date 06/04/2012	Unit#/Star# 450 / 01025

Exhibit B-2

Agency I.D.
SC0230000

EC5 06/05/2012-09:10:07

GREENVILLE COUNTY SHERIFF'S OFFICE

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

Case Number

12000072917

<input type="checkbox"/> Original Report	<input checked="" type="checkbox"/> Status Change	<input type="checkbox"/> Additional Victims	<input type="checkbox"/> Additional Stolen Property	Incident Type <u>S011 - Burglary</u>
<input checked="" type="checkbox"/> Supplemental Report	<input type="checkbox"/> Other Report	<input type="checkbox"/> Additional Defendants	<input type="checkbox"/> Additional Recovered Property	Patrol District <u>10</u> Page <u>3</u> of <u>7</u> Pages

I.D. OVERFLOW	<input type="checkbox"/> Complainant	Subject's Name (Last, first, Middle)									
	<input type="checkbox"/> Victim	Victim Relationship To Subject									
	<input type="checkbox"/> Subject	Address		City		State		Zip Code		Patrol District	
	<input type="checkbox"/> Runaway	Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.					

<input type="checkbox"/> Wanted	<input type="checkbox"/> Arrest	<input type="checkbox"/> Missing	<input type="checkbox"/> Jail	<input type="checkbox"/> Other	<input type="checkbox"/> Victim No. _____	<input type="checkbox"/> Visible Injury Yes <input type="checkbox"/> No	<input type="checkbox"/> Complaint of any Non-Visible Injuries Yes <input type="checkbox"/> No	<input type="checkbox"/> Victim Using Alcohol Yes <input type="checkbox"/> No <input type="checkbox"/> Unk	<input type="checkbox"/> Two-Man Veh <input type="checkbox"/> One Man Veh <input type="checkbox"/> ALONE <input type="checkbox"/>
---------------------------------	---------------------------------	----------------------------------	-------------------------------	--------------------------------	---	---	--	--	---

<input type="checkbox"/> Arrestee Armed	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Weapon Type	<input type="checkbox"/> On View Arrest	<input type="checkbox"/> Summoned	<input type="checkbox"/> Custody
---	---	-------------	---	-----------------------------------	----------------------------------

Arrest Location	Gang Affiliation: NG - Not Gang Related
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CHARGES. SHE STATED THAT SHE DID AND WE THEN BROUGHT HER TO THE LAW ENFORCEMENT CENTER WHERE I READ HER A WAIVER OR RIGHTS FORM. I ASKED HER IF SHE UNDERSTOOD THE FORM AND SHE STATED THAT SHE DID. CALDWELL WAS ASKED IF SHE KNEW WHAT THE WORD COERCION MEANT AND SHE STATED THAT SHE DID. SHE THEN EXPLAINED THE WORD, INITIALED, AND SIGNED THE FORM. INV PERRON AND I THEN SIGNED AS WITNESSES. SHE WAS THEN ASKED ABOUT THIS CASE AS WELL AS SEVERAL OTHERS. CALDWELL THEN GAVE A WRITTEN STATEMENT WHICH IS AS FOLLOWS:

On today's date Inv Mashak pulled me out of the Greenville County Detention Center and asked me if I would answer some questions. I told him that I would and he then brought me to the Law Enforcement Center where he pulled out a form which had my Miranda Rights/Waiver of Rights on it. Inv Mashak read the form to me and asked me if I understood it. I told him yes and he then asked me if I understood what the word coercion meant. I told him that I did and then explained it to him. I am not under the influence of any alcohol/narcotics. I have allowed Inv Mashak to type my statement.

Inv Mashak asked me about my soon to be ex-husband's house being broken into and I told him that I did not know about it until I was read my warrants. He asked me about the shotgun that I had sold to the pawn shop and I told him that I got it from Tyler Whitman. I told him that I said to all my friends that I was pissed off at my husband and I guess Tyler broke in his house to get him back. Tyler asked me to sell the shotgun at a pawnshop for him and he would give me \$20. I said that I would and sold the shotgun. I didn't know that it was my husband's shotgun. Inv Mashak showed me a photograph of a white male who I positively identified as Tyler Whitman.

Inv Mashak then asked me about breaking into a house on S. Welcome Road. I told him that Tyler Whitman had given me the stuff to sell at the pawnshop. Inv Mashak then told me that I was lying and stated that I was with Furman Taylor. I then told him that I was going to be truthful and I told him that my boyfriend, Furman Taylor, and I were riding around in his white Ford Explorer. We were on S. Welcome Road and Furman said that a house looked good and told me to pull into the driveway. I then pulled in and Furman got out of the car and walked to the front door. He knocked on the door and walked back to the car. He told me to drive around the neighborhood and come back to pick him up. I drove around the neighborhood for about 5 minutes and I then started to drive back to the house. Furman was already walking down the road carrying a little black Avon box which had the Avon symbol on it. He then told me to take him to the pawnshop and that he needed me to pawn it. We then went straight to the pawn shop in Berea where I sold a gold watch. Inv Mashak asked me where the

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

ADMIN	Subject Identified	Subject Located	<input type="checkbox"/> Active	<input type="checkbox"/> Admin Closed	<input type="checkbox"/> Arrested Under 18	<input type="checkbox"/> Ex-Cleared Under 18
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Unfounded		<input checked="" type="checkbox"/> Arrested 18 and Over	<input type="checkbox"/> Ex-Cleared 18 and Over
	Reason For Exceptional Clearance <input type="checkbox"/> Offender Death <input type="checkbox"/> No Prosecution <input type="checkbox"/> Victim Declines Cooperation <input type="checkbox"/> Extradition Denied <input type="checkbox"/> Juvenile No Arrest					
Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#	
MASHAK, BRADY	06/04/2012	450 / 01025	SGT SMITH, O B.	06/04/2012	402 / 00313	
			Follow Up Investigation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	(Officer) MASHAK, BRADY	06/04/2012	450 / 01025

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

Supplemental Report Other Report Additional Defendants Additional Recovered Property Patrol District 07 Page 4 of 7 Pages

I. D. OVERFLOW

Complainant Victim Subject Runaway Wanted Arrest Missing Jail Other

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

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

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

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

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

Arrestee Armed Yes No Weapon Type _____ On-View Arrest Summoned Custody

Juvenile Disposition Handled Released Referred To Other Authority

Arrest Location _____ Gang Affiliation: NG - Not Gang Related

NARRATIVE

AT 1545 HOURS I RESPONDED TO THE INCIDENT LOCATION AND ADVISED MCCORMICK OF THE SITUATION. ON 5/21/12 AT 0856 HOURS I RECEIVED AN EMAIL FROM LEADS-ON-LINE ADVISING THAT I HAD "HITS" IN REFERENCE TO MY SAVED SEARCHES. I PULLED THESE UP AND OBSERVED THAT THE SERIAL NUMBER OF THE CAMERA THAT WAS STOLEN WAS PAWNED BY SUBJECT CALDWELL ON 5/19/12 AT 1159 HOURS. THIS WAS SOLD AT CASH AMERICA PAWN OF GREENVILLE #1 LOCATED AT 3 FARRS BRIDGE ROAD. I THEN SEARCHED CALDWELL'S NAME AND OBSERVED OTHER ITEMS WHICH SHE HAS SOLD. ONE ITEM IN PARTICULAR WAS A GOLD SEIKO WATCH WHICH WAS SOLD ON 5/16/12 AT 1411 HOURS. THIS WAS DURING THE INCIDENT DATE AND TIMES. I ALSO RECEIVED A "HIT" FOR RILEY. I PULLED THIS INFORMATION UP AND OBSERVED SHE HAD SOLD 3 RINGS AT FIRST CASH PAWN #107 LOCATED AT 3235 AUGUSTA STREET ON 5/19/12.

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

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

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

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

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

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

PROPERTY

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

ADMIN

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

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

Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
MASHAK, BRADY	05/24/2012	450 / 01025	SGT SMITH, O B	05/24/2012	452 / 00313
			Follow Up Investigation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <small>(FORM)</small>	05/24/2012	450 / 01025

Exhibit C-1

Agency I.D.
SC0230000

EC5 06/05/2012-09:10:07

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report Ent: grobertson 06/14/2012

15:11:13

Case Number

12000072917

Original Report Status Change Additional Victims Additional Stolen Property
 Supplemental Report Other Report Additional Defendants Additional Recovered Property
 Incident Type S011 - Burglary
 Patrol District 10 Page 6 of 7 Pages

I.D. OVERFLOW
 Complainant Victim Subject Runaway Wanted Arrest Missing Jail Other
 Subject's Name (Last, first, Middle) _____ Victim Relationship To Subject _____ Ethnicity _____ Resident _____ Race _____ Sex _____ Age _____ Date of Birth _____
 Address _____ City _____ State _____ Zip Code _____ Patrol District _____ Day Phone _____ Evening Phone _____
 Height _____ Weight _____ Hair _____ Eyes _____ Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc. _____
 Victim No. _____ Visible Injury Yes No Complaint of any Non-Visible Injuries Yes No Victim Using Alcohol Yes No Unk Two-Man Veh One Man Veh ALONE
 Explain: _____ Drugs No Yes Type: _____ Detective Other ASSISTED
 Subject No. _____ Using Alcohol No Yes Unk Arrested on Current Offense
 Using Drugs No Yes Type: _____ Unk Cleared By Arrest on Prior Offense

Arrestee Armed Yes No Weapon Type _____ On View Arrest Summoned Custody
 Juvenile Disposition Handled Released Referred To Other Authority
 Arrest Location _____ Gang Affiliation: NG - Not Gang Related

NARRATIVE
 TALK WITH HER. I ADVISED HER THAT I WOULD HAVE HER PULLED OUT.
 AT 1000 HOURS I PULLED OUT CALDWELL AND BROUGHT HER TO THE LAW ENFORCEMENT CENTER. I READ HER A WAIVER OF RIGHTS FORM AND SHE STATED THAT SHE UNDERSTOOD IT. SHE WAS ASKED IF SHE UNDERSTOOD WHAT THE WORD COERCION MEANT AND SHE STATED THAT SHE DID. CALDWELL THEN ADVISED ME WHAT IT MEANT. SHE THEN INITIALED AND SIGNED THE FORM. CALDWELL THEN STATED THAT SHE HAD LIED TO ME ABOUT THIS INCIDENT AND STATED THAT SHE WANTED TO TELL ME THE TRUTH. SHE THEN GAVE ME THE FOLLOWING WRITTEN STATEMENT:
 On today's date I contacted Inv Mashak on his office phone and told him that I wanted to speak with him. Inv Mashak came to the jail and I told him that I wanted to be completely honest to him because I had told him some lies. He then took me to the Law Enforcement Center where he read me a waiver of rights form. Inv Mashak asked me if I understood the form and I told him that I did. He then asked me if I understood what the word coercion meant and I told him that I did. I then explained the word to him. I then initialed and signed the form. I am not under the influence of any drugs/alcohol. I have allowed Inv Mashak to type my statement.
 On 6/1/12 I had given Inv Mashak a false statement about a burglary that happened on Old White Horse Road. I was afraid of getting more charges and after thinking about it all I wanted to be honest and to cooperate with the investigation.
 I don't know what the date or day was but Furman Taylor and I were riding around in his white and blue Ford Aerostar van. We past a house and he told me to turn around and stop. I turned the car around and pulled into the driveway. Furman went and broke one of the back doors down. He was in there for about 15 minutes and I finally went inside and told him to come on. All of a sudden a black truck pulled up and I then went straight to the driver's seat. He then came out carrying a pillowcase and went straight to the passenger side. We then took off. A little bit later in the day we went to the Cash America Pawn on E. North Street where I pawned a DVD player, necklace with a heart shape pendant, and a pendant with an "R" on it. I think I got around \$30-\$40 for the stuff and handed it to Furman outside. Furman then took me to McDonalds and got something to eat. He then took me to White Horse Road and dropped me off.
 I am very sorry for what I did and apologize to all the people that I affected. I know I shouldn't have done it and would like to make it up to them. I am willing to cooperate by

PROPERTY

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

ADMIN

Subject Identified <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Subject Located <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Active <input type="checkbox"/> Admin Closed <input type="checkbox"/> Unfounded	<input type="checkbox"/> Arrested Under 18 <input checked="" type="checkbox"/> Arrested 18 and Over	<input type="checkbox"/> Ex-Cleared Under 18 <input type="checkbox"/> Ex-Cleared 18 and Over
Reason For Exceptional Clearance <input type="checkbox"/> Offender Death <input type="checkbox"/> No Prosecution <input type="checkbox"/> Victim Declines Cooperation <input type="checkbox"/> Extradition Denied <input type="checkbox"/> Juvenile No Arrest				
Reporting Officer(s) MASHAK, BRADY	Date .06/04/2012	Unit#/Star# 450 / 01025	Approving Officer SGT SMITH, O.B.	Date 06/04/2012
Follow Up Investigation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		MASHAK, BRADY 06/04/2012 450 / 01025		

Exhibit C-2

Agency I.D.
SC0230000

EC5 06/05/2012-08:05:51

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report Ent: grobertson 06/14/2012
14:51:57

Case Number

12000071214

Original Report Status Change Additional Victims Additional Stolen Property

Supplemental Report Other Report Additional Defendants Additional Recovered Property

Incident Type S011 - Burglary Patrol District 07 Page 3 of 4 Pages

I. D. OVERFLOW

Complainant Victim Subject Runaway Wanted Arrest Missing Jail Other

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

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

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

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

Explain: _____ Using Alcohol No Yes Unk Using Drugs No Yes Unk Type: _____ Arrested on Current Offense

Arrestee Armed Yes No Weapon Type _____ Unk Cleared By Arrest on Prior Offense

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

Arrest Location _____ Gang Affiliation: NG - Not Gang Related

NARRATIVE

him that I said to all my friends that I was pissed off at my husband and I guess Tyler broke in his house to get him back. Tyler asked me to sell the shotgun at a pawnshop for him and he would give me \$20. I said that I would and sold the shotgun. I didn't know that it was my husband's shotgun. Inv Mashak showed me a photograph of a white male who I positively identified as Tyler Whitman.

Inv Mashak then asked me about breaking into a house on S. Welcome Road. I told him that Tyler Whitman had given me the stuff to sell at the pawnshop. Inv Mashak then told me that I was lying and stated that I was with Furman Taylor. I then told him that I was going to be truthful and I told him that my boyfriend, Furman Taylor, and I were riding around in his white Ford Explorer. We were on S. Welcome Road and Furman said that a house looked good and told me to pull into the driveway. I then pulled in and Furman got out of the car and walked to the front door. He knocked on the door and walked back to the car. He told me to drive around the neighborhood and come back to pick him up. I drove around the neighborhood for about 5 minutes and I then started to drive back to the house. Furman was already walking down the road carrying a little black Avon box which had the Avon symbol on it. He then told me to take him to the pawnshop and that he needed me to pawn it. We then went straight to the pawn shop in Berea where I sold a gold watch. Inv Mashak asked me where the other items were taken to and I told him that I sold the camera and a gold necklace with a heart on it the next day. I told him that we took all the other jewelry to the Gold Exchange on Haywood Road but it was not real so we threw it away.

Inv Mashak asked me about the DVD player and pendant that had an "R" on it. I told him that the day that I pawned them Furman Taylor came and picked me up at the Walmart on White Horse Road in his white and blue Ford Aerostar van. We went to the pawnshop and sold the camera that came from the house on S. Welcome Road. He then dropped me off on White Horse Road and told me that he had to run some errands and go eat lunch. About 2 and half to 3 hours later I was walking down White Horse Road and Furman came and picked me up. He told me that he had a DVD player and some other things to sell. He told me that he wanted me to sell them. We then went to the pawnshop on E. North Street where I sold the DVD player and the pendant with the "R" on it. Inv Mashak told me that there were witnesses who saw a male and female in a white and blue Aerostar van and I told him that I was not the female. He asked me who this female would be and I told him that it might be a stripper that works at Platinum Plus. I know her as "Katherine" or "Elaine". I told him that I did not have anything to do with the burglary. Inv Mashak showed me a photograph who I positively identified as my boyfriend, Furman Taylor. He showed me a photograph of a white female who I know as

PROPERTY

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

ADMIN

Subject Identified Yes No Subject Located Yes No Active Admin Closed Arrested Under 18 Ex-Cleared Under 18

Arrested 18 and Over Ex-Cleared 18 and Over

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

Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
MASHAK, BRADY	06/04/2012	450 / 01025	SGT SMITH, O.B.	06/04/2012	402 / 00313
			Follow Up Investigation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
			(Officer) MASHAK, BRADY	06/04/2012	450 / 01025

Exhibit D-1

Agency I.D.
SC0230000

EC5 06/05/2012-09:10:07

GREENVILLE COUNTY SHERIFF'S OFFICE

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

Case Number

12000072917

<input type="checkbox"/> Original Report	<input checked="" type="checkbox"/> Status Change	<input type="checkbox"/> Additional Victims	<input type="checkbox"/> Additional Stolen Property	Incident Type <u>S011 - Burglary</u>								
<input checked="" type="checkbox"/> Supplemental Report	<input type="checkbox"/> Other Report	<input type="checkbox"/> Additional Defendants	<input type="checkbox"/> Additional Recovered Property	Patrol District <u>10</u> Page <u>5</u> of <u>7</u> Pages								
I. D. OVERFLOW	<input type="checkbox"/> Complainant	Subject Name (Last, First, Middle)			Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth	
	<input type="checkbox"/> Victim	Address			City	State	Zip Code	Patrol District	Day Phone	Evening Phone		
	<input type="checkbox"/> Subject	Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.						
	<input type="checkbox"/> Runaway	<input type="checkbox"/> Victim No. _____	Visible Injury <input type="checkbox"/> Yes <input type="checkbox"/> No	Complaint of any Non-Visible Injuries <input type="checkbox"/> Yes <input type="checkbox"/> No	Victim Using Alcohol <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unk	Drugs <input type="checkbox"/> No <input type="checkbox"/> Yes Type: _____	Two-Man Veh <input type="checkbox"/> One Man Veh <input type="checkbox"/> ALONE <input type="checkbox"/>	Detective <input type="checkbox"/> Other <input type="checkbox"/> ASSISTED <input type="checkbox"/>				
	<input type="checkbox"/> Wanted	Explain: _____			Subject No. _____	Using Alcohol <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Unk	Using Drugs <input type="checkbox"/> No <input type="checkbox"/> Yes Type: _____	<input type="checkbox"/> Arrested on Current Offense				
<input type="checkbox"/> Arrest							<input type="checkbox"/> Unk <input type="checkbox"/> Cleared By Arrest on Prior Offense					
<input type="checkbox"/> Missing							<input type="checkbox"/> On View Arrest <input type="checkbox"/> Summoned <input type="checkbox"/> Custody					
<input type="checkbox"/> Jail												
<input type="checkbox"/> Other												
Arrestee Armed <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				Weapon Type _____								
Juvenile Disposition <input type="checkbox"/> Handled Released <input type="checkbox"/> Referred To Other Authority				Gang Affiliation: <u>NG - Nct Gang Related</u>								
Arrest Location _____												

PHOTO #3: SASSER, KATHERINE (BOOKING #3300110); PHOTO #4: SNIDER, RHONDA (BOOKING #32005828); PHOTO #5: MCCONELL, CARRIE (BOOKING #32007105); PHOTO #6: HAYNES, LAURA (BOOKING #32010316)

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

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

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

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

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

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

NARRATIVE

PROPERTY

ADMIN

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

Subject Identified <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Subject Located <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Active <input type="checkbox"/> Admin Closed <input type="checkbox"/> Unfounded	<input type="checkbox"/> Arrested Under 18 <input checked="" type="checkbox"/> Arrested 18 and Over	<input type="checkbox"/> Ex-Cleared Under 13 <input type="checkbox"/> Ex-Cleared 13 and Over	
Reason For Exceptional Clearance <input type="checkbox"/> Offender Death <input type="checkbox"/> No Prosecution <input type="checkbox"/> Victim Declines Cooperation <input type="checkbox"/> Extradition Denied <input type="checkbox"/> Juvenile No Arrest					
Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
MASHAK, BRADY	06/04/2012	450 / 01025	Sgt SMITH, JCS	06/04/2012	409 / 00313
Follow Up Investigation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			Officer MASHAK, BRADY	06/04/2012	450 / 01025

Exhibit D-2

Greenville County Sheriff's Office

4 McGee St.
Greenville, South Carolina 29601

VICTIM/WITNESS STATEMENT

Field Statement

Case Number 12-072917

Date 6/1/12

I, Tandy Rice Perry
Inv. Mashell #1045/450 and _____, do hereby give freely and voluntarily this statement to
me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina.

TRP I am 37 years old and I reside at _____

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

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

I have read the above statement of 6/1 pages and it is true and correct as best as I recall.

WITNESS:
[Signature]

Tandy Rice Perry
I have received a copy of this statement.

Tandy Rice Perry

Sworn before me this _____ day of _____

NOTARY PUBLIC FOR SOUTH CAROLINA

6
2012
08 11

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
Furman Taylor, #198161,
v. Applicant,
State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
THE 13th JUDICIAL CIRCUIT
C/ANo. 2016-CP-05673
MOTION TO ALTER, AMEND AND/OR
RECEIVE NEW TRIAL

Now comes the above captioned applicant who would move for this court, pursuant to Rule 59(e) of Civil Procedure, to alter, amend, and/or schedule a New Trial on the following;

ISSUE I

- 1) Introduction of mugshot photo was unduly and unfairly prejudicial when:
 - (a) The prosecution did not have a demonstratable need to introduce the mugshot photo;
 - (b) Particular attention was drawn to the implication of the photo and its origin (2nd Trial transcript page 140, Lines 18 thru 25, page 141, Lines 1, 2);
 - (c) And, indicated defendant had prior record (2nd Trial transcript page 141, Lines 19 thru 23);
 - (d) When it likely excited prejudice and encouraged the jury to declare guilt on an improper basis;
 - (E) thus, the applicant was deprived of due process of law by this identification procedure that was suggestive and conducive to irreparable mistaken identification;
 - (F) Without objection from counsel (2nd Trial Transcript page 142, Lines) 25);
- (1)

(G.) and, the outcome of the trial would have probably been different if not for this highly prejudicial taint on the jury.

(Trial Transcript from this point further will be TE., and page will be pg.)

Issue II

2.) Failure of trial counsel to discharge his duty of due diligence in the investigation of the evidence and testimony in this case and having favorable testimony struck (2nd TE. pg. 106, Lines 10 thru 20) compare (1st TE. pg. 67, Lines 8 thru 18); (see: Exhibit D)

(2.) If the jury had been aware of this evidence it would stand to reason that the outcome of the trial would have been different.

Issue III

3.) Failure by trial counsel to motion for a 403 balancing test and/or get a ruling on his 404(b) motion (2nd TE. pg. 9, Lines 2 thru 5, pg. 11, Lines 4 thru 7), and the court failed to conduct, on the record, required Rule 404(b) analysis prior to the admission of prior bad acts evidence. When in Rule 404(b) the term "unfair prejudice" speaks to the compacity of some concededly relevant evidence to lure the fact finder into declaring guilt on an improper basis rather than on proof specific to the offense charged. The court failed to conduct any analysis prior to the introduction of any evidence. These

(2)

rulings would have changed the outcome of the trial by diminishing the prejudicial taint.

Issue IV

4) Trial counsel failed to properly argue and/or object to the constitutionality and/or the application of §16-11-311(a)(2), when;

(a) It controvenes the well established rule that evidence that an accused has committed other crimes is not admissible in the prosecution for the crime charged, and

(b) encourages the declaring of guilt by the jury on an improper basis (2nd TE pg. 11, lines 19 thru 25), and is unfairly prejudicial and did deny the applicant a fair trial.

Issue V

5) Trial counsel failed to give counter weighing cases to the States position of James such as;

(a) United States v. Poore, 594 F.2d. 39, 40-41 (4th Cir);

(b) United States v. Old Chief, 519 U.S. 172, (2nd TE pg. 10, 11),

(see: Exhibit A); in which the ruling and outcome would probably been different.

Issue VI

6) Trial Counsel failed to properly stipulate to prior bad acts;

(a) He stipulated under Old Chief (see: Exhibit A) but quoted the States position and case of James (2nd TE pg. 115, lines 7 thru 9) his failure to

articulate his stipulation properly did unduly and unfairly prejudice the case. And a different outcome would have most likely occurred if not for this prejudice.

Issue VII

7) Trial counsel failed to object to the court's ruling on his Langford argument (400 S.C. 421; 735 S.E.2d 471) to preserve the issue. (2nd TE, pg. 7, Lines 1 thru 5, pg. 8, Lines 22 thru 25.)

Issue VIII

8) Trial counsel failed to incorporate Langford into his time frame motion but did argue that the delay was so great that it did become a substantive issue before the court (2nd TE, pg. 267, Lines 24, 25, and pg. 268, Lines 1, 2). And upon ruling the court found no prejudice was shown from any delay (2nd TE, pg. 269, Lines 9, 10) which was clear error with the evidence before the court (2nd TE, pg. 39, Lines 19 thru 25, pg. 40, Lines 1 thru 3). And because of changed and/or lost memories.

(Renna Taylor, 2nd TE, pg. 77, Lines 15, 16; Tandy Perry, 1st TE, pg. 60, Lines 3 thru 11, 2nd TE, pg. 97, Line 23; Amanda Caldwell, 2nd TE, pg. 174, Line 11; Ofc. Frank Abella; 2nd TE, pg. 107, Lines 116). A correct ruling would have changed the outcome.

ISSUE IX

9) Knowing use of perjured testimony by the prosecutor, and if he did not know, he should have known; Compare /; Amanda Caldwell;

(1st TE, pg. 95, Lines 5 thru 7, 21, 22 / 2nd TE, pg. 157, Lines 14 thru 22);

(1st TE, pg. 96, Lines 6, 7 / 2nd TE, pg. 179, Lines 20, 21);

(1st TE, pg. 96, Lines 19 thru 21 / 2nd TE, pg. 158, Lines 21 thru 25);

(1st TE, pg. 97, Lines 11 thru 13, pg. 108, Lines 12, 13 / 2nd TE, pg. 160, Lines 6 thru 8);

(1st TE, pg. 108, line 25, pg. 109, line 1 / 2nd TE, pg. 180, line 25, pg. 181, Lines 1, 2, pg. 164, Lines 21, 22);

(1st TE, pg. 103, Lines 6 thru 8, 10 thru 12, pg. 109, Lines 20 thru 25,

pg. 110, Lines 1 thru 12 / 2nd TE, pg. 169, Lines 12 thru 20, pg. 173, Lines 13 thru 18)

Brady Mashak; (1st TE, pg. 124, Lines 3 thru 5, pg. 125, Lines 12 thru 18, 21 thru 23 / 2nd TE, pg. 218, Lines 13 thru 17) (see Exhibit E);

(2nd TE, pg. 223, Lines 23, 24, pg. 225, Lines 1, 2, 7, 8, 10 (see Exhibit B) / 2nd TE, pg. 226, Lines 6 thru 21) (see: Exhibit C, B);

(2nd TE, pg. 226, Lines 19 thru 24 / 2nd TE, pg. 95, Lines 5, 6 / 2nd TE, pg. 145, Lines 16, 17, 19);

(2nd TE, pg. 217, Lines 3 thru 9 / 2nd TE, pg. 169, Lines 12 thru 22 / 2nd TE, pg. 174, Lines 16 thru 20);

Tandy Perry; (1st TE, pg. 53, Lines 25, pg. 54, line 1 / 2nd TE, pg. 90, Lines 8 thru 10 (see: Exhibit D) / 2nd TE, pg. 97, Lines 18 thru 23);

(1st TE, pg. 60, line 3 thru 10 / 2nd TE, pg. 95, Lines 5 thru 8);

David Perry; (1st TE, pg. 124, Lines 3 thru 5, pg. 125, Lines 16 thru 18 / 2nd TE, pg. 128, Lines 9 thru 15, 23, 24 (see: Exhibit B).

Which denied the applicant of a fair trial, and if not

For these improprieties it would have ended with a different result.

Issue X

10.) Brady violation(s) for perjured testimony, as well as for failure to produce purported and/or requested length of videos). Because without such surprises and/or denials the results would have obviously been different.

Issue XI

11.) Trial Counsel was ineffective for failing to argue that the chain of custody was irreparably breached/broken by the impounding officer, Brady Mashak (2nd Tr. pg. 231) when he took it to his office and burned a copy (2nd Tr. pg. 209, lines 20 thru 23) instead of following the proper protocol (2nd Tr. pg. 210, lines 9 thru 17) by his own admission. And, the videos(s) not containing what he purported it to contain (2nd Tr. pg. 209, lines 12 thru 14). This argument would have changed the ruling and the outcome of the trial.

Issue XII

12.) It was an abuse of discretion to not rule on the admissibility of the video(s) when their authenticity was brought into question because it is a copy (2nd Tr. pg. 232, lines 22 thru 24; 2nd Tr. pg. 208, line 25, pg. 209, lines 1 thru 3) and does not contain what the proponent purported it to contain (2nd Tr. pg. 209, lines 12 thru 14) and a ruling on the

(6)

admissibility of the video(s) would have most likely made them inadmissible and affected the outcome of trial. (clear error).

Issue XIII

13.) With the evidence that was before the court it was abuse of discretion (2nd TE pg. 209, Lines 21 thru 23) to allow Mrs. Bennick to testify when it would not repair and/or complete the chain of custody. (2nd TE pg. 233, Lines 17, 18). And made a ruling on the admissibility inescapable (clear error).

Issue XIV

14.) It was an abuse of discretion with the evidence before the court (2nd TE pg. 231, Lines 19 thru 25, pg. 232, Lines 1 thru 3) to give defense counsel his objection (2nd TE pg. 244, Lines 1, 2) when it was counter to his argument. Without this taint a ruling on admissibility would have changed the result of trial. (clear error).

Issue XV

15.) Trial counsel failed to move for a 403, 404(b) analysis prior to the video being introduced (2nd TE pg. 244) when it was a copy and the whole story not being told and was misleading and a misrepresentation of the facts. And, with either all the purported video or none, the outcome of the trial would have been different.

Issue XVI

16.) Trial counsel failed to move for a directed

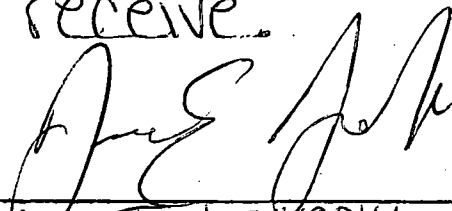
verdict due to no competent testimony and/or evidence linking the applicant to the crime and/or scene. (2nd Tr. pg. 256, Line 10, motions)

Issue XVII

17.) Trial Counsel failed to move for a directed verdict due to the State not proving each and every element charged in the indictment.

Conclusion

The applicant would request that the foregoing issues be amended, and each and every issue to be ruled on, the judgment altered, as well as a New Trial ordered because the applicant was not afforded a fair trial as he was entitled to receive.



Fulman Taylor, #198161

Certificate of Service

I, Furman Taylor, hereby certify that on today's date, I placed a copy of my 59th motion, CIA No., 2016-CP-05673, postage pre-paid, was placed in the hand of the United States Postmaster here at Perry Correctional Institution, and addressed to the following individuals:

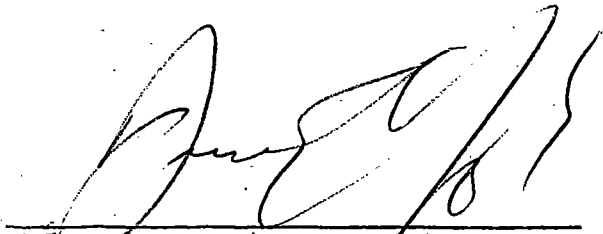
1) Mr. Alan Wilson, A.G.
Office of the Attorney General
Post Office Box 11549
Columbia, S.C. 29211-1549

2) Ms. Susannah Ross (esq.)
Ross and Enderlin, PA
300 Coffee Street
Greenville, S.C. 29601

RECEIVED

MAY 21 2019

SC Court of Appeals


Furman Taylor #198161

Sworn and Subscribed before me this
30th day of January, 2018.

Tamara Conwell
Notary Public

My Commission Expires
September 25, 2023

my commission expires:

RECEIVED

JAN 30 2018

P.C.I. MAILROOM

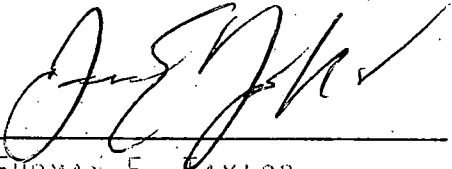
cc my file

AFFIDAVIT

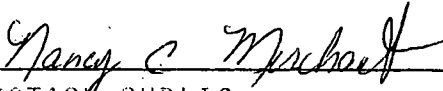
I Furman Taylor DO HEREBY DEPOSE,
DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING JOHNSON
BRIEF IS TRUE, AND CORRECT TO THE BEST OF MY KNOWLEDGE AND
BELIEF. THAT:

1. I AM THE PETITIONER IN THIS CASE.
2. I AM CURRENTLY HOUSED AT PERRY CORRECTIONAL INST.,
3. THAT I DID NOT RECEIVE A FAIR TRIAL OR FAIR TREATMENT AT
SEVERAL STAGES AND ULTIMATELY WAS DENIED MY 5TH, 6TH,
AND 14TH AMENDMENT RIGHTS AS A RESULT.

FURTHER AFFIANT SAITH NOT.

/s/ 
FURMAN E. TAYLOR
P.C.I. / 430 OAKLAWN ROAD
PELZER, SC 29669

SWORN AND SUBSCRIBED BEFORE ME THIS 16th DAY OF May, 2019


NOTARY PUBLIC:

1-23-2023
MY COMMISSION EXPIRES:

RECEIVED
MAY 16 2019
P.C.I. MAILROOM

RECEIVED
MAY 21 2019
SC Court of Appeals


Certificate of Service

I, Furman E. Taylor, hereby Certify that a True Copy of my Pro-se Brief on the Johnson Petition filed by Counsel, was this day, postage pre-paid, placed in the hands of the United States Postmaster here at Perry Correctional Institution and addressed to the following:

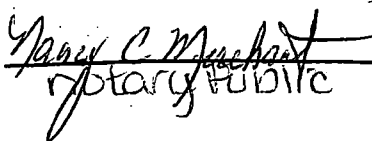
1) South Carolina Court of Appeals
JENNY ABBOTT KITCHINGS, CLERK
Post Office Box 11629
Columbia, S.C. 29211

RECEIVED
MAY 21 2019
SC Court of Appeals

2) S.C. Attorney General's Office
Attn: Megan Harrigan Jameson (esq.)
Post Office Box 11549
Columbia, S.C. 29211-1549


Furman Taylor #198161/Pro-se

Sworn and subscribed before me
this 16th day of May, 2019.

 Nancy C. Murchant
Notary Public my Commission expires: 1-23-2023

RECEIVED

MAY 16 2019

P.C.I. MAILROOM

S.C. Court of Appeals
JENNY A. KITCHINGS, Clerk
Post Office Box 11629
Columbia, S.C. 29211

Furman E. Taylor #198161
Perry Corr. Inst. 103A-211
430 Oaklawn Road
Pelzer, S.C. 29669

MAY 16, 2019

In Re: Pro-se Brief on the Johnson Petition filed by
Counsel for Writ of Certiorari; Appellate Case No. 2018-00587

Ms. Kitchings,

I am writing in concern of the
above referenced matter.

In which, I would like you to file this
enclosed Brief and Exhibits in the courts.

In addition, I would like for you
to know that all of your time, help, and
consideration in these endeavors on my behalf
is greatly appreciated!

*Sincerely,
J. E. Taylor*

RECEIVED

MAY 21 2019

SC Court of Appeals

Mar Taylor # 198161
I 430 Oaklawn rd
265, S.C. 29169

South Carolina Court of Appeals
JENNY ABBOTT KITCHINGS, CLERK
Post Office Box 11629
Columbia, S.C. 29211

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REC'D MAIL ROOM