**VOLUME II OF II**

STATE OF SOUTH CAROLINA

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S.C. SUPREME COURT

IN THE SUPREME COURT

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Certiorari to Lexington County

Honorable Perry H. Gravely, Circuit Court Judge

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JEFFREY D. CROMER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001959

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APPENDIX

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buy them instead of loading them into their truck and meeting you down at the Shell Station and then put them in your car and move them to your apartment? You agree with me that that makes more sense, wouldn't you?

A If you would -- I don't understand.

Q Do you agree with me that makes more sense?

A No, I am asking you, would you ask that question again.

Q It would make more sense for you to go down there, pull into the driveway of Rick's house, pick out what you want, load it up in your truck or your Tercel and take it back to your place. Wouldn't that make more sense if you were going to have a transaction with Mr. Dowell?

A Probably to you, sir, probably to you and probably to some of y'all. Probably it won't to some of y'all. I couldn't answer that, Judge, if that was a good answer. To come to talk about that, my Toyota Tercel, one of the tools was too big to fit in my Toyota Tercel.

Q Mr. Cromer, do you normally do your business late at night like that?

A Do I normally?

Q Toward midnight like that?

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A Toward midnight? I probably would -- if somebody would have came and if I was up at 2:00 o'clock in the morning, and somebody would have came to me with a deal, I would have did it. If I was up at 7:00 o'clock in the morning and somebody would have came to me with that deal, I probably would have. If somebody would have came to me at 12:00 o'clock in the noon, I probably would have. So that happened that way.

Q Mr. Cromer, I am showing you what has been marked as State's Exhibit Number 14 in evidence.

A Yes, sir.

Q Let me hand that to you. That's a conviction of yours for breaking into a residence in Lincolnshire.

A Uh-huh. (Indicating affirmative response.)

Q That's correct, isn't it?

A Yes, it is.

Q And you lived in Lincolnshire?

A I surely did.

Q In fact, I believe your mom testified yesterday you lived at 305 Lincolnshire?

A Yes.

Q That's right around Crane Church Road in Richland County?

A No, it is not.

MR. CHESSER: Your Honor, I would object.

THE COURT: What is your objection?

MR. CHESSER: This conviction has been admitted for a limited purpose. I would ask in the first place -- well, in the first place, I would like to renew my objection I made when these things were initially broached. I made a number of objections earlier in the trial. I would like to renew those at this time.

THE COURT: I overrule those objections. What is your objection now?

MR. CHESSER: Secondly, the prosecutor appears to be going into all kinds of details having to do with this. The fact is that it's just a conviction itself that was admitted by the Court and not the details and surrounding circumstances and so forth. So I would object on that basis, Your Honor.

THE COURT: Solicitor, just limit your question: Was he convicted on such and such a date without going into the facts of each conviction. If he denies the conviction, you can ask whatever you want to ask.

MR. SWARAT: Thank you, Your Honor.

Q You were convicted of that charge on April the

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2nd of '93; is that accurate, Mr. Cromer?

A Yes.

Q Mr. Cromer, I am showing you State's Exhibit Number 15. That is another conviction of yours for breaking into a residence; is that correct?

A Yes.

Q You were convicted on April the 2nd of 1993; is that correct?

A Yes.

Q I am showing you State's Exhibit Number 16 in evidence, Mr. Cromer. That's your conviction for breaking into a residence, and you were convicted on April the 2nd of '93; is that correct, Mr. Cromer?

A What is the address on this one?

Q The address of the house? What are you asking me? I apologize.

A Yes, the address of the house.

Q Just a moment, Mr. Cromer, let me check. Could I see that exhibit?

A Yes.

Q That was the dwelling of Mamie Louise Paige. That was also in Lincolnshire.

A Okay.

Q What is your answer? I apologize.

A You can put it up.
Q You were convicted of that on April the 2nd of '93 also?
A Yes.

MR. CHESSER: Your Honor, at this point I would ask for a limiting instruction that was given earlier; but it seems to me that it would be appropriate again.

THE COURT: I think I have already given it earlier. I will charge it at the end of the case. I will not do it at this time. Go ahead, solicitor.

BY MR. SWARAT:

Q Mr. Cromer, you are also the same Jeffrey Cromer that was convicted of possession of a stolen vehicle here in Lexington County; is that correct?
A Yes, sir, when I was 16 years old. That's when most of these happened, but I got charged when I was 17.
Q I see. Mr. Cromer, you were also convicted of a felony down in Tampa, Florida on February the 7th of '96; isn't that true, sir?
A Yes, sir. It happened in 95, yes, sir.

MR. CHESSER: Your Honor?

Q It happened in '95 and you were convicted in

'96?

A '96.

THE COURT: Solicitor, hold on just a second. What is your objection?

MR. CHESSER: At this point we would ask for a limiting instruction with respect for these under the inquiry the solicitor has just made under Rule 609 that they are for a limited purpose.

THE COURT: Ladies and gentlemen of the jury, under our rules of evidence, the Solicitor can ask the Defendant about prior convictions that affect the time that he received or if they go towards the trustworthiness of the individual.

They are admitted in Court just to determine -- for you to determine and hear the credibility of the witness, not that this past conduct is followed by this bad conduct.

It's not for purposes of the bad conduct but just strictly to question the credibility of the witness. I instruct you that's the only consideration that you can use it for is for the credibility of the witness. Solicitor, you may proceed.

BY MR. SWARAT:

Q Mr. Cromer, you testified on direct that back

then when all this happened, you were doing wrong things to make a dollar? Do you remember that testimony?

A Yes, sir, I remember that testimony, sir.

Q Is that accurate?

A Yes, it is, sir.

MR. SWARAT: Your Honor, that is all I have at this time.

THE COURT: Mr. Foreman, and ladies and gentlemen of the jury, we are going -- I know you haven't, but we have been in here since 10:00 o'clock, about an hour and a half.

I try to take a break about every hour and a half. So we will take about a 15 or 20-minute break. We will get started back about ten minutes to 12. Please don't discuss the case until you have heard all the testimony.

(The jury retires to the jury room.)

THE COURT: Anything before we break from the State?

MR. SWARAT: No, Your Honor.

THE COURT: Anything from the Defendant?

MR. CHESSER: No, Your Honor.

THE COURT: We will take about a 15 or 20-minute break. Mr. Chesser.

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MR. CHESSER: Yes, sir, Your Honor.

THE COURT: I don't know if you have got any further testimony or not, but please don't discuss the testimony with Mr. Cromer. Mr. Cromer, please don't discuss the testimony with anyone until you are off the witness stand. Do you understand?

THE WITNESS: Yes, sir.

THE COURT: Mr. Chesser, I will see that you keep that in force.

MR. CHESSER: Yes, sir.

(Whereupon there was a recess.)

THE COURT: Mr. Cromer, do You want to come back around, please, sir.

JEFFREY DURRELL CROMER, having been previously duly sworn, resumed the witness stand and testified as follows:

THE COURT: Mr. Chesser, do you have any rebuttal testimony?

MR. CHESSER: We are going to have a brief redirect.

THE COURT: That's fine. Anything before we bring the jury from the State?

MR. SWARAT: No, sir.

THE COURT: Do you plan on having any rebuttal witnesses?

MR. SWARAT: One witness.

THE COURT: Would you bring us the jury, please, sir.

(The jury returns to the courtroom.)

THE COURT: Mr. Chesser it appears we have all the jury. If you will proceed with any redirect, please, sir.

MR. CHESSER: Thank you.

**REDIRECT EXAMINATION**

BY MR. CHESSER:

Q Mr. Cromer, I just want to deal with some basic elements. Jeffrey, are you guilty of receiving stolen property?

A I take that responsibility. I am, sir.

Q But did you steal this property, Jeffrey?

A No, I did not, sir.

Q Did you have any role in helping steal this property?

A No, I did not, sir.

Q When did you find out it was stolen?

A After I got arrested, sir.

Q Jeffrey, are you innocent of this crime?

A To let y'all know, from me to y'all, I am guilty of buying stolen property. I am guilty of selling stolen property, but I will tell each

and every one of y'all I did not go on Mr. Barnhill's property and take nothing from him nor his family.

Q Did you act as a lookout on that night, Jeffrey?

A No, I did not.

MR. CHESSER: That's all I have.

THE COURT: Any cross examination, solicitor?

MR. SWARAT: I believe just one question and maybe a follow-up based on the answer.

**RECROSS EXAMINATION**

BY MR. SWARAT:

Q Mr. Cromer, would you have any reason to buy an operations manual from the post office from Mr. Dowell?

A No sir.

Q Thank you.

MR. SWARAT: That's all I have.

THE COURT: Mr. Cromer, you may step down. Mr. Chesser, do you have any further witnesses?

MR. CHESSER: The defense rests, Your Honor.

THE COURT: Mr. Foreman, and ladies and gentlemen of the jury, we have to take up some motions at this point in time. Please don't discuss

the case among yourselves. I will get you back just as soon as I hear this motions.

(The jury retires to the jury room.)

THE COURT: Any motions from the State?

MR. SWARAT: No, Your Honor.

THE COURT: Any motions from the Defendant?

MR. CHESSER: Your Honor, we would simply renew at this time the motions that we made upon the close of the State's case.

THE COURT: Those motions are denied. Anything else before we bring the jury back? Solicitor, you will have some rebuttal testimony, I think you said, one witness?

MR. SWARAT: That's correct, Your Honor.

MR. CHESSER: As far as jury instructions, we can go into those later; is that right?

THE COURT: We will go into those sometime before -- we will get set on that before you make your closing statement.

MR. CHESSER: Thank you, Your Honor.

THE COURT: If you will bring us the jury.

(The jury returns to the courtroom.)

THE COURT: Ladies and gentlemen of the jury, the Defendant has rested his case. At this time the State has an opportunity to offer any

witnesses as rebuttal testimony. The State has informed the Court they will call a witness for rebuttal. Solicitor.

MR. SWARAT: The State calls Mr. Thad Mays.

THE COURT: Mr. Mays.

THADIUS EVERETT MAYS, being first duly sworn, testified as follows:

CLERK: Please have a seat and state your full name for the record, please.

THE WITNESS: My name is Thadius Everett Mays, M-A-Y-S.

**DIRECT EXAMINATION**

BY MR. SWARAT:

Q Mr. Mays, good afternoon.

A Same to you.

Q Mr. Mays, can you tell the jury where you are from?

A I am from Newberry, South Carolina.

Q What line of work are you in?

A I'm a building contractor.

Q How long have you been a building contractor?

A About 23 years.

Q Are you a subcontractor or do you own the company?

A I own the company.

Q Do you have people working for you?
A I do.
Q Approximately how many people do you have working for you at one time?
A It varies seasonally, from 15 to 25.
Q Mr. Mays, are you married?
A Yes.
Q Do you have any children?
A I have two children.
Q Mr. Mays, I want to take you back to early spring of last year. Do you recall meeting an individual by the name of Jeffrey Cromer?
A Yes, I do.
Q About what time of the spring of 2000, did you meet Mr. Cromer?
A It was sometime in March.
Q Can you explain to the jury how you came to meet Mr. Cromer.
A Yes. My company was doing a roof job over off [redacted] Road. Mr. Cromer came out an apartment next door or two houses down and approached me and asked me if I was interested in buying a couple of items.
Q And did you buy any items from him?
A Yes, I did.

Q You say that was sometime in March?
A Yes, the best I can remember.
Q After you made this purchase from Mr. Cromer, did you continue to have some contact with him?
A Yes. He told me that he didn't have any use for these items, and from time to time he came across and dealt in tools and other items. So I gave him my telephone number.
Q Do you recall if he got in touch with you later on in March or early April?
A Yes, it was approximately two weeks later. He called me back and said that he had a skill saw he would like to sell. I told him since my work was in Newberry, I would not come to Columbia. He met me in Newberry and brought it down, and I purchased it from him.
Q Was that the second time you had dealt with him?
A Yes.
Q After you dealt with him the second time, would he sometimes call you on the phone and offer you items?
A Yes.
Q Did he call you frequently?
A It would vary from time to time. Sometimes he would call me once a week. Sometimes it would

be more frequently than that.
Q Was there an occasion toward the middle of April where you had contact with Mr. Cromer and bought some other items?
A Yes. I purchased on a Friday I remember -- I don't remember the date -- I remember it was a Friday. I met him and purchased a welder, a leaf blower, some hedge trimmers and some miscellaneous items.
Q And at that time where did you meet with him? Were you in Newberry?
A In Newberry, yes.
Q So he came to Newberry to meet with you?
A Yes.
Q Mr. Mays, I am showing you what has been marked as State's Exhibit Number 18, 19 and 20 and ask you if you recognize the items that are shown in those photographs.
A Yes, I do. They are some of the items that I purchased from him.
Q You purchased some of those items from Mr. Cromer?
A Yes, I did.
Q In Newberry?
A That's correct.

Q That would have been toward the middle of April?
A Right.
Q In State's Exhibit Number 20, do you see a hedge trimmer in there?
A Yes, I do.
Q You purchased that hedge trimmer from him?
A Yes, I did.
Q In State's Exhibit Number 18, do you see a leaf blower?
A Yes, I do.
Q Did you purchase that from Mr. Cromer?
A Yes, I did.
Q How about that welder that is next to the leaf blower?
A It was in the same group of tools.
Q And State's Exhibit 19, would you describe for the Court what type of tools those are.
A It's a saber saw, a jigsaw, a sander and one is a DeWalt grinder and a portable drill.
Q Did you purchase those also from Mr. Cromer?
A Yes, I did.
Q Now, Mr. Mays, on that particular occasion on that Friday in the middle of April, did he offer you any firearms for sale?
A Yes, he did.

Q Can you describe that firearm for me, Mr. Mays?
A One was a 30-06. Well, it was -- the only gun was a 30-06 Savage with a scope. As I remember, it had a light color stock. It was in a case. I'm not sure, but I think it was a green or brownish case.
Q And did you want to purchase that rifle?
A No, I had no interest in it.
Q Do you own some firearms yourself?
A Yes, I do.
Q You declined to purchase that 30-06 rifle from him?
A That's correct.
Q Now, after you had that third occasion to buy tools from him, did he make phone calls to you after that time, after that time in mid April?
A Yes, from time to time.
Q What was he calling you about?
A He had various items. I don't recall. I remember one was a generator, a large generator. I didn't have any interest in that.

MR. CHESSER: Object to this on the grounds of relevance, Your Honor, and 404 (B) and the Lyle line of cases.

THE COURT: I will overrule it. Go ahead.

BY MR. SWARAT:

Q Can you please continue, Mr. Mays.

A Like I said, it was a generator. That was one item I remember, and I had no interest in it.

Q Did you have any other face-to-face contact with him in April of 2000?

A Yes, I did. I bought tools from him at two other times. At one time he came to Newberry, and I bought some tools from him. Another time while we were building an office in Columbia and one in Ballentine, I saw him at what used to be, I think, is an antique store now, Darryl Bull Oil Company right there where Highway 6 comes in.

Q That's in Ballentine?

A In Ballentine.

Q Later on, did you have the occasion to find out Mr. Cromer had been arrested?

A Yes, I did.

Q And did he call you after he had been arrested?

A Yes, he did.

Q What was the purpose of his call? Why was he calling you, Mr. Mays?

MR. CHESSER: Your Honor, I would object to this. I am not sure what we are getting at. Could

we approach briefly?

THE COURT: Yes, sir.

(Whereupon there was a bench conference off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: Mr. Chesser, I will note your objection and overrule it.

MR. CHESSER: Thank you.

THE COURT: Go ahead, Solicitor.

BY MR. SWARAT:

Q What was the nature of that call after he had been arrested, Mr. Mays?

A He told me that he needed some money for bail, and would I help him out, and he would pay me back shortly.

Q Did you provide him with some money for bail?

A I did.

Q Mr. Mays, did you at that time have anything against Mr. Cromer?

A No.

Q He personally had never done anything to you, had he?

A No.

Q No reason for you to tell anything false about him, would there be?

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A No.
Q Mr. Mays, after you provided Mr. Cromer with some money, did you start thinking about the transactions you made with him?
A I sure did.
Q As a result, did you contact any law enforcement authorities?
A I did. I contacted an ex-police chief that I knew personally in Newberry and explained the entire situation to him, how it all transpired.
Q As a result, did he advise you to do something?
A He advised me to meet with the detective in Newberry and to bring all the items I had purchased and return them to him.
Q That's the lieutenant there in Newberry County?
A Yes, Mike Pickelsimer.
Q And did you return the items I have shown to you previously?
A Yes, I did.
Q To that Detective?
A Yes, I did.
Q As a result of returning those items, did you later in September, in the early fall, did you have the occasion to meet Detective Quig?
A Yes, I did.

Q How about Mr. Barnhill right there?
A I sure did.
Q And where would that have been? What county was that in?
A That was in Newberry County.
Q That was with that same detective?
A He was present, yes, sir.
Q And at that time were some items returned to Mr. Barnhill?
A Yes, they were.
Q Mr. Mays, I will show you a document and ask you if you recognize that.
A Yes, I do.
Q Is that a statement that you gave to law enforcement?
A That's correct.
Q Would that have been on the same day in September of last year?
A That's correct.
Q When you met with Detective Quig and Mr. Barnhill?
A That's correct.
Q Is that statement true?
A Yes, sir.
Q Is what you are telling this jury today true?

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A Absolutely.

MR. SWARAT: Your Honor, that's all I have at this time.

THE COURT: Cross examination.

**CROSS EXAMINATION**

BY MR. CHESSER:

Q Mr. Mays, that rifle that you referred to, did you get a serial number on it?

A No, sir.

Q Did it have anybody's name written on it?

A I didn't notice if it did.

Q And are you sure of the brand that it was?

A Relatively sure.

Q It could have been some other brand?

A To the best of my knowledge, that's the brand that it was.

Q Did you ever buy any property from Mr. Cromer in this area, in the Columbia or North Columbia area?

A I bought property from him on [redacted] Road. I bought property from him in Prosperity, in Newberry County. As far as I know, that's it.

Q Did you ever go to the Shell Station on Piney Grove Road and buy property?

A No.

Q Thank you, Mr. Mays.

MR. CHESSER: No further questions.

THE COURT: Redirect?

MR. SWARAT: No, sir. I ask that Mr. Mays be excused.

THE COURT: Any objection, Mr. Chesser?

MR. CHESSER: No, Your Honor.

THE COURT: Mr. Mays, you may be excused. Solicitor, do you have any further witnesses?

MR. SWARAT: No, sir.

THE COURT: Ladies and gentlemen of the jury, it's ten minutes after -- almost 12:15. What we will do is take a lunch break. If you will be back in the jury room at -- I have got to take up some matters with the attorneys. That will probably take 15 or 20 minutes.

If you will be back in the jury room at 2:00 o'clock, we will get started with the remaining portion of the trial, which will be closing arguments and the charge.

As I have told you every time you have left the courtroom, please don't discuss the case until you have heard all the testimony, the closing arguments and the charge. Have a good lunch and I will see you back at 2:00 o'clock.

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(The jury is excused for lunch at 12:12 p.m.)

THE COURT: Any motions from the State?

MR. SWARAT: No, Your Honor.

THE COURT: Any from the Defendant?

MR. CHESSER: We would renew the motions that were made at the close of the State's case and at the close of the defense's case.

THE COURT: I will overrule those objections and so note your objections. Gentlemen, we can go off the record.

(Whereupon there was a discussion off the record, followed by a luncheon recess.)

THE COURT: Anything from the State before we bring the jury?

MR. SWARAT: No, Your Honor.

THE COURT: Anything from the defense?

MR. CHESSER: No, Your Honor.

THE COURT: Bring us the jury, please, sir.

(The jury returns to the courtroom at 2:10 p.m.)

THE COURT: Solicitor.

MR. SWARAT: May it please the Court. Mr. Foreman, and ladies and gentlemen, first of all, on behalf of the people of Lexington County, which I

have represented in this case and of which we are all a part, I want to thank you for your service this week.

I know it's not easy for you to be here. You have to take time away from your own responsibilities, from your daily lives and the things you would probably rather be doing, perhaps have to be doing.

I will tell you though today after you have deliberated on this case, your jury service will be over. We can't have you back in generals sessions court for three years. So you are least safe for three years.

I will tell you though that one of the services you have performed sitting on the jury is one of the highest services you can give to your community. That's not something I have come up with. That's something a lot of people have talked about over time.

It's one of the best quotes I've ever heard from Winston Churchill. He said that jury service is the highest form of service that you can give to your community in peace time. Just short of fighting on foreign soil defending your country against a foreign enemy, jury service is the second highest service you

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could give, besides putting your life on the line.

I would submit to you that's true. Whereas dealing with a foreign enemy, you are putting your life on the line, when you sit on the jury, you defend your community again those domestic enemies, those people that walk among you that can't conform their conduct to the law. You protect the community from those types of people when you sit on the jury. We thank you for it.

You may say: How am I qualified to do that type of job, Solicitor? How do I get to sit on the jury? How do I raise my skills to that type of level? Ladies and gentlemen, I would submit to you that you have been preparing for jury service your entire lives.

You have been collecting all those things that you make up as a person from your work histories, to your family relationships, your dealings with others in life, your education. All the things that come together to make you you, make you qualified to be a juror.

Because being on the jury, one of the main things you have to do is judge the credibility and believability of evidence. As you judge people that you deal with in your everyday lives, you judge their

credibility by what they are as a person. You judge it by their background, things about them that you find out, to decide whether or not they are a credible and believable person.

People like Detective Quig there: Twenty-seven years in the military, retired command sergeant major. That's the highest rank you can have as an enlisted individual in the army. It's the highest rank you can attain. Six years with the Lexington County Sheriff's Department as a detective, given his life to public service his entire professional life.

Men like Tom Barnhill: Thirty-five years at the same job, thirty-four years in the same house raising a family in that house he calls a home, four children and I believe he said three grandchildren.

You get to look when they take that witness stand. You hear about them. You hear about that background. You determine whether or not they are credible people. People like Mr. Cromer -- and you heard from him.

MR. CHESSER: Your Honor, I believe the solicitor is supposed to be opening on the law. I am not sure exactly where he is going.

MR. SWARAT: If he has got a case that says

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I can't talk about this, I want to see it.

THE COURT: I overrule the objection.

MR. SWARAT: Thank you, Your Honor. You get to judge the credibility of the witnesses that you have seen under oath. You heard from Mr. Cromer, and you have heard about Mr. Cromer.

You get to look at his background, things about him. You get to judge if he has had a prior record. I believe Mr. Cromer is the only witness that testified that had a prior record.

He's got a felony that he got in 1996 in Tampa, Florida. You heard about that possession of a stolen vehicle. I will get to the charges he has got, but they are put into evidence for another purpose, to show you that this is a burglary in the first degree.

But you get to use those type of things about their background to determine whether or not they are credible, whether they are believable. Also you get the chance to look at what they do on the witness stand.

What is their demeanor like? How do they behave themselves? Whether they are respectful to the Court, whether they are forthright in their answers, whether they try to hide the truth, jade the

truth a little bit to suit their purpose.

You get to look at those things as you view from the jury box them testifying under oath. Those things are important: Whether what that say on the witness stand corresponds with what they have said prior, if they have given a prior inconsistent statement, said something that is inconsistent from what they said in front of you. Use all those things to determine their credibility because it's very important.

Ladies and gentlemen, one way you can determine the credibility of evidence is by corroboration. What does corroboration mean? It's just taking one fact, looking at one fact, and taking all the other facts surrounding it to decide whether this first fact is true.

It's kind of like building on the evidence. By showing you one thing, it leads you to conclude this thing you saw over here is true. We did that a lot with Mr. Cromer's statement, the things about the house at [redacted] and [redacted] Road.

Ladies and gentlemen, do y'all have any doubt that Mr. Barnhill's house at [redacted] and [redacted] was broken into? Did you have any doubt about that? Reasonable doubt or otherwise? Of

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course not.

Do you have any doubt that a contractor was involved with Mr. Cromer and that Mr. Cromer sold him some of Mr. Barnhill's things? We have proved that in many different ways. We showed you things in that statement that are true because we brought other evidence in to show you that it is true.

We told you at the start of the case, we don't have to prove that Mr. Cromer went inside Mr. Barnhill's house. We do not have to prove he went inside the house. If we have proved to you beyond a reasonable doubt that he was involved in this crime, that he participated in any way whatsoever, he is guilty.

We told you at the start -- and we didn't try to stretch the truth with you -- there was one more person involved in this. That's based on common sense. That's the most important thing you bring into the jury box, your good common sense.

All those items that were stolen from Mr. Barnhill, many, many items, some of them very heavy items. It would have taken a lot of trips back and forth inside that house, inside that garage, to load those items up and cart them away from his residence that night.

Your good common sense tells you that wasn't the work of one man. We don't believe that Mr. Cromer did this crime alone, and we don't have to prove to you that he did. If anybody in that group went inside that house, everybody in the group is guilty of burglary.

If anybody in that group went inside that house and it was nighttime, everybody in that group is guilty of burglary in the first degree. If any one person in that group stole a weapon out of there, stole that ammunition and armed themselves, whether they were going in with a weapon or had the weapon while they were on the premises or left with a weapon, they are armed for the purposes of burglary in the first degree. It makes it burglary in the first degree.

The other aggravating factor we told you we could show you -- and we only have to prove one, any one of these three will do -- is that Mr. Cromer has two or more prior convictions for burglary, for breaking into someone else's house. We showed you he had three.

You will have those things back in the jury room with you. You will have a chance to look at all that evidence, every single piece of it. Take your

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time, as much time as is necessary, for you to understand the role Mr. Cromer played in this break-in.

If he is involved at all, any activity whatsoever, whether he was the lookout guy, the getaway driver, the recipient of the proceeds, it doesn't matter. If he is involved at all, he is as guilty as the group. These were his associates, people that were aligned, combined with him.

Now, ladies and gentlemen, I will have another opportunity to speak to you about some of the specific facts in the case. I will talk to you at length about that later on.

But I will tell you this. This is the only chance that the people of Lexington County have for justice in this case. There will be no other chance whatsoever.

If you find Mr. Cromer is not guilty -- and if we haven't proved it, you should -- but if you believe he is guilty beyond a reasonable doubt -- and that's not beyond all possible doubt. That's a doubt that you evaluate from the use of your good common sense, those talents that you have.

If you believe, based on the evidence, he is guilty, find him guilty. If you find him not

guilty, we will have no other chance. We can't bring the case again. He walks out the door scott-free on this charge.

We ask that you evaluate the evidence, that you use your good common sense and that you render a verdict that speaks the truth, either for him or against him. My job is to point you toward the truth, not something that is not the truth. I ask you to speak the truth.

THE COURT: Mr. Chesser.

MR. CHESSER: May it please the Court. 55I hope y'all are doing fine this afternoon. I can't help but sort of naturally tend to respond to some of the things the solicitor said.

One of the things is the idea that what does somebody have to do in order to be considered part of this. In other words, for example, if Mr. Cromer simply purchased or received this property that was taken from Mr. Barnhill's home, that doesn't make him guilty.

I think if you were to have listened, and I am sure you did listen to the solicitor, it seemed like to me that he said something like if he received the proceeds, he is guilty. That's not the law.

The law is that he has to have done

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something affirmative. He has to basically have been a participant -- not basically -- in fact. He has to have participated and performed some role in this in order for you to find him guilty.

When you have this type of situation in the law and it appears to be some sort of disagreement, the judge will give you the law on this, as far as what somebody has to do to be considered guilty.

So you should listen very carefully to the judge's instructions that he is going to give you at the end of this. But he will tell you that somebody has to actually have done something, have participated, have performed a role in this, in order to be considered guilty.

So it's not just a matter of well, he did something wrong. He received this property or bought it, and therefore he is guilty. That's not the way it works, that's not the law.

That gives rise to a second point. Again, it was suggested by the solicitor's opening statement here, that somehow Mr. Cromer if he were found -- if you decide the State has not proved their case beyond a reasonable doubt, then this charge is over with. That's true. It is.

You only get charged one time for a crime

in our system, which is a rather admirable principle. There are things like receiving stolen goods and so forth that could have been charged and still could be charged.

That's a separate offense, receiving stolen goods. So it's not like somebody can say he gets a merit badge for receiving stolen goods if he gets found not guilty. That's not the case.

That leads to a third point. You have heard some testimony that he received stolen goods, that he was selling goods. You heard some other things, some convictions for crimes.

Well, you are challenged, one of your challenges in this case, is to not consider, particularly with regard to convictions, to not consider those things for purposes of deciding if he is the kind of guy that would do this or find him guilty because he did something in the past particularly.

If he had a conviction in the past -- and the judge is also going to instruct you on this -- three convictions were admitted by the Court for purposes of establishing the element of burglary first, which is having two or more priors for burglary.

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That's the only purpose that you can consider those for in deciding if that element of burglary first is established. There were a couple of other convictions, a possession of stolen goods and a felony in Florida. Those were admitted for the sole purposes of credibility.

I am a lawyer. So I studied these things a long time. To me that just makes sense. I know y'all are probably smarter than I am, but the challenge is for you to say:

I recognize those principles, and I am going to apply them. I am not going to convict somebody because he is a guy I don't like or he is not the kind of guy I want to belong to my club or something of that nature.

I know that you won't do that because the judge is going to instruct you not to do it, and I know you won't do it. I am sure you appreciate that distinction.

Somebody has to be determined to be innocent or guilty based just on the evidence that was presented to you in this case that pertains to this particular accusation.

Now, in a criminal case, of course, the Defendant begins and continues with a presumption of

innocence. He is presumed innocent. The entire burden is on the State to prove his guilt beyond a reasonable doubt.

So the Defendant doesn't have to prove anything. He retains that cloak, that presumption of innocence, up to and even during your deliberations, until such time, if you should happen to find him beyond a reasonable doubt guilty, that would be a different point.

But even in considering the evidence, you should apply the presumption and look at things that are unclear or they are not proven sufficiently with an eye to a presumption of innocence for the Defendant.

What the primary point in issue, as I told you earlier, is the Defendant -- was he an active participant with a role in this breaking in. That is the issue, I think, for you to consider. Has the State proved that he performed, that he participated, that he had this active role that he fulfilled in this break-in.

I would submit to you that the State has not proved that. Really a large part of the State's case is the fact that Mr. Cromer was simply in possession of stolen goods. It seems that that is 80

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or 90 percent of it.

When you get beyond that, you get to the statements. One statement, you recall, Detective Quig obtained on April 23rd, the day after Jeffrey was arrested in jail.

Now, that statement -- the judge is going to instruct you -- in fact, you must consider the voluntariness of this statement. Voluntariness, what that means is:

Was there something that was offered that he got in exchange for making the statement? Was there something promised to him or was he led to believe something that would encourage him to make a statement like this.

In fact, there was testimony that the one thing that he wanted most of all was he wanted to get out. Anything he could do to get bail, that's what he wanted to do.

There was testimony, particularly from Mr. Cromer, it was suggested to him, "Look, if you will write these things down, if you will say this -- and he indicated his statement was given in stages.

He would give part of it, and then Detective Quig would suggest, "Look if you want to get out, you need to help me. You need to give me

something." So he continued writing.

This is the type of promise that in a certain case, in a given set of circumstances, it can be considered to make somebody's statement in exchange for something.

"Yeah, I will do this if I can get out." The testimony was that he got a bond that day. In fact, he got a bond about a half an hour after he gave this statement.

His Honor is going to instruct you, and it is in fact the law that you have to consider whether the statement was voluntary looking at all the facts and circumstances.

If the State has not proven that it was voluntary, if it was given in exchange for something, if the State has not proven that beyond a reasonable doubt -- and the burden is on them -- then it is your duty to discard that statement and not to consider it.

I would think that in a case where a jury is considering that type of issue, it might be possible that some jurors would say, "Yes, it's voluntary," and some wouldn't.

If you decide in your own mind it's not voluntary, then you shouldn't consider it. If you

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decide the State has not proven beyond a reasonable doubt that it was voluntary, then you shouldn't consider it. You must exclude it from your deliberations.

Apart from the voluntariness of this statement, I think that you should consider just the reliability of a statement. Even if a statement was given, was it reliable? That is an important part of the evaluation of any statement.

When you have a person -- Jeff testified that he did get a G.E.D. -- but when you have a person who say struggles to get a G.E.D. in the presence of a man of the experience with the sense of duty, with the sort of enthusiasm for law enforcement, which may be interpreted as enthusiasm to put people in jail.

When you have those two people, you have an unequal battle. So if you have things suggested to somebody with a limited education, very limited education, in the presence of a very strong personality, I would suggest to you that you ought to consider the reliability of such a statement.

How much can you rely on it? One of the hallmarks, one of the distinguishing characteristics of this case is the State, to a very, very large

extent, relies on this statement.

I think inherently, I would suggest to you, that when the State is basing so much of their case on a statement, that's really not the ideal set of circumstances to judge a case.

Statements can be unreliable. There is nothing -- they can't even compare to good physical proof of something. A statement, you know, everybody has heard of false confessions or false statements.

If you have a situation where things are suggested to somebody for any reason, that is not a very reliable form of evidence. So keep in mind, in addition to voluntariness, you should consider: Is this reliable?

If you decide that you are going to consider it at all, give it whatever weight or less weight as you consider appropriate based on: Is this really reliable? Is this the type of thing that we want to base a decision of guilt or innocence on these extremely serious charges on a statement obtained in such unequal circumstances?

There was another statement testified to. You may recall Mr. Barnhill testified that Jeffrey had said something similar to what he said on the 23rd.

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That statement was not even reported by Mr. Barnhill to anybody until last week. Mr. Barnhill testified that he heard maybe that Jeffrey had said something to this effect.

Again, of course, you heard the testimony from Mrs. Cromer that it wasn't possible that that statement was made. I would suggest to you that when you have something like that, that is in effect a confession, and then somebody doesn't even talk about or mention it, the victim, who has everything supposedly on the line in this case, doesn't even mention anybody, then you should question whether that statement was ever made.

I think it would be a reasonable inference that it wasn't made at all. That's not the kind of thing you would keep under wraps for nine or ten months or almost a year.

In general in the case there is a lack of evidence. You have no physical evidence. In this regard, I would say that the State has been negligent in one respect particularly.

The chain was cut. The expert on crime scene investigation testified you can analyze a cut chain and try to determine exactly what set of cutters or bolt cutters or instrument was used. This

wasn't done. The State just didn't bother.

That's one of the evils, I think, of relying on statements that are supposedly given. You don't pursue what you should pursue. You don't go out there and say, "Well, let's analyze this type of evidence that really doesn't lie. No, we are not going to bother to do that."

That is a troubling thing when you have something's liberty that rides on a decision like this to say, "we are just not going to pursue this avenue of reliable scientific evidence."

This breaking-in basically, due to the amount of stuff that was carried away, had to involve more -- several people. That is another aspect of this that is troubling.

Nobody else was ever investigated to the point where they would corroborate the State's case or where they would refute the State's case. They weren't really pursued. It was like, "Well, we are going to stop because a statement was extracted from the Defendant on the 23rd."

These people, it's the type of case that requires that type of corroboration or that type of evidence or maybe that type of refuting. It requires that type of investigation.

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In other words, guys like Rick Dowell and Cecil and Dante, whoever these people are, they should have been thoroughly investigated. I would submit they should have testified.

MR. SWARAT: Your Honor, I object. He can call witnesses just like I can.

THE COURT: Overruled.

MR. CHESSER: Can you imagine these people talking to us? We don't have a burden of proof in this case. The State has the burden of proof. They have got access to these people.

This type of investigation which should have been done and hasn't been done, and now Mr. Cromer's liberty, his freedom, rests on what the State has, without regard to what these other things could have shown that I submit to they had a duty to do and to investigate and which wasn't done.

How do you justify that? Mr. Dowell lived a few doors down from Mr. Barnhill. He was a drug addict. That's somebody you would want to look at in a case like this, I submit to you.

Of course, Mr. Cromer said on the day that he was arrested and subsequent, he said, "You know, I bought these tools from Mr. Dowell." That's a very important point.

I will bring up something else, and that is Mr. Cromer testified that Mr. Dowell said, "I am going to get some tools," and Mr. Cromer followed him. Mr. Cromer didn't -- all he knew was that Dowell lived on [redacted].

Well, all he knew was he lived on [redacted] and Dowell was desperate. He was going to bring him some tools, and that's what happened according to Mr. Cromer's testimony.

He brought these things. He brought them back up. Mr. Cromer went to see where he was going, where he lived. Then he went back, and he was only there for five minutes, three to five minutes. Then Dowell brought him these tools and different things and put them in Mr. Cromer's house.

Obviously, in order to be found guilty, the State would have to prove beyond a reasonable doubt that Mr. Cromer wasn't under this conception that this might have been Dowell's house. If he thought that, then he can't be found guilty.

I would point out to you that Mr. Barnhill testified it was about 100 things taken. There was a list made that had over 50 things. That's what Detective Quig testified to. Mr. Barnhill said about a hundred things.

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There were 14 items that were found at Mr. Cromer's place on the 22nd. There were an additional five of six items that were obtained from this contractor up in Newberry.

So what you have is a situation where only part of the property, a relatively minor part, taken Mr. Barnhill's figure of a hundred items were found at Mr. Cromer's.

Therefore this is consistent with the idea that he purchased some of these items. In effect, some of the items were brought over and then he compensated them. What he put in his room, he may not have been sure; but they put them there. Then he pays them and then says, "I will pay you some more."

So he was basically -- I mean, according to the testimony, Dowell brought this stuff over to his place. Mr. Cromer was under the impression that Dowell had been at his own residence. He knew he lived on this particular [redacted] Road.

In short, if Mr. Cromer had a misconception about that, if he was in fact -- if he didn't know Cromer was doing something like this -- excuse me -- if he didn't know Dowell was doing something like this, then he can't be found guilty.

If he didn't know Dowell was robbing

somebody, he can't be found guilty. In addition, if he didn't play an active part and help in it, he can't be found guilty either.

There was a type of a postal box that was found at Mr. Cromer's residence. This box, it could have been brought there by Dowell when he brought in the other stuff and just brought it in and set it down.

Whether that box contained tools or whether it contained something else is not very probative in this case. It is one item, but there are a lot of possibilities about how that got there. Dowell could have brought it in. It really doesn't prove anything.

You can make an argument, "Well, that's not the kind of thing you would buy would be some type of postal directory." All you see in the picture is a box. What it contains is unclear.

In addition, when you are talking about a number of items, 15 items or 20 items, they can bring things in; and you could really not be sure what they were. You just assume that they were giving you what you wanted.

All in all on this case, there is a lack of proof. This is a case that hasn't been sufficiently

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investigated. It rests on the threads of this statement that was given.

To find a guy guilty based on this, this type of statement alone, when really the case rests on his being in possession of stolen items, that's where the case really comes from.

Then the case was not properly investigated. It wasn't followed up. When you have somebody's liberty depending on a case that hasn't been investigated properly, I would submit to you that the State has fallen short because of things they didn't do and because they haven't proven their case that Jeffrey Cromer actually participated, that he had some role, actual role, in the theft of these goods.

They have to show that he either served as a lookout or that he went in there himself. He testified that this thing about a lookout was suggested to him by Detective Quig.

You know, you will have your opinion about that; but maybe you will think, "You know, that's quite possible." He said Detective Quig knew that Jeffrey had to have played a role in order to be found guilty.

He suggested this to him. Again, you are

dealing with rather unequal intellects or at least unequal in terms of experience. A case shouldn't depend on that, not when somebody's life and their future is riding on it. There is a lack of proof in this case.

I want to sort of end where I began, and that is talking about what is required. The State has to prove beyond a reasonable doubt that he participated, that he performed an active role in this. He either was a lookout or he went in.

They haven't proved that beyond a reasonable doubt. I submit to you that they have not, and then you must find him not guilty. He is not charged with receiving stolen goods. They can charge him with that tomorrow if they want to.

But he is not charged with it right now. The judge will be instructing you that that has nothing -- the idea of receiving stolen goods, he can't be found guilty of burglary first on that, being in possession of stolen goods. You shouldn't find him guilty for that.

Look at all the evidence and the lack of evidence. You shouldn't find him guilty. He is not guilty of burglary first. Ladies and gentlemen, the State has not proved their case beyond a reasonable

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doubt. Please find Mr. Cromer not guilty.

THE COURT: Solicitor.

MR. SWARAT: May it please the Court.

THE COURT: Yes, sir.

MR. SWARAT: Ladies and gentlemen, there is a con man in the courtroom with you today. He is trying to sell you something. Mr. Cromer is trying to sell you something today. Do you want to buy something from Mr. Cromer?

You have heard from honest Jeffrey. You have heard from honest Jeffrey Cromer up on the witness stand. Use your good common sense. Use what you saw and what you heard to evaluate his credibility. Because their defense hinges completely on his credibility, his believability. If you don't believe him, he is guilty. If you don't believe him, he is guilty.

Now, ladies and gentlemen, I submit to you not only have we proven our case, we have overwhelmingly proven our case. We would like, of course, to have more evidence. I have never walked in a courtroom where I didn't want to have more evidence.

It's the evidence we do have, and I submit to you it's sufficient. There's two things I would

like for you to watch and pay close attention to. If you track these things and nothing else, you will know the truth.

If you watch the flow of that property, if you follow the track of the property that was stolen from Mr. Barnhill, and if you look at the timing of this investigation, you will know the truth.

I want to respond to something Mr. Chesser said about receiving stolen goods. He is charged with receiving stolen goods. A lot of people's property was in that household with Mr. Cromer, and he is charged with it. Yes, sir. Yes, ma'am. He is charged --

MR. CHESSER: Your Honor, I object.

MR. SWARAT: Your Honor, it's unfair response.

MR. CHESSER: Object under Rule 404 (B) and Lyle.

THE COURT: Solicitor, move on. I will sustain the objection. Ladies and gentlemen, he is charged with burglary, not receiving stolen goods.

MR. SWARAT: He is charged with the burglary of Mr. Barnhill's residence, that he was involved in that burglary. If you take only one piece of evidence, I ask you to look at State's

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Exhibit Number -- I believe it's 22.

It is his statement in its entirety. You will have it back in your jury room. If you read that and look through it and find that to be truthful as it came from the pen in his hand, the words from his lips back when he was arrested, he is guilty of the crime he is charged with today.

Let's look at a few more things. Ladies and gentlemen, this break-in occurred late night on the 13th. Mr. Barnhill testified he went to bed about 11:00 o'clock.

In between 11:00 o'clock and 4:30 on the 14th is when this break-in occurred when he and his wife were sleep in their bed in their house, as they have every right to do.

He said something about Mr. Barnhill's got something. What did he say? The victim has something on the line. No, sir. No, ma'am. He has nothing on the line in this case. He has been victimized. That can never be given back to him.

MR. CHESSER: Your Honor, I object on the grounds of 403. This is not proper.

THE COURT: Overruled.

MR. SWARAT: He has been victimized, ladies and gentlemen. Is there any doubt his house was

broken into? Some of his personal items were stolen, things that can never be replaced. We all have them in our household, those things that have sentimental value to us.

There was also things of monetary value that were never recovered. He has been victimized once, and no matter what the outcome of this trial, he can never get those things back. Ladies and gentlemen, I ask you not to victimize him again.

MR. CHESSER: I object, Your Honor. I renew my same objection.

THE COURT: Overruled.

MR. SWARAT: Follow that property. Mr. Cromer was arrested on the 22nd. A lot of this property was recovered from his residence. If you will look at the calendar, that is eight days later. Eight days later he is caught with 14 of Mr. Barnhill's items from that house, just eight days later.

Mr. Mays, let's talk a little bit about Mr. Mays and how important he is because it reduces that time. It boxes Mr. Cromer in on that time. What do you think he is doing with that property once he steals it?

Ladies and gentlemen, he said he is in the

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tool buying business. No, sir. No, ma'am. He is in the tool stealing business and the tooling selling business.

MR. CHESSER: I object, Your Honor, under 404 (B).

THE COURT: Overruled.

MR. SWARAT: He is selling tools. You have heard testimony about it. He steals tools -- you heard it from his own lips on cross examination -- and he sells tools. He sold them to Mr. Mays. Is there any doubt about that?

When did Mr. Mays say he bought these tools from Mr. Cromer? The middle of May -- excuse me -- the middle of April on a Friday, the middle of April on a Friday.

It was the third time he had dealt with Mr. Cromer. The day after the break-in, the day after the break-in was a Friday; and it's the middle of April.

What does Mr. Cromer's statement say? They went in the house. He was the lookout guy. They got tools, cordless drills, all these other items that they took out of the house, and they went up to the Shell Station and talked about selling them to a contractor.

He said the middle of April on a Friday. He wasn't even cross examined on that point. They don't want to mess with that. Mr. Mays was buying Barnhill property before he was caught. There is no question about that. He wasn't selling Barnhill property after he was arrested on the 22nd. He was in possession of those items.

Now, of course, when he talked to Detective Quig, he minimized his involvement in this case. I submit to you that the person that is the lookout guy that doesn't go into the residence, that doesn't load it up and doesn't steal it, he doesn't get the line share of the property.

He doesn't get the good cut of the good stuff. Does that make good sense to you that he gets those items? Ladies and gentlemen, I submit he had greater involvement than what he told Detective Quig, but we don't have to prove it. If you believe he was just the lookout guy, he is guilty.

These items were recovered from Mr. Mays in September. Detective Quig didn't know a Mr. Mays until September of 2000. But it's in Mr. Cromer's statement.. Do you think Detective Quig put it there or Mr. Cromer put it there?

Detective Quig didn't know a Jeffrey Cromer

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until the 22nd. He didn't know about a break-in at the corner of [redacted] Road and [redacted] Road until Jeffrey Cromer himself told him about it.

It doesn't get much better than that. He doesn't know anything about the break-in, doesn't have any involvement in this investigation. He was reacting on a tip about some stolen property.

He investigated. He did his job. He went and looked to see if the person that was giving him this tip was telling him the truth. He went to the Shell Station. He testified about that.

He looked on the back patio and saw these items sitting on the back patio, consistent with what Mr. Dowell had told him. It was not an anonymous tip.

Mr. Dowell could have picked up the phone and said, "I just want to tell you about some stolen property. It's at [redacted]," and hung up the phone. He didn't. He gave his name. He gave his address. He gave his telephone number, he gave a lot of information.

Does he have a hidden agenda? Sure. What kind of fellow is he? Well, he is a friend of Jeffrey Cromer's. You know what kind of fellow he is if he runs with Jeffrey Cromer.

All these people involved that they are pointing the finger at, they are friends of Cromer's. They are Jeffrey Cromer's kind of folks. We would love to have every single one of them on trial today sitting with Mr. Cromer right now.

We don't because there is no evidence, other than from the mouth of Jeffrey Cromer. Ladies and gentlemen, I am not going to put a witness up there with the credibility of Jeffrey Cromer to point the finger at three people with no other evidence about them.

There was no property found on them. There was nothing at all to put them in this burglary, other than the mouth of Cromer. Ladies and gentlemen, I am not going to put him up there. I submit to you that he is not credible.

MR. CHESSER: Your Honor, I object to him making comments about what he believes in terms of credibility and so forth. That's not proper.

MR. SWARAT: I submit to you --

THE COURT: Solicitor, don't comment on your personal beliefs. Just comment on the conclusions from the facts, please, sir. I will sustain the objection.

MR. SWARAT: Thank you, Your Honor.

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THE COURT: Ladies and gentlemen of the jury, disregard any statement the solicitor makes as far as his personal belief. He is supposed to draw conclusions from the facts and present them to you. Go ahead, Solicitor.

MR. SWARAT: Detective Quig followed up the information he received. He checked into it. He found it to be truthful because he found what the man told him that he would find:

Stolen items on his back patio, stolen items in his Tercel, in his Toyota Tercel, some of Barnhill's items in the Tercel, some of Barnhill's items on the back patio, some of Barnhill's items strewn throughout the house.

Mr. Cromer was having a yard sale, ladies and gentlemen, with Mr. Barnhill's property, his neighbor's property, a house he helped to violate. He is having a yard sale with his property. That's the kind of person he is, ladies and gentlemen.

That's the Jeffrey Cromer. That's the Jeffrey Cromer that if you believe, if you believe every word out of his mouth, he is not guilty. If you don't, he is guilty.

Now, ladies and gentlemen, he gave his statement on the 23rd. Detective Quig didn't know

about the break-in until the 24th when he looked into who owned that property.

There is all this stolen property around. Who is the rightful owner? "I want to return it to the rightful owner." It makes good sense. Isn't that good police work? He wants to return that property to who really owns it.

He finds out about Thomas Barnhill. In checking around and in checking into break-in reports, he finds out about this break-in at [redacted] and [redacted] Road.

That's the first time he ever talked to Mr. Barnhill. He called him on the phone that day, went to go see him that day and released some of his property to him on the 26th.

Four and a half months went by, four and a half months went by until Mr. Mays gave the property that he received from Jeffrey Cromer, after he figured out that something wasn't right with it, he gave it to the police in Newberry County.

As a result of some cooperation with law enforcement and that information, Mr. Mays got in contact with Mr. Quig; and more of his property was recovered.

You heard about the ammunition that was

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found there, ammunition. Personal items of Mr. Barnhill's, personal items like that hunting gear right there, camouflage, that deer-skinning knife, personal items like this post office box with an operating manual for the post office, stuff Mr. Barnhill uses in his work.

It's the type of stuff you might steal if you were in a hurry to steal, but you can do anything with it. Where was it found? We showed you where it was found. If we didn't have pictures of it, they would probably be saying we planted it there.

MR. CHESSER: Your Honor, I object to the slur on the defense.

THE COURT: Overruled.

MR. SWARAT: They have had an answer for everything, haven't they? A Jeffrey Cromer answer. What is in his car? Bolt cutters, the type of bolt cutters you use to cut a chain. Gloves. You think he knows something about the stealing business, about the burglary business? A bolt cutter which can cut a chain and gloves.

Did they find any fingerprints at the scene of this break-in? He is in business all right. It's the tool-stealing business and the stealing-selling business.

MR. CHESSER: Your Honor, I renew my objection on the that point.

THE COURT: Overruled.

MR. SWARAT: Ladies and gentlemen, you will have these back in your jury room. You will have the chance to look through it. You will have the opportunity to address his credibility and his believability.

I don't care what statement you use of his, the one that had things marked out of it that we talked about while he was on the witness stand. You heard that.

He told you under oath, "I am saying to this jury I would not steal tools." You will know from his statement, yes, of course, he does steal tools.

"Late at night. Sometimes I have to break the locks; sometimes I don't. Sometimes I have to break the locks late at night; sometimes I don't." Do you honestly believe with that good common sense you all possess that he is not involved in this crime whatsoever?

He is the innocent man, honest Jeffrey Cromer. I submit to you that's not common sense. That's not truth. It certainly isn't reasonable

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doubt. I ask you to do what is right, to do justice and find the truth.

(Whereupon the Court charged the jury as follows.)

THE COURT: Ladies and gentlemen of the jury, the State, as I said earlier, has charged the Defendant Jeffrey Cromer with the offense of burglary in the first degree.

Now, to the indictment the Defendant has entered a plea of not guilty, which places upon the State the burden of proving the Defendant guilty. A person charged with committing a crime in the State of South Carolina is never required to prove himself innocent.

I charge you that it is a vital and important rule of the law of evidence that the Defendant in a criminal trial, no matter how great or serious may be the offense with which he is charged must always be presumed innocent until his guilt has been proven beyond a reasonable doubt.

The presumption of innocence remains with the Defendant at all times, from the moment of his appearance in court, throughout the trial, until you the jury have, upon the testimony and evidence presented, reached a verdict of guilty beyond a

reasonable doubt.

For it is your solemn duty, if not clearly convinced of his guilt beyond a reasonable doubt, to acquit the Defendant. So the burden of proof is upon the State to establish by evidence to your satisfaction the guilt beyond a reasonable doubt of this Defendant here on trial for the crime of burglary in the first degree.

What is reasonable doubt? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. If you have such doubt as to the guilt of the Defendant, then he would be entitled to a verdict of not guilty.

Reasonable doubt may arise from evidence which is in the case or from the absence or lack of evidence in the case. You alone must make the determination of whether or not reasonable doubt exists as to guilt of the Defendant.

The term reasonable doubt should be given its everyday plain and ordinary meaning. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

There are very few things in this world that we know with absolute certainty. In criminal cases the law does not require proof that overcomes

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ever possible doubt.

If based on your consideration of the evidence, you are firmly convinced the Defendant is guilty of the crime charged, you must find him guilty.

If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

There's two types of evidence which are generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all the evidence in the case. Violation of the law may be proven by circumstantial evidence, as well as by direct testimony of an eyewitness.

On a contested factual issue, you may have some direct evidence and some circumstantial evidence; that is, a combination of the two types of evidence on that disputed fact.

The State in the proof of its case may rely on either or both of these types of evidence; that is, direct or circumstantial evidence. With regard to both direct and circumstantial evidence, it must be such as to prove the guilt of the accused, the Defendant, beyond a reasonable doubt.

After weighing all the evidence, if you are convinced of the guilt of the Defendant beyond a reasonable doubt, you must find the Defendant guilty. Conversely, if you are convinced that the State has not proven the Defendant guilty beyond a reasonable doubt, then you must find him not guilty.

The credibility of witnesses, Mr. Foreman, and members of the jury, under the Constitution and laws of the State of South Carolina, you are the finders of the facts in this case.

I do not have the right to pass upon the facts or even to express an opinion as I might have to them, nor may I intimate in any way what I may think about the guilt or innocence of the Defendant.

You are the judges, the sole judges, of the

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credibility, the believability, of the witnesses who have testified in this case. In passing upon their credibility, you may take into consideration many things, such as:

The demeanor or manner of testifying, whether the witness had a reason to be biased or prejudiced, whether a witness's testimony was contradicted on the one hand or supported on the other hand.

You do not determine the credibility or believability by counting the number of witnesses for either side. You may believe a small portion of a witness's testimony and disregard the larger or vice-versa.

You may believe one witness against many or many against one, all these things you will consider, bearing in mind that you should give the Defendant the benefit of a reasonable doubt.

The rules of evidence ordinarily do not permit witnesses to testify to their opinion on conclusions. An exception, however, to this rule does exist for those whom we call expert witnesses.

Expert witnesses are witnesses who by education and experience have become expert in some art, science, profession or calling. These witnesses

may state their opinion as to relevant and material matters in which they profess to be an expert and may also state their reasons for the opinion.

You should consider an expert's opinion received as evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience or if you should conclude the reasons given in support of the opinion are not sound or if you feel it is outweighed by other evidence, you may disregard the opinion entirely.

Now, the same Constitution and laws which make you the finders of the facts and the evidence, as I have discussed it with you, I am as the judge made the sole and only instructor of the law.

You must accept as correct the law which I charge it and apply to it the evidence as you find it and reach your verdict. Finally, I charge in this regard that you, nor for that matter I, should not be concerned about what we think the law ought to be, but rather what I charge you the law to be.

Ladies and gentlemen of the jury, I further charge you about the law concerning a crime or crimes committed by two or more persons who are acting

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together.

If two or more people are involved in the commission of the crime, then the act of one is the act of all. This is true if there are two people or more than two people involved in the act.

For example, two or more people can be guilty of murder when only one of the two or more had a pistol and only one bullet fired the shot or committed the act that caused the death.

If two or more people are acting together and assisting each other in the commission of an offense, the law says that under these circumstances, the act of one is the act of all. It's sometimes called the hand of one is the hand of all.

There has been admitted into the record in this case a statement alleged to have been made by the Defendant. Before you may consider this statement as evidence for any purpose, you must determine four questions.

The first question: Did the Defendant make the statement? The second question: Was the Defendant warned of his constitutional rights. Third: Did the Defendant knowingly and intelligently waive his constitutional rights? And four: Was the statement given voluntarily?

The fact that the Court has admitted a statement into evidence should not be considered by you as any evidence whatsoever that the Defendant made such a statement or the required constitutional safeguards were, in fact, provided and waived by the Defendant or whether the same statement was voluntarily given.

These issues are for you the jury to determine. The State must prove beyond a reasonable doubt each of the four requirements that I have just stated to you before you may consider the statement as evidence for any purpose whatsoever.

Now, as to the first requirement: Did the Defendant make the statement? If you conclude that the Defendant did not make the statement, you must then completely and totally disregard the statement.

Conversely, if you find that the Defendant did make the statement, you must then consider the second requirement. The second requirement: Was the Defendant warned of his constitutional rights?

When a defendant is taken into custody or otherwise deprived of his freedom of action in any significant way by a police or law enforcement officer, he must be warned of his constitutional rights prior to and before any custodial

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interrogation or custodial questioning.

These rights are: He has the right to remain silent; that anything any statement he does make can and will be used again him in a court of law.

He has the right to select a lawyer of his choice or if he does not have the money or resources to employ a lawyer, the Court will appoint and provide a lawyer to represent him without cost or expense to him if he so desires.

He has the right to consult a lawyer before answering any questions or making any statement. He has the right to have his lawyer present with him at all times during all interviews and all interrogations. He can stop answering questions at any time during the interrogation.

If you determine that these constitutional warnings were not given to the Defendant prior to interrogation in the taking of the statement or the Defendant was not afforded the opportunity to exercise these rights, you must completely disregard the statement.

If you find that the Defendant did make the statement and if you conclude these constitutional warnings were, in fact, given to the Defendant and

the Defendant was afforded an opportunity to exercise his constitutional rights, you must next consider the third requirement.

Did the Defendant knowingly and intelligently waive his constitutional rights? Before you can consider the statement as evidence in the case, the State must prove beyond a reasonable doubt that the Defendant, after being given his constitutional warnings, knowingly and intelligently waived his constitutional rights and agreed to answer questions and make a statement.

Therefore, if you find that the Defendant did not knowingly and intelligently waive his constitutional rights, you must completely disregard the statement.

However, if you find that the Defendant was given his constitutional warnings, and he knowingly and intelligently waived his constitutional rights and agreed to answer questions and made a statement, you must next consider the fourth requirement.

Was the statement given voluntarily? The word voluntarily means that the statement was the expression of the Defendant's own free will and was not induced by pressure, force or fear or the influence or hope of promise of some benefit or

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reward or extracted by threats, coercion or intimidation.

If a statement is not voluntary, it may not be used against a defendant, unless it is the product of an essentially free and unconstrained choice by its maker.

If the statement is voluntary, the Defendant has willed to make a statement, it may be used against him. If the statement is not voluntarily given, it cannot be used against him.

The true test to be applied is whether the statement was freely, voluntarily and understandingly made without compulsion or inducement. In determining whether or not the alleged statement of the Defendant was voluntarily given, you may consider all the facts and circumstances surrounding the taking or the making of the statement.

You may consider all the evidence in the case in reaching the ultimate conclusion as to the voluntariness or involuntary character of any such statement.

With regard to the alleged statement by the Defendant, the State must prove by evidence each and every requirement as explained earlier beyond a reasonable doubt before you can consider the alleged

statement as evidence. You must give the alleged statement such weight and value as to which you conclude it is entitled.

Under section 16-11-311 of the Code of Laws of the State of South Carolina 1976 amended, burglary in the first degree is defined as the entering of the dwelling house of another without the consent with the intent to commit a crime therein.

I will define for you, which accompany one by one, the following circumstances: While effecting entry, while in the dwelling or in immediate flight therefrom, the Defendant or any other participant in the crime was armed with a deadly weapon or explosive, causes physical injury to anyone not participating in the crime, uses or threatens the use of a dangerous weapon or displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm.

Or the Defendant has a prior record of two or more convictions for burglary and/or housebreaking or the Defendant entered or remained in the house at night. In common law the nighttime is that period between sunset and sunrise to which the face of a person cannot be discerned by the light of the sun.

There are four essential elements to the

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requirement that the Defendant did enter into the dwelling house of another without consent with the intent to commit a crime.

They are: There must be an entering. The State must prove that there was an entering; that is, the Defendant actually went inside the house or some part of it.

It is not necessary, however, that the entire body enter the house. The smallest entry is sufficient, and it may be any part of the body, such as a hand or foot or even an implement, such as, a hook or other instrument. No force needs to be used to gain entry.

The entry must be without content. Aside from the usual and normal understanding of the phrase without consent, the term entry also means to enter a building which using deception, artifice, trick or misrepresentation to gain consent to enter from the person in law enforcement possession.

The place of entry must be a dwelling house. The term dwelling house means any building inhabited by a person or persons in which they customarily sleep.

A building constructed as a dwelling that has never been occupied cannot be considered as a

dwelling within the definition. The temporary absence of any inhabitant or inhabitants does not affect the building's character as such.

The term dwelling also means the living quarters of a building used or normally used for sleeping and living or lodging by a person. All houses, outhouses, buildings, sheds and erections that are within 200 yards of a dwelling shall be considered part of it.

The Defendant must have an intent to commit a crime. The mere entry into a dwelling house without consent is not a violation of this burglary statute. It is only where there is an intent to commit a crime, whether it be a felony or a misdemeanor, that the crime is complete.

Proof of intent necessarily rests on inference from conduct. It is essential that the felonious intent exists at the time of entry, and it is not sufficient that the felonious intent is formed afterwards.

On the other hand, where the intent exists at the time of the entry, it is no defense that the intent was abandoned after the entry. It does not matter that the intended crime was not complete.

Criminal intent is a necessary element of

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each crime that must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation.

There is no way to prove intent to a mathematical certainty. There is no way medical science can dissect a person's brain and determine what he had in his mind.

So the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how the jury makes a determination whether or not the elements requiring intent was present.

Criminal intent is a state of mind, operating jointly with an act in the commission of a crime. Criminal intent is a mental state, a conscious wrongdoing. So it is up to you the jury to determine whether the Defendant intended to do based on the circumstances shown to have existed.

I tell you that the State must prove criminal intent beyond a reasonable doubt, just as the State must prove every element beyond a reasonable doubt as I have previously explained to you.

The general rule is that one is armed for

purposes of first degree burglary if a firearm is readily accessible or readily available for use by an individual for offensive or defensive purposes, even absent evidence that the Defendant intended to use the weapon in furtherance of the crime.

To be armed with a deadly weapon in the meaning of the first degree burglary provision, the Defendant or another participant in the crime need only have physical control over the deadly weapon in effecting entry or while in the dwelling or in the immediate flight therefrom, such that the weapon is easily accessible and readily available for use. The manner and acquisition and purpose for taking possession of the deadly weapon are irrelevant.

Ladies and gentlemen of the jury, there has been evidence of the Defendant's prior burglary convictions. Those can be considered only in relation to the proof of the alleged statutory aggravating circumstances of two or more burglary convictions.

Ladies and gentlemen of the jury, you cannot consider the evidence of the Defendant's past convictions as evidence that he committed the burglary on this occasion, but only for the purpose of determining whether or not it satisfies that

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element of the offense that makes it burglary first.

If you enter a dwelling without consent to commit a crime therein and you have two or more prior convictions for burglary, this evidence of prior convictions is not to be considered as evidence of the Defendant's bad character or evidence that the Defendant acted in accordance with the prior conduct.

This evidence is used for the very limited purpose of proving the statutory element of the current charge for first degree burglary, not to suggest that the Defendant was a bad person or committed the present burglary because he had committed prior burglaries.

You have heard evidence of prior convictions of crimes in which the punishment was in excess of one year or a conviction involving dishonesty or false statement.

This evidence was admitted and may be considered by you only for the purpose of evaluating the credibility or believability of the witness. Evidence of convictions such as this can be used by you in determining whether a witness is truthful or worthy of belief.

You may give this evidence such weight or value to which you may feel it would be entitled.

This evidence of prior convictions is not to be considered as evidence of the Defendant's bad character or that the Defendant acted in accordance with past conduct.

This evidence is used for the limited purpose of evaluating the Defendant's credibility and not to suggest that the Defendant committed the present crime because of the previous crimes.

Ladies and gentlemen, State's Exhibit Number 22 was admitted into evidence. It had previously been marked out. In the statement where it says, "I, Jeffrey D. Cromer, have stolen tool items from construction trucks," that was admitted strictly for the purposes of determining the Defendant's credibility and not to suggest that the Defendant committed the past crime of stealing the items from construction sites because of the present crime.

Mere presence -- excuse me -- what I want to say to you is the fact that he made the statement of stolen items from the construction site is not to suggest that the Defendant committed the present crime of burglary first because of the previous admission of stealing from a construction site.

Mere presence at the scene is insufficient

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to prove someone guilty of a crime. The burden is upon the State to prove every element of the crime charged.

If you find, after reviewing all the evidence, that the State has proven that the Defendant was only present at the scene of the crime and they have not proved beyond a reasonable doubt any other participation in the crime, you must find the Defendant not guilty.

The law is that proof of mere presence at the scene of the crime is not sufficient to find someone guilty. A defendant's presence where a crime is being committed on mere association with a person who commits a crime does not make a defendant an accomplice.

You have been selected as fair and impartial jurors, sworn to impartially try and determine the facts of this case. When you have complied with your oath to do so, no one would have the right to criticize your verdict; and you will have fully discharged your duties as jurors.

You are to decide this case according to the testimony that you have heard from the sworn witnesses, along with other evidence introduced. I charge you that as jurors you must decide the issues

in this proceeding without bias and without prejudice to either party.

Do not allow yourself to be governed by sympathy, by prejudice, by passion, by public opinion or any other arbitrary factor. Both the State and the Defendant have a right to expect that each of you will carefully and impartially consider all the evidence in this case and that you will follow the law as I have explained it to you.

Mr. Foreman, and ladies and gentlemen of the jury, I have prepared a verdict form. Please don't consider the order in which I listed the questions that I favor the State or the Defendant.

It is captioned: The State of South Carolina versus Jeffrey Cromer. We the jury find the Defendant Jeffrey Cromer guilty of burglary in the first degree. The second question: We the jury find the Defendant Jeffrey Cromer not guilty of burglary in the first degree.

Mr. Foreman, your verdict has to be unanimous. It's a unanimous decision. All 12 of you have to agree. It's a give and take decision on your part. I would ask you to please all consider each other's opinions.

Discuss the evidence. After you have

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arrived at a decision, Mr. Foreman, sign your name where it says foreperson and date it March the 21st, knock on the door and tell the bailiff that you have reached a verdict.

I am going to ask you very shortly to go to the jury room. I have to take up my charge with the attorneys. Please don't begin your deliberations quite yet until I have an opportunity to take the charge up.

I may have to bring you back and change something, correct something or add something to it. If you will go to the jury room. Very shortly, the bailiffs will bring the exhibits to you; and you can begin your deliberations. Mr. Allen, would you just keep your seat, please, sir.

(The jury retires to the jury room.)

THE COURT: Any exceptions to the charge from the State?

MR. SWARAT: Your Honor, I was just going back through my mind -- and I apologize because sometimes I kind of faded in and out -- but I don't recall hearing you charge on reasonable doubt.

THE COURT: I did it. State versus Manning and Victor versus Nebraska.

MR. SWARAT: I don't believe I have any

exceptions to the charge.

THE COURT: Anything from the Defendant?

MR. CHESSER: Your Honor, we request a charge on the lesser included of burglary second.

THE COURT: I deny that. I don't think the facts substantiate a lesser included.

MR. CHESSER: We don't have anything further.

THE COURT: Thank you. Would you come and review all the evidence and put on the record that all the exhibits are here from both sides.

Mr. Bailiff, if you will take the exhibits after they put on the record they are here, take the verdict form and ask the jury to begin their deliberations. Please, sir.

(Pause.)

THE COURT: Do you want to put on the record all the exhibits are here?

MR. CHESSER: The defense has examined the exhibits, and it appears all the exhibits are in and submitted to the jury.

MR. SWARAT: The State concurs.

(The jury commences its deliberation at 3:25 p.m.)

(The following occurred at 4:15 p.m.)

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THE COURT: Anything from the State before we receive the verdict?

MR. SWARAT: Nothing from the State.

THE COURT: Anything from the Defendant?

MR. CHESSER: Nothing from the Defendant, Your Honor.

THE COURT: Would you bring us the jury, please, sir.

(The jury returns to open court to report its verdict)

THE COURT: Mr. Foreman, I understand you have reached a verdict; is that correct?

FOREMAN: That's correct, Your Honor.

THE COURT: Would you hand the verdict form to the bailiff, please, sir.

(Hands to Court.)

THE COURT: Madame Clerk, if you will publish the verdict, please.

(Whereupon the verdict of the jury was published as follows.)

CLERK: The State of South Carolina versus Jeffrey Cromer, Warrant Number G-014715, we the jury find the Defendant Jeffrey Cromer guilty of burglary in the first degree; and it is so signed.

Mr. Foreman, and ladies and gentlemen, if

this so be your verdict, please indicate each of you by raising your right hand.

(All jurors so indicate.)

CLERK: All hands are raised, Your Honor.

THE COURT: Mr. Cromer, do you want to come around, please, sir.

THE DEFENDANT: Yes, sir.

MR. CHESSER: Your Honor, can we ask that the jury be polled?

THE COURT: Yes, sir, I'm sorry. Does the State want the jury polled?

MR. SWARAT: Your Honor, the State waives.

THE COURT: You want the jury polled?

MR. CHESSER: Yes, sir, Your Honor.

THE COURT: Madame Clerk, would you please poll the jury. I apologize for not asking you that, Mr. Chesser.

MR. CHESSER: Yes, sir.

CLERK: As I call your name, if you will please hold your hand up for recognition for me, please. Then wait until I have finished asking the question before you respond, please. Richard Linton, as to the verdict, is this your verdict and is it still your verdict?

JUROR: Yes.

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CLERK: Ann Henderson, as to the verdict, is this your verdict and is it still your verdict?

JUROR: Yes, ma'am.

CLERK: Wendy Bodrick, as to the verdict, is this your verdict and is it still your verdict?

JUROR: Yes.

CLERK: James Bradley, as to the verdict, is this your verdict and is it still your verdict?

JUROR: Yes.

CLERK: Troy Tims, as to the verdict, is this your verdict and is it still your verdict?

JUROR: Yes.

CLERK: Lisa Duvall, as to the verdict, is this your verdict and is it still your verdict?

JUROR: Yes, it is.

CLERK: Samuel Bruce, as to the verdict, is this your verdict and is it still your verdict?

JUROR: Yes, ma'am.

CLERK: Sonya Lybrand, as to the verdict, is this your verdict and is it still your verdict?

JUROR: Yes.

CLERK: Joseph Keller, as to the verdict, is this your verdict and is it still your verdict?

JUROR: Yes, ma'am.

CLERK: William Welch, as to the verdict,

is this your verdict and is it still your verdict?

JUROR: Yes, it is.

CLERK: Alma Ray, as to the verdict, is this your verdict and is it still your verdict?

JUROR: Yes, ma'am.

CLERK: Mary Granger, as to the verdict, is this your verdict and is it still your verdict?

JUROR: Yes.

CLERK: All jurors are polled, Your Honor.

THE COURT: Anything else from the Defendant?

MR. CHESSER: No, Your Honor.

THE COURT: Bring him around please, sir. Mr. Chesser, do you have any motions for the Court?

MR. CHESSER: Your Honor, I would renew the motions I made previously; and I would make a motion for a new trial on the grounds that I stated at the end of the State's case and at the end of my case.

THE COURT: I deny those motions.

MR. CHESSER: In addition, I would have a new trial motion based on the admission of those portions of the statement that were originally redacted, and the Court admitted them for purposes of impeachment. We feel like there was no basis for that. We objected to it in a timely fashion.

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THE COURT: You don't think he put his character in issue?

MR. CHESSER: Right. We would move for a new trial on that ground.

THE COURT: I deny the motion.

MR. CHESSER: That's all we have.

THE COURT: Mr. Cromer, do you want to come forward? Mr. Chesser, I will hear anything you want to tell me.

MR. CHESSER: Your Honor, what really is the big picture here, at least from the sentencing point of view is that Mr. Cromer is a drug addict. At this time period, he was -- I don't think there is any question.

I don't think the solicitor will dispute that he was doing crack and selling crack. We are talking about a manifestation of a drug problem, a societal problem; and it's a very serious personal problem for Mr. Cromer.

THE COURT: Let me hear you -- I understand that and I think that is fairly obvious -- let me hear you on three previous burglaries here in South Carolina and the burglary in Florida.

That's my major concern. We are sitting here, and he has had four previous burglaries. Now

we are here having tried him for his fifth burglary.

MR. CHESSER: Your Honor, as the Court knows, burglary first carries, as a minimum --

THE COURT: Fifteen years to life.

MR. CHESSER: -- fifteen years to life. Fifteen is the minimum with no parole.

THE COURT: Right.

MR. CHESSER: If he gets 15, he does about 13 or a little more at a minimum, assuming he gets some time good and so forth. If he gets life, he does life. If he gets 30, he does 30.

The legislature has mandated these minimum sentences and given the Court the possibility of giving life in prison. I, as the defense attorney, what I actually believe is I don't think the legislature had a magic view as to what was right, what was actually right in this case.

If I can give the Court an example. I have a guy that I am defending on a possession of a kilo of powder cocaine. I just want to give the Court an example. Under the laws of this State, it's a minimum 25 years with no parole.

Under the federal laws, it's a minimum of five years. If you qualify, you can get like three and a half. In other words, when the legislature

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says 15 for burglary first, that doesn't mean that he necessarily, because he has a significant record, that he necessarily should get 30 or should get life.

THE COURT: I understand. At the same time -- I understand it's drug related -- but at the same time, the victim is standing here. He has been convicted. I sympathize with the problem.

I sympathize with the problem in that there are facilities or no effort in South Carolina to try to treat these people. But at the same time, we can't let him out on the streets committing crimes.

MR. CHESSER: Yes, sir. Again, the Court really doesn't even have the option of letting him out on the street. What the Court has the option at the most is that he spend the next 13 years incarcerated with no possibility of release.

The question is how much more than that, if anything, would be appropriate. I would like to point out -- and this sounds odd to say it -- he doesn't have any violent crimes in the sense of attacking somebody, breaking in somebody's house can certainly be considered a violent crime.

THE COURT: Well, he got a tremendous break last time. They sentenced him to youthful offender on the last three burglaries when he pled to them in

Richland County, all three at the same time. I don't know what happened to the burglary in Florida.

MR. SWARAT: Your Honor, I can address that if you want me to.

THE COURT: What happened to the burglary in Florida?

MR. SWARAT: Your Honor, he was convicted on February the 7th of '96, received a three-year and six-month sentence. I don't know how they calculate their time, but he received an active sentence.

THE COURT: Mr. Chesser, my problem is it just appears he is a hard learner; and he is a menace to society?

MR. CHESSER: Your Honor, if he were to get out -- I am brazen enough to actually ask the Court, and I am asking the Court to give him 15 years.

THE COURT: I'm not going to give him 15 years, Mr. Chesser.

MR. CHESSER: Yes, sir.

THE COURT: Not with his prior record. I understand your argument on the drugs.

MR. CHESSER: If he were -- whatever he gets, as the Court knows, he will have to do. So really when you are talking about you are not going to let him on the street, the question is: Is he not

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going to be on the street for 15 years or is he not going to be out for 20 or not going to be out for 30 or is he never going to come out? He is 26 now.

THE COURT: He is 26 now?

MR. CHESSER: Yes, Your Honor. I know the Court said you wouldn't give him 15; but, again, he would be out when he was almost 40. If he gets more than that, he would be out -- the Court, I know, can figure that out.

He is going to be a different person in terms of his age and his mind when he gets out. He can't help it. We are all different 15 years down the road.

So I would ask the Court just to take the factors I have stated. As far as saying he is 26 and he has these priors and got burglary first now; and therefore, we should put him in jail for the rest of his life.

THE COURT: I'm not going to put him in jail for life.

MR. CHESSER: Yes, sir. I have made my argument.

THE COURT: I understand. Mr. Cromer or Mr. Chesser, does any member of the family want to say anything? I would be glad to hear from them if

they want to address me.

MRS. CROMER: I'm his mother.

THE COURT: Yes, ma'am.

MRS. CROMER: All I ask is that you just search your heart. Some of the crimes that my son was convicted of, especially those that were in Lincolnshire Square, my neighbor is here whose house was one of the ones that got broken into.

The reason Jeffrey got convicted is he told my neighbor who broke into her house, but he wouldn't tell the police. Those were my neighbors. Those neighbors have been with me in support of him because at that time he was bullied by a guy who was doing things. He wouldn't tell.

He never went in my neighbor's house, but he wouldn't tell the police who did. So when the police find out who did, of course, he was taken as a suspect.

In the auto theft thing, the boy came to my house in the car. I begged my son not to go because I didn't trust the boy. He went with him. The boy had a stolen car. So he got caught up in that.

THE COURT: What about the burglary in Florida?

MRS. CROMER: The burglary in Florida, he

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took a door off an abandoned house to put on the house of an elderly man who didn't have a door. So he didn't know. He was thinking that because the building was empty and nobody lived in it that he had free will to move that door.

He did not. It was private property, and he got caught for trespassing. That was the burglary. Even though he helped an old man, he sent himself to jail.

THE COURT: What about the fact he has had time and time and opportunity after opportunity to straighten himself out --

MRS. CROMER: Jeffrey was straight.

THE COURT: -- and he hasn't done it?

MRS. CROMER: Jeffrey was straight.

THE COURT: When?

MRS. CROMER: When he first came back from Florida, Jeffrey was very active in the church. After Jeffrey went over to Irmo, he got involved with his friends over there. He relapsed back on drugs.

Before I could grasp him again, he was too far again; and I couldn't get to him. I do regret that. I have set him up. Whenever there was a drug rehab program that had been initiated by Bible Way Church on Atlas Road under the leadership of Senator

Elvin Darrell Jackson.

I have submitted him to that program, you know. I am sorry that it looks like to the people that he is a menace to society. He is my son. I don't support all that he has done, and I am not saying that he should not be slapped on the hand if he has done something to hurt someone.

He has an eight-year-old son, and I would hate to see him in prison for the rest of his life and not be there to help raise his eight-year-old son.

THE COURT: I understand. Unfortunately, drugs are the scourge of our society.

MRS. CROMER: I know. That's why I went ahead -- I have gone ahead and worked with getting him into the program. Whatever event may happen, whether he is out in a year or out in two years or whatever, I have his name on that program.

I have gone down and talked with the people who in are that program; and in some instances, if they feel that the case is in such need, they have an in-house program.

THE COURT: Mr. Chesser, does anybody else want to comment to the Court? I would be glad to hear from them.

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MR. HAYNES: I would like to say, Your Honor, realizing the consequences are inevitable for wrongdoing, I would also like to plead to the Court to be merciful unto him.

COURT REPORTER: Your name, sir?

MR. HAYNES: My name is Roland Haynes.

THE COURT: Thank you, sir.

MR. GLOVER: My name is Mike Glover. I am Jeffrey's deacon at the church. I am just going to make a real brief statement.

A few years ago when Jeffrey joined the church, he was in the church for a short while and more or less disappeared for a while. When I inquired into where he was, he said he was working on the weekends and didn't have time.

Nonetheless, he has made some bad decisions in his life. The next time I heard he was in jail incarcerated of the charge he had that was brought before the Courts.

But I will tell you that in the last year visiting with him, I have seen this man grow. I have seen him grow from someone who is trying to hustle, to someone who came to the realization that what he did he was sorry for.

That's the person that is before this Court

now. Yes, a year ago, he probably would have tried to make a deal. In his acts of trying to make deals, he probably set himself up even worse.

But the fact is that he has grown and he has learned. The thing is that I know we have got to the point now that he can't correct those things that he has done in the past.

But I will say that what you have before you today is not the same person that you had in the past. Some of his records when he was -- ten years ago as a juvenile, 16 years old, yeah, he did some childish things. He did.

And not to even take light of the act that was done even recently, but I will tell you that he has learned and he has changed. I would hate to see that, through all of this, we just more or less throw him out with the bath water.

He is a person who is ready to go back. The fact is that even though it may be for a while before he gets back, he is prepared in his heart; and I know that by talking with him.

THE COURT: Thank you, sir. Mr. Cromer, anything you want to add?

MR. GLOVER: Let me add one note.

THE COURT: Yes, sir.

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MR. GLOVER: And I will leave this alone. I know initially when I first started talking with him, and I started to see the change in Jeffrey, I used him as an example to a lot of little boys because I sat back and said, "Our actions as little children, 12, 13, 14 years old, we don't think much of it.

But I wanted to use and I wanted to introduce them to him because what I saw in him -- and I told him this even at the beginning -- I would never have brought a child before him unless I knew he had changed.

The fact that he was able to share with a lot of boys that the actions that they do, even as teen-agers, if they are not conscious of them, that it will come back around to them.

I used him as an example because what he did was he actually shared with them his errors in life. Then he came back and he showed them, he said, "This is where I'm at."

He even explained to them where he was -- what was before him. But he did. He took that time to talk with them. The things that he shared with them, he has got a young man right now that writes him.

He continuously asks prayer for him. I just think it's because of something that he shared with them. He is a person who I believe can give back, and I just want that to be considered as well.

THE COURT: Thank you very much. Mr. Cromer, anything you want to add?

THE DEFENDANT: Yes, sir. I know this is a decision on my life. I know that the 12 people over there decided -- y'all felt fit to decide --

THE COURT: Don't talk to the jury. Talk to me. I am making this decision. Do you understand? Leave the jury out of it.

THE DEFENDANT: Yes, sir.

THE COURT: They have done their job.

THE DEFENDANT: Yes, sir, they have. I would like to say to you, if I could, that I was offered something. I don't know what category this falls up under, Judge, whether my ego, whether my pride or whether just pure principle.

I said I wasn't going to plead to this when I came to court before, but I would plead to the same time that I was offered to what I did do. I am not going to sit here -- what I did, especially in Florida, as my mom was saying --

THE COURT: I am not concerned about

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Florida. Your mom has told me about Florida. I want to hear about this, this burglary here, if you have got anything to say to me.

THE DEFENDANT: I am letting you know, sir. I didn't do this, sir. If you would please, if you would please, I know that you heard all the testimony, with all of your thoughts, if you would please --

THE COURT: Mr. Cromer, let me tell you this. You have had three previous most serious offenses against you. I don't know about the one in Florida. I can't address that. Have you ever heard the term three strikes and you are out?

THE DEFENDANT: Yes, sir, I have.

THE COURT: You have had your three strikes. You are very fortunate that the solicitor hasn't served notice on you to try you and put you in jail for life without parole because you got your three strikes. Do you understand?

When you get out again, if you get a serious or a most serious offense when you get out of jail, then you will go to jail for life without parole. Do you understand?

THE DEFENDANT: Yes, I do sir. I don't think that I will.

THE COURT: In this particular case, the solicitor could have done that.

THE DEFENDANT: Yes, sir.

THE COURT: So you are fortunate the solicitor has not done that. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: Anything else you want to add or say to the Court? Make it brief.

THE DEFENDANT: Yes, sir. I would like to say that I do want to give back to society, and I do want to accept what you give me.

THE COURT: Mr. Cromer, you should have thought about that five, six, seven, eight years ago.

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Barnhill, I would be happy to hear anything you would like to tell the Court.

MR. BARNHILL: Well, Judge, the only thing I would like to say is after my rights had been violated to the point where they were, not only has it cost me a lot financially to prepare myself better, but emotionally and physically it has cost me because I do not sleep as well as I used to.

I feel like this has been a part of it, but I do want to thank everybody that has been involved, from you on down to the jurors, everyone in the

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courtroom, all the police departments. Everybody that has been involved, I do appreciate it.

THE COURT: Thank you, sir. Solicitor, anything you want to add?

MR. SWARAT: Yes, Your Honor. I just want to put on the record there were never any deals offered to Mr. Cromer. I know I could have served him with--

THE COURT: I am not considering any deals, whether they were or weren't.

MR. SWARAT: Yes, sir. Your Honor, as to his prior record, there was three separate burglaries. He pled on the same date, but they were three separate and distinct burglaries.

THE COURT: I understand. They were all at the apartment where his mother lived, all three of them.

MR. SWARAT: Three neighbors around that area, one in October, one in November, one in July. Your Honor, the burglary from Tampa, I do not know the circumstances. They are mailing me a certified conviction. It has not arrived.

I requested it about two months ago. Otherwise I would have that information for you, and also you know about the possession of a stolen

vehicle.

THE COURT: Yes, sir. Mr. Cromer, indictment number 217, burglary first, you are sentenced to the State Department of Corrections for a period of 25 years. Thank you very much.

(The jury is excused.)

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

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Lexington, South Carolina, on the 12th and 13th days of March and the 19th through the 21st days of March, 2001.

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

July 17, 2001

L. Coconut Pantsari
Court Reporter

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF LEXINGTON | ) | DOCKET NO.: 2002-CP-32-3895 |
| JEFFREY DARRELL CROMER, | ) | |
| | ) | |
| Applicant, | ) | |
| v. | ) | AMENDMENT TO APPLICATION FOR POST CONVICTION RELIEF |
| | ) | |
| STATE OF SOUTH CAROLINA, | ) | |
| | ) | |
| Respondent, | ) | |
| | ) | |

The Applicant by and through his attorney, Tommy A. Thomas would respectfully amend and supplement his original application for Post Conviction Relief filed November 6, 2002 by adding the following:

1. That the Applicant is informed and believes that after discovered evidence has been obtained that indicates there is a witness who was unknown and/or had information unknown at the time of trial.

Respectfully submitted,

Tommy A. Thomas
Attorney for the Applicant
Post Office Box 88
Irmo, South Carolina 29063
(803) 732-5507

October 13, 2004
Irmo, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

JEFFREY CROMER,

APPLICANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

BEFORE: THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

APPEARANCES:

FOR THE APPLICANT: TOMMY THOMAS, ESQUIRE

FOR THE RESPONDENT: ARIE D. BAX, ASSISTANT ATTORNEY GENERAL

COURT REPORTER: SMOKEY PERRY

FEBRUARY 10, 2005

2002-CP-32-3895

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THE COURT: ARE Y'ALL READY TO PROCEED ON MR. CROMER'S CASE?

MR. BAX: YES, YOUR HONOR.

MR. THOMAS: YES, YOUR HONOR. WE'RE READY.

MR. BAX: YOUR HONOR, THIS IS JEFFREY CROMER VERSUS THE STATE. THAT'S C-R-O-M-E-R. THIS IS DOCKETED AT 2002-CP-32-3895. THE APPLICANT IS PRESENT IN THE COURTROOM AND AS WELL AS HIS ATTORNEY MR. THOMAS. IF I COULD GIVE A BRIEF PROCEDURAL HISTORY BEFORE WE BEGIN, YOUR HONOR.

THE COURT: YES, SIR.

MR. BAX: THANK YOU, SIR. WE'RE HERE ON A POST-CONVICTION RELIEF APPLICATION FILED NOVEMBER 6TH 2002. THE APPLICANT WAS INDICTED THE JANUARY 2001 TERM OF THE LEXINGTON COUNTY GRAND JURY FOR FIRST DEGREE BURGLARY. HE WAS REPRESENTED ON THOSE CHAR -- ON THAT CHARGE BY MR. CHESSER. MARCH 3RD THROUGH MARCH 21ST OF 2001. THE APPLICANT PROCEEDED TO TRIAL AFTER WHICH HE WAS FOUND GUILTY AS CHARGED. HE WAS SENTENCED BY THE HONORABLE JUDGE NICHOLSON TO CONFINEMENT FOR A PERIOD OF 25 YEARS. A TIMELY NOTICE OF APPEAL WAS FILED ON THE APPLICANT'S BEHALF AND AN APPEAL WAS PERFECTED BY MR. PACHAK OF THE OFFICE OF APPELLATE DEFENSE. THE SOUTH CAROLINA COURT OF APPEALS AFFIRMED THE CONVICTION AND SENTENCE. THAT OPINION WAS FILED AUGUST 26TH OF 2002. THAT BRINGS US TO THIS APPLICATION. I WOULD YIELD TO OPPOSING COUNSEL AT THIS TIME, YOUR HONOR.

MR. THOMAS: YOUR HONOR, WE HAD THERE WAS AN INVESTIGATOR THAT WE HAD SUBPOENAED TO BE HERE, AND I DON'T THINK THAT DETECTIVE RESTIGIACOMO IS HERE, YOUR HONOR, BUT I HAVE SPOKEN WITH THE ATTORNEY GENERAL'S OFFICE ABOUT IT, AND I BELIEVE THAT WE CAN JUST PUT THIS

INFORMATION INTO EVIDENCE, YOUR HONOR, WITHOUT HAVING TO HAVE HIM HERE. THERE'S AN INVESTIGATIVE REPORT THAT HE HAD WRITTEN, THAT IS ALREADY PART OF THE RECORD, YOUR HONOR. IT WAS INTRODUCED AT TRIAL AS COURT'S EXHIBIT, I THINK, EITHER 3 OR 6, YOUR HONOR. BUT IT WAS ALREADY IN THE RECORD. IN ADDITION I DO HAVE A COPY OF HIS STATEMENT WHICH WE'D BE MORE THAN HAPPY TO PROVIDE TO THE COURT IF THE COURT PLEASES.

THE OTHER THING, YOUR HONOR, THAT RESTIGIACOMO WAS GONNA TESTIFY TO IS THAT HE WAS NOT PRESENT AT JEFFREY CROMER'S TRIAL, NOR WAS HE SUBPOENAED TO BE THERE, AND I BELIEVE THAT THE ATTORNEY GENERAL IS IN AGREEMENT THAT WE CAN STIPULATE TO THOSE TWO FACTS.

MR. BAX: THAT'S RIGHT, YOUR HONOR. IF IT'S THE STATEMENTS PART OF THE RECORD IS INTRODUCED, THAT'S PROPERLY BEFORE YOUR HONOR, AND IF HE WASN'T AT THE TRIAL, HE WASN'T AT THE TRIAL. SO I DON'T HAVE A PROBLEM WITH THAT.

MR. THOMAS: AND THAT WAS THE ONLY INFORMATION THAT WE WERE GOING TO ELICIT FROM THE DETECTIVE ANYWAY, YOUR HONOR.

THE COURT: OKAY. ARE YOU READY TO PROCEED WITH THE EVIDENCE?

MR. THOMAS: YES, YOUR HONOR. WE'RE READY TO PROCEED.

THE COURT: CALL YOUR WITNESS.

MR. THOMAS: YOUR HONOR, IF IT PLEASE THE COURT?

THE COURT: YES, SIR.

MR. THOMAS: YOUR HONOR, WE'D CALL MR. CHESSER TO THE STAND.

THE COURT: COME AROUND, PLEASE.

MICHAEL CHESSER, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. THOMAS

Q MR. CHESSER, YOU REPRESENTED JEFFREY CROMER?

A YES, SIR.

Q ALL RIGHT, SIR. AND YOU REPRESENTED HIM, I GUESS, IN MARCH OF 2001?

A RIGHT.

Q ALL RIGHT, SIR. AND WHAT CHARGES DID HE HAVE AGAINST HIM?

A WELL, HE HAD A BURGLARY FIRST CHARGE AND—

Q ALL RIGHT, SIR.

A —GRAND LARCENY I BELIEVE.

Q OKAY. AND THIS CASE WENT TO TRIAL?

A YES.

Q ALL RIGHT, SIR. MR. CHESSER, I WOULD LIKE IF WE COULD JUST GO THROUGH THE TRIAL ON THIS. THERE WERE A NUMBER OF MOTIONS THAT YOU FILED ON MR. CROMER'S BEHALF?

A YES.

Q ALL RIGHT, SIR. AND WERE THERE A NUMBER OF TECHNICAL ISSUES IN REGARDS TO THE EVIDENCE THAT WAS INVOLVED IN JEFFREY'S CASE?

A YES.

Q ALL RIGHT, SIR. DO YOU REMEMBER WHAT THOSE ISSUES WERE?

A WELL, THERE WAS A SEARCH AND SEIZURE. IT SEEMS LIKE THE PRIMARY SORT OF PRETRIAL ISSUE THAT WE DEALT WITH WAS THAT THE POLICE CAME TO JEFFREY'S HOUSE, AND THEY SAID THEY OBSERVED SOMETHING IN HIS VEHICLE PARKED OUT FRONT OF HIS HOUSE, AND THEN THEY KNOCKED ON THE DOOR. THERE WAS A QUESTION ABOUT THEIR RIGHT TO OBSERVE THE INSIDE OF THE

VEHICLE, AND THEN THERE WAS A QUESTION ABOUT THEIR SORTA PERMISSION TO ENTER THE HOUSE. AS I RECALL, THEY WERE ADMITTED BY A MINOR, A CHILD.

Q ALL RIGHT, SIR. AND I GUESS YOU RESEARCHED THESE ISSUES IN PREPARATION FOR TRIAL?

A YES, SIR.

Q ALL RIGHT, SIR. NOW IN REGARDS TO -- YOU MADE A -- ON THE SEARCH AND SEIZURE THERE WAS A ISSUE OF THIS WAS A WARRANTLESS SEARCH? IS THAT WHAT IT WAS?

A YES.

Q ALL RIGHT, SIR. AND HOW -- HOW DID THAT DEVELOP?

A WELL, WE ACTUALLY, YOU KNOW, ARGUED THAT MOTION AS I RECALL ABOUT 2 WEEKS BEFORE THE TRIAL, AND THEN THERE WAS, AS I RECALL, A MISTRIAL OR SOMETHING, AND THEN WE CAME BACK AND THE JUDGE ADOPTED HIS RULINGS AT THIS EXTENSIVE HEARING THAT WE HAD ON THE SUPPRESSION. BUT, LET'S SEE, AGAIN, THE ISSUES WERE THIS OBSERVATION OF THE -- THE INCRIMINATING ITEM IN THE VEHICLE WHICH I BELIEVE WAS SOME PROPERTY THAT THE POLICE THOUGHT WAS STOLEN OR SOME BURGLARY TOOLS, AND, YOU KNOW, WE ARGUED THEY DIDN'T HAVE A RIGHT TO BE WHERE THEY WERE, AND THE JUDGE RULED THAT THEY DID HAVE THE RIGHT TO BE WHERE THEY WERE, AND THEN WE ARGUED AGAIN THAT THEY – THAT THEY DIDN'T HAVE PERMISSION TO GO IN THE RESIDENCE, THAT THIS CHILD WAS NOT COMPETENT OR DIDN'T GIVE PERMISSION IN THE FIRST INSTANCE AND WASN'T COMPETENT OR WHATEVER TO GIVE PERMISSION IN THE SECOND INSTANCE, AND THE JUDGE RULED AGAINST US ON THAT.

INSIDE THE HOUSE THERE WAS A WHOLE BUNCH OF – I MEAN JUST A

WHOLE BUNCH OF OBVIOUSLY STOLEN ITEMS.

Q YES, SIR.

A AND SO -- BUT THOSE THINGS WERE FULLY FLESHED OUT. AS I RECALL, THE HEARING LASTED FOR SEVERAL HOURS, AND THEN THE JUDGE RULED AGAINST US, AND I HOPE THAT RENEWED THOSE OBJECTIONS AT TRIAL.

Q ALL RIGHT, SIR. AND YOU DID I THINK THAT THERE WAS SOME CONFUSION IN REGARDS TO WHETHER OR NOT MR. CROMER TOLD THE POLICE THAT THEY COULD COME IN OR WHETHER OR NOT I THINK THERE WAS AN UNDER AGE CHILD WHO ALSO -- THERE WERE SOME ALLEGATIONS THAT SHE HAD GIVEN THEM PERMISSION TO ENTER.

A THAT'S RIGHT. AND THEN NOW THAT YOU MENTION IT, I BELIEVE THE POLICE HAD ALLEGED THAT SOMEHOW MR. CROMER YELLED, THAT THEY HEARD HIM SAY, COME IN AS IF HE DIDN'T KNOW, YOU KNOW, WHO WAS THERE AND SOMEBODY KNOCKED AND HE DID SAY COME IN—

Q RIGHT.

A —AND HE DISPUTED THAT. AND WE DISPUTED THAT AS A FACTUAL ISSUE THAT WE DISPUTED AT THE SUPPRESSION HEARING.

Q OKAY. AND DO YOU REMEMBER THAT, I THINK, DETECTIVE QUIG FROM THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT, HE WAS THE INVESTIGATOR OF THIS CASE?

A YES, SIR.

Q ALL RIGHT, SIR. AND DO YOU REMEMBER HIS TESTIMONY IN REGARDS TO WHO TOLD HIM THAT HE COULD COME IN OR THAT THEY COULD COME IN?

A AGAIN, MY RECOLLECTION AT THIS POINT -- YOU MIGHT HAVE SOMETHING TO REFRESH IT, BUT MY RECOLLECTION IS THAT HE SAID THAT HE HEARD A MALE

VOICE, I GUESS WOULD HAVE BEEN MR. CROMER, ACCORDIN' TO DETECTIVE QUIGLY, AND ALSO THAT THE CHILD OPENED THE DOOR AND LET HIM IN. THAT'S MY RECOLLECTION.

Q OKAY. AND YOU KNOW THAT IN REGARDS TO DETECTIVE PRESTIGIACOMO WAS THERE ANY INCONSISTENCY BETWEEN WHAT DETECTIVE QUIG WAS SAYING OR WHAT DETECTIVE PRESTIGIACOMO WAS SAYING IN REGARDS TO WHO SAID THAT THEY COULD COME INTO THE HOUSE?

A AT THIS POINT I HONESTLY DON'T REMEMBER.

Q OKAY. AND YOU ARGUED THE ISSUE OF THE WARRANTLESS SEARCH BEFORE THE COURT.

A YES, SIR.

Q AND HOW DID THE JUDGE RULE ON THIS ISSUE?

A HE RULED THAT IT WAS ADMISSIBLE, THAT THE 4TH AMENDMENT RIGHTS WERE NOT VIOLATED.

Q OKAY. NOW YOU HAD A JACKSON V. DENNO HEARING AS WELL?

A YES, SIR.

Q AND WHAT WAS THE PURPOSE OF YOUR JACKSON V. DENNO HEARING?

A WELL, WHENEVER THE STATE PROPOSES TO USE STATEMENTS OF THE DEFENDANT, THEN WE WOULD ASK FOR A HEARING ON WHETHER THE MIRANDA RIGHTS WERE ADMINISTERED AND WHETHER THE STATEMENTS, IN ANY EVENT, WERE VOLUNTARILY GIVEN.

Q DID JEFFREY GIVE A STATEMENT IN THIS CASE?

A IT SEEMS TO ME THAT THERE WAS A STATEMENT THAT THEY INTENDED TO INTRODUCE SOMETHIN' THAT HE SAID INTO EVIDENCE.

Q LET ME SHOW YOU THESE PAGES AND ASK IF YOU CAN IDENTIFY THOSE.

A THANK YOU. WELL, THIS—

Q ARE THOSE THE STATEMENTS OF MR. CROMER?

A YES, SIR. IT CONSISTS OF 3 PAGES AND IT LOOKS TO BE 2 STATEMENTS GIVEN ON APRIL THE 23RD OF 2000.

Q DURING THE COURSE OF THE TRIAL, WAS PART OF HIS STATEMENT REDACTED?

A YES, IT WAS.

Q BEFORE IT WAS PRESENTED?

A THAT'S RIGHT.

Q ALL RIGHT, SIR. AND ON THE THIRD PAGE DOES THAT APPEAR TO YOU TO BE A REDACTED STATEMENT THAT WAS ORIGINAL?

A THAT'S CORRECT.

Q ALL RIGHT, SIR.

MR. THOMAS: YOUR HONOR, AT THIS TIME WE WOULD MOVE THOSE AS EXHIBIT 1.

THE COURT: ANY OBJECTION?

MR. BAX: NO OBJECTION, YOUR HONOR.

THE COURT: MARK THEM INTO EVIDENCE. (APPLICANT'S EXHIBIT #1 RECEIVED IN EVIDENCE.)

Q MR. CHESSER, ON WHAT'S BEEN MARKED AS PETITIONER'S ONE, THAT'S A STATEMENT – MR. CROMER'S STATEMENT?

A YES, SIR.

Q OKAY. AND WAS THIS PART OF THE JACKSON V. DENNO MOTION?

A YES.

Q OKAY. AND WHAT PART OR WHAT WERE YOU ATTEMPTING TO DO

THROUGH THE JACKSON V. DENNO?

A WELL, TYPICALLY, AND I'M SURE IN THIS CASE, WE TRY TO KEEP HIS STATEMENT OUT OF EVIDENCE.

Q UH-HUH. CAN YOU REMEMBER WHAT YOUR GROUNDS WERE ON THAT MOTION?

A I DON'T HAVE A RECOLLECTION AT THIS POINT. I MEAN TYPICALLY IT'S THAT THEY DIDN'T GIVE HIM HIS MIRANDA RIGHTS OR THAT THEY PROMISED HIM SOMETHING, AND THAT HE GAVE HIS STATEMENT AS A RESULT OF A PROMISE AND, THEREFORE IT SHOULDN'T BE CONSIDERED BE CONSIDERED VOLUNTARY.

Q DO YOU REMEMBER YOUR ARGUMENT IN REGARDS TO DETECTIVE QUIG PROMISING JEFFREY THAT IF HE WOULD HELP HIM HE WAS -- HE WAS SEARCHING FOR NAMES?

A IT SEEMS TO ME THAT SPECIFICALLY, AS I RECALL IT, IT SEEMS TO ME THAT JEFFREY CROMER FELT THAT THEY PROMISED HIM HE COULD GET OUT ON BOND IF HE WOULD GIVE A STATEMENT.

Q RIGHT.

A THAT SPECIFICALLY COMES TO ME. AS TO WHETHER THERE WAS SOME OTHER PROMISES, I'M NOT SURE.

Q WERE THERE OTHER PEOPLE ALLEGEDLY INVOLVED IN THIS CRIME?

A WELL, IT WAS NEVER ALLEGED BY THE STATE THAT HE DID IT ALONE. I MEAN IT WAS LIKE THEY KNEW HE HAD DONE IT WITH SOME OTHER PEOPLE, AND SO IT WAS A CRIME THAT, YOU KNOW, WHOEVER COMMITTED IT, THERE WAS MORE THAN ONE PERSON.

Q OKAY. AND DO YOU REMEMBER THE ISSUE OF YOUR ARGUMENT THAT THE PROMISES WERE MADE IN REGARDS FOR JEFFREY GIVING THEM THOSE NAMES,

THAT HE WAS GONNA TRY TO ASSIST AND GET HIM OUTTA JAIL?

A THERE AGAIN, RIGHT, I THINK THAT, YOU KNOW, THEY INTIMATED OR TOLD HIM THAT IF HE WOULD MAKE THESE STATEMENTS THAT THEY WOULD HELP HIM, THAT HE WOULD GET A BETTER SENTENCE, AND I'M SURE THAT WAS OUR ARGUMENT.

Q OKAY. WAS COUNSEL PRESENT WHEN HE GAVE THOSE STATEMENTS?

A NO.

Q AND DID HE, IN FACT, IN THOSE STATEMENTS TELL THEM THAT HE HAD KNOWLEDGE OF THIS CRIME?

A HE DID.

Q ALL RIGHT. AND IN THIS STATEMENT I THINK IT SAYS SOMETHING ABOUT THE LOOKOUT. DO YOU REMEMBER THE CIRCUMSTANCES REGARDING THAT STATEMENT?

A I REMEMBER THAT HE MADE A STATEMENT THAT HE HAD ACTED AS THE LOOKOUT.

Q OKAY. AND DO YOU REMEMBER WHETHER OR NOT THERE WAS ANYTHING PRESENTED AT TRIAL REGARDING HOW THAT STATEMENT, WHETHER THAT STATEMENT, THE LOOKOUT PORTION, WAS COERCED OR NOT?

A I DON'T RECALL.

Q YOU DON'T RECALL. I THINK IN THE SCOPE OF THE JACKSON V. DENNO HEARING YOU ALSO ARGUED THE ISSUE OF AN INCONSISTENT STATEMENT BY DETECTIVE QUIG AND PRESTIGIOCOMO?

A YES, SIR.

Q AND WHAT DO YOU REMEMBER ABOUT THAT?

A IT SEEMS TO ME THAT DETECTIVE QUIG HAD MADE -- REALLY AS FAR AS

THE INCONSISTENT STATEMENT THAT DETECTIVE QUIG HAD MADE, I DON'T RECALL EXACTLY WHAT IT WAS.

Q OKAY.

MR. THOMAS: YOUR HONOR, IF I COULD BEG THE COURT'S INDULGENCE.

THE COURT: YES, SIR.

MR. THOMAS: YOUR HONOR, MAY I APPROACH THE WITNESS?

THE COURT: (NODDED YES.)

Q THIS IS PART OF THE TRANSCRIPT PAGE 142. LET ME SHOW YOU PART OF A TRANSCRIPT PAGE 142 LINE 16 AND SEE IF THAT HELPS TO—

A OKAY.

Q —IF YOU CAN REMEMBER THAT ISSUE. WERE THEY PROMISING – THEY WERE SEEKING FROM JEFFREY THE NAMES OF THE OTHER—

A THAT'S CORRECT. AND ONE OF WHOM WAS RICK DOWELL AND I RECALL THAT NAME.

Q OKAY. AND WAS THERE SOME EVIDENCE THAT AT THE TIME OF QUESTIONING MR. CROMER THAT THEY ALREADY KNEW THE NAME?

A I WOULD SAY THAT MY RECOLLECTION IS THAT THEY MAY HAVE HAD THAT INFORMATION FROM ANOTHER SOURCE, BUT I'M NOT SURE.

Q OKAY. BUT YOU MADE THE OBJECTION IN YOUR JACKSON V. DENNO HEARING THAT THE STATEMENTS OF DETECTIVE QUIG AND DETECTIVE PRESTIGIACOMO WERE INCONSISTENT WITH EACH OTHER?

A YES, SIR.

Q OKAY. AND I THINK YOU ALSO MADE THE STATEMENT THAT THOSE STATEMENTS WENT TO THE WARRANTLESS SEARCH, TO THE NATURE OF THE WARRANTLESS SEARCH.

A YES, SIR.

Q OKAY. AND THIS MOTION WAS MADE SEVERAL TIMES DURING THE COURSE OF THE TRIAL?

A YES.

Q AND HOW DID THE COURT RULE ON THAT MOTION?

A THE COURT RULED THAT HE HAD NOT BEEN PROMISED ANYTHING OR THAT WHATEVER HAD BEEN MENTIONED TO HIM THAT IT WASN'T SUFFICIENT SUCH AS HIS STATEMENT WOULD BE CONSIDERED INVOLUNTARY.

Q OKAY. NOW YOU WERE SUCCESSFUL IN HAVING PORTION OF THE STATEMENT REDACTED THOUGH, WEREN'T YOU?

A YES.

Q ALL RIGHT. AND YOU WERE HAVING SUCCESSFUL HAVING THE PORTIONS ABOUT STOLEN TOOLS AND, I'M LOOKING AGAIN AT #1 THE FIRST PARAGRAPH, HAVE STOLEN TOOL ITEMS FROM CONSTRUCTION TRUCKS.

A RIGHT. IT SAYS HERE I HAVE STOLEN TOOL ITEMS FROM CONSTRUCTION STUFF OUT OF STATE, SO THIS WOULD HAVE BEEN UNRELATED EVENTS AND SO IT WAS INITIALLY STRUCK OUT BY THE JUDGE.

Q ALL RIGHT. AND THE OTHER PART THAT WAS REDACTED, I BELIEVE, WAS THE PART ABOUT THE 30 ROCK.

A RIGHT. HE SAYS THAT IN CONNECTION WITH – WHAT JEFFREY'S THEORY OR WHAT HIS POSITION WAS IS THAT THIS FELLOW RICK HAD ACTUALLY STOLE THE ITEMS AND THEN HAD JEFFREY TO STORE THEM FOR HIM, AND SO IN THIS STATEMENT THAT JEFFREY GAVE HE SAYS THAT RICK HAD GIVEN HIM A $30 ROCK TO KEEP THESE TOOLS FOR A WHILE AND SO WE ARGUED THAT THAT WAS – YOU KNOW, THE JURY TO BE TOLD ABOUT DRUG DEALIN' WOULD BE PREJUDICIAL TO

HIM SO THAT WAS STRUCK OUT.

Q DID -- DID YOU EVER FIND OR TALK TO OR ATTEMPT TO FIND THE OTHER WHICH COULDA BEEN CO-DEFENDANTS IN THIS CASE?

A I ACTUALLY HAD A PERSON WHO WORKED AS AN INVESTIGATOR ON THIS CASE AND HE TRIED TO FIND RICK DOWELL AND SOME OF THESE OTHER NAMES THAT WERE MENTIONED AND HE WAS NOT ABLE TO DO THAT.

Q OKAY. DO YOU KNOW WHETHER OR NOT THE POLICE WERE ABLE TO TALK TO RICK DOWELL?

A I DO NOT KNOW. I DON'T RECOLLECT AT THIS TIME.

Q OKAY. DO YOU REMEMBER WHETHER OR NOT IN DETECTIVE PRESTIGIACOMO'S STATEMENT THAT HE SPOKE TO RICK DOWELL?

A I DON'T RECALL.

Q DON'T RECALL? OKAY. SO YOU WERE -- YOU DID HIRE AN INVESTIGATOR?

A YES, SIR.

Q ALL RIGHT, SIR. BUT YOU WERE UNABLE TO SPEAK TO THESE OTHER TWO GENTLEMEN?

A THAT'S CORRECT.

Q WERE THEY CHARGED?

A MY RECOLLECTION IS THAT THEY WERE NOT.

Q OKAY. NOW DID JEFFREY'S -- I THINK I HAD ASKED YOU ABOUT IN JEFFREY'S STATEMENT ABOUT THE ISSUE ABOUT THE LOOKOUT GUY.

A RIGHT.

Q OKAY. IF PRESENTED TO TRIAL WAS THERE SOME CONFUSION AS TO THAT STATEMENT OR DO YOU REMEMBER HOW THAT STATEMENT WAS PRESENTED?

A I DON'T RECALL. I WOULD SAY THIS, YOU KNOW, THAT AT THAT TIME AND

NOW THAT, YOU KNOW, BEIN' A LOOKOUT IS EQUIVALENT TO SAYIN' I'M GUILTY. SO IT REALLY WOULDN'T DO HIM A LOTTA GOOD TO TAKE THE POSITION I WAS JUST A LOOKOUT.

Q NOW WAS THAT PART OF YOUR ARGUMENT OR YOUR MOTION BEFORE THE COURT IN REGARDS TO THE VOLUNTARINESS OF THE -- OF THE STATEMENT? YOU REMEMBER THE PART OF ANY ALLEGATIONS OF JEFFREY SAYIN' THAT HE WAS COERCED TO SAY THAT FOR THEM TO TRY TO HELP HIM GET OUTTA JAIL?

A THAT WAS JEFFREY'S POSITION IS THAT THEY SAID, YOU KNOW, WE WILL HELP YOU, AND, SPECIFICALLY, WE WILL BOND YOU OUT AND HELP YOU, AND THAT HE GAVE HIS STATEMENT IN RESPONSE TO THEIR SAYIN' THAT AND, YOU KNOW, I DON'T REALLY HAVE A REASON TO DOUBT THAT.

Q OKAY. WAS HE, IN FACT, BONDED OUT?

A IT SEEMS TO ME HE WAS. THAT'S RIGHT.

Q OKAY.

A AND THAT WOULD BE, YOU KNOW, PRETTY UNUSUAL. SO THAT ITSELF WOULD BE EVIDENCE THAT HE WAS PROMISED THIS.

Q OKAY. AND I THINK YOU DID ARGUE THIS IN FRONT OF THE COURT.

A YES, SIR.

Q AND, AGAIN, WHAT WAS THE COURT'S DECISION?

A AND, AGAIN, THEIR POSITION WAS THAT EITHER HE WASN'T MADE A PROMISE OR IF HE WAS IT WASN'T SUFFICIENT THAT SUCH THAT IT WOULD BE CONSIDERED NOT VOLUNTARY SUCH THAT IT SHOULD BE SUPPRESSED. SO THEY DETERMINED THAT HIS STATEMENT WAS VOLUNTARY.

Q OKAY. SO THEY WERE GONNA ALLOW THE STATEMENT IN AS -- AS REDACTED.

A YES, SIR.

Q OKAY. NOW I THINK YOU ALSO HAD A MOTION IN LIMINE TO SUPPRESS THE ISSUE OF THE CRACK PIPE. THERE WAS A CRACK PIPE THAT WAS TAKEN?

A YES.

Q AND DO YOU REMEMBER IF THAT WAS GRANTED?

A I DON'T REMEMBER. I WOULD ASSUME IT WAS, BUT I DON'T REMEMBER.

Q AND THE ISSUE OF THE CRACK PIPE DIDN'T COME IN.

A RIGHT.

Q OKAY. AND THEN YOU HAD A MOTION IN LIMINE TO SUPPRESS TESTIMONY OF DAN MAYES.

A YES, SIR.

Q AND I BELIEVE THAT WAS TAKEN CARE OF BY THE SOLICITOR'S OFFICE SAYIN' THEY WERE NOT GOIN' TO CALL MR. MAYES.

A YES, SIR.

Q AND YOU HAD A – I THINK THAT MR. – AND I APOLOGIZE – I THINK THE PART THAT YOU HAD MADE THE MOTION TO SUPPRESS WAS SOMETHING ABOUT SOME SORT OF VEILED THREATS?

A YES. THE STATE AT ONE TIME HAD FELT THAT MR. CROMER HAD, AS I RECALL, HAD THREATENED A POTENTIAL WITNESS. SO WE WANTED THAT ADDRESSED BEFORE THE TRIAL STARTED, AND IT'S MY RECOLLECTION THAT THOSE WERE DECIDED THEY WOULD NOT BE ADMITTED.

Q OKAY. AND YOU ALSO MADE A MOTION TO SUPPRESS TESTIMONY OF RICK DOWELL, BUT MR. DOWELL DIDN'T TESTIFY.

A RIGHT.

Q NOW WHEN YOU GOT TO TRIAL I THINK THAT THE – THERE WAS A GRAND

JURY AMENDMENT. IS THAT CORRECT?

A YES, SIR.

Q TO ADD – TO ADD SOME LANGUAGE THAT HE HAD 2 OR MORE PRIOR CONVICTIONS.

A YES, SIR.

Q CAN YOU IDENTIFY THAT DOCUMENT? IS THAT THE INDICTMENT?

A YES.

Q OKAY. AND THAT'S THE INDICTMENT AS AMENDED?

A YES, SIR.

MR. THOMAS: YOUR HONOR, WE WOULD MOVE THIS AS PETITIONER'S EXHIBIT 2.

MR. BAX: FOR THE RECORD, YOUR HONOR, THE INDICTMENT SHOULD BE PART OF THE RECORD. SO I HAVE NO OBJECTION.

THE COURT: MARK IT IN EVIDENCE. (APPLICANT'S EXHIBIT #2 RECEIVED IN EVIDENCE.)

Q NOW YOU FOUND OUT ABOUT THAT I GUESS FROM THE TRANSCRIPT IT INDICATES THAT YOU FOUND OUT ABOUT THAT LIKE A MONDAY PRIOR TO TRIAL?

A YES, SIR. IN ANY EVENT, YOU KNOW, I – THIS TYPE OF AMENDMENT WHERE YOU ADD A AGGRAVATING CIRCUMSTANCE IT SEEMS TO ME WOULD BE SOMETHIN' THAT SHOULD BE PRESENTED TO THE GRAND JURY. YOU KNOW, IT'S NOT THE TYPE OF AMENDMENT THAT YOU WOULD CONSENT TO, AND IT'S NOT THE TYPE THAT THEY CAN MAKE WITHOUT REPRESENTING IT TO THE GRAND JURY.

Q OKAY. DO YOU KNOW WHETHER OR NOT THAT WAS PRESENTED TO THE GRAND JURY?

A IT'S MY RECOLLECTION AT THIS POINT, 4 YEARS HAVING PASSED, IT WAS,

BUT I'M NOT SURE.

Q ALL RIGHT. AND DID YOU SEE ANYTHING OBJECTIONABLE ABOUT -- ABOUT THE INDICTMENT?

A LET'S SEE.

Q WAS ANYTHING OBJECTIONABLE WHILE ADDING -- AT THAT POINT IN TIME ABOUT ADDING OR AMENDING TO ADD THOSE CIRCUMSTANCES?

A WELL, AGAIN, YOU KNOW, I THINK THAT THIS IS AN AMENDMENT THAT IF YOU'RE GONNA AMEND IT TO ADD THIS AGGRAVATING CIRCUMSTANCE, THEN, YOU KNOW, IT WOULD HAVE TO BE PRESENTED TO A GRAND JURY BEFORE YOU COULD TRY THE CASE.

Q OKAY. BUT IF IT HAD BEEN PRESENTED THEN IT COULD'VE GONE FORWARD.

A THAT'S CORRECT.

Q ALL RIGHT. I THINK YOU DID MAKE AN OBJECTION IN REGARDS TO THEM USING MORE THAN 2 CONVICTIONS?

A WELL, THIS IS ACTUALLY SOMETHIN' THAT CAME UP AT A DIFFERENT POINT IN THE TRIAL. IT MAY HAVE BEEN SOMETHIN' THAT WE DISCUSSED AT THE BEGINNIN' OF THE TRIAL BUT WHAT THE STATE DID AS PART OF THEIR CASE IN CHIEF WAS THEY INTRODUCED 3 PRIOR BURGLARY CONVICTIONS AND AT THAT TIME, AT THE TIME THEY ADMITTED THOSE, I OBJECTED ON THE GROUNDS, ON A NUMBER OF GROUNDS, BUT THE FACT IS THAT ONE OF THE GROUNDS WAS THAT IT WAS MORE PREJUDICIAL THAN PROBATIVE UNDER RULE 403—

Q ALL RIGHT.

A —AND THAT IT SHOULDN'T COME IN UNDER RULE 404(B) AND THAT IT WAS A VIOLATION OF DUE PROCESS. EVERY – EVERY GROUND, I GUESS, YOU COULD

HAVE, BUT THAT IT WAS IMPROPER FOR THEM TO INTRODUCE 3 BURGLARY CONVICTIONS TO SUPPORT THIS CIRCUMSTANCE ESPECIALLY WHEN THEY HAD ALREADY HAD AN AGGRAVATING CIRCUMSTANCE OF POSSESSION OF A WEAPON. SO HERE THEY HAD THIS OTHER AGGRAVATING CIRCUMSTANCE, AND THEN THEY INTRODUCED 3 RATHER THAN JUST 2 OF THESE PRIOR BURGLARY CONVICTIONS.

Q OKAY. DO YOU REMEMBER WHAT THE -- THE ISSUE OF THE POSSESSION OF A WEAPON WAS?

A WELL, THIS WAS SOMETHIN' -- THIS WEAPON WAS ACTUALLY STOLEN. AND SO THE STATE TOOK THE POSITION THAT WHEN YOU STEAL IT YOU'RE IN POSSESSION OF IT SUFFICIENT TO SORTA CONSTITUTE AN AGGRAVATING CIRCUMSTANCE FOR BURGLARY FIRST. AND THAT ACTUAL ISSUE, IT'S MY IMPRESSION OR OPINION, THAT IT'S BEEN ADDRESSED BY THE SUPREME COURT, AND THEY SEEM TO HAVE DECIDED -- THE SOUTH CAROLINA SUPREME COURT -- THAT IF YOU STEAL A WEAPON THAT YOU ARE IN POSSESSION OF A WEAPON FOR PURPOSES OF BURGLARY FIRST, THE AGGRAVATING CIRCUMSTANCE.

Q AND I THINK ALL OF THE TESTIMONY IN THIS CASE WAS THAT MR. CROMER NEVER WENT INTO THE BUILDING THAT WAS LOCATED ON THE PREMISES.

A WELL, THAT WAS MR. CROMER'S TESTIMONY. THE STATE, YOU KNOW, THAT CERTAINLY WAS NOT THEIR POSITION. I MEAN THEIR POSITION WAS THAT HE WAS A ACTIVE PARTICIPANT IN IT EVEN IF THEY JUST HAD TO RELY ON CIRCUMSTANTIAL EVIDENCE. BUT THAT WAS THEIR POSITION.

Q OKAY. AND I THINK IN THE ACTUAL INDICTMENT IT SAYS THAT JEFFREY CROMER DID HIMSELF DO THESE ACTS?

A IT -- THE INDICTMENT THE ACTUAL LANGUAGE SAYS HE ENTERED THE DWELLING. SO IT WOULD APPEAR FROM THERE THAT THEY'RE NOT RELYIN' ON

THE FACT THAT HE WAS JUST A LOOKOUT IN ORDER TO MAKE THEIR CASE.

Q OKAY. AND I THINK THAT THERE WAS -- WAS THERE A CHARGE TO THE JURY OF HAND OF ONE HAND OF ALL?

A I'M SURE THERE WAS.

Q OKAY. IF HE HAD ONLY BEEN GUILTY OF AIDING OR ABETTING OR HAND OF ONE HAND OF ALL, WOULD THE INDICTMENT HAVE TO HAVE BEEN ANY DIFFERENT?

A I DON'T THINK SO. YOU KNOW, I THINK THEY AS LONG AS THEY PUT HIM ON NOTICE OF THE ELEMENTS OF BURGLARY FIRST, THAT THAT REALLY WOULD BE SUFFICIENT.

Q OKAY. THAT THE HAND OF ONE HAND OF ALL WOULD NOT HAVE TO BE SPECIFICALLY PLED.

A RIGHT.

Q NOW I THINK DURIN' THE COURSE OF THIS TRIAL THE JUDGE ACTUALLY RECONSIDERED YOUR REQUEST TO SUPPRESS THE STATEMENT. YOU REMEMBER?

A I DON'T RECALL. THAT'S POSSIBLE. THAT'S THE TYPE OF MOTION -- WELL, IT MAY BE THAT YOU WOULD WANT TO RENEW THAT AT THE TIME THAT THEY INTRODUCED THE STATEMENT IN ANY EVENT.

Q DO YOU REMEMBER THE BASIS OF THE MOTION OF THE RECONSIDERATION OF THE MOTION BEING INVOLVED WITH THE DRUG USAGE?

A WELL, NOW THAT YOU MENTION IT, IT DOES -- IT'S MY RECOLLECTION THAT JEOPARDY -- YOU KNOW, WE TOOK THE POSITION DURIN' THAT CASE THAT JEFF WAS IT SEEMS TO BE UNDER WITHDRAWAL FROM DRUGS THAT HE HAD, YOU KNOW, BEEN A DRUG ADDICT AND THAT WHEN THEY HAD HIM AND THEY WERE QUESTIONIN' HIM HE BEIN' OFF OF DRUGS SPECIFICALLY, MY RECOLLECTION OF

CRACK, FOR A COUPLE OF DAYS THAT HE WAS UNDERGOIN' SOME PRETTY SEVERE WITHDRAWAL SYMPTOMS AT THE TIME, AND I THINK HE WANTED TO GET OUT IN ORDER TO RELIEVE THOSE SYMPTOMS AND THAT WAS ONE OF THE REASONS THAT WE TOOK THE POSITION THAT HIS STATEMENTS WEREN'T VOLUNTARY.

Q OKAY. WHICH COULD'VE GONE TO THE ISSUE OF THE STATEMENT ABOUT LOOKOUT? YOU REMEMBER THAT?

A YOU MEAN HIM GIVIN' THAT STATEMENT? IN OTHER WORDS—

Q YES, SIR.

A — IN HIS – IN HIS STATEMENT HE INCULPATED HIMSELF SUFFICIENTLY SO THAT HE COULD GET OUT. IN OTHER WORDS, HE HAD TO SAY SOMETHIN' THAT WOULD MAKE THEM HAPPY. THAT WAS OUR POSITION. AND SO HE SAYS WELL I'LL JUST SAY I WAS THE LOOKOUT AND THEREFORE HE – YOU KNOW, THEY MIGHT GIVE HIM A BOND OR THEY MIGHT – PARTICULARLY AS THE BOND WAS AS BIG AS YOU SAW THAT HE COULD GET OUT.

Q AND WHAT WAS THE COURT'S RESPONSE TO THE RECONSIDERATION OF THE MOTION TO SUPPRESS?

A WELL, MY RECOLLECTION IS THAT THEY DECIDED THAT THE STATEMENT WAS ADMISSIBLE.

Q OKAY. NOW I THINK IN – IN THIS CASE THERE WERE A LOT OF – THERE WERE A LOT OF MOTIONS – THERE WERE A LOT OF MOTIONS MADE. IS THAT CORRECT?

A YES, SIR.

Q THERE WERE A LOT OF TECHNICAL ISSUES THAT WERE BROUGHT BEFORE THE COURT?

A YES, SIR.

Q ALL RIGHT. AND IN GOING THROUGH THE TRIAL OF THIS CASE, I BELIEVE AT THIS POINT IN TIME YOU MADE ANOTHER MOTION IN FRONT OF THE COURT IN REGARDS TO THE -- THE USE OF MORE THAN 2 PRIOR CONVICTIONS.

A RIGHT. AGAIN, I'VE BEEN OVER THE TRANSCRIPT, AND, SPECIFICALLY, WHEN THE STATE MOVED TO INTRODUCE THOSE 3 PRIOR BURGLARIES, I BELIEVE THAT, YOU KNOW, OBJECTIONS WERE MADE AT THAT TIME ON VARIOUS GROUNDS: 403, 404 AND JUST DUE PROCESS AND MORE PREJUDICIAL THAN PROBATIVE. AGAIN, ALL SAYIN' THAT THEY COULDN'T INTRODUCE 3 OF THOSE CONVICTIONS.

Q OKAY. WHAT IS -- WHAT'S THE STATUS OF THE LAW NOW?

A WELL, AFTER -- AT THE TIME THIS CASE WAS ACTUALLY TRIED, THERE WAS A COURT OF APPEALS DECISION THAT SAID YOU COULD ADMIT AS MANY AS 7 DEPENDING ON, YOU KNOW, REALLY THE CIRCUMSTANCES, BUT, BASICALLY, THAT THE STATE COULD ADMIT AS MANY AS THEY WANTED PRETTY MUCH. AND THEN THAT CASE WAS REVERSED BY THE SUPREME COURT OF SOUTH CAROLINA STATE V. JAMES, AND THAT'S A 2003 DECISION. AND THEY SAID THAT, IN SHORT THEY SAID THAT IF 2 WAS SUFFICIENT THAT'S ALL YOU CAN INTRODUCE AND THAT THIS IS SUBJECT TO RULE 403 BALANCING. AND SO REALLY THE LAW YOU COULD SAY THE LAW CHANGED ALTHOUGH REALLY THE COURT OF APPEALS DECISION I GUESS YOU COULD IDEALLY TAKE INTO ACCOUNT THE FACT THAT IT MIGHT CHANGE. BUT -- AND THEN YOU'VE GOT THE LAW NOW WOULD SEEM TO BE THAT YOU COULD ONLY INTRODUCE 2.

Q OKAY. WHICH HAS BEEN A CHANGE SINCE THE TIME THAT MR. CROMER'S CASE WAS TRIED.

A WELL, THE DECISION OF THE SUPREME COURT REVERSING THE COURT OF

APPEALS CAME OUT AFTER WE TRIED THIS CASE.

Q OKAY. AND I THINK THAT YOU HAD – YOU ENTERED YOUR OBJECTIONS WHICH WERE DENIED BY THE COURT?

A THAT'S RIGHT.

Q OKAY. AND I THINK YOU EVEN MADE A MOTION AT THAT TIME FOR A MISTRIAL.

A YES, SIR.

Q NOW THERE WAS THE ALLEGED USE OF BOLT CUTTERS IN THIS CASE?

A YES.

Q AND THEY INTRODUCED -- DID THEY INTRODUCE THE BOLT CUTTERS INTO EVIDENCE?

A IT SEEMS TO ME THAT THEY DID.

Q ALL RIGHT. DO YOU KNOW OR DO YOU REMEMBER WHETHER OR NOT THESE BOLT CUTTERS WERE SENT TO SLED FOR EXAMINATION?

A MY RECOLLECTION IS THEY WERE NOT, BUT I DON'T RECALL.

Q OKAY. DO YOU REMEMBER THAT YOU ELICITED TESTIMONY IN REGARDS TO THE BOLT CUTTERS ABOUT THAT THEY CAN I.D. SPECIFIC BOLT CUTTERS?

A RIGHT.

Q SO THERE WAS TESTIMONY THAT THEY COULD, IN FACT, IDENTIFY A CUT FROM A CERTAIN BOLT CUTTER.

A AND, IN FACT, THAT'S RIGHT. IT SEEMS TO ME THAT THE SLED AGENT TESTIFIED THAT THEY COULD ACTUALLY IDENTIFY A BOLT CUTTER BY THE MARKS THAT IT LEAVES ON, YOU KNOW, WHAT IT CUTS, WHETHER IT BE A LOCK OR WHAT HAVE YOU. AND IT SEEMS TO ME THAT THAT'S WHAT HAPPENED IN THIS CASE, THAT THEY HAD – ACTUALLY WERE ABLE TO TIE THIS BOLT CUTTER TO A LOCK

THAT WAS CUT AT THIS HOUSE.

Q DID YOU – DID YOU EVER MAKE ANY ATTEMPT OR MAKE ANY MOTION TO HAVE ANY EXAMINATION OF THE BOLT CUTTER ON YOUR OWN INDEPENDENTLY?

A NO.

MR. THOMAS: YOUR HONOR, IF I COULD BEG THE COURT'S INDULGENCE FOR JUST A SECOND.

THE COURT: YES, SIR.

Q MR. CHESSER, LET ME SHOW YOU PAGE 269 OF THE TRIAL TRANSCRIPT AND ASK YOU TO READ 69 AND 70 IN REGARDS TO THE TESTIMONY OF THE BOLT CUTTER.

A WELL, I GUESS MY RECOLLECTION IS NOT TOO GOOD. IT SAYS HERE THAT THE SLED AGENT SAYS IT IS POSSIBLE TO TIE A BOLT CUTTER TO A -- IN THIS CASE A CHAIN WAS CUT, BUT THAT HE DIDN'T ATTEMPT TO DO THAT.

Q OKAY. SO THERE WAS NO POSITIVE I.D. OF THE BOLT CUTTER AND THE CHAIN.

A THAT'S CORRECT.

Q OKAY. IT WOULD HAVE BEEN POSSIBLE TO DO THAT.

A ACCORDING TO THE SLED AGENT'S TESTIMONY, THAT'S CORRECT.

Q OKAY. BUT IT WASN'T DONE IN THIS CASE.

A NO, SIR.

Q AND YOU DIDN'T SEEK TO GET AN INDEPENDENT EVALUATION OR EXAMINATION OF THE BOLT CUTTER AND CHAIN?

A NO.

Q NOW MR. BARNHILL – MR. BARNHILL, I THINK, WHO TESTIFIED IN THIS CASE WAS -- AND HE WAS THE ALLEGED VICTIM?

A YES, SIR.

Q AND I BELIEVE THAT THERE WAS A STATEMENT MADE OR DO YOU REMEMBER IF THERE WAS A STATEMENT MADE BY MR. CROMER ALLEGEDLY TO MR. BARNHILL?

A BY MR. WHO?

Q BY MR. CROMER TO MR. BARNHILL.

A I DON'T RECALL.

Q OKAY. NOW WHEN IT CAME TO REQUEST FOR A CHARGE, DID YOU ASK FOR ANY SPECIFIC CHARGES? OR DO YOU REMEMBER THAT -- THAT YOU ASKED THE COURT THAT THERE WOULD BE NO SPECIFIC CHARGE?

A I DON'T RECALL.

Q OKAY. IN THE TRANSCRIPT IT SAYS THAT YOU ASKED THAT THERE BE NO SPECIFIC CHARGE. WHY OR AT THAT POINT WOULD YOU NOT HAVE ASKED THE COURT TO HAVE CHARGED ALSO RECEIPT OF STOLEN GOODS?

A WELL, I'LL JUST SAY THIS, YOU KNOW, AS TO WHAT EXACTLY AFTER THEN, I DON'T RECALL. BUT IF I HAVE THIS SITUATION I ASSUME THE JUDGE IS GONNA CHARGE WHATEVER HE'S CHARGED WITH.

Q RIGHT.

A IN OTHER WORDS, IF HE'S CHARGED WITH -- OH, RECEIVIN' STOLEN GOODS AS BEIN' A SORT OF A LESSER OFFENSE WHERE HE WOULDN'T BE FOUND GUILTY OF BURGLARY FIRST?

Q YES, SIR.

A I WILL TELL YOU THIS: IT WOULD BE -- THAT MIGHT BE SOMETHIN' THAT AS TRIAL STRATEGY WOULD BE WORTH WHILE BUT I REALLY DON'T THINK THAT YOU CAN CHARGE A DIFFERENT CRIME, THAT YOU'RE REALLY ENTITLED TO A

CHARGE OF A DIFFERENT CRIME JUST BECAUSE IT HAPPENED TO BE NOT THE ONE THAT HE'S CHARGED WITH DOING IN THIS CASE.

Q RIGHT. LET ME SHOW YOU TRANSCRIPT PAGE 434 WHICH I THINK IS A NARRATIVE BETWEEN YOU AND THE COURT IN REGARDS TO THAT CHARGE.

A THERE'S SOME DISCUSSION ABOUT, YOU KNOW, STATE V. COOPER OVERRULING DEWITT WHICH APPARENTLY THERE'S SOME CASES THAT DEAL WITH YOUR RIGHT TO -- WELL, I GUESS THAT MUST BE CIRCUMSTANTIAL EVIDENCE. I DON'T KNOW.

Q OKAY.

A BUT IN ANY EVENT, IT'S APPARENT THAT I DIDN'T ASK FOR A CHARGE ON POSSESSION OF STOLEN PROPERTY.

Q OKAY. AND IN THIS THE COURT ACTUALLY ASKED YOU SO NEITHER PARTY WILL REQUEST A CHARGE OF POSSESSION OF STOLEN PROPERTY.

A IT SEEMED THAT THAT WOULD BE SOMETHING THAT SOMEBODY MIGHT CONSIDER DOING.

Q OKAY. IN FACT, I THINK JEFFREY HAD TOLD YOU THAT IF ANYTHING -- WASN'T IT HIS CONTENTION THAT HE WAS IN RECEIPT OF STOLEN PROPERTY?

A IT WAS NOT HIS CONTENTION?

Q NO. IT WAS HIS CONTENTION THAT IF HE WAS GUILTY OF ANYTHING HE WAS GUILTY OF RECEIVING STOLEN PROPERTY.

A THAT'S RIGHT.

Q OKAY.

THE COURT: YOU'RE NOT SAYING HE SHOULD'VE REQUESTED A CHARGE OF RECEIVING STOLEN PROPERTY; YOU'RE SAYING HE SHOULD'VE REQUESTED A CHARGE THAT RECEIVING STOLEN PROPERTY IS ONLY EVIDENCE OF BURGLARY?

MR. THOMAS: YOUR HONOR, WHAT WE WERE ASKING IT APPEARED FROM THE TRANSCRIPT THAT THE COURT HAD INQUIRED OF COUNSEL WHETHER OR NOT HE WISHED A SPECIFIC CHARGE TO THE JURY OF RECEIVING STOLEN PROPERTY.

THE COURT: RELATED TO CIRCUMSTANTIAL EVIDENCE.

MR. THOMAS: YES, SIR.

THE COURT: RECEIVING STOLEN PROPERTY IS NOT A LESSER INCLUDED OFFENSE OF BURGLARY IN THE FIRST DEGREE. IS IT?

MR. THOMAS: NO, SIR, I DON'T THINK IT IS. BUT I WAS WONDERING SINCE THE JUDGE HAD INQUIRED OF THAT WHETHER THE JUDGE WOULD HAVE, IN FACT, CHARGED THAT IF THE COURT HAD BEEN ASKED.

THE COURT: CHARGE WHAT?

MR. THOMAS: THE CRIME OF RECEIVING STOLEN PROPERTY.

THE COURT: NO. HE'S TALKIN' ABOUT CIRCUMSTANTIAL EVIDENCE THERE. ONE OF THOSE INFERENCES—

MR. THOMAS: YES, SIR.

THE COURT: ONE OF THOSE INFERENCE TYPE CHARGES THAT YOU MAY INFER IN POSSESSION OF STOLEN PROPERTY. BUT IT'S ONLY AN EVIDENTIARY THING. I'LL HAVE TO LOOK UP THE CASES HE'S TALKIN' ABOUT.

MR. THOMAS: OKAY. ALL RIGHT. YOUR HONOR, AND I'LL PUSH FORWARD JUST A LITTLE MORE ON THAT AND THEN WE'LL MOVE ON. I THINK THAT—

THE COURT: I -- I JUST WANTED TO MAKE SURE I UNDERSTOOD YOU BECAUSE—

MR. THOMAS: YES, SIR.

THE COURT: —NOW IT'S BEEN -- SINCE THEN IT'S BEEN CLARIFIED THAT YOU GO AND GIVE A CIRCUMSTANTIAL CHARGE. BUT I MEAN IT STILL MAY BE

SOME LAW THAT YOU CAN GET SOMETHING. I'LL HAVE TO LOOK IT UP WHAT JUDGE NICHOLSON WAS TALKING ABOUT.

MR. THOMAS: ALL RIGHT, SIR. YES, SIR.

Q WHAT WAS THE THEORY – WHAT WAS THE THEORY OF YOUR DEFENSE?

A THAT'S A GOOD QUESTION.

Q WAS IT THAT IF HE WAS GUILTY OF ANYTHING HE WAS GUILTY OF RECEIVING STOLEN GOODS?

A WELL, JUST TO ADDRESS THE WHOLE QUESTION. I THINK IN THE FIRST INSTANCE, IN MY OPINION, THERE WAS A LOT OF EVIDENCE, AND YOU COULDN'T KEEP SOME OF THESE STATEMENTS OUT. IN A WAY, THE THEORY OF THE CASE WAS TO TRY TO PRESERVE SOME TYPE OF ERROR ON SEARCH AND SEIZURE, YOU KNOW. THAT WAS – OR TO PRESERVE SOME OTHER ERROR. THAT WAS, IN A WAY THAT WAS THE THEORY OF THE CASE BECAUSE THAT WAS ABOUT ALL WE HAD. IN TERMS OF A THEORY THAT DEALT WITH THE FACTS, THEN THE ONLY REAL DEFENSE WOULD HAVE BEEN THAT HE WAS A PASSIVE OBSERVER. THERE WASN'T EVEN A LOOKOUT. THAT WOULD BE THE ONLY DEFENSE ON THE FACTS.

Q AND I THINK THREE FOURTHS OF THIS CASE WHICH MAKES IT MORE COMPLICATED ARE THE ISSUES OF WHAT WAS ADMISSIBLE AND WHAT WAS NOT AND—

A YES, SIR.

Q —REGARDING TO THE MOTIONS THAT YOU MADE BEFORE THE COURT.

A RIGHT.

Q NOW I THINK AT SOME POINT IN TIME WE KINDA COME BACK TO THE STATEMENT THAT I WOULDN'T – THERE WAS A STATEMENT MADE BY JEFFREY ABOUT I WOULDN'T STEAL TOOLS.

A RIGHT. IN DIRECT TESTIMONY.

Q IN DIRECT TESTIMONY. WHICH COMES BACK TO THE STATEMENT AND THE REDACTED STATEMENTS.

A RIGHT.

Q YOU REMEMBER IN TESTIMONY THAT JEFFREY SAYS I WOULDN'T STEAL TOOLS?

A YES.

Q OKAY.

A WELL, I GUESS THE POINT AND THE QUESTION IS WHETHER HE SAID I DIDN'T STEAL TOOLS VERSUS I WOULDN'T STEAL TOOLS, AND REALLY IN ORDER TO REMEMBER THAT, I'D HAVE TO SEE THE TRANSCRIPT. I DON'T KNOW IF HE SAID I DIDN'T STEAL 'EM OR I WOULDN'T STEAL 'EM.

Q I CAN SHOW YOU THAT.

A AND THAT WOULD BE A DIFFERENCE OF COURSE BECAUSE IF HE SAID I WOULDN'T STEAL 'EM, THEN YOU'D BE TALKIN' ABOUT HIS CHARACTER. IF HE SAID I DIDN'T STEAL 'EM THAT'S A ISSUE OF FACT. IT WOULDN'T OPEN THE DOOR.

Q RIGHT. THE TRANSCRIPT ON PAGE 436. THIS IS THE DIRECT TESTIMONY OF MR. CROMER. I WANT YOU TO LOOK AT THAT PAGE.

A SO THE TRANSCRIPT WOULD INDICATE THAT HE SAID I DIDN'T STEAL TOOLS AS OPPOSED TO I WOULDN'T WHICH IS AN IMPORTANT DISTINCTION. THAT'S PAGE 436.

Q RIGHT. WAS IT YOUR UNDERSTANDING THAT WHEN HE MADE THAT STATEMENT HE WAS TALKIN' ABOUT MR. BARNHILL'S HOUSE.

A RIGHT.

Q THIS CRIME.

A EXACTLY.

Q THAT I DIDN'T STEAL NO TOOLS.

A THAT'S RIGHT.

Q OKAY. NOW THAT STATEMENT WAS USED BY THE PROSECUTION TO ALLOW THE REDACTED PORTION OF THE STATEMENT IN?

A THE FIRST PARAGRAPH THAT WAS REDACTED IS WHERE HE TALKS ABOUT I HAVE STOLEN TOOLS, YOU KNOW, ON OTHER OCCASIONS, AND SO THE STATE TOOK THE POSITION THAT HE HAD OPENED THE DOOR TO HIS CHARACTER OR PARTICULARLY WITH REGARD TO WHETHER OR NOT HE HAD STOLEN BEFORE. AND SO THEY DID GET IN THAT FIRST PARAGRAPH. I DON'T KNOW IF THEY GOT IN THIS THING ABOUT THE $30 ROCK WHICH—

Q RIGHT.

A —WAS THE OTHER PART.

Q LET ME SHOW YOU PAGE 459 WHICH IS THE CROSS-EXAMINATION OF MR. CROMER.

A SO WHAT MR. SURRAT SAYS HE SAYS I BELIEVE YOU TESTIFIED YOU DIDN'T STEAL ANY. MR. CROMER SAID RIGHT THAT'S WHAT I SAID. AND THEN HE SAYS SO YOU TRYIN' TO TELL US YOU WOULDN'T STEAL 'EM. IN OTHER WORDS, HE MAKES THE JUMP INTO CHARACTER. AND AT THAT POINT I OBJECTED, AND – BUT I DON'T KNOW WHAT THE RESULT OF THAT WAS.

Q BUT IT WAS YOUR CON – YOUR CONTENTION AT THAT TIME THAT HE WAS STILL SAYING THAT I DIDN'T STEAL THE TOOLS FROM MR. BARNHILL'S HOUSE.

A RIGHT.

Q WHICH GOES ALONG BACK – BACK TO THE POINT OF IF HE WAS GUILTY OF ANYTHING IN THIS, HE WAS GUILTY OF RECEIVING STOLEN GOODS.

A RIGHT.

Q AND THE COURT'S DECISION WAS THAT -- TO ALLOW THE REDACTED PORTIONS IN.

A RIGHT.

Q OKAY. SO THOSE THINGS DID COME IN THAT HAD BEEN TAKEN OUT IN REGARDS TO I HAD STOLEN TOOLS FROM CONSTRUCTION TRUCKS IN NORTH CAROLINA.

A YEAH, THAT WOULD BE THE FIRST PARAGRAPH OF HIS STATEMENT.

Q OKAY. AND YOU OBJECTED AT THAT TIME.

A YES, SIR.

Q NOW IF WE MOVE ON TO THE CLOSING, I THINK THAT IN CLOSING ARGUMENT—

MR. THOMAS: YOUR HONOR, IF I CAN BEG THE COURT'S INDULGENCE. I'M SORRY. THIS TRANSCRIPT IS HUGE.

LET ME SHOW YOU PAGE 531 WHICH IS REGARDING THE AGGRAVATING FACTOR OF THE MORE THAN 2 BURGLARIES.

A RIGHT.

Q OKAY. AND THAT STATEMENT WAS MADE THERE BY THE SOLICITOR THAT HE DIDN'T HAVE TO SHOW -- HE ONLY HAD TO SHOW 2 BUT HE COULD SHOW 3.

A RIGHT.

Q WHICH YOU HAD ALSO OBJECTED TO.

A I'D OBJECTED TO THE ADMISSION -- YOU KNOW, AT THE TIME HE ADMITTED THOSE BURGLARY STATEMENTS IN. I DON'T KNOW THAT I OBJECTED AT THE TIME HE SAID THAT IN CLOSING.

Q OKAY.

A I DON'T THINK I DID.

Q OKAY. LET ME ASK YOU TOO, PAGES 534 AND 535 OF THE TRANSCRIPT—

MR. THOMAS: YOUR HONOR, IF I COULD BEG THE COURT'S INDULGENCE JUST FOR A SECOND.

THE COURT: SURE.

Q OKAY. ON 535 WHICH, AGAIN, IS IN THE SOLICITOR'S CLOSING. JUST LOOK AT THAT PAGE. AGAIN, I THINK IT BRINGS US BACK INTO THIS ISSUE OF RECEIVING STOLEN GOODS.

MR. BAX: I BELIEVE THAT'S IN HIS CLOSING STATEMENT, 535.

MR. THOMAS: YES.

A SO IN MY CLOSING WHAT I ARGUE IS IF HE -- IF HE WAS GUILTY OF SOMETHING HE WAS ONLY GUILTY OF RECEIVING STOLEN GOODS.

Q OKAY. AND I THINK THAT YOUR INDICATION THERE WAS THAT IT COULD'VE BEEN CHARGED.

A RIGHT.

Q AND STILL COULD BE CHARGED.

A RIGHT.

Q BUT, IN FACT, IT WASN'T CHARGED.

A RIGHT.

THE COURT: YOU MEAN CHARGED BY THE JUDGE OR CHARGED BY THE PROSECUTION? YOU MEAN CHARGE IN THE SENSE OF A CHARGE ON THE LAW BY THE JUDGE OR CHARGE IN THE SENSE OF A WARRANT BY THE LAW ENFORCEMENT PEOPLE?

MR. THOMAS: WELL, YOUR HONOR, I THINK -- I THINK THAT'S WHERE THE CONFUSION IS BECAUSE—

THE COURT: THERE ISN'T ANY CONFUSION. HE COULDN'T GET A CHARGE ON—

MR. THOMAS: YES, SIR.

THE COURT: HE COULDN'T GET A CHARGE FROM A JUDGE ON RECEIVING STOLEN GOODS.

MR. THOMAS: YES, SIR.

THE COURT: UNLESS YOU CAN TELL ME SOME LAW THAT RECEIVING STOLEN GOODS IS A LESSER INCLUDED OFFENSE OF BURGLARY IN THE FIRST DEGREE.

MR. THOMAS: NO, SIR, I DON'T THINK IT IS BUT I THINK—

THE COURT: I DON'T SEE HOW IT POSSIBLY COULD BE—

MR. THOMAS: YES, SIR.

THE COURT: —BECAUSE THE ELEMENTS ARE COMPLETELY DIFFERENT IN BOTH.

MR. THOMAS: I AGREE, YOUR HONOR, I DON'T THINK IT IS, BUT I THINK THAT IT GOES TO THE PCR ABOUT THE INEFFECTIVENESS IN REGARDS TO THE CONFUSION THAT IT COULD'VE CAUSED AND ALSO, YOU KNOW, IF THESE THINGS ARE PRESENTED TO THE JURY AND THE STATEMENTS MADE ABOUT A LESS – WELL, NOT A LESSER INCLUDED OFFENSE, BUT STATEMENTS ARE MADE ABOUT A CHARGE OF RECEIVING STOLEN GOODS AND IF THAT'S THE WAY THE FACTS OF THIS CASE ARE MOVING TOWARDS IF HE'S GUILTY OF ANYTHING HE'S GUILTY OF RECEIVING STOLEN GOODS, BUT YET NOTHING IS PRESENTED BY THE COURT TO INDICATE OR TO COVER THE ISSUE OF RECEIVING STOLEN GOODS. THE ONLY THING THAT GOES TO THE JURY IS THE ISSUE OF BURGLARY. THEN YOU HAVE THE COLLOQUY WITH THE COURT AS TO WHETHER OR NOT HE REQUESTS RECEIVING

STOLEN GOODS OR WHETHER OR NOT THE COURT WOULD EVEN HAVE CHARGED IT. THAT MAY NOT HAVE BEEN A LESSER OFFENSE, BUT HE DID INQUIRE THERE MAY HAVE BEEN SOME INSTANCE THE COURT MAY HAVE CHARGED IT.

THE COURT: IF HE HAD CHARGED IT, WE WOULD'VE ENDED THIS THING 2 MINUTES INTO IT 'CAUSE THE COURT WOULDN'T A HAD ANY SUBJECT MATTER JURISDICTION FOR THE CONVICTION.

MR. THOMAS: YES, SIR.

THE COURT: AND I'D THROW IT OUT.

MR. THOMAS: YES, SIR.

THE COURT: 'CAUSE HE WASN'T INDICTED FOR RECEIVING STOLEN GOODS. GO AHEAD.

MR. THOMAS: OKAY.

THE COURT: I MEAN THE WORD CHARGE MEANS DIFFERENT THINGS. THE ENGLISH LANGUAGE IS NOT VERY PRECISE.

MR. THOMAS: YES, SIR.

THE COURT: I JUST WANTED TO MAKE SURE I UNDERSTOOD IT.

MR. THOMAS: ALL RIGHT, SIR.

THE COURT: GO AHEAD.

MR. THOMAS: YOUR HONOR, IF I CAN BEG THE COURT'S INDULGENCE.

THE COURT: SURE.

Q MR. CHESSER, YOU MADE A NUMBER OF MOTIONS IN FRONT OF THE COURT, ESPECIALLY IN REGARDS TO THE ILLEGAL SEARCH; THE JACKSON V. DENNO, AND YOU WERE RULED AGAINST BY -- BY THE JUDGE. RULED AGAINST -- AGAINST YOU.

A YES, SIR.

Q OKAY. YOU FEEL LIKE THERE WAS MERIT TO THOSE ISSUES?

A WELL, I MEAN I THINK THEY SHOULD HAVE BEEN BROUGHT UP. DO I THINK THAT THE SEARCH WAS ILLEGAL? THERE'S SOME QUESTION ABOUT WHETHER THEY CAN BE THERE LOOKIN' IN SOMEBODY'S CAR WHICH IS IN THEIR DRIVEWAY. I BELIEVE THEY TESTIFIED THOUGH THAT THE CAR WAS OUT ON THE -- ON THE STREET. SO THERE WAS A FACTUAL ISSUE ABOUT WHERE WAS THE VEHICLE. AND THEN IT'S A FACTUAL ISSUE ABOUT WHETHER THEY HAVE PERMISSION TO GO IN THE HOUSE. SO I THINK THAT SHOULD'VE BEEN BROUGHT UP. WHETHER I SHOULD'VE PREVAILED IN 'EM, I REALLY CAN'T SAY.

Q OKAY.

A AND THAT WOULD BE TRUE WITH THE JACKSON V. DENNO. I MEAN I THINK IT'S LIKELY THAT THEY DID SAY WELL WE'LL HELP YOU WITH YOUR BOND. I THINK THEY MAKE THOSE TYPE OF STATEMENTS, AND TO ME THERE IS SOME AUTHORITY THAT THAT -- THAT THEY'RE NOT SUPPOSED TO MAKE ANY PROMISES AND THAT A STATEMENT SHOULD NOT COME IN IF THEY MAKE A PROMISE LIKE THAT. SO, YOU KNOW, I WOULD -- I THINK THEY WERE MERITORIOUS IN THAT SENSE.

Q OKAY. AND YOU MADE EVERY ATTEMPT THAT YOU COULD, OF COURSE, TO PRESERVE THESE ISSUES FOR APPEAL IF IT WAS NECESSARY.

A YES, SIR.

Q ALL RIGHT. WHO FILED THE NOTICE OF INTENT TO APPEAL IN THIS CASE? DID YOU?

A I BELIEVE I DID.

Q ALL RIGHT. AND AFTER THE NOTICE OF INTENT TO APPEAL WAS FILED IT WENT TO APPELLATE DEFENSE?

A CORRECT.

Q DO YOU KNOW WHO HANDLED THE CASE?

A I BELIEVE MR. PACHAK DID.

Q ALL RIGHT.

MR. THOMAS: YOUR HONOR, MAY I BEG THE COURT'S INDULGENCE?

THE COURT: YES, SIR.

MR. THOMAS: YOUR HONOR, THAT'S ALL THE QUESTIONS WE HAVE.

MR. BAX: BRIEFLY, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BAX

Q MR. CHESSER, A LOT OF THINGS HAVE BEEN TALKED ABOUT ON DIRECT EXAM. I'M NOT GOING TO GO INTO ALL OF THEM. JUST FOR BACKGROUND TO START THOUGH, WERE YOU APPOINTED OR RETAINED IN THIS CASE?

A APPOINTED.

Q YOU WERE APPOINTED? ABOUT HOW LONG PRIOR TO TRIAL, THE TRIAL AS WE'VE ALREADY STATED WAS DURING THE MONTH OF MARCH IN 01. HOW LONG BEFORE THAT WERE YOU APPOINTED? DO YOU RECALL?

A MY RECOLLECTION IS THAT I HAD A FAIR AMOUNT OF TIME, THAT IS, YOU KNOW, AT LEAST 3 MONTHS. IT COULDA BEEN MORE.

Q NOW YOU'VE ALREADY TESTIFIED THAT YOU HAD HIRED AN INVESTIGATOR TO LOOK INTO CERTAIN MATTERS IN THIS CASE. CORRECT?

A RIGHT.

Q AND YOU WERE ABLE TO FILE RULE 5 AND BRADY MOTIONS IN THIS CASE?

A YES.

Q OKAY. YOU RECEIVED DISCOVERY FROM THE SOLICITOR'S OFFICE?

A YES.

Q DID YOU HAVE A CHANCE TO GO OVER THE CHARGES AND THE DISCOVERY MATERIALS WITH MR. CROMER?

A YES.

Q WERE YOU ABLE TO MEET WITH HIM MORE THAN JUST ONCE AND DO YOU RECALL HOW OFTEN YOU MET WITH HIM PRIOR TO TRIAL?

A MY REC -- MY THINKIN' IS THAT I MET WITH HIM AT LEAST 3 TIMES BUT I'M NOT SURE.

Q NOW THERE WERE A LOT OF MOTIONS MADE BY YOU AS WELL AS OBJECTIONS DURING THE TRIAL. WE'VE GONE OVER SEVERAL OF THEM HERE. ONE OF THE THINGS IS THE SUPPRESSION OF THE STATEMENT THROUGH JACKSON V. DENNO HEARING INITIALLY. CORRECT?

A YES.

Q AND YOU RENEWED THAT MOTION LATER ON DURING THE TRIAL. CORRECT?

A YES.

Q AND THE GOAL -- WOULD IT BE SAFE TO SAY THAT THE GOAL OF THAT SUPPRESSION WAS TO SUPPRESS EVERYTHING; NOT JUST THE STATEMENT THAT HE WAS THE LOOKOUT, BUT THE WHOLE THING INCLUDING THE STATEMENT THAT HE WAS JUST A LOOKOUT?

A WELL, IT WAS TO SUPPRESS HIS ENTIRE STATEMENT. YES.

Q ALSO THE MOTIONS ABOUT THE PRIOR BURGLARY CHARGES, YOU'VE ALREADY STATED THAT WAS A SITUATION WHERE YOU WERE TRYING TO ARGUE THAT 2 WERE SUFFICIENT IN ADDITION TO THE FACT THAT OTHER AGGRAVATING CIRCUMSTANCES WERE PRESENT AND THAT BURGLARY CHARGES WERE REALLY

NOT NECESSARY FOR THEM TO GET TO BURGLARY FIRST DEGREE. IS THAT CORRECT?

A RIGHT.

Q OKAY. NOW ONE OTHER THING REAL QUICKLY. THERE WAS SOME INFORMATION ELICITED ON DIRECT EXAM HERE ABOUT THE SLED AGENT WHO TESTIFIED THAT IT'S POSSIBLE TO IDENTIFY BOLT CUTTERS BU THAT WAS --- THAT NO EXAM WAS DONE.

A RIGHT.

Q I BELIEVE YOU TESTIFIED THAT YOU DIDN'T GET AN INDEPENDENT EXAM DONE.

A RIGHT.

Q IS THERE SOME CONSIDERATION AS A TRIAL LAWYER FOR HAVING A TEST DONE WHEN THE STATE DOESN'T HAVE ANY TEST DONE? IN OTHER WORDS, EXCUSE ME, LET ME REPHRASE THAT. IS HAVING A TEST DONE FOR IDENTIFICATION OF EVIDENCE KIND OF A DOUBLE EDGE SWORD IN YOUR OPINION?

A YES.

Q IN OTHER WORDS IF YOU HAD THAT TEST DONE AND IT DOES ACTUALLY INCULPATE YOUR CLIENT, THAT'S PROBABLY A BAD THING. CORRECT?

A RIGHT.

Q BECAUSE THAT COULD BE SOMETHING THAT THE SOLICITOR COULD DISCOVER AND PUT FORTH IN TRIAL.

A YEAH, I'M NOT SURE IF YOU HAVE TO GIVE 'EM THINGS THAT YOU DON'T INTEND TO USE IN COURT.

Q RIGHT.

A SO THEORETICALLY YOU MIGHT COULD HIDE IT. BUT SOMETIMES IT MAY OR MAY NOT BE GOOD IN A GIVEN SITUATION. BUT SOMETIMES YOU JUST RELY ON THE FACT THAT THEY DIDN'T DO SOMETHING THAT THEY SHOULD'VE DONE.

Q UH-HUH.

A BUT, YOU KNOW, I DON'T HAVE ANY -- I DON'T KNOW THAT THIS WOULD'VE SHOWED THAT IT WAS THE TOOL THAT WAS USED TO CUT THIS WIRE OR NOT.

Q UH-HUH. IN ADDITION WHEN IT COMES TO THE THEORY OF THE CASE -- THAT WAS ALSO SOMETHING THAT WAS DISCUSSED ON DIRECT EXAM -- INITIALLY YOU STATED ON -- ON YOUR ANSWER TO THAT QUESTION THAT ONE OF THE THEORIES WAS TO PRESERVE THE ERROR OF THAT ILLEGAL SEARCH AND SEIZURE. IS THAT CORRECT?

A THAT'S RIGHT.

Q THAT WAS SOMETHING THAT YOU WERE GOING FOR AS A MAIN ISSUE IN THIS CASE. CORRECT?

A WELL, AGAIN, IN A CASE WHERE YOU HAVE -- YOU DON'T HAVE MUCH TO WORK WITH -- AND THAT IS HOW YOU CAN DESCRIBE THIS CASE, AND YOU HAVE TO TRY IT, THEN I THINK THAT ONE STRATEGY IS TO TRY TO PRESERVE SOME ERROR SO THAT MAYBE HE'LL GET A SECOND CHANCE, AND MAYBE ON THAT SECOND CHANCE THAT THEY'LL MAKE HIM A MUCH BETTER DEAL WHICH HAPPENS.

Q UH-HUH.

A SO REALLY IT WAS TO PRESERVE ANY ISSUE THAT MIGHT'VE BEEN ON SEARCH AND SEIZURE, WHATEVER MIGHT COME UP AT TRIAL.

Q AND ALSO INCLUDED IN THAT, OF COURSE, WOULD BE THE FACT THAT YOU

ALSO WOULD CONSIDER TRYING TO GET THAT OUT AS PART OF YOUR TRIAL STRATEGY—

A RIGHT.

Q —IF YOU COULD GET IT OUT, THERE WOULD BE NO – WOULDN'T BE ANY NEED TO PRESERVE THE ISSUE. CORRECT?

A YES.

Q AND I BELIEVE THAT THE SUPPRESSION OF THE SEARCH WARRANT AND THE EVIDENCE OBTAINED THEREFROM WAS JUST ONE OF THE THINGS THAT YOU WERE TRYING TO SUPPRESS. IS THAT CORRECT?

A RIGHT.

Q ALSO THERE WAS SOME TESTIMONY ABOUT, YOU KNOW, THE IDEA THAT IF HE WAS GUILTY OF ANYTHING IT WAS RECEIVING STOLEN GOODS AND NOT BURGLARY FIRST.

A RIGHT.

Q CORRECT? AND AS HAS ALREADY BEEN DISCUSSED, IS IT YOUR UNDERSTANDING OF THE LAW THAT RECEIVING STOLEN GOODS IS NOT A LESSER INCLUDED OFFENSE OF BURGLARY FIRST DEGREE?

A RIGHT.

Q I BELIEVE ONE OF THE THINGS THAT WAS REFERRED TO WAS SOME OF YOUR STATEMENTS IN CLOSING ARGUMENT PAGE 535 ABOUT THE FACT THAT – AND LET ME JUST READ THIS TO YOU RATHER THAN BRING IT UP TO YOU. YOU HAD TALKED ABOUT THE FACT THAT YOU CAN ONLY BE CHARGED WITH A CRIME ONCE AND TRIED ON – EXCUSE ME – TRIED ON A CHARGE ONCE – AND THEN YOU STATED THERE ARE THINGS LIKE RECEIVING STOLEN GOODS AND SO FORTH THAT COULD HAVE BEEN CHARGED AND STILL COULD BE CHARGED. DO YOU

HAVE ANY INDEPENDENT RECOLLECTION OF THE FACT THAT WHETHER YOU WERE TALKING ABOUT WHEN YOU WERE DISCUSSING THIS WITH THE JURY IN YOUR STATEMENT WHETHER HE COULD STILL BE CHARGED BY THE SOLICITOR'S OFFICE AS FAR AS AN INDICTMENT, ALL THAT KINDA THING, AFTER THIS FOR RECEIVING STOLEN GOODS?

A THAT'S WHAT I MEANT.

Q OKAY. WAS IT YOUR INTENTION OR DO YOU RECALL THIS TO KINDA PUT IN THE JURY'S MIND THAT, YOU KNOW, WHAT HE HAD DONE, THE FACT THAT THERE WAS ENOUGH EVIDENCE TO SHOW THAT HE HAD DONE SOMETHING AND THAT WHAT HE HAD DONE WAS NOT NECESSARILY BEING LET OFF. HE WAS NOT BEING LET OFF SCOTT FREE IF HE WASN'T FOUND GUILTY OF WHAT YOU'RE SAYING HE REALLY DIDN'T DO?

A THAT'S THE IDEA. THAT WAS IT.

MR. BAX: NO FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

THE COURT: REDIRECT?

MR. THOMAS: YOUR HONOR, I JUST HAVE ONE OR TWO ON REDIRECT IF I MIGHT.

<u>REDIRECT EXAMINATION</u>

<u>BY MR. THOMAS</u>

Q MR. CHESSER, YOU SAID THAT – COUNSEL HAD ASKED YOU ON CROSS ABOUT THE INVESTIGATOR, YOU HIRED AN INVESTIGATOR IN THIS CASE?

A RIGHT.

Q AND YOU HAD SAID THAT THAT WAS BOBBY ASBILL?

A YES, SIR.

Q OKAY. HOW LONG HAD MR. ASBILL WORKED FOR YOU?

A HE HAD DONE WORK FOR ME IT SEEMS TO ME FOR 8 OR 10 MONTHS OR A YEAR.

Q OKAY. SO YOU HAD SOME CONFIDENCE IN HIS ABILITY?

A I DID.

Q OKAY. IN SOUTH CAROLINA AS FAR AS INVESTIGATORS, ARE THEY LICENSED?

A THEY'RE SUPPOSED TO BE.

Q THEY ARE? DO YOU KNOW WHETHER OR NOT MR. ASBILL WAS LICENSED?

A WELL, IT CAME TO LIGHT AFTER THAT THAT SLED CALLED ME UP ONE DAY AND SAID HE WASN'T LICENSED, AND I DIDN'T KNOW THAT, AND I HAD USED HIM BECAUSE A LAWYER IN LEXINGTON MICKEY -- I FORGET HIS LAST NAME, BUT HE USED HIM, AND THEN IT TURNED OUT THAT MR. ASBILL HAD NEVER HAD A LICENSE, AND IT WAS, YOU KNOW, HE ENDED UP, YOU KNOW, NOT GOIN' TO JAIL OVER IT, BUT IT WAS SOMETHIN' THAT MADE ME AND A NUMBER OF OTHER LAWYERS UNCOMFORTABLE.

Q DID YOU FIND THAT OUT BEFORE THIS TRIAL OR DURING THE TRIAL OR AFTER THE TRIAL?

A AFTER.

Q AFTER THE TRIAL.

MR. THOMAS: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

MR. BAX: NOTHING FURTHER FROM THE STATE, YOUR HONOR.

THE COURT: THANK YOU, MR. CHESSER. YOU MAY STEP DOWN.

A THANK YOU.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M SORRY FOR THE FACT THAT YOU HAD TO WAIT SO LONG THIS MORNING. WE HAD OUR FIRST

ATTEMPT AT THESE FIRST APPEARANCES WHICH I THINK WILL ULTIMATELY BE A MUCH BETTER SYSTEM.

WE'RE GONNA HAVE TO BREAK FOR LUNCH. THEY HAVE A CASE THAT THEY'RE PLANNING TO TRY NEXT WEEK THAT THEY'VE INDICATED THAT THE DEFENDANT WANTS TO PLEAD GUILTY ON, BUT THEY WANT TO GO AHEAD AND FIND OUT AND GET THE GUILTY PLEA DONE IF, IN FACT, THE DEFENDANT DOES. I DON'T KNOW ANYTHING ABOUT THE CASE OR EVEN WHO IT IS. BUT I TOLD THEM THAT I WOULD DO THE PLEA AT 2 O'CLOCK IF THEY WANTED TO DO IT. SO I'M GONNA ASK YOU ALL TO BE BACK HERE AT 2:15. I CAN'T PROMISE THAT -- WE'RE NOT GONNA SENTENCE THE PERSON. THEY JUST WANT TO QUALIFY IF THE PLEA GOES FORWARD. I ALSO TOLD THEM TO TALK TO JUDGE WESTBROOK IF HE HAD A COURT REPORTER HE COULD DO IT, AND IF THEY COULDN'T DO IT AT 2 WE WOULD DO IT AFTER THIS WAS OVER. I DON'T EVEN KNOW IF THEY'RE GOING TO BE ABLE TO TRANSPORT THE MAN FROM JAIL. JUST BE BACK AT 2:15. I'LL START BACK WITH YOU AS QUICKLY AS I CAN. THANK YOU. (THERE WAS A LUNCH RECESS.)

MR. THOMAS: YOUR HONOR, PLEASE THE COURT? WE CALL MR. PACHAK TO THE STAND.

THE COURT: OKAY. COME AROUND, PLEASE, SIR.

ROBERT PACHAK, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. THOMAS

Q MR. PACHAK, YOU ARE EMPLOYED BY THE APPELLATE DEFENSE?

A YES, I AM.

Q ALL RIGHT, SIR. AND YOU'VE HAD AN OPPORTUNITY TO REPRESENT MR.

JEFFREY CROMER?

A YES, I DID.

Q AND THAT WAS ON AN APPEAL FROM A POST CONVICTION RELIEF?

A NO, THAT WAS DIRECT APPEAL.

Q AN APPEAL FROM HIS TRIAL.

A YES.

Q I APOLOGIZE. WHAT DO YOU DO IN THE PROCESS OF EVALUATING A CASE LIKE THAT AS TO IDENTIFYING THE ISSUES AND PREPARING THAT CASE FOR THE APPEAL?

A WHAT I DO IS WE GET A COPY OF THE TRANSCRIPT AND I SIT DOWN AND READ THE TRANSCRIPT AND TAKE NOTES AS I GO ALONG AND IDENTIFY WHAT POTENTIAL ISSUES I THINK THERE MAY BE THAT MAY HAVE SUCCESS ON AN APPEAL. THERE ARE A LOT OF ISSUES THAT ARE USUALLY PRESENTED DURING THE COURSE OF A TRIAL.

Q YES, SIR.

A IT'S SOMETHING THAT TRIAL ATTORNEYS LIKE TO DO. THEY WANT TO SEE WHAT THEY CAN GET AWAY WITH SOMETIMES AND WHAT THEY CAN'T GET AWAY WITH AND -- ON A DIRECT APPEAL THOUGH I LOOK AT AN ISSUE THAT I THINK IT GONNA BE STRONG ENOUGH, MAYBE HAVE SOME IMPACT ON THE APPEAL.

Q RIGHT. SO WHAT YOU'RE DOING IS LOOKING FOR MERITORIOUS ISSUES.

A YES.

Q ALL RIGHT, SIR. AND DID YOU HAVE THE OPPORTUNITY TO DO THAT WITH MR. CROMER'S TRIAL?

A THERE WAS A JURY ARGUMENT THAT THE SOLICITOR MADE THAT I FELT KINDA WENT OUT -- OUTTA BOUNDS AND THAT WAS THE ISSUE THAT I RAISED—

Q ALL RIGHT, SIR.

A —ON APPEAL.

Q OKAY. THIS IS THE BRIEF THAT YOU PREPARED FOR MR. CROMER?

A YES.

Q ALL RIGHT. AND IN THAT BRIEF YOU RAISED WHICH ISSUE?

A TRIAL COURT ERRED IN OVERRULING DEFENSE COUNSEL'S OBJECTION TO THE SOLICITOR'S CLOSING ARGUMENT WHERE HE URGED THE JURY NOT TO VICTIMIZE THE VICTIM AGAIN.

MR. THOMAS: YOUR HONOR, WE WOULD LIKE TO MOVE THIS IN AS, I GUESS, #3.

MR. BAX: IT'S IN THE PACKET.

THE COURT: JUST GO AHEAD AND MARK IT.

MR. THOMAS: ALL RIGHT, SIR.

THE COURT: I GOT IT. I GOT THE FILED BRIEF. (APPLICANT'S EXHIBIT #3 RECEIVED IN EVIDENCE.)

Q MR. PACHAK, THIS – THIS CASE WAS ACTUALLY DECIDED IN AN UNPUBLISHED OPINION?

A THAT'S CORRECT.

Q ALL RIGHT. IS THIS THE UNPUBLISHED OPINION?

A YES.

MR. THOMAS: YOUR HONOR, WE'D LIKE TO MARK IT AS EVIDENCE APPLICANT'S #4.

THE COURT: OKAY. (APPLICANT'S EXHIBIT #4 RECEIVED IN EVIDENCE.)

Q NO, MR. PACHAK, THE ONLY ISSUE THAT YOU ADDRESSED WITH THE COURT WAS THAT ONE ISSUE ABOUT THE STATEMENT MADE IN CLOSING?

A CORRECT.

Q IN YOUR REVIEW OF MR. CROMER'S FILE, DID YOU SEE ALL THE OTHER MOTIONS THAT WERE MADE BY TRIAL COUNSEL?

A YES.

Q OKAY. AND THE ISSUE OF THE -- OF THE MOTIONS THAT HE MADE IN REGARDS TO THE SEARCH, ILLEGAL SEARCH, SAYING THAT IT WAS WARRANTLESS AND THEY CAME IN THAT THE ISSUE OF THE-- WHETHER CONSENT WAS GIVEN. I THINK IT ALSO INVOLVED A QUESTION OF A 14-YEAR-OLD GIRL, DID YOU REVIEW THOSE ISSUES?

A YES.

Q AND DID YOU -- WHAT DETERMINATION DID YOU MAKE REGARDING THOSE ISSUES?

A I WAS IN AGREEMENT WITH THE TRIAL JUDGE THAT CONSENT WAS GIVEN AND THAT THERE WAS NO ABUSE OF DISCRETION BY THE TRIAL JUDGE IN THAT RULING.

Q OKAY. DID YOU FEEL LIKE THERE WAS ANY MERIT TO THEM AT ALL AS FAR AS GOING UP IN FRONT OF THE COURT FOR A HEARING?

A NO.

Q DID NOT.

A NO.

Q AND HOW ABOUT THE ISSUE, DID YOU SEE THE ISSUE OR CONSIDER THE ISSUE ABOUT -- PARDON ME -- LET ME -- I THINK THERE WAS ALSO, NOT MOVING ON AND STEPPING BACK A LITTLE BIT, THERE WAS ALSO AN ISSUE, A SEARCH ISSUE, ABOUT COERCION, WHETHER OR NOT THE OFFICERS CAME IN AND THERE WAS ANY COERCION THAT WAS INDUCED ON THEM TO GIVE THE CONSENT, DID

YOU CONSIDER THAT ISSUE?

A NO, BECAUSE I THINK THE OFFICER'S TESTIMONY WAS THAT THERE WAS NO COERCION.

Q ALL RIGHT.

A THE TRIAL JUDGE IS FREE TO TAKE THE CREDIBILITY OF EITHER PARTY WHEN---

Q ALL RIGHT.

A ---MAKING HIS DECISION.

Q SO YOU DIDN'T SEE ANY MERIT THEN IN ANY OF THOSE FACTORS IN REGARDS TO---

A NO.

Q OKAY. NOW THE STATEMENT THAT WAS MADE BY MR. CROMER, THERE'S A MOTION MADE BY TRIAL COUNSEL TO SUPPRESS THAT STATEMENT. THE FACTS OF THERE WAS -- I THINK THERE WAS NO ATTORNEY PRESENT. THERE WAS TESTIMONY IN REGARDS TO SOMETHING THEY HAD BEEN OFFERED TO HIM TO INDUCE HIM INTO -- TO GIVING THE STATEMENT, THE OFFER BEING OR THE INDUCEMENT BEING THAT THEY WOULD HELP HIM TO GET OUT OF JAIL OR THEY WOULD HELP HIM TO MAKE BOND. ALSO, I THINK THERE WAS TESTIMONY IN REGARDS TO YOU NEED TO HELP ME WITH SOME MORE INFORMATION ABOUT THE TERM I WAS THE LOOKOUT AND WHAT THE TERM I WAS THE LOOKOUT MEANT. WAS THERE ANYTHING THAT YOU SAW IN THOSE ISSUES FOR APPEAL?

A THAT CREATES AN ISSUE, BUT THE PROBLEM THAT THE POLICE AT THE HEARING, THE SUPPRESSION HEARING SAID THEY DIDN'T OFFER HIM ANY PROMISES AND THAT HE HAD WAIVED HIS RIGHTS.

Q RIGHT. WERE YOU ABLE TO MAKE ANY DETERMINATION IN REGARDS TO --

WHICH I THINK WAS BROUGHT OUT BY TRIAL COUNSEL WAS THE INCONSISTENT STATEMENTS REGARDING DETECTIVE QUIG AND DETECTIVE PRESTIGIACOMO IN THAT ONE OF THE ALLEGED INDUCEMENTS FOR HIM TO MAKE THIS STATEMENT WAS THAT HE WANTED THE NAMES OF THE TWO OTHER GENTLEMEN AND IT WAS CLEAR -- IT WAS BROUGHT OUT IN TRIAL THAT HE HAD ALREADY GIVEN THE OTHER OFFICER INFORMATION THROUGH THE OTHER OFFICER'S STATEMENT WHICH INDICATED THAT HE ALREADY KNEW THOSE NAMES?

A I THINK THAT'S SOMETHING YOU CAN ARGUE TO THE JURY BUT AS FAR AS TRYIN' TO GET ANYWHERE WITH THAT ON A DIRECT APPEAL, I DON'T THINK YOU'D GET ANYWHERE.

Q OKAY. SO YOU DIDN'T REALLY SEE ANYTHING THAT WOULD'VE BEEN MERITORIOUS IN REGARDS TO SUPPRESSING THE STATEMENT.

A NO.

Q HOW ABOUT IN THE ISSUE OF THE REDACTION OF THE STATEMENT? YOU KNOW, THE STATEMENT COMES IN WITH THE REDACTIONS AND THEN LATER ON IN THE TRIAL THERE IS SUPPOSEDLY AN OPENING OF THE DOOR WHICH THE JUDGE AT THAT POINT THEN ALLOWS THE OTHER INFORMATION ON THE STATEMENT COMING IN, BASICALLY, THE INFORMATION THAT I HAD STOLEN TOOLS FROM OTHER PLACES AND -- OUTTA STATE.

A I WAS IN AGREEMENT WITH THE JUDGE THAT THE DOOR HAD BEEN OPENED.

Q OKAY. SO YOU DIDN'T FEEL LIKE THERE WAS ANY MERIT TO THAT.

A NO.

Q HOW ABOUT THE ISSUE OF THE USE OF MORE THAN 3 PRIOR BURGLARIES TO ENHANCE?

A I NOTED THAT ISSUE AND I LOOKED BACK ON MY NOTES AND I'VE GOT HAMILTON AND BENTON WRITTEN DOWN NEXT TO THAT ISSUE WHICH WAS THE CURRENT LAW AT THE TIME. NOW THEY SUBSEQUENTLY HAVE CHANGED THE LAW SINCE THIS TRIAL AND I THINK SINCE I'VE BRIEFED THE ISSUE.

Q RIGHT. DO YOU THINK WHEN THE OTHER DECISION WAS RENDERED IN -- WHAT IS THE NAME OF THE CASE?

A WAS IT SMALLS OR SOMETHIN', JACKSON OR---

Q OKAY. IN THE STATE –VS- JAMES.

A JAMES. OKAY.

Q AND THAT WAS DECIDED IN 2003.

A UH-HUH.

Q DID YOU FEEL LIKE THAT AT SOME POINT IN TIME THE COURT CAME AND MADE A DECISION AND SAID THAT THE USE OF MORE THAN 2 IN SOME CIRCUMSTANCES COULD BE PREJUDICIAL?

A CORRECT?

Q DID YOU FEEL LIKE AT THE TIME THAT YOU COULD'VE USED THIS CASE TO SEND IT TO THE COURT TO MAKE THAT DETERMINATION?

A THE JAMES CASE?

Q NO. MR. CROMER'S CASE.

A AT THAT TIME ALL THE APPELLATE COURTS HAD SAID THAT 2 OR MORE WAS ALL RIGHT.

Q OKAY. BUT AT SOME POINT IN TIME THAT ISSUE DID GO UP TO THE COURT EVEN---

A YES, WHEN THERE IS -- IN FACT, WHEN CERT WAS GRANTED IN SMALLS I HAD A CASE SIMILAR TO THAT WITH MULTIPLE BURGLARIES.

Q RIGHT.

A AND I ASKED THAT THE COURT OF APPEAL HOLD THAT DECISION IN MY CASE IN ABEYANCE UNTIL THEY DECIDE SMALLS.

Q YEAH.

A WELL, THEY JUST WENT AHEAD AND CONFIRMED BY CLIENT'S CONVICTION. SO I WENT TO CERT ON THAT CASE, TO THE SUPREME COURT, AND THEY SAID WELL THERE WAS MULTIPLE CONVICTIONS BUT IN LIGHT OF THE EVIDENCE AGAINST THE ACCUSED THAT THE ERROR WAS HARMLESS.

Q UH-HUH.

A SO THAT'S AS FAR AS I HAD GOTTEN WITH IT. NOW IN THIS CASE WHETHER IT WOULD'VE BEEN REVERSED ON THAT ISSUE, I DON'T KNOW. YOU KNOW, YOU DON'T HAVE -- YOU DON'T HAVE 7. YOU GOT 3. YOU GOT ONE MORE THAT THEY SUBSE -- YOU KNOW, HAVE COME TO HOLD THAT YOU'RE SUPPOSED TO HAVE. SO I'M NOT SURE WHAT THE COURT WOULD'VE DONE.

Q ALL RIGHT. WHAT COMMUNICATION DID YOU HAVE WITH MR. CROMER DURING THE APPELLATE PROCESS? DO YOU REMEMBER?

A THE ONLY THING I WOULD PROBABLY -- I DON'T REMEMBER TALKIN' TO HIM OVER THE PHONE. I WOULD'VE SENT HIM AN INITIAL CONTACT LETTER AND THEN I WOULD'VE SENT HIM A LETTER ALONG WITH A COPY OF THE BRIEF AND THEN WHEN THE DECISION CAME OUT I WOULD'VE SENT HIM A COPY OF THAT.

Q OKAY. WHAT IS YOUR POLICY? DO YOU ACTUALLY DO YOU EVER GO AND SEE THE INMATES?

A WE USED TO A LONG TIME AGO WHEN THE CASE LOAD WASN'T LIKE IT WAS AND THE BUDGETARY RESTRAINTS WEREN'T -- BUT IT'S IMPOSSIBLE TO DO THAT NOW.

Q OKAY. DO YOU REMEMBER WHETHER MR. CROMER WROTE YOU OR SENT YOU ANY MATERIALS THAT HE WANTED INCLUDED IN THE APPEAL?

A YES, HE DID.

Q OKAY. LET ME SHOW YOU THIS. IS THAT THE MATERIAL, SOME OF THE MATERIAL THAT HE SENT TO YOU?

A YES.

Q OKAY. AND HE WAS ASKING YOU TO DO WHAT FOR HIM?

A I ASSUME HE WANTED TO ADD THESE TO MY DIRECT APPEAL.

Q OKAY. WERE THOSE ISSUES ADDED?

A NO.

MR. THOMAS: YOUR HONOR, I'D LIKE TO MARK THESE AS 5.

THE COURT: ANY OBJECTION?

MR. BAX: I DON'T HAVE ANY OBJECTION, YOUR HONOR.

THE COURT: MARK IT. (APPLICANT'S EXHIBIT #5 RECEIVED IN EVIDENCE.)

Q MR. PACHAK, WHAT ISSUES WAS HE ASKING YOU TO INCLUDE IN HIS APPEAL?

A THE FIRST ONE HE ASKED ME TO INCLUDE WAS THE ISSUE I ACTUALLY BRIEFED.

Q RIGHT.

A THE SECOND ONE WAS WHETHER THE COURT ERRED IN ALLOWING HIS REDACTED STATEMENT IN ITS ENTIRETY TO BE ADMITTED.

Q OKAY.

A THE THIRD WAS WHETHER THE COURT ERRED IN OVERRULING DEFENSE COUNSEL'S OBJECTION IN NOT GRANTING A MISTRIAL -- HE'S GOT EXPOSITION OF 41 STOLEN ITEMS BEING TAKEN IN A RESIDENCE. AND THERE WERE ONLY 14 ITEMS

WERE INVOLVED IN THE BURGLARY.

Q UH-HUH.

A AND THE FOURTH ITEM WAS WHETHER THE PROSECUTOR'S CLOSING ARGUMENT TO THE JURY THAT A LOT OF PEOPLE'S PROPERTY WAS IN THAT HOUSEHOLD WAS ERROR.

Q I THINK THERE WAS AN ISSUE – DID YOU SEE THERE WAS AN ISSUE OF A CASE ABOUT WHEN THE POLICE SEIZED ITEMS OUT OF HIS HOME THAT THERE WERE MORE ITEMS THAN MR. BARNHILL WHICH WAS THE SUBJECT OF THIS CASE—

A CORRECT.

Q —HAD CLAIMED THAT WERE GONE.

A CORRECT.

Q SO I GUESS THE CONCERN WAS THAT MENTION TO THEM WOULD TAINT – COULD TAINT THE JURY IN THAT THERE WAS MENTION OF MORE ITEMS THAN THE 14 ITEMS THAT HAD BEEN ALLEGED HAD BEEN TAKEN.

A THE ONLY MENTION WAS THE POLICEMAN SAID HE CATALOGED, I THINK, 41 ITEMS.

Q YEAH.

A AT THAT POINT I THINK THE JURY WENT OUT. THE TRIAL JUDGE SAID WE'RE NOT GOING INTO THAT OR WHAT THESE OTHER ITEMS WERE OR ANYTHING OF THAT NATURE. SO IT PRETTY MUCH STOPPED ANY, TO ME, ANY PREJUDICE THAT MAY HAVE RESULTED FROM THAT.

Q YES. WAS THERE A STATEMENT MADE IN CLOSING ABOUT THERE WAS A LOTTA PEOPLE'S STUFF? DID YOU SEE THAT?

A I – I – APPARENTLY THERE WAS BECAUSE HE'S GOT IT IN HIS FOURTH ISSUE.

Q RIGHT. WOULD THAT HAVE BEEN OF ANY MERIT TO GO UP FOR APPEAL?

A I DON'T KNOW. I DON'T KNOW. WAS THERE AN OBJECTION TO IT?

MR. THOMAS: YOUR HONOR, BEG THE COURT'S INDULGENCE.

THE COURT: YES, SIR.

Q YES, SIR. MR. PACHAK, IT APPEARS THERE WAS AN OBJECTION ON 551. A LOTTA PEOPLE'S PROPERTY WAS IN THAT HOUSEHOLD?

A HE SAYS -- I'M RESPONDING TO SOMETHING MR. CHESSER SAID ABOUT RECEIVING STOLEN GOODS.

Q YES, SIR.

A HE IS CHARGED WITH RECEIVING STOLEN GOODS. SO I THINK THAT'S A FAIR RESPONSE TO WHAT DEFENSE COUNSEL'S ARGUMENT WAS.

Q OKAY. AND THEN MR. CHESSER GOES ON TO OBJECT TO THAT STATEMENT.

A CORRECT.

Q UNDER THOSE CIRCUMSTANCES DO YOU FEEL THAT THAT WOULD HAVE HAD MERIT IF IT HAD BEEN TAKEN UP ON APPEAL?

A I DON'T KNOW. AGAIN, LIKE I -- TO ME IT'S IN RESPONSE TO SOMETHING DEFENSE COUNSEL TRIED TO ARGUE IN HIS CLOSING.

Q YEAH.

A SO THE COURT WOULD PROBABLY SAY THAT'S JUST FAIR RESPONSE.

Q OKAY. IN YOUR OPINION WERE THERE ANY OTHER ISSUES THAT YOU FELT LIKE YOU COULD'VE BRIEFED OR SHOULD'VE BRIEFED ON BEHALF OF MR. CROMER?

A NO, IF THERE WERE, I WOULD'VE TRIED TO STICK 'EM IN THERE.

Q YES, SIR.

MR. THOMAS: YOUR HONOR, IF I COULD BEG THE COURT'S INDULGENCE.

THE COURT: YES, SIR.

Q. MR. PACHAK, IN REGARDS TO THE INDICTMENT IS IT -- IN REGARDS TO THE INDICTMENT THE HANDS OF ONE THE HANDS OF ALL, DOES THAT HAVE TO BE ALLEGED IN THE INDICTMENT?

A NO.

Q SO HE CAN BE ALLEGED AS A PRINCIPAL.

A YES.

Q AND FOUND GUILTY UNDER HANDS OF ONE HANDS OF ALL?

A CORRECT.

Q DOES THERE HAVE TO BE A PRINCIPAL? IN HIS CASE THERE WERE NO OTHER CO-DEFENDANTS UNDER HANDS OF ONE HANDS OF ALL.

A I THINK JUST THE FACT THAT THERE WAS MORE THAN ONE PERSON INVOLVED, YOU CAN GO TO TRIAL JUST AGAINST ONE, YES.

Q RIGHT. SO YOU DON'T HAVE TO HAVE A PRINCIPAL WHO HAS BEEN CONVICTED TO BE CONVICTED OF HANDS OF ONE?

A I'M NOT CERTAIN I UNDERSTAND THE QUESTION.

Q IF YOU'RE -- THE ALLEGATIONS THAT CAN PROVE YOU'RE CONVICTED OF THE HANDS OF ONE THE HANDS OF ALL BUT YOU'RE THEREFORE -- YOU'RE CONVICTED OF THAT AS FAR AS NOT NECESSARILY BEING THE ACTUAL PRINCIPAL INVOLVED IN THE CRIME, DOES THERE HAVE TO BE AN ACTUAL PRINCIPAL?

A I DON'T KNOW. I'D HAVE TO RESEARCH THAT. I'M NOT CERTAIN THAT MR. CROMER WASN'T CONSIDERED A PRINCIPAL HIMSELF.

Q OKAY. ALL RIGHT.

MR. THOMAS: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

THE COURT: THANK YOU. QUESTIONS OF THIS WITNESS?

MR. BAX: YES, YOUR HONOR, BRIEFLY.

THE COURT: YES, SIR.

CROSS-EXAMINATION

BY MR. BAX

Q MR. PACHAK, HOW LONG HAVE YOU WORKED WITH THE OFFICE OF APPELLATE DEFENSE?

A BE 16 YEARS THIS MONTH.

Q AND IT'D BE FAIR TO SAY YOU'VE HANDLED A CONSIDERABLE AMOUNT OF CRIMINAL APPEALS?

A THAT'S CORRECT.

Q MR. PACHAK, ARE YOU FAMILIAR WITH ANY CASE LAW IN THIS STATE CONCERNING THE EFFECT OF ASSISTANCE OF APPELLATE COUNSEL THAT STATES THAT APPELLATE COUNSEL DOES NOT HAVE TO RAISE EVERY MERITORIOUS ISSUE THAT IT FINDS WITHIN A RECORD?

A THERE IS PROBABLY CASE LAW THAT SAYS THAT. I KNOW THERE'S A U.S. SUPREME COURT CASE JONES –VS- BARNES WHICH SAYS THAT IN EFFECT AND I THINK THAT'S PROBABLY BEEN QUOTED BY OUR STATE SUPREME COURT.

Q HAVE YOU FOUND YOUR EXPERIENCES AS AN APPELLATE LAWYER THAT IT IS ALWAYS WISE TO RAISE EVERY MERITORIOUS ISSUE OR EVERY ISSUE THAT COULD BE RAISED IN AN APPEAL?

A I THINK IT'S BETTER TO RAISE THE STRONGEST ISSUES YOU THINK YOU HAVE. I THINK YOU DILUTE YOUR APPEAL AND YOU DILUTE THE STRENGTH OF YOUR STRONG ISSUES IF YOU RAISE EVERY CONCEIVABLE ISSUE THAT WAS RAISED AT TRIAL.

Q SO IT WOULD BE YOUR OPINION THAT YOU WANT TO FOCUS ON THE

THINGS THAT YOU FEEL HAVE THE BEST CHANCE OF SUCCESS?

A CORRECT.

Q IS THAT WHAT YOU FEEL THAT YOU DID IN THIS CASE?

A YES.

Q AND YOU DID HAVE A CHANCE TO GO OVER THE FULL RECORD BEFORE MAKING A DECISION AS TO WHAT ISSUE—

A YES.

Q —YOU WERE GOING TO RAISE.

A I'VE GOT 8 PAGES OF NOTES I'VE TAKEN FROM THE TRANSCRIPT.

MR. BAX: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ANYTHING FURTHER OF THE WITNESS?

MR. THOMAS: NOTHIN' FURTHER, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH, SIR. YOU MAY STEP DOWN. Y'ALL NEED HIM TO STAY?

MR. BAX: I'D ASK THAT HE BE EXCUSED, YOUR HONOR.

THE COURT: THANK YOU, SIR. I'M SORRY FOR ALL THE SCHEDULING SNAFUS. WE'RE TRYING TO FEEL OUR WAY AROUND HERE. HOW MANY ADDITIONAL WITNESSES DO YOU HAVE?

MR. THOMAS: YOUR HONOR, WE JUST HAVE ONE MORE. IT WILL BE MR. CROMER.

THE COURT: LET'S TAKE A BRIEF SHORT BREAK, 5 MINUTES AND THEN WE'LL GET STARTED. OKAY?

MR. THOMAS: THANK YOU, SIR.

THE COURT: THANK YOU. (THERE WAS A BRIEF RECESS.) OKAY. CALL YOUR NEXT WITNESS.

MR. THOMAS: YOUR HONOR, IF IT PLEASE THE COURT, WE CALL MR. JEFFREY CROMER TO THE STAND.

JEFFREY DURRELL CROMER, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION

BY MR. THOMAS

Q MR. CROMER, YOU'RE CURRENTLY INCARCERATED AT THE DEPARTMENT OF CORRECTIONS?

A YES.

Q AND WHERE ARE YOU BEING HOUSED?

A AT LEIBER CORRECTION INSTITUTION.

Q ALL RIGHT, SIR. AND YOU ARE SERVING A SENTENCE FOR BURGLARY FIRST?

A YES.

Q AND HOW MANY YEARS HAVE YOU SERVED?

A EXCUSE ME?

Q HOW MANY -- WHAT WAS YOUR SENTENCE?

A 25 YEARS.

Q ALL RIGHT. AND YOU'VE SERVED HOW MUCH TIME, MR. CROMER?

A GOIN' ON 5 YEARS.

Q ALL RIGHT. AND WHAT'S YOUR MAX-OUT DATE?

A 7-21-21.

Q 2021?

A YES.

Q ALL RIGHT, SIR. ARE YOU ELIGIBLE FOR PAROLE?

A NO, SIR.

Q YOU ARE 85 PERCENT?

A YES.

Q ALL RIGHT, SIR. MR. CROMER, YOU WERE REPRESENTED BY MR. CHESSER?

A YES.

Q AND THIS CASE WENT TO TRIAL?

A YES, IT DID.

Q AND YOU FEEL LIKE THAT YOU WERE GIVEN INEFFECTIVE ASSISTANCE OF COUNSEL?

A YES.

Q AND YOU ALSO FEEL LIKE THERE WERE CERTAIN ISSUES THAT YOU HAD WANTED TO BE RAISED FROM APPEAL WHICH YOU FEEL HAD MERIT THAT WERE NOT?

A YES.

Q OKAY. AND SO YOU'RE ALSO SAYING THAT YOUR APPELLATE COUNSEL WAS INEFFECTIVE. IS THAT RIGHT?

A YES, I AM.

Q MR. CHESSER (SIC), THIS IS OF COURSE YOUR DAY IN COURT. OKAY? WHAT, IF ANYTHING – AND I GUESS THESE ISSUES KIND OF OVERLAP AND BLEND INTO EACH OTHER. SO WE'LL JUST TAKE THEM IN THE SAME PROCEDURE THAT WE'VE TAKEN EVERYTHING ELSE IN IN REGARDS TO INEFFECTIVE ASSISTANCE OF BOTH COUNSELS. THERE WERE A NUMBER OF MOTIONS THAT WERE FILED IN YOUR CASE?

A YES, THERE WAS.

Q OKAY. AND ONE OF THE KEY ISSUES THAT YOU FEEL IN YOUR CASE WAS

THE ISSUE OF ILLEGAL SEARCH.

A YES.

Q AND ILLEGAL ARREST.

A YES. WHICH—

Q WHY—

A —WASN'T LITIGATED. THE ILLEGAL ARREST WASN'T LITIGATED TO THE COURT.

Q WHY DO YOU FEEL THAT THAT ISSUE WAS NOT PROPERLY LITIGATED?

A HE – MICHAEL CHESSER THAT IS HE – HE PRESERVED THE ISSUE FOR APPEAL; HOWEVER, HE DIDN'T LITIGATE THE CLAIM FOR ILLEGAL ARREST. IT'S IN THE TRANSCRIPTS. HE – WELL, MICHAEL CHESSER HIS – HIS MOTION WAS SEARCH AND SEIZURE UNDER PATTEN –VS- NEW YORK WHEN THE RIGHT OF PRIVACY MUST REASONABLY YIELD TO A RIGHT A SEARCH SHOULD BE DECIDED BY A JUDICIAL OFFICER, NOT BY A POLICEMAN AND NO GOVERNMENT AGENT.

Q AND THAT – YOU'RE SAYING THAT IT'S BASED UPON HOW THE ARREST – HOW THE ARREST TOOK PLACE.

A NO, I'M BASIN' IT UPON MICHAEL CHESSER'S MOTION. HIS MOTION WAS A PATTEN –VS- NEW YORK. HE ASKED FOR A PATTEN –VS- NEW YORK HEARING AND, AGAIN, I WILL STATE WHICH IS THE WHEN THE RIGHT OF PRIVACY MUST REASONABLY YIELD TO THE RIGHT OF SEARCH SHOULD BE DECIDED BY A JUDICIAL OFFICER; NOT BY A POLICEMAN OR GOVERNMENT AGENT. YOU SEE, MICHAEL CHESSER'S BASIC THEORY FOR – FOR THE SUPPRESSION WAS THAT THE OFFICERS SHOULD'VE GOTTEN A WARRANT WITH AMPLE TIME TO GET ONE, AND BUT THE JUDGE WHAT HE DID, HONORABLE J.C. NICHOLS (SIC) HE SET THAT ISSUE ASIDE UNDER CONSIDERATION, AND HE NEVER DID RULE ON THAT ISSUE. SO, IN

TURN, THE APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO APPEAL THE JUDGE'S DECISION NOT TO RULE ON THE ISSUE OF THE OFFICERS HAVIN' AMPLE TIME TO RECEIVE A WARRANT BUT NOT GETTING ONE.

Q WHICH FOUND WHAT THEN?

A EXCUSE ME?

Q WHICH FOUND WHAT? WHAT WAS THE BASIS FOR THIS? WHAT ARE YOU SAYIN' THAT THE -- THAT THE COURT SHOULD HAVE OR DIDN'T ALLOW?

A WELL, WHAT THE COURT DID WAS IT -- WELL, FIRST OF ALL, MICHAEL CHESSER'S -- MICHAEL CHESSER'S ARGUMENT, JUST LIKE I SAID, HIS BASIC THEORY WAS THAT THEY SHOULD'VE GOTTEN A WARRANT. THAT'S LOCATED IN TRIP -- TRANSCRIPT PAGE 122 3 THROUGH 6. HIS OTHER THEORY WAS THAT CYNTHIA W. [redacted] THEN 14 YEARS OLD, SHE COULDN'T GIVE CONSENT FOR THE OFFICERS TO COME IN WITHOUT THE OFFICERS FIRST NOT KNOCKIN' AND ANNOUNCIN' THEIR IDENTITY. AND THAT WAS HIS OTHER ARGUMENT. AND -- AND -- AND THAT, AGAIN, THEY DIDN'T HAVE A SEARCH WARRANT, NOR ARREST WARRANT, NOR EXIGENT CIRCUMSTANCES NOR -- NOR NOT WARRANT TO ENTER INSIDE OF THE -- THE PREMISES. SEE -- SEE, WHAT – WHAT HIS HONOR DID WAS TAKE ALL OF THOSE ISSUES AND – AND -- AND HE PUT 'EM UNDER HIS CONSIDERATION, AND HE NARROWED THIS WHOLE SUPPRESSION HEARING DOWN AS TO THE CONSENT. WHO INVITED THESE OFFICERS INSIDE OF THE HOUSE.

Q WHO DID INVITE THESE OFFICERS INSIDE OF THE HOUSE?

A FROM -- FROM THE – FROM THE DEFENSE STANDPOINT, NO ONE INVITED NEITHER ONE OF THE OFFICERS INSIDE OF THE HOUSE.

Q OKAY.

A NOW AS FOR THE OFFICERS, FROM THE OFFICERS' STANDPOINT, WE HAVE

THE ARRESTIN' OFFICER DETECTIVE QUIG HE -- HE WRITES THIS -- THIS STATEMENT TO A DETECTIVE PRESTIGIACOMO WHICH HE -- WHICH HE SAYS IN THE STATEMENT THAT I INVITED HIM INTO THE HOUSE.

THE COURT: YOU NEED TO TALK THAT WAY.

A WHICH HE STATED -- PARDON ME, YOUR HONOR.

THE COURT: THE MICROPHONE ARE ALL SET UP THAT WAY. IF YOU TURN AND TALK TO ME YOU'RE MESSIN' UP HER---

A SORRY, MA'AM. JUST LIKE I WAS SAYIN' , MICHAEL CHESSER'S BASIC THEORY WAS -- WAS THAT THE OFFICER SHOULD'VE GOTTEN A WARRANT AND THAT THEY COULDN'T JUST COME INSIDE OF A PERSON'S HOUSE WITHOUT FIRST KNOCKIN' AND ANNOUNCIN' THEIR IDENTITY. AND WHAT HIS HONOR DID WAS HE -- HE -- WHAT HE DID HE NARROWED THIS THING DOWN AS TO THE CONSENT. WHO INVITED THESE OFFICERS INSIDE OF THE HOUSE. NOW DETECTIVE QUIG HE GETS ON THE STAND, THE ARRESTIN' OFFICER, AND HE STATES THAT -- THAT ONCE HE KNOCK ON THE DOOR, CYNTHIA WATLINGTON WHICH IS 14 YEARS OLD, BEIN' A MINOR CHILD, SHE -- SHE UNDOUBTEDLY SAID COME IN. HOWEVER, WHEN HE WROTE DOWN HIS REPORT, HE STATED THAT I INVITED HIM INSIDE OF THE HOUSE WHICH IN TURN THAT'S WHY I SAY THAT MICHAEL CHESSER WAS INEFFECTIVE FOR FAILING TO -- TO SUBPOENA DETECTIVE PRESTIGIACOMO TO THE STAND TO SHOW HIS HONOR THIS INCONSISTENT STATEMENT THAT THIS ARRESTIN' OFFICER MADE BECAUSE JUST LIKE I SAID, AS WE TURN—

Q WAS -- WAS DETECTIVE PRESTIGIACOMO DID HE COME TO THE -- TO THE HEARING?

A NO, HE DID NOT.

Q ALL RIGHT.

A MICHAEL CHESSER NEVER CALLED HIM. AND THAT'S ANOTHER THING I WOULD LIKE THE COURT TO NOTE THAT THIS – THIS – THAT THIS STATEMENT, THIS DETECTIVE WAS – WAS KNOWN TO MICHAEL CHESSER. THIS IS THE SAME STATEMENT, THE SAME DETECTIVE THAT MICHAEL CHESSER USED IN THE JACKSON –VS- DENNO HEARING.

Q WAS HE GIVEN AN OPPORTUNITY TO SUBPOENA THE DETECTIVE?

A YES. AND EVEN THE SOLICITOR SAID HE WOULD HELP HIM OUT.

Q NOW I DRAW YOUR ATTENTION TO PAGE 354 OF THE TRANSCRIPT, JEFFREY.

A UH-HUH.

Q AND BEGINNING ON LINE 19, WHAT DID THE COURT ASK AT THAT POINT?

A YOU SAY PAGE 354?

Q 354. BEGINNING ON PAGE – ACTUALLY BEGINNING ON PAGE 20 OR LINE 20. I'M SORRY.

A OKAY. 354. LINE 20. YOU CAN GIVE IT SOME THOUGHT IF YOU WANNA SUBPOENA THIS OTHER DETECTIVE. AND MR. CHESSER SAID I WOULD THINK SO YOUR HONOR. I WILL CONTACT MY INVESTIGATOR AND PRESTIGIACOMO.

Q AND THEN ON 355 ON LINE 2.

A SOLICITOR CAN YOU GIVE HIM SOME ASSISTANCE IN GETTIN' THIS OFFICER HERE.

Q AND HIS RESPONSE WAS?

A THE SOLICITOR GAVE AFFIRMATIVE RESPONSE.

Q OKAY. NOW WHY DID YOU FEEL, JEFFREY, THAT IT WOULD'VE BEEN IMPORTANT TO HAVE PRESTIGIACOMO THERE?

A WELL, LIKE I SAY, AGAIN, MR. THOMAS, THIS – THIS SUPPRESSION HEARIN' THIS PATTEN –VS- NEW YORK HEARIN' WAS NARROWED DOWN TO THE CONSENT.

WHO INVITED THESE -- THESE OFFICERS INSIDE OF THE HOUSE. NOW DETECTIVE PRESTIGIACOMO HE -- HE WRITES THE STATEMENT FROM DETECTIVE QUIG.

Q RIGHT. BUT WASN'T HIS STATEMENT -- HIS STATEMENT WAS INTRODUCED, WASN'T IT? PRESTIGIACOMO'S STATEMENT WAS MADE AS A COURT'S EXHIBIT. RIGHT?

A YES, IT WAS, BUT NOT ON THAT PARTICULAR ISSUE. DETECTIVE PRESTIGIACOMO'S STATEMENT WAS -- WAS WRITTEN IN ON A -- WAS GIVEN IN ON A WHOLE TOTALLY DIFFERENT ISSUE. THIS ISSUE WAS AT THE TOP PAGE WHICH I WOULD LIKE FOR THE -- TO MAKE A COURT'S EXHIBIT.

MR. THOMAS: YOUR HONOR, I THINK WE HAVE A COPY OF IT IF THE COURT WISHES. I THINK IT'S ALREADY IN -- IN THE RECORD, THAT IT WAS INTRODUCED IN THE ORIGINAL HEARING. YOUR HONOR, IF IT PLEASE THE COURT I CAN MARK THIS AS 6. YOUR HONOR, THAT'S THE ONLY COPY THAT WE HAVE OTHER THAN THE ONE THAT'S IN THE COURT'S FILE. THERE ARE LINES ON THAT COPY BUT THOSE ARE FROM MR. CROMER. THOSE ARE NOT PART OF THE ORIGINAL EXHIBIT.

(APPLICANT'S EXHIBIT #6 RECEIVED IN EVIDENCE.)

Q MR. CROMER, NOW WHAT WERE YOU SAYING THAT YOU FELT LIKE MR. PRESTIGIACOMO OR DETECTIVE SHOULD'VE BEEN THERE?

A YES, SIR. THERE'S A HIGH PROBABILITY IF IT WASN'T FOR TRIAL COUNSEL'S INEFFECTIVENESS NOT -- NOT SUBPOENAING THIS DETECTIVE TO THE STAND TO TESTIFY ON THE INCONSISTENT STATEMENT OF DETECTIVE QUIG THAT THE MOTION TO SUPPRESS THE EVIDENCE WOULD HAVE BEEN GRANTED. AS WE CAN SEE ON TRIP (PHONETIC) PAGE 129 IN VOLUME ONE OF TWO, THE COURT DENIED THE MO -- THE MOTION TO SUPPRESS THE EVIDENCE BASED ON CYNTHIA W. [redacted] MEMORY, WHEREAS, SHE DID NOT REMEMBER OFFICER SHULER

IN UNIFORM. NOW – NOW WE HAVE THIS SITUATION WHERE THIS DETECTIVE, THIS ARRESTIN' OFFICER DETECTIVE QUIG DID NOT REMEMBER WHO INVITED HIM INSIDE OF THE HOUSE. HAVING – HAVING THE SUPPRESSION HEARING BASED ON THE MEMORY OF CYNTHIA WATLINGTON WITH – WITH THE OFFICER'S UNIFORM VERSUS THE OFFICER'S MEMORY OF WHO INVITED HIM INSIDE OF THE HOUSE, I THINK THAT IF MR. CHESSER WOULD HAVE GAVE – GIVEN ME ADEQUATE LEGAL REPRESENTATION AND SUBPOENAED DETECTIVE PRESTIGIACOMO THE – THE SUPPRESSION HEARING WOULD'VE BEEN GRANTED.

Q HOW ABOUT THE ISSUE OF – I MEAN HOW DID THE POLICE GET INTO YOUR HOUSE TO BEGIN WITH?

A WHAT – WHAT HAD HAPPENED IS THIS GUY NAMED RICHARD LEE DOWELL THE SAME GUY WHO SOLD ME THESE TOOLS, HE CALLED – HE CALLED THE DETECTIVE AND HE SAID I KNOW OF SOME STOLEN TOOLS. AND SO THIS DETECTIVE, DETECTIVE QUIG HE LEAVES HIS HOUSE AND COMES TO THE SHELL GAS STATION WHERE HE CAN RIGHTFULLY SEE SOME TOOLS CORROBORATING IN PART WHAT RICK DOWELL IS TELLIN' HIM, AND THEN HE CALLS THIS OFFICER FOR – FOR – THIS BACK UP OFFICER FOR HIS OWN SAFETY. AND THEN HE COMES AROUND MY APARTMENT AND THEY ALLEGEDLY LOOKS INSIDE OF – OF MY CAR. AFTER LOOKIN' INSIDE OF MY CAR THEY ALLEGEDLY SEE SOME – SOME OTHER THINGS IN MY CAR ; THEN HE COMES UP TO MY DOOR AND HE KNOCK ON THE DOOR AND ALLEGEDLY HEAR THIS LITTLE GIRL SAY COME IN, BUT THE DEFENSE STANDPOINT THEY KNOCK ON THE DOOR AND THIS – THIS LITTLE GIRL SHE OPENS UP THE DOOR AND THEY SAY WELL IS J.C. HOME, AND SHE WAS LIKE HE'S OVER THERE AND SHE LEAVES, BUT BEFORE I CAN SECURE MY THRESHOLD THEY JUST COME INSIDE OF THE HOUSE AND THE OFFICER STARTS WALKIN' DOWN THE

HALLWAY AND I JUMP UP AND I RUN BEHIND HIM OH OH YOU CAN'T GO BACK THERE MY CHILDREN ARE BACK THERE ASLEEP. AND THE DETECTIVE WAS AT THE ENTRANCE OF THE HALLWAY. HE STATES WELL WE JUST GONNA LOOK AROUND. AND I TOLD THE OFFICER – THAT WAS IN MY HALLWAY – IF Y'ALL GOTTA LOOK AROUND, LOOK AROUND OUT THERE, AND THE STATE OFFERED THAT AS CONSENT, AND I OFFER IT AS CONSENT UNDER DURRESS. BUT FURTHERMORE, WE GO TO THE BACK WHERE THESE TOOLS WERE AND DETECTIVE QUIG ASKED ME WHERE I GET THESE TOOLS AND I STATE TO HIM I GOT THIS STUFF. YOU KNOW.

Q HOW ABOUT – AND WHILE WE'RE TALKIN' ABOUT PRESTIGIACOMO HE COMES – HE COMES INTO PLAY IN THIS CASE AGAIN AT A LATER POINT IN REGARDS TO YOUR STATEMENT. IS THAT CORRECT?.

A WELL, WELL, WHEN WE GET TO THAT STATEMENT – I UNDERSTAND AND I'M FOLLOWING YOU, MR. THOMAS. WHEN WE GET TO THAT STATEMENT, YOU SEE, I DON'T KNOW WHAT TO CALL THIS – THIS STATEMENT THING BECAUSE OF THE FACT THAT, YES, I WROTE THIS THING WITH MY OWN – OWN HANDWRITING AND – AND I WAS JUST PUTTIN' UNDER THE IMPRESSION THAT I WAS SUPPOSED TO BE A WITNESS TO THIS THING. YOU KNOW, I – I AM CLASSIFIED AS A VIOLENT OFFENDER RIGHT NOW. ON THE CONTRARY, NOT BEIN' A VIOLENT INDIVIDUAL I TRIED TO PLAY POLICE WITH THE POLICE AND – AND BECOME A WITNESS TO THIS CRIME, MR. THOMAS, AND – AND AFTER GETTIN' OUTTA THIS – THIS SITUATION, THIS PREDICAMENT, DETECTIVE QUIG CALLS ON ME TO FURTHER PLAY POLICE, YOU KNOW.

Q QUIG ASKED YOU, POINTED YOU TO GIVE HIM THE NAMES OF WHO ELSE WAS INVOLVED IN THIS. IS THAT CORRECT?

A WELL, WELL, SEE, AND THAT'S WHAT WE SPEAKIN' OF. NO, NO, THAT'S

NOT CORRECT. THAT'S NOT CORRECT. THAT'S CORRECT. SEE, BECAUSE THIS WHOLE THING – I CAN RANT AND RAVE. I CAN – IT'S JUST—

Q I WANT YOU TO KEEP IT CONCISE FOR THE COURT. I WANT YOU TO KEEP IT CONCISE NOW.

A OKAY. WHAT THIS SITUATION, SEE, I WAS PUT UNDER THE IMPRESSION JUST LIKE I SAY, THAT I WAS SUPPOSED TO HAVE THIS REVENGE LIKE TYPE THING ON RICK DOWELL. NOW I TOLD DETECTIVE QUIG, I TOLD DETECTIVE QUIG THAT THE CIRCUMSTANCES THAT HAPPENED AT MY RESIDENCE I TOLD HIM EXACTLY WHAT HAPPENED. IF YOU CAN—

Q OKAY.

A PARDON ME A LITTLE BIT.

Q RIGHT.

A I GOT SO MUCH STUFF UP HERE. SEE, AND JUST LIKE I SAID – CAN YOU ASK ME THE QUESTION AGAIN.

Q ALL RIGHT. IS IT – IS IT YOUR ALLEGATION IN REGARDS TO – TO THE OFFENSE OF ASSISTANCE OF COUNSEL—

A YES.

Q —THAT YOUR STATEMENT WAS NOT VOLUNTARILY GIVEN BECAUSE YOU WERE MADE CERTAIN PROMISES AND YOU WERE LED TO BELIEVE CERTAIN THINGS ESPECIALLY IN THAT YOU WERE COOPERATING IN GIVING THEM THE NAMES OF THE OTHER WITNESSES, THAT THEY WERE GONNA HELP YOU GET OUT.

A YES. YES.

Q OKAY. AND WE WERE TALKIN' ABOUT DETECTIVE PRESTIGIACOMO, DIDN'T HE – HE IN HIS REPORT INDICATE THAT QUIG KNEW AT THE TIME THAT HE COMES TO YOUR HOUSE ABOUT THE OTHER 2 INDIVIDUALS. IS THAT CORRECT?

A YES.

Q OKAY.

A YES.

Q SO THAT – THAT'S THE DETECTIVE'S PLAY IN YOUR CASE. THAT'S HOW HIS INVOLVEMENT IS HERE.

A YES.

Q ISN'T THAT WHY YOU FELT LIKE HE SHOULD'VE BEEN SUBPOENAED FOR THE HEARING?

A YES. YES.

Q OKAY.

A YES.

Q NOW I KNOW YOU'RE SAYING THAT YOU FEEL LIKE THE SEARCH WAS ILLEGAL AND THE ARREST WAS ILLEGAL. IF WE MOVE ON TO THE STATEMENT, WHY DO YOU FEEL LIKE THAT YOU RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL OR INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL IN REGARDS TO THE ISSUE OF THE STATEMENT BEING GIVEN?

A WELL, SEE, THAT'S – THAT'S WHERE I GET -- THAT'S -- THAT RIGHT THERE IS WHERE I GET A LITTLE CAUGHT UP BECAUSE OF THE FACT THAT DETECTIVE QUIG STATES THAT HE -- HE SEES ME DO THIS AND THEN WE LEAVE. AND SEE IT WASN'T NEVER NO VIDEO SURVEILLANCE OF THIS THING, ESPECIALLY AFTER READIN' MIRANDA. IT WAS -- IT WAS NEVER NO VIDEO SURVEILLANCE AND NEVER TAPE RECORDED. SO WITH THE STATEMENT SITUATION, IF IT'S GONNA BE COUNTED AS BEING A TRUE, THEN I WOULD LIKE TO HAVE A NEW TRIAL JUST -- JUST ON THAT STATEMENT ALONE.

Q WELL, LET ME ASK YOU ABOUT THE ISSUE ABOUT THE LOOKOUT.

A YES.

Q WHAT HAPPENED IN REGARDS TO YOU INSERTING INTO YOUR STATEMENT THE INFORMATION ABOUT I WAS THE LOOKOUT? WHAT DOES THAT MEAN?

A THAT WAS – THAT WAS ON ME. THAT WAS ON ME. I – I ASKED DETECTIVE QUIG, I SAID QUIG WHERE'D THOSE TOOLS COME FROM YOU KNOW. HE TOLD ME FROM THE GARAGE. AND THEN HE WAS LIKE WELL WHAT IF SOMEBODY WOULDA START HARMIN' THESE GUYS WOULD YOU HAVE LOOKED OUT FOR 'EM. I WAS LIKE YEAH I COULD JUST PUT DOWN THAT I WAS THE LOOKOUT GUY. SEE, AND I DON'T KNOW HOW TO FORMULATE THIS THING BECAUSE WHAT I WAS DOIN' I WAS ACTING AS – AS A – A TYPE OF INFORMANT LIKE TYPE FOR HIM BECAUSE RICK DOWELL THE SAME GUY WHO SOLD ME THESE TOOLS HAD SENT QUIG AT ME BECAUSE I – ME AND HIM GOT INTO A ALTERCATION THE NIGHT BEFORE. AND JUST LIKE I SAID, IT WAS LIKE A VENGEANCE TYPE THING ON HIM.

Q NOW DID YOU GIVE ALL THIS INFORMATION TO MR. CHESSER?

A YES. YES.

Q OKAY.

A AND ALSO BOBBY ASBILL.

Q OKAY. AND BOBBY ASBILL WAS THE PRIVATE INVESTIGATOR.

A MERELY, YES.

Q OKAY. ALL RIGHT. WHAT, IF ANYTHING, DID MR. CHESSER DO WITH THIS INFORMATION THAT YOU GAVE HIM?

A WELL, I KNOW WHAT HE DIDN'T DO. I KNOW THAT HE DIDN'T GO OUT AND – AND INVESTIGATE RICK DOWELL. I KNOW THAT HE DIDN'T GO AND INVESTIGATE CECIL BYRD, YOU KNOW. IT TOOK LEE TOMLINS TO DO THAT.

Q WERE THEY CHARGED?

A NO. NONE OF 'EM WAS NEVER CHARGED. JUST LIKE THE SOLICITOR STATED HE CAN'T CHARGE THEM BECAUSE IT COMES FROM ONLY – ONLY – HE SAYS WE DON'T BECAUSE THERE IS NO EVIDENCE OTHER THAN FROM THE MOUTH OF JEFFREY CROMER. LADIES AND GENTLEMEN I'M NOT GONNA PUT A WITNESS UP THERE WITH THE CREDIBILITY OF JEFFREY CROMER TO POINT THE FINGER AT 3 PEOPLE WITH NO OTHER EVIDENCE ABOUT THEM. THAT'S TRIP PAGE 557 WITHOUT OBJECTION.

Q UH-HUH.

A IF THAT STATEMENT CAN – CAN COVER ALL THE GROUNDS AND EVERY ELEMENT OF FIRST DEGREE BURGLARY AGAINST ME, HE'S SAYIN' THAT HE CAN'T COVER IT AGAINST NO ONE ELSE. YOU KNOW, IT'S THAT STATEMENT THING.

Q WAS YOUR STATEMENT FREELY AND VOLUNTARILY GIVEN?

A NO, IT WAS NOT. AND THEN AGAIN I DON'T WANT TO SAY FREELY AND VOLUNTARILY GIVEN. I DON'T WANT TO USE THAT TERM ON THAT. BUT I WANT TO BE HONEST BECAUSE OF THE FACT THAT WHAT IT WAS IS THAT I WAS SUPPOSED TO IN MY MIND AND THE WAY DETECTIVE QUIG HAD ME THINKIN' IS THAT I WAS GOIN' TO BE HIS – HIS TYPE OF INFORMANT LIKE TYPE. SO, YES, IN A SENSE IT WASN'T FREELY AS TO SAYING THAT HEY I COMMITTED THIS BURGLARY. I WILL SAY IT LIKE THAT.

Q UH-HUH.

A I SHOULDN'T HAVE ANYTHING TO DO WITH THIS BURGLARY. I DIDN'T THINK THAT I WAS GONNA HAVE ANYTHING TO DO WITH THIS BURGLARY DUE TO THE STATEMENT AND MICHAEL CHESSER'S RECOLLECTION OF THE DEFENSE WAS A LITTLE FAINT WHEN HE SAID THAT I WROTE THAT I WAS THE LOOKOUT GUY TO GET LESSER TIME. THERE'S NOWHERE IN THIS TRANSCRIPT OR NOWHERE EVER

ALLEGED OF THAT. THAT STATEMENT AT THE BARNHILL HOUSE WASN'T A CONFESSION. YOU KNOW, WHAT IT WAS IT WAS REALLY A FANTASY, YOU KNOW, AND I MAINTAIN MY INNOCENCE ON THAT.

Q NOW ALL THESE MOTIONS WERE ARGUED IN FRONT OF THE COURT. THEY WERE ACTUALLY ARGUED A NUMBER OF TIMES, WEREN'T THEY?

A ALL WHAT MOTIONS?

Q THE MOTIONS IN REGARDS TO THE ILLEGAL SEARCH AND JACKSON V. DENNO.

A YES, THE ILLEGAL SEARCH AND SEIZURE WAS – WAS A MOTION. THE JACKSON –VS- DENNO WAS A MOTION. HOWEVER, THE ILLEGAL SEARCH AND – SEARCH AND SEIZURE FROM OUT OF MY VEHICLE WASN'T NEVER MOTIONED, WHEREAS, I SUBMIT RIGHT NOW TO THE COURT AND THEN IF I WOULD HAVE TALKED ABOUT IT IN COURT THOSE BOLT CUTTERS WERE IN MY CAR. YOU SEE, THEY WERE SEARCHIN' MY CAR WHILE I WAS THERE. JAMES HICKMAN WASN'T THERE TAKIN' ANY PICTURES THERE. THOSE BOLT CUTTERS WAS IN MY BACK PATIO IN THE GARAGE.

Q SO THEY WERE NOT IN PLAIN VIEW.

A NO, THEY WAS NOT IN PLAIN – NO BOLT CUTTERS IN PLAIN VIEW.

Q OKAY.

A AND AS WE SPEAK ABOUT PLAIN VIEW, I WANNA TOUCH BASES ON THIS AGAIN, TOMMY, AND I'M GONNA PRETTY MUCH SHUT UP AND TRY MY BEST TO FIGHT IT BUT I JUST HAVE TO TOUCH BASES JUST—

Q OKAY. KEEP IT AS—

A —FOR THE PURPOSES—

Q —CLOSE AS YOU CAN.

A I'M A LITTLE JITTERY. BUT—

Q OKAY.

A —YOU KNOW, JUST FOR THIS RIGHT HERE DETECTIVE QUIG, HE – HE GETS THIS PHONE CALL FROM RICK; HE COMES TO MY RESIDENCE. OKAY. SEEIN' THESE TOOLS THAT RICK SAYS –. SAYS THAT ARE STOLEN, HE COMES AND HE – HE THINKS THAT HE DOES NOT HAVE ANY PROOF THAT THESE TOOLS WERE ACTUALLY STOLEN, SO WHAT HE DID WAS TAKE THESE TOOLS, ARREST ME FOR A MISDEMEANOR WITHOUT A WARRANT AND – AND – AND THEN GOES TO – TO HIS OFFICE OR WHATEVER – WELL, WHAT HE SAID UNTIL HE WAS ABLE TO COLLATE (PHONETIC) AGAINST THE COMPUTER AND THE THINGS HE DID IN RETROSPECT IS WHEN HE FOUND OUT THAT THE TOOLS WERE ACTUALLY STOLEN. YOU KNOW, SO WHAT HE DID WAS ARREST ME BY – ON COMMON RUMOR OR REPORT AND WITHOUT – WITHOUT POSITIVE KNOWLEDGE.

Q OKAY.

A THAT THE TOOLS WERE ACTUALLY STOLEN.

Q AND YOU FEEL LIKE ALL OF THESE ISSUES WOULD'VE BEEN ISSUES FOR APPEAL.

A YES. YES.

Q AND DID YOU COMMUNICATE THESE CONCERNS THAT YOU HAD WITH FELLOW COUNSEL?

A YES, I DID.

Q OKAY, NOW—

A YES, I DID.

Q AND IN FACT, YOU ACTUALLY SENT HIM A PROPOSED ADDITIONAL ADDENDUM TO THE BRIEF I GUESS.

A YES.

Q THAT'S BEEN INTRODUCED.

A NO, THAT HASN'T BEEN INTRODUCED.

Q THE ONE THAT WE -- THE COPY THAT WE INTRODUCED.

A YEAH, IT'S ANOTHER COPY WHERE MY MOM TYPED IT UP ON A COMPUTER. HE HAS THAT ALSO. I HAVE ANOTHER COPY OF IT. HOWEVER, I'M NOT GONNA ENTER THAT.

Q BUT YOU HAD—

A IT'S ON THE RECORD.

Q HOW MANY TIMES DID YOU CONTACT HIM IN REGARDS TO YOUR APPEAL?

A 1, 2, I THINK ABOUT 4 OR 5 TIMES. I'M TRYIN' TO FIND THE TIME WHEN HE TOLD ME -- THIS ONE RIGHT HERE HE SAYS WHEN OUR OFFICE DOES A MERITS BRIEF WE DO NOT SEND A COPY OF THE FINAL BRIEF TO OUR CLIENT. IT IS ONLY WHEN WE DO A ANDERS NO BRIEF THAT THE CLIENT IS SENT THE FINAL BRIEF SO THAT THE CLIENT CAN GIVE HIS OWN RESPONSE IN 45 DAYS. WHY DO YOU HAVE A FINAL BRIEF ENVY. YOU SHOULD BE HAPPY A MERITS BRIEF WAS DONE IN YOUR CASE. THIS IS THE ONE I HAD – I HAD SENT HIM A LETTER -- WELL, THE AMENDMENTS OF THE BRIEF.

Q RIGHT.

A AND I -- I KEPT -- I KEPT ASKIN' HIM TO PUT IN WHAT I -- WHAT I HAD WANTED HIM TO DO ALSO. AND HE—

Q SO HE DIDN'T EVER SEND YOU A COPY OF THE BRIEF.

A NO.

Q BUT YOU WERE SENDING HIM COPIES OF STUFF THAT YOU WANTED HIM TO—

A YES. YES. BUT HE NEVER DID.

Q AND YOU FELT STRONGLY ABOUT THOSE ISSUES, JEFFREY?

A YES.

Q OKAY.

A YES.

Q ALL RIGHT. NOW WHAT DID YOU -- YOU MENTIONED THE BOLT CUTTERS. WHAT, IF ANYTHING, WAS DONE IN REGARDS TO THE BOLT CUTTERS?

A WELL, THE JURY WAS TOLD THAT I WAS THE TYPE OF PERSON THAT RODE AROUND IN MY CAR WITH BOLT CUTTERS AND GLOVES. THAT – THAT'S FIRST. MICHAEL CHESSER WAS INEFFECTIVE IN FAILIN' TO INVESTIGATE AND TO HIRE A LICENSED INVESTIGATOR. SEE THOSE -- THOSE BOLT CUTTERS WERE SENT TO -- TO SLED IF YOU WANNA—

Q WELL, THAT'S OKAY.

A YOU DON'T WANNA MARK IT AS A EXHIBITS OR ANYTHING?

Q WELL, I THINK THE TESTIMONY WAS THAT—

A OKAY. YEAH, THEY WERE -- THEY WERE SENT TO SLED AND I SUBMIT THAT BOBBY ASBILL NOT BEIN' LICENSED COULDN'T GO IN SLED AND -- AND GO AND TRY TO GATHER UP NO EVIDENCE FOR THE DEFENSE. HE COULDN'T SEND OUT ANY TYPE OF SUBPOENAS FOR DETECTIVE PRESTIGIACOMO, CHARLENE MARTIN OR OTHER PEOPLE. AND – AND AGAIN, WHEN IT GOT TO DO WITH THOSE BOLT CUTTERS, THE CRIME SCENE REPORT -- MICHAEL CHESSER RECEIVED THE CRIME SCENE REPORT ON 3/5/2001. THE -- THE TRIAL PROCEEDINGS STARTED ON 3/6/2001, AND RIGHT HERE IT SAYS THAT THE CHAIN WAS CUT, AND – AND -- AND THEN -- AND WHAT I'M SAYING IS -- IS THAT WITHOUT HAVING THOSE BOLT CUTTERS OR THAT STUFF ALLEGEDLY TAKEN FROM OUTTA MY CAR SUPPRESSED, IT

PREJUDICED THE DEFENSE.

Q WAS THERE ANY INDEPENDENT EXAMINATION DONE OF THE BOLT CUTTERS?

A NO, THERE WAS NOT.

Q OKAY.

A THE STATE DID EXAMINATION. I TAKE IT THAT IT WAS INCONCLUSIVE WHICH I KNEW IT – IT'S INCONCLUSIVE.

Q RIGHT. DID YOU TALK ABOUT THE BOLT CUTTERS WITH MR. CHESSER? DID YOU HAVE AN OPPORTUNITY TO DISCUSS THAT WITH HIM?

A WELL, WE -- WE TALKED - WE TALKED, YES. WE -- WE HAD OPPORTUNITY TO SPEAK ABOUT 'EM, BUT HE NEVER DID A MOTION TO SUPPRESS.

Q HOW MANY TIMES DID YOU MEET WITH MR. CHESSER?

A HE WAS FAIRLY RIGHT. AROUND 3 TIMES. IT'S JUST THAT I NEVER COULD CALL HIM. HE HAD A BLOCK ON HIS PHONE.

Q WHY DID HE HAVE A BLOCK ON HIS PHONE?

A I HAVE NO IDEA.

Q OKAY. SO HE WOULD NOT ACCEPT ANY OF YOUR CALLS?

A YEAH, HE HAD A BLOCK ON HIS PHONE.

Q SO YOU COULDN'T CALL HIM.

A NO, SIR. UH—

Q GO AHEAD. I'M SORRY.

A AND MOREOVER SEARCHES AND SEIZURES SEVEN TEN WHAT I'VE READ SAID THAT A AUTOMOBILE FOUND PARKED IN A RESIDENTIAL AREA TEMPORARY OR OTHERWISE IS PROTECTED BY THE 4TH AMENDMENT ALSO. SO THAT WAS ANOTHER WAY WE COULD'VE GOT THAT INADMISSIBLE EVIDENCE FROM

REACHIN' THE JURY.

Q OKAY. THERE WAS TESTIMONY IN THE CASE, JEFFREY, FROM MR. BARNHILL THAT YOU MADE A STATEMENT TO HIM, BASICALLY, I GUESS, ADMITTING TO HIM THAT YOU WERE THE LOOKOUT. DID YOU DO THAT?

A NO, OF COURSE NOT.

Q AND DID YOU DISCUSS THAT ISSUE WITH MR. CHESSER? DID YOU GET A CHANCE TO TALK TO HIM ABOUT IT? WAS THAT A SURPRISE TO YOU AT TRIAL?

A THAT WAS A SURPRISE TO BOTH OF US IF I'M NOT MISTAKEN.

Q OKAY. NOW IN YOUR DIRECT EXAMINATION YOU TALK ABOUT THAT YOU DIDN'T STEAL TOOLS I THINK IS WHAT YOUR -- WHAT YOUR TESTIMONY WAS.

A YES.

Q WHAT'D YOU MEAN BY THAT?

A I SAID I DIDN'T STEAL -- STEAL NO TOOLS. WHEN WE WAS WALKIN' DOWN, IF I CAN REMEMBER CORRECTLY, WHEN ME AND DETECTIVE QUIG WAS WALKING IN THE POD WHEN WE WAS GOIN' TOWARDS THE INTERROGATION, OUR WHOLE CONVERSATION WAS ABOUT I DIDN'T STEAL ANY TOOLS FROM MR. BARNHILL'S HOUSE, YOU UNDERSTAND FROM WHERE I TOLD HIM THAT I SEEN RICK ALLEGEDLY GO IN. I THOUGHT THAT THAT WAS RICK'S HOUSE.

Q ALL RIGHT.

A THIS -- THIS IS WHY -- WHY -- I WOULDN'T BE TALKIN' ABOUT ANYTHING ELSE. THIS RIGHT HERE WAS BARNHILL'S -- I WAS INDICTED FOR -- FOR FIRST DEGREE BURGLARY AT [redacted]. THIS IS WHAT I WAS ON TRIAL FOR, [redacted] ROAD. BARNHILL. SEE, THE STATE IS THE ONE INTRODUCED A LOTTA PEOPLE'S PROPERTY AND SHOWED PICTURES OF THE BOLT CUTTERS. DIDN'T HAVE ANYTHING TO DO WITH MR. BARNHILL. AND A LOT MORE OTHER

THINGS. TALKED ABOUT THE 41 ITEMS COMPOUNDED WITH A LOTTA PEOPLE'S PROPERTY.

Q WHAT HAPPENED WITH THAT? THERE WERE – HOW MANY ITEMS WERE SEIZED?

A ALLEGEDLY 41 ITEMS.

Q AND MR. BARNHILL WAS ALLEGING THAT THERE WERE HOW MANY ITEMS TAKEN OUT OF HIS HOUSE?

A IF I'M NOT MISTAKEN, OVER 150.

Q OKAY.

A 150.

Q BUT THEY WERE ABLE TO IDENTIFY ALL 41 OF THOSE ITEMS FROM HIS HOME? OR HOW MANY DID—

A NO, SIR. NO, SIR. I'M TRYIN' TO GET – I'M SORTA – I HAVE IT RIGHT HERE. I DON'T WANT TO SAY THE WRONG THING. MR. – ONLY 14 – 41 OF THOSE ITEMS THAT – THOSE – THOSE ITEMS WERE – WERE NOT ALL MR. BARNHILL ITEMS. AND I HAVE THE PEOPLE WHO ITEMS THERE WAS.

Q OKAY.

A SOME OF 'EM CAME FROM MR. BARNHILL'S HOUSE COME TO FIND OUT AND I CAN SHOW IT IN THE TRANSCRIPT. COME TO FIND OUT, MR. BARNHILL DID SOME TRADING UP AT THE SHELL GAS STATION, YOU KNOW, AND SOME OF THAT STUFF HE PROBABLY TRADED OFF, AND THEY CAME OUT TO BE STOLEN ALSO. I HAVE THE PEOPLE'S NAME. THEY WERE IN RICHLAND COUNTY I HAD GOT THAT STUFF FROM RICK. SO – SO SOME OF THE TRADING THAT MR. BARNHILL WAS ALREADY ALLEGED IN HAD SOMETHIN' TO DO WITH—

Q WELL, WHAT WAS YOUR CONCERN, IF ANY, ABOUT THE ADDITIONAL

ITEMS? WHY WERE YOU CONCERNED THAT THEY WERE -- THAT THEY WERE TALKIN' ABOUT 41 ITEMS?

A OH, BECAUSE OF THE FACT THAT I WASN'T ONLY ON TRIAL NOTHIN' BUT FOR MR. BARNHILL WHERE THE JURY WAS GIVEN TIME TO SPECULATE JUST LIKE A LOTTA PEOPLE'S PROPERTY. MICHAEL CHESSER DID OBJECT TO THAT. HOWEVER, MICHAEL CHESSER DID OBJECT TO THAT BUT THE -- THE COURT'S INSTRUCTION SAYS SOLICITOR MOVE ON; I WILL SUSTAIN THE OBJECTION. LADIES AND GENTLEMEN HE IS CHARGED WITH BURGLARY NOT RECEIVING STOLEN GOODS. WHAT THAT THE JURY CAN INFER IS THAT YES I WAS INDEED CHARGED WITH BURGLARY BUT I INDEED HAD A LOTTA PEOPLE'S PROPERTY IN MY HOUSEHOLD. YOU KNOW, THAT DIDN'T CURE ANYTHING LIKE THAT PLUS THE -- THE PRIOR CONVICTIONS PLUS THE CREDIBILITY.

SEE, THAT'S WHAT THIS -- THIS CASE IS LIKE CREDIBILITY, YOU KNOW. THEY SLASH DOWN MY CREDIBILITY AS BEIN' A CONVICTED FELON AND 27 YEARS OF MILITARY AND 9 YEARS RANK LOW (PHONETIC) OF -- OF A OFFICER. AND I WANNA TOUCH BASES ON THAT ALSO JUST FOR THE PURPOSES OF THE RECORD. I AIN'T -- I -- I'M NOT MAD AT -- AT DETECTIVE QUIG ON -- ON ANYTHING BECAUSE I'VE COME TO REALIZE THAT -- THAT PEOPLE GET WRONGED. I -- I SEE IT BACK THERE IN THE PENITENTIARY. PEOPLE GET WRONGED TO GET OFF OF THE POPULATION, BUT GUESS WHAT. MOST OF THE TIME IT'S FOR THE BEST OF THE POPULATION. YOU KNOW, I JUST WANTED THE COURTS TO KNOW THAT I'M NOT A LOST CAUSE.

Q NOW THE STATEMENT WAS MADE IN CLOSING IN REGARDS TO A LOTTA PEOPLE'S STUFF.

A YES.

Q THAT THERE WAS A LOTTA PEOPLE'S STUFF THAT WAS FOUND.

A YES.

Q AND HOW DID YOU TAKE THAT? WHAT DID YOU TAKE THAT TO MEAN?

A A LOTTA PEOPLE'S STUFF, A VARIETY OF STUFF.

Q OTHER THAN MR. BARNHILL?

A OTHER THAN MR. BARNHILL.

Q DID YOU FEEL THAT THAT WAS AN ISSUE THAT COULD HAVE OR SHOULD'VE BEEN BROUGHT TO APPEAL BY APPELLATE DEFENSE?

A YES.

Q THE ONE STATEMENT, AN IMPERMISSIVE STATEMENT WAS BROUGHT UP; YOU FELT LIKE THAT ISSUE COULD'VE BEEN TAKEN UP AS AN IMPERMISSIVE STATEMENT AS WELL?

A YES. COMPOUNDED WITH -- WITH THAT -- THAT STATEMENT.

Q OKAY. JEFFREY, LET'S GET BACK TO WHAT WE WERE TALKIN' ABOUT STEALIN' THE TOOLS. YOU HAD CERTAIN PORTIONS OF YOUR STATEMENT THAT WERE REDACTED. IS THAT CORRECT?

A YES.

Q AND THOSE PORTIONS THAT WERE REDACTED WAS, BASICALLY, ABOUT CRIMES OTHER THAN AT MR. BARNHILL'S HOUSE?

A YES.

Q OKAY. AND THOSE STATEMENTS CAME IN. IS THAT CORRECT? AND THEN LATER ALL THAT CAME IN.

A YES.

Q BASED UPON YOUR TESTIMONY ABOUT I DON'T STEAL TOOLS?

A YES. MY TESTIMONY I SUPPOSE THAT SAYS THAT I WOULDN'T STEAL ANY

TOOLS, BUT I SAID -- AND HE ASKED ME THAT. HE ASKED ME DID I TELL THE JURY THAT I WOULDN'T STEAL ANY TOOLS, AND I SAID YES AT THAT TIME I WOULDN'T STEAL NO TOOLS.

Q YOU TALKIN' ABOUT MR. BARNHILL'S HOUSE.

A YES. YES.

Q AND, BASICALLY, IS THAT THE COURT INFERRED THAT YOU WERE TALKIN' ABOUT THAT YOU WOULD NOT STEAL TOOLS IN GENERAL.

A YES.

Q WHICH THEN ALLOWED THEM TO—

A BRING IN THE REDACTED STATEMENT.

Q —BRING IN THE REDACTED PORTIONS OF YOUR STATEMENT.

A YES.

Q DID MR. CHESSER OBJECT TO THAT?

A HE FIERCE -- HE FIERCELY OBJECTED TO THAT. AS A MATTER OF FACT, HE -- HE -- YEAH, HE OBJECTED TO THAT. HE TIMELY OBJECTED.

Q OKAY. WHAT, IF ANYTHING, DO YOU FEEL LIKE WOULD'VE BEEN INEFFECTIVE IN THAT THEN?

A AT THE ENDIN'. AT THE ENDIN' OF THE -- THE SOLICITOR'S -- THE ENDIN' OF THE SOLICITOR'S CLOSIN' ARGUMENT WHERE HE STATED LADIES AND GENTLEMEN YOU WILL HAVE THESE BACK IN THE JURY ROOM. YOU WILL HAVE A CHANCE TO LOOK THROUGH IT; YOU WILL HAVE THE OPPORTUNITY TO ADDRESS HIS CREDIBILITY AND BELIEVABILITY. I DON'T CARE WHAT STATEMENT YOU USE OF HIS, THE ONE THAT HAS THINGS MARKED OUT OF IT; WE TALKED ABOUT IT WHILE HE WAS ON THE WITNESS STAND. YOU HEARD THAT. HE TOLD YOU UNDER OATH I AM SAYING TO THIS JURY I WOULD NOT STEAL TOOLS. YOU WILL KNOW

FROM THIS STATEMENT YES OF COURSE HE DOES STEAL TOOLS. RIGHT THERE WHERE THE SOLICITOR MISQUOTED WHAT HE WAS FIERCELY OBJECTIN' TO. HE NEVER OBJECTED TO THAT TO GET LIMITED INSTRUCTIONS.

Q SO THAT WAS ALLOWED TO GO TO THE JURY WITHOUT OBJECTIONS.

A YES.

Q JEFFREY, I THINK WE'VE BEEN THROUGH A LOTTA STUFF TODAY, AND YOU'RE HERE SAYING THAT THERE WAS INEFFECTIVE ASSISTANCE OF COUNSEL, INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. ARE THERE ANY OTHER ISSUES THAT WE HAVEN'T BEEN OVER THAT YOU FEEL ARE IMPORTANT TO PRESENT TO COURT TODAY?

A FIRST OF ALL, ON THAT COOPER CHARGE HIS HONOR WAS CORRECT WHEN HE HAD SAID THAT RECEIVIN' STOLEN GOODS IS NOT A LESSER INCLUDED CHARGE TO FIRST DEGREE BURGLARY.

WHAT THE -- WHAT HAD HAPPENED IN THIS SITUATION IS THAT THE SOLICITOR TRIED TO HAND OFF -- HAND DOWN A CHARGE STATE –VS- DEWITT STATIN' THAT IF I WAS FOUND IN POSSESSION OF STOLEN – RECENTLY STOLEN GOODS COULD BE DIRECT EVIDENCE OF MY GUILT OR SUBSTANTIAL EVIDENCE OF MY GUILT, AND STATE –VS- COOPER OVERRULED THAT. AND IT STATES THAT IT'S MERELY AN EVIDENTIARY FACT; WHEREAS, HERE TRIAL COUNSEL WAS INEFFECTIVE FOR FAILIN' TO REQUEST A JURY INSTRUCTION ON RECEIVIN' STOLEN GOODS AND/OR HE WAS INEFFECTIVE FOR REJECTIN' THE JUDGE'S OFFER TO CHARGE THE JURY ON POSSESSION OF STOLEN GOODS WHICH WAS THE DEFENSE'S THEORY. HE FIRST STARTED OFF IN HIS OPENIN' ARGUMENT THAT WE WAS GONNA – THAT – THAT THE ONLY THING THE STATE COULD – COULD – COULD PROVE IS THAT I WAS IN POSSESSION OF STOLEN GOODS, AND HE ENDED

OFF THE ARGUMENT SAYING THE ONLY THING THAT THEY CAN FIND ME GUILTY OF IS RECEIVIN' STOLEN GOODS. SUBSEQUENTLY, THE ABSENCE OF THE CHARGE ON RECEIVIN' STOLEN GOODS GAVE RISE TO A CONCLUSION BY THE JURY THAT IT WAS IMPERMISSIBLE FOR THEM TO CONSIDER RECEIVIN' STOLEN GOODS AS A DEFENSE.

Q RATHER THAN IF THEY FOUND YOU GUILTY OF BURGLARY FIRST OR SOME OTHER CRIME.

A YES. RATHER THAN THEY FIND ME GUILTY OF THAT. IT IS REVERSIBLE ERROR TO REFUSE A CHARGE ON A DEFENSIVE THEORY. THAT'S WHY I SAY THAT MICHAEL CHESSER WAS INEFFECTIVE FOR FAILING TO REQUEST AND IN THIS INSTANCE ACCEPT A JURY CHARGE ON POSSESSION OF STOLEN GOODS. SO IF THE JURY -- SO THE JUDGE HE CHARGED THE JURY ON CIRCUMSTANTIAL EVIDENCE WHICH WAS THE SAME WEIGHT OF DIRECT EVIDENCE WHICH -- IN WHICH THE JUDGE CHARGED THE JURY INSTEAD OF MERELY – MERELY CIRCUMSTANTIAL EVIDENCE OR THAT THE JURY CAN'T FIND ME GUILTY OF FIRST DEGREE BURGLARY IF THEY ONLY SEE THAT I RECEIVED THESE GOODS.

Q RIGHT. NOW YOU'RE ASKIN' TODAY FOR THE COURT TO GIVE YOU A NEW TRIAL?

A YES.

Q AND YOU UNDERSTAND THAT YOU ARE -- HAVE BEEN TRIED AND FOUND GUILTY AND SENTENCED UNDER A BURGLARY FIRST WHICH CARRIES UP TO LIFE IMPRISONMENT.

A YES.

Q YOU HAVE EXPOSURE TODAY IF THE COURT WAS INCLINED TO GRANT YOUR POST CONVICTION RELIEF?

A EXCUSE ME?

Q YOU UNDERSTAND THAT IF THE COURT WERE TO GRANT YOUR POST CONVICTION RELIEF THAT YOU WOULD GET A NEW TRIAL AND WOULD STAND BACK IN THE POSITION THAT YOU WERE BEFORE.

A YES.

Q AND THAT'S WHAT YOU'RE ASKIN' THE COURT TO DO.

A THAT'S WHAT I'M BEGGIN' THE COURT TO DO, YES.

Q YOU UNDERSTAND THAT YOU HAVE EXPOSURE IN THAT YOU WERE SENTENCED TO LESS TIME THAN WHAT THE CRIME CARRIES.

A YES.

Q AND THAT'S YOUR RISK.

A YES.

Q AND YOU'RE TAKING THAT RISK.

A YES, I AM.

Q OKAY. JEFFREY, THIS IS YOUR DAY IN COURT. IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD IN REGARDS TO THESE ISSUES OF EFFECTIVENESS ASSISTANCE OF COUNSEL OR TRIAL -- OR APPELLATE COUNSEL?

A I'LL TELL YOU THIS THING -- YES, SIR. YES, SIR. RIGHT HERE MICHAEL CHESSER WAS INEFFECTIVE FOR FAILIN' TO -- TO -- TO OBJECT TO THE MISINSTRUCTION OF LAW THAT THE SOLICITOR GAVE IN HIS SUMMATION. HE SAID IF I WAS INVOLVED ANY ACTIVITY WHATSOEVER WHETHER I WAS THE LOOKOUT GUY, THE GETAWAY DRIVER, THE RECIPIENT OF THE PROCEEDS IT DIDN'T MATTER. IF HE WAS INVOLVED AT ALL HE IS AS GUILTY AS THE GROUP. HE WAS INEFFECTIVE FOR FAILIN' TO OBJECT TO THE -- TO THE SOLICITOR'S ARGUMENT SAYIN' THAT IF I WAS THE RECIPIENT OF THE PROCEEDS THAT I WAS

AS GUILTY AS THE GROUP. THAT'S IN TRIP PAGE 533.

ALSO MICHAEL CHESSER WAS INEFFECTIVE FOR FAILIN' -- FOR -- FOR NOT KNOWING MY PENDIN' CHARGES. RECEIVIN' STOLEN GOODS. HE STATED ON 2 SEPARATE OCCASIONS THAT I WASN'T CHARGED WITH RECEIVIN' STOLEN GOODS WHICH INVITED THE SOLICITOR TO STATE THAT HE WANTED TO RESPOND TO SOMETHIN' THAT CHESSER SAID ABOUT RECEIVIN' STOLEN GOODS. A LOTTA PEOPLE'S PROPERTY WAS IN MY HOUSEHOLD, A VARIETY OF PEOPLE'S PROPERTY WAS IN MY HOUSEHOLD.

AND JUST FOR THE PURPOSES OF THE RECORD, MICHAEL CHESSER WAS INEFFECTIVE FOR FAILIN' TO -- TO -- TO SUBPOENA RICK DOWELL. THE COURT. THAT'S WHO'S SUPPOSED TO BEEN ON -- ON THE STAND. THAT'S WHO'S SUPPOSED TO BE RIGHT HERE. AND THERE'S -- THERE'S -- I DON'T WANNA MISS OUT ANYTHING.

THERE'S ANOTHER ISSUE. THERE'S ONE MORE ISSUE THAT I WANNA TAKE UP. THERE'S ONE MORE ISSUE THAT I WANNA TAKE UP. AND THIS IS ON A INCONSISTENT STATEMENT. THIS RIGHT HERE. THIS IS ON DETECTIVE QUIG'S -- THIS IS WHERE THEY LIMITED MICHAEL CHESSER'S ARGUMENT. OKAY. HERE WE GO. IF YOU CAN GIVE ME A LITTLE TIME. YEAH, THIS IS THE PART WHERE IN 323 FOR THE PURPOSES OF THE RECORD, HIS HONOR DIDN'T TELL THE JURY NOT TO DISCUSS THE CASE. OKAY. HERE WE GO. MICHAEL CHESSER ASKED DETECTIVE QUIG AT OR ABOUT THE TIME OF THAT ARREST, MR. CROMER INFORMED YOU THAT RICK DOWELL AND THE INDIVIDUAL NAMED CECIL 2 WHITE MALES HAD SOLD HIM THE PROPERTY IN HIS RESIDENCE. ON PAGE 338 AND 339 AND DETECTIVE QUIG SAID YES SIR. THIS IS OUTSIDE OF THE -- THE JURY. THIS -- THIS -- WHAT THIS WOULD'VE DID IT -- IT -- SEE, THE JURY NEEDED TO HEAR THIS ANSWER, THIS YES

SIR ANSWER, BECAUSE OF THE FACT THAT WHAT THAT WOULDA DID WOULDA SHOWED THE JURY THAT I TOLD DETECTIVE QUIG THAT I HAD BOUGHT THIS STUFF FROM RICK DOWELL AND CECIL AND -- AND THEN I IN TURN SENT DETECTIVE QUIG TO A BURGLARY. I SENT DETECTIVE QUIG, I TOLD HIM THAT RICK STAYED AT THE CORNER OF [redacted] AND [redacted] AT MY HOUSE. HOWEVER, WHEN THE JURY COME BACK OUT THERE AND PAGE 363 HE -- HE SAID NO SIR I DID NOT TELL 'EM THAT. SO MICHAEL CHESSER WAS ALSO INEFFECTIVE FOR FAILIN' TO -- TO MOTION TO SUPPRESS ALL ORAL STATEMENTS THAT HE DID NOT -- HE DID NOT SUPPRESS.

Q WHAT ORAL STATEMENTS DID YOU MAKE?

A THEY SAID THAT -- THEY ALLEGEDLY SAID THAT I -- I ALLEGEDLY SAID I WAS IN POSSESSION OF THIS STUFF BUT I DIDN'T STEAL IT.

Q WAS THAT ISSUE RULED UPON BY THE COURT?

A NO. IT WAS NEVER MOTIONED. HE LET IT GO THROUGH.

Q ALL RIGHT.

MR. THOMAS: YOUR HONOR, IF I CAN BEG THE COURT'S INDULGENCE.

THE COURT: YES, SIR.

MR. THOMAS: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

THE COURT: CROSS.

MR. BAX: VERY BRIEFLY, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BAX

Q MR. CROMER, IS MR. DOWELL HERE IN THE COURTROOM TODAY?

A NO, SIR.

MR. BAX: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ANYTHING ELSE?

MR. THOMAS: NOTHIN' FURTHER, YOUR HONOR.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

MR. BAX: YOUR HONOR, IS THE EXHIBIT THAT IS THE STATEMENT OF MR. GIACOMO (SIC), IS THAT UP WITH YOU OR THE COURT REPORTER?

THE COURT: ANYTHING FURTHER FROM THE APPLICANT?

MR. THOMAS: YOUR HONOR, BEG THE COURT'S INDULGENCE JUST FOR A SECOND.

THE COURT: YES, SIR.

MR. THOMAS: YOUR HONOR, THAT'S EVERYTHING.

THE COURT: OKAY. ANYTHING FROM THE STATE?

MR. BAX: NO WITNESSES FROM THE STATE, YOUR HONOR. WE WOULD ONLY NOTE FOR YOUR INFORMATION THAT THE STATEMENT OF MR. GIACOMO -- PRESTIGIACOMO CAME INTO EVIDENCE ON PAGE 145 OF THE TRANSCRIPT.

THE COURT: THANK YOU. I'LL READ THESE MATERIALS, AND NOTIFY YOU OF A DECISION IN WRITING. THANK YOU VERY MUCH.

MR. THOMAS: THANK YOU, YOUR HONOR.

MR. BAX: THANK YOU, YOUR HONOR.

THE APPLICANT: THANK YOU, YOUR HONOR.

**********ENDOFTRANSCRIPT**********

CERTIFICATE

I, THE UNDERSIGNED, SMOKEY PERRY, OFFICIAL AND CERTIFIED COURT REPORTER FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF RECORD TO THE BEST OF MY ABILITY AND SKILL.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

Smokey Perry

7-20-06

692

ORIGINAL

FORM 5

STATE OF SOUTH CAROLINA )
FILED
COUNTY OF ) IN THE COURT OF COMMON PLEAS
2012 MAY 29 P 4:48
Full name and prison number (if any) of Applicant. )
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC
v. ) APPLICATION FOR
VW
State of South Carolina ) POST-CONVICTION RELIEF
2012CP3202197

## INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Tyger Rivers Correctional Institution
2. Name and location of Court which imposed sentence Lexington County - General Sessions
3. Name(s) of co-defendant(s) (if any) ____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) 01-GS-32-217 (Burglary 1st degree) "Hands of one Hands of all"
   (b) ____
   (c) ____
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) March 21, 2001 25 years
   (b) ____

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.



Revised 3/2003

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

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2012 MAY 29 P 4:48

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

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

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

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

i. South Carolina Court of Appeals

ii. Court of Common Pleas

iii. U.S. District Court iv. U.S. Court of Appeals 4th Circuit v. U.S. Supreme Cou

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

i. Denied

ii. Denied

iii. Denied iv. Denied v. Denied

(c) the date of each such result:

i. August 26, 2002

ii. Sept 21, 2007

iii. _____ iv v. January 9, 2012

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

i. Unpublished opinion number 2002-up-518

ii. N/A

iii. N/A iv. N/A v. N/A

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

(a) _____

(b) _____

(c) _____

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

694

(a) Newly, Important, Helpful Evidence

(b) Trial Judge Erred And Abused his Discretion

(c) PCR Judge Abused his discrection Prosecution used Strikes Because of Jurors Race deprived Def fair tr

(D) Case lacked Proper Investigation (E) [redacted]

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

(a) Alibi witness has come forward

(b) He Stated And Agreed Def. was deprived a fair trial And Def. Due Process Rights viol

(c) Ruled Investigation by Non-license Investigator is Adequate for Criminal trial.

(D) Civilian who Imposed As An Investigator Scammed The Defense (E) Black Jurors struck be of where they worked- where they lived.

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes

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

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

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

(a) the specific nature thereof:

i. Federal habeas - Free Standing Claim on written Statement

ii. PCR Ineffective Assist Trial Lawyer / Appellant Counsel / Violation of Due Process

iii. _____

iv. _____

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

i. U.S. District Court for the District of South Carolina

ii. Court of Common Pleas State of South Carolina

iii. _____

iv. _____

(c) the disposition thereof:

i. Denied

ii. Denied

iii. _____

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2012 MAY 29 P 4:48
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

iv. _____

(d) the date of each such disposition:

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2012 MAY 29 P 4:48
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No. However, it's on record of the hiring of a non licenced Investigator. And PCR Judge was given a case twins with Def. case.

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. On record - Rulings were on Ineffective Asst of Counsel's.

ii. _____

iii. _____

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

(a) Newly Discovered

(b) Haven't Gotten no Relief from Grounds Def. was told and common sense said I would recieve Relief.

(c) Errors of the Court.

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

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

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

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

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

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

i. Sally Henry 206 East main St. Lexington, S.C. 29072

ii. Michael Chesser P.O.Box 1018 - 104 Park Ave. SW Aiken, S.C. 29802

iii. Robert Pachak 1122 Lady Street Suite 940 Colm, S.C. 29201

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

i. Arraignment

ii. Plea, trial, Sentencing

iii. Direct Appeal

19. State clearly the relief you seek in filing this application:
Sentence Reduction - OR New trial - OR Parole - OR Vacated Sentence

20. Are you now under sentence from any other court that you have not challenged?
NO

FILED
2012 MAY 29 P 4:48
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

ORIGINAL 697

STATE OF SOUTH CAROLINA )
) VERIFICATION
County of )

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

Jeffrey Cromer

SWORN to and subscribed before me this 21st day of May, 2012.

D. Kerri Morrow (L.S.)
Notary Public
D. Kerri Morrow

My Commission Expires: May 18 2015

2012CP3202197

FILED
2012 MAY 29 P 4:48
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

· 698

ORIGINAL

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

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

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

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

Jeffrey Cromer
*Applicant*

SWORN or affirmed to and subscribed before me this 21st day of May, 2012.

D. Kevin Morrow
*Notary Public*

D. Kevin Morrow
My Commission Expires: May 18 2015

FILED
2012 MAY 29 P 4:48
BETH A CARRIGG
CLERK OF COURT
LEXINGTON SC

2012CP3202197

Revised 3/2003

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF LEXINGTON | IN THE COURT OF COMMON PLEAS<br>ELEVENTH JUDICIAL CIRCUIT |
| Jeffrey Cromer, #197498,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | 2012-CP-32-2197<br><br>**RETURN AND MOTION TO DISMISS** |

In response to the post-conviction relief (PCR) application filed May 29, 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the January 2001 term of the Lexington County Grand Jury for First Degree Burglary (2001-GS-32-0217). Applicant was represented on the charges by Michael W. Chesser, Esquire. Applicant proceeded to trial before the Honorable J.C. Nicholson, Jr. on March 3-21, 2001. The jury convicted Applicant as charged. Judge Nicholson sentenced Applicant to confinement for a period of twenty-five (25) years.

Applicant filed a timely notice of appeal. Assistant Appellate Defender Robert M. Dudek represented Applicant on his appeal. Applicant made a Final Brief of Appellant on March 4, 2002 and raised the following issue on appeal verbatim:

1. Whether the trial court erred in overruling defense counsel's objection to the solicitors closing argument where he urged the jury not to victimize the victim again.

Respondent made its Final Brief of Respondent on March 11, 2002, through Senior Assistant Attorney General Harold Coombs. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Cromer, Op. No. 2002-UP-518 (S.C. Ct. App. filed August 26, 2002). The remittitur was issued on September 11, 2002. Applicant did not seek rehearing or certiorari to the South Carolina Supreme Court.

**2002-CP-32-3895**

Applicant subsequently filed an application for post-conviction relief on November 6, 2002, where he alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of counsel.
    a. Trial attorney failed to fully investigate case; did not pursue defense required by 6th amendment, USCA; was not fully prepared to go to trial; did not raise issues during suppression hearing.
2. Ineffective assistance of appellate counsel.
    a. Appellate counsel did not present meritorious issues to appeals court after being asked to.
3. Violation of due process.
    a. Due to aforementioned ineffective assistance of counsel, applicant was denied a fair trial and proper redress to court.

Respondent filed its return on or about February 7, 2003. Applicant amended the application on October 13, 2004, asserting the following:

1. Applicant is informed and believes that after discovered evidence has been obtained that indicates there is a witness who was unknown and/or had information unknown at the time of trial.

An evidentiary hearing was convened on February 10, 2005 at the Lexington County Courthouse before the Honorable William P. Keesley. Applicant was present and represented by counsel Tommy A. Thomas, Esquire. The State was represented by Assistant Attorney Daniel E. Grigg. Applicant testified on his own behalf. Also testifying was Applicant's former counsel, Mr.

Chesser and Mr. Pachak. On September 24, 2007, the Judge Keesley, issued an Order of Dismissal denying relief and finding that Applicant's allegations were without merit.

Applicant appealed the decision made by the PCR court and filed a notice of appeal. Applicant was again represented by Tommy A. Thomas, Esquire. On January 22, 2008, counsel filed a Petition for Writ of Certiorari in the Supreme Court of South Carolina. In the petition, Applicant asserted the following issues:

1. Whether appellate counsel rendered ineffective assistance of counsel when he failed to address the introduction of petitioner's three prior convictions to establish burglary in the first degree?
2. Whether appellate counsel rendered ineffective assistance of counsel when the appellate brief failed to address prejudicial comments made by the solicitor and defense counsel's motion for a mistrial?
3. Whether appellate counsel rendered ineffective assistance of counsel when he failed to address the introduction of redacted portions of the petitioner's statement during cross-examination of the Petitioner?

Respondent made its Return on May 22, 2008. On January 8, 2009, the South Carolina Supreme Court denied the petition. Applicant, through counsel Tricia A. Blanchette made a motion for reconsideration on January 16, 2009, which was denied on February 4, 2009. The remittitur was issued that same day, February 4, 2009.

**2009-cv-2235-MBS-PJG**

Applicant then filed a petition for writ of habeas corpus on August 24, 2009, in federal district court. Petitioner raised the following issues:

1. Cromer argues that trial court's decision to allow evidence of 3 prior burglary convictions and one felony in Florida (burglary) was in error.
2. Voluntariness of statement – use of statement was in error.
3. Solicitor's misconduct throughout trial – solicitor's closing.
4. Ineffective assistance of trial counsel – mistrial not successful.

On December 2, 2009, the Respondent filed its return and motion for summary judgment. The federal district court granted Respondent's motion for summary judgment by Order dated

October 26, 2010, finding that Petitioner's claims were without merit. Applicant filed a Notice of Appeal on December 7, 2010. The Fourth Circuit Court of Appeals issued an order enforcing the judgment on May 13, 2011.

II.

In his *second* and current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons verbatim:

1. Newly, important, helpful evidence
    a. Alibi witness has come forward
2. Trial judge erred and abused his discretion
    a. He state and agreed Def. was deprived a fair trial and Def. Due Process rights violated
3. PCR judge abused his discretion
    a. Ruled investigation by non-liscense investigator is adequate for criminal trial.
4. Case lack proper investigation
    a. Civilian who imposed as an investigator scammed the Defense.
5. Prosecution used strikes because of jurors race deprived Def fair trial
    a. Black jurors struck because of where they work- where they lived.

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

III.

This Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other

> proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief applications. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent also submits this Application for Post-Conviction Relief should also be dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to –160 (Supp. 2003). S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was found guilty on the offenses he challenges on March 21, 2001. The remittitur from Applicant's direct appeal was issued on September 11, 2002, so he was therefore required to file his application on or before **September 12, 2003**. This Application was filed on May 29, 2012, which was over nine (9) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

V.

Additionally, this Court should dismiss the Applicant's allegation of ineffective assistance of counsel as barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id. This application presents allegations that could have been and were in fact raised in those prior collateral proceedings. The Applicant did raise the issue of ineffective counsel in his

prior post-conviction relief proceedings. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss these claims as barred by *res judicata.*

VI.

Applicant contends that he is entitled to an evidentiary hearing because of newly discovered evidence of an alibi witness. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

> (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. The Respondent submits that the Applicant cannot satisfy *any* of these requirements to be granted a new trial.

VII.

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

VIII.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to Applicant's previous PCR applications and was filed after the statute of limitations had expired.

(signatures on following page)

Respectfully submitted,

ALAN M. WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Staff Attorney

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

By: _____
Attorneys for the Respondents

Columbia, South Carolina
July 9, 2014

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF LEXINGTON<br><br>JEFFREY CROMER<br>Applicant,<br>vs<br>STATE OF SOUTH CAROLINA,<br>Respondent | IN THE COURT OF COMMON PLEAS<br>IN THE ELEVENTH CIRCUIT<br><br>2012-CP-32-2197<br><br>AFFIDAVIT OF SERVICE BY MAIL |

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Jeffrey Cromer, SCDC # 197498**
**Tyger River Correctional Institution**
**200 Prison Road**
**Enoree, SC 29335**

DATED this 9th day of July, 2014

Troyeshi Brailey, Legal Assistant
For Respondent

FILED

ORIGINAL

2014 AUG 21 PM 4:58

KEITH A. CARRIG
CLERK OF COURT
LEXINGTON SC

| | |
|---|---|
| STATE OF SOUTH CAROLINA ) | IN THE COURT OF COMMON PLEAS |
| ) | FOR THE ELEVENTH JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON ) | |
| ) | Case # 2012-CP-32-02197 |
| JEFFREY CROMER, 197498, ) | |
| ) | |
| Applicant, ) | |
| ) | |
| v. ) | **ORDER REGARDING MOTION FOR CONDITIONAL ORDER OF DISCHARGE** |
| ) | |
| STATE OF SOUTH CAROLINA, ) | |
| ) | |
| Respondent. ) | |

The State has submitted a request for a conditional order of discharge. Prior to the entry of the order, the Applicant sent a letter, which the court interprets as an objection to the entry of the order. Having reviewed the packet submitted in support of the State's motion, as well as the letter from the Applicant, the court finds that the Applicant should be allowed to amend his application so as to state with more particularity the claim of after-discovered evidence and when he learned of it.

THEREFORE, IT IS ORDERED that the motion for a conditional order of discharge is denied at this point, subject to the requirement that the Applicant must amend his application, and file it, and serve it on the Attorney General's office within 30 days from the date of this order. His application must provide more specifics as to the claim of after-discovered evidence and when this information was obtained.

AND IT IS SO ORDERED.

August 19, 2014

William P. Keesley
Chief Judge for Administrative Purposes
Common Pleas

# State of South Carolina
# The Circuit Court of the Eleventh Judicial Circuit

WILLIAM P. KEESLEY
JUDGE

127 COURTHOUSE SQUARE
POST OFFICE BOX 10
EDGEFIELD, SOUTH CAROLINA 29824-0010
TELEPHONE: (803) 637-4095
FAX: (803) 637-2035
E-MAIL: wkeesleyj@sccourts.org

August 18, 2014

Mr. Jeffrey Cromer, #197498
U-3-124
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

Re: Cromer v. State (2012-CP-32-02197)

Dear Mr. Cromer:

In late July, you sent me a letter regarding a conditional order of dismissal. I am treating this as an objection to the entry of the order and/or an objection to the dismissal of your most recent PCR case. When you send these types of documents, you should send the original to the Clerk of Court and a copy to the Attorney General's office. I am forwarding what you sent me to those officials.

Thank you.

Sincerely,

COPY

William P. Keesley

cc: w/enclosure (letter from Mr. Cromer): ✓ Clerk of Court's file
J. Walt Whitmire, Asst. Atty. Gen.

FILED
2014 AUG 21 PM 4:
BETH A. CARR
CLERK OF COURT
LEXINGTON SC

2012-CP-32-02197

FILED
2014 AUG 21 PM 4:58
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

RECEIVED
7/24/14

Dear Judge Keesley,

You was sent a proposed Conditional Order of Dismissal to sign Concerning me. Sir, I have written you before when I Pleaded to you my Innocense in what I was Indicted for.

I have served 14 years 6 months on this 25 year sentence. And I maintain my Innocense in the matter.

As you know from my 2005 hearing in Your Court Room, I was never afforded the opportunity of an Investigation. My Trial Lawyer Michael Chesser was swindled of the States Grant money for the Indigent defense.

My Hope is in God. An Alibi witness has came forward and I ask that you allow this witness to put on record her Testimony. She has written a statement And is awaiting the opportunity to state her facts.

During these 14 years, I have been classified as violent which is contrary to my being.

It is very important to me and my Family

that you Allow me A hearing, so you will determine if my Alibi witness' testimony holds the weight of being material.

As You Know, the trial against me was based on Credibility. I never had an Investigation, and without the knowledge of an Alibi witness I could not have raised that issue then.

The Alibi witness' Credibility Is Outstanding.

I ask that you don't sign the proposed Conditional order of Dismissal, and Allow this Important testimony be heard.

Thank You, Sir

May God Bless

I sincerely Appreciate it if You would ~~don't~~ sign the Proposed Order of Dismissal.

Thank You Again, Sir

Jeffrey Cromer

FILED

STATE OF SOUTH CAROLINA 2012 AUG 14 PM 12:10
County of LEXINGTON BETH A. HARRIS CLERK OF COURT LEXINGTON SC 29072

In the Court of Common Pleas
11 Judicial Circuit
2012-CP-32-2197

JEFFREY CROMER
Applicant

v

State of South Carolina
Respondent

Motion for PCR Hearing
Sentence Reduction (or)
New Trial

In Response to the Return and Motion to Dismiss;

I AM NOT AN ATTORNEY. I DO NOT KNOW NOR HAVE THE PROPER SCHOOLING, SO I CAN NOT RESPOND AS A LAWYER, ET AL.

I AM REQUESTING A PCR HEARING to DECIDE ON ANY RELIEF AVAILABLE.

I HAVE MAINTAINED MY INNOCENSE. LEXINGTON County Sheriff METTS AND the South CAROLINA Courts has based its "Rulings of TRUTH" ON AN UNREVIEWABLE INTERROGATION. Without proper REVIEW OR WITNESSES, that INTERROGATION should be deemed unreliable when its opposed.

Sheriff Metts employee took ME IN hiding AND COACHED, COERCED, AND USED TRICKERY, BY PROMISES to GET ME TO WRITE A STATEMENT

(NO MIRANDA RIGHTS at all given)

1

That stated I was a lookout to a burglary that occurred in Lexington County.

* Valid Reasonings to be allowed to Depart from The Truth of Statement *

"I, Jeffrey Cromer saw where the 3 individuals mention in the Statement went before selling me the power tools. I was not an active participant. Sheriff Metts Employee convinced me that not only would he Go (personally) to the Bond Judge to get me out of Jail, no charges would be filed against me if I Aligned myself with the others, being his witness."

- If only the interrogation was recorded or witnessed, the deals and promises and coercions could be reviewed. But since the Lexington County Sheriff's employee did (Nor cannot) not ensure proper procedures, (The trial's base was hinged upon Credibility) the Statement should have been and now, should be suppressed. -

I am presently Confined in South Carolina Department of Corrections. I was Indicted January 2001 for 1st degree burglary (2001-GS-32-0217) I was represented by Michael W. Chesser, esquire. The trial attorney was appointed and paid by Grant money from the Indigent Defense.

That money was taken from Mr. Chesser

By someone who impersonated an investigator. Without an investigation I proceeded to trial before the Honorable J.C. Nicholson, Jr. on March 3-21, 2001. I was convicted as indicted and sentenced to 25 years.

I filed a timely Notice of Appeal. Assistant Appellate defender Robert Pachak represented me. Mr. Pachak made a final Brief on March 4, 2002, but did not raise the issues I ask him to.

The main issue was the interview at the Lexington County Detention Center, and still is. He didn't have case law on this issue. Is there case law on this issue?

Mr. Pachak's issue was responded to by Senior Assistant Attorney General Harold Coombs. The South Carolina Court of Appeals Affirmed the conviction and sentence. State v Cromer OP No 2002-UP-518 (S.C. Ct App. Filed August 26, 2002) The Remittitur was issued September 11, 2002. (9/11)

I filed an Application for PCR on November 6, 2002, where I alleged:

1. Ineffective Assistance of Trial Counsel
2. Ineffective Assistance of Appellate Counsel
3. Violation of Due Process

Respondent filed its Return February 7, 2003.

At that time a female friend of mine was told by the Guy who sold me the power tools, that he had "set me up."

An evidentiary hearing was conducted on February 10, 2005 at Lexington County Courthouse before Honorable William P. Keesley. I was represented by Tommy Thomas, Esquire. The State was represented by Daniel E. Grigg. I testified on my behalf.

The female friend, Sharlene Martin was told she could not testify as to what Richard Lee Dowell had told her, because it will be considered hearsay. Credibility?

[Rick L. Dowell = The individual who sold me the tools, The same person who call Police informing them the whereabouts of stolen tools.]

Also testifying were former counsels, Mr. Chesser and Mr. Pachak. September 24, 2007, Judge Keesley issued an order of Dismissal. Judge Keesley also apologized for his delay in deciding.

I appealed yet again. Tommy Thomas filed a Petition for Writ of Certiorari in the South Carolina Supreme Court

with the utmost confidence that I would RECIEVED Relief. THERE WAS A "TWIN" CASE that RECIEVED Relief from the SAME Judge who WAS handling my WRit.

Judge Jean Toal GRANTED RELief for Tommy Lee JAMES (opinion No. 25676), but denied ME on the SAME (exact) ISSUE.

*Enclosed IS Tommy LEE James CASE (ISSUE) AND JEFFREY Darrell CROMER ISSUE. I ASK FOR EQUALity of the South CAROLINA Justice Department.

FurtheRMORE, I ASK Tommy Thomas to file within the WRit A Petition ON the PRIVATE INTERVIEW that Produced the damning EVIDENCE AGAINST ME, AND AN ISSUE ON THE CRIME AGAINST my TRIAL LAWYER ON why I WAS NEVER AFFORDED AN INVESTIGATION before trial. I AM denied that litigation.

I WAS YET AGAIN denied February 4, 2009. The REMittitur WAS ISSUED that SAME day. 2009-CV-2235-MBS-PJG

THE Fourth Circuit RECIEVED AN ARGUMENT from A Jail House LAWYER ON my behalf on the [illegible] the INTERROGATION. THE ISSUE WAS AGAIN IGNORED. But AN ORDER ENFORCING JUDGEMENT WAS ISSUED MAY 13, 2011. Recieved 5/25/2011

In December 2014, an Alibi witness surfaced. My hope is in God.

There are sufficient reasons why new grounds for relief were not raised during PCR.

1. I did not know of the Alibi witness At the time of the PCR Hearing

2. I never was afforded an investigation to find witnesses or evidence thereof.

3. without knowledge of the Alibi witness, I could not have raised that issue(s).

I ask that the PCR application for Post conviction Relief be heard. I filed within 1 year of the last Judgement, and within 1 year of finding the Alibi witness who came forward.

Troyeshi Brailey, for the Respondant got it wrong when she says my Appellate Attorney was Mr. Dudek. The record shows I was represented by Mr. Pachak. She alleges I filed for an after discovered evidence for an Alibi twice. Even if I did, I don't know of any witnesses because of the lack of an investigation, But I have only filed one newly discovered evidence for an Alibi.

She is saying that my litigation should come to an end. My Trial Lawyer had a crime committed against him during the start and stage of this case. Please allow my Alibi to put on Record; what she know.

This is not a Successive PCR Application. The statute Allows it if any of the determining Grounds are met.

The trial was based on Credibility:

Solicitor: "Your Honor you are going to Judge his (cromer) Credibility against the officers credibility" Tr. P 117

Solicitor: "It's a question of credibility For Your Honor. We move to have the statement in." Tr P 159

Solicitor Opening Argument: "We ask you to pay close Attention to the facts of this case, the credibility of the witnesses, who you can believe and find A verdict." Tr P 227

Solicitor: It's an issue of credibility for Your Honor's Determination. We submit that ~~Det~~ective Duicy is more credible." Tr P 216

With this trial's base, A witness is material to the issue of Guilt. With the crime of Fraud against Trial Attorney, the exercise of due diligence is in default. The Alibi has been discovered since the trial. The

Alibi witness' credibility is outstanding. SC

The Alibi witness has written a [redacted] statement concerning ~~The~~ would be testimony.

I have explained everything to the best of my Ability.

I move to have the Alibi witness' testimony be put on this record.

Thank You
And God Bless

Jeffrey Cromer
Applicant

* The Alibi Witness is coorberating the testimony I gave in court. Since the trial was based on "who's more credible," her testimony is pertinant to this case.

Enclosed is a written Statement by ~~the~~ alibi witness who's credibility is out-standing.

Without an investigation I was never afforded a proper representation.

FILED

2011 AUG -4 PM 12:11

RUTH A. CARRICO
CLERK OF COURT
CHARLESTON SC

Ms. CLERK,

Please send this where ever you see fit. Just not in the trash. I don't know where else to turn.

May God help us

thanks
Jeffrey Cromer

Is there?

I swear under the penalty of purjury that I Am being honest on every level.

I swear that I Am sending this to whom it make concern to make sure my life and liberty be Judged fairly and equally.

GC

TO:

THE South CAROLINA Judicial Courts

ATT: Someone who's qualified to GIVE AN OPINION by LAW, OR SOMEONE who CAN GRANT Relief.

DEAR Court(s),

This is AN ARGUMENT that I INTEND to pursue for the REST of my life, if it CONTINUES to BE IGNORED.

I SWEAR TO TELL THE TRUTH SO HELP ME GOD.

I AM ASKING FOR the APPROPRIATE RELIEF IN this MATTER.

MY NAME IS JEFFREY CROMER, CONVICTED of first degree burglary AND Sentenced to 25 years. 14 years 7 months has BEEN SERVED thus FAR, for AUTHORING A Statement that alleges to be a lookout for some guys who went into a garage and Stole some powertools.

AN employee of the Lexington County Sheriff's department initiated

An interrogation and has withheld the truth of events that happen in that private interrogation that produced a written statement,
(Recanted by its Author)
that was given inside the Sheriff's department. Based on that statement a warrant was issued for first degree burglary. An indictment soon followed.

Because the lack of Evidence, such as: A Recording or witness(es) of the alleged dealings, writings, or promises, "Credibility" ruled the pretrial's rulings.
STATEMENT WAS submitted to the Jury.

Argumentive Point

Without recordings or witness(es) to the interrogation its merely word against word. NO case(s) show otherwise. (Miranda rights were ignored before the interrogation)
The references to confessions, Miranda, and all other cases aligned, Interrogations are either witnessed, recorded by audio, video, or both, or typed by a stenographer. Or the author simply pleads guilty. *Plus Miranda

Rights weren't given. I was told to sign after statement.*

Trial = who is more credible?

The Solicitor's Opening and Closing arguments highlights credibility. Same as the trials entirety.

Questions on Credibility

1 What makes up someone's credibility for the purposes of Court Proceedings?

2. Is credibility factual by law?

3. When should Credibility be used as the determining factor in the Court, by law?

4. What is credibility in Court, by law?

THIS CONVICTION RESTS UPON Credibility.....

Personal

# I AM CREDIBLE

I have admitted to my illegal acts going through the sickness of drug usage. I am clensed and free from what that sickness had to offer.

There are people who witnessed the trial and those who have read the transcipts express I admitted to things I wasn't indicted for.

Even though I was questioned on prior bad acts, those admitions were my first steps toward a new start.

I am Credible and I take and took responsibility for my bad acts. Though this circumstance - I saw where the guys went. That is no crime. I left them where they were. I did no crime.

Without Recordings or Witness (es) of the interrogation I am at a disadvantage, not being able to show the truth. At this stage or any other. Ditto, the interrogator should be accountable for not ensuring proper methods. The Truth is Hidden.

THERE are consequences suffered, lessons learned.

My hope is in God that the people who uphold the peace, fairness, and equality for the States in America, set a legal Policy to abide by, for ASSURANCE that all interrogation inside the sheriff's department be legally bound.

My hope is in God that the appropriate Relief be given in this case.

Do such a case exist to touch a base on this issue.

I READ WHERE THE PRESIDENT AND THE ATTORNEY GENERAL STATED ABOUT ALL INTERROGATIONS IN CHICAGO WAS TO BE RECORDED.....,

I would APPRECIATE A RULING AND OPINION ON this ISSUE. UNTIL NOW this ISSUE has been IGNORED.....

With Hope,

Jeffrey Cromer

Contact number
(803) 754-0404
Mother Cathy Cromer

... Furthermore,

listing Crawford v US 519 F2d 317 (4 cir). Statements made during a guilty plea should be considered conclusive unless an inmate presents valid reasons why he should be allowed to depart from the truth of his Statement, — I would use this as a reference —

Enclosed is a statement by Police that was signed by the interrogator, to show that my testimony in trial and ~~now~~ current plea, is the same as it was when I met the interrogator. Joseph B. Quig.

I was given promises of freedom and ~~the~~ twisted feeling of doing right, coerced me to include myself (to) Solidify myself a witness for the police.

## How and Why the Statement was Written

Lexington County Sheriff's employee, Detective Joseph B. Quig had me awaken up 23 hours after the arrest to talk.

I was told by Quig that I needed to hurry and follow him if I wanted to go home. I was told that the Judge was about to go home, and I had to be interviewed first.

In the interview I stated where I was, what I had seen, where the guys had went, when I Left, How I got the merchandise, and who I got the merchandise from, I Even added that I had a drug problem.

I WAS told by the Interrogator that he was tipped off by one of the guys I had mention. And that he would need me AS his witness to Arrest him. Adding that I'd HAVE to SAY I WAS there.

Suggestions between us were made, and promises were given. Then I made a leap and suggested that I can state I was their lookout to solidify myself A witness.

I was given a affirmative response that if that was written he would go visit the bond Judge himself and to my belief, there were no Repercussions.

I was rewarded with the interrogator paying a visit to the bond Judge for leniency AND I was later released.
— Quig Admits to Bond Judge visit —

AFTER two dAys of NOt ANSWERING the interrogatORS phone calls I was reARRESTed for the contents of the Statement. "LOOKOUT"

I Immediately RECANTed the Statement. I've WRITTEN Sheriff METTS explAINING my delimma. I was IGNORed.

## Valid verifyable REASON (s)

The trickery AND pressure in rushing me to write a statement, THE Private informal interrogation that implied free of any charges against me, The AROUSING dependency for drugs, being gave a way out of jail, all are valid reasons why I should be able to depart from the statement. The statement is conflicting, and without A witness (ES) OR video and/or audio footage, the truth is hidden.

ALL THAT I HAVE SAID IS the truth so help me God.

Transcript records verifies much, Police Reports verifies more.

Please don't allow another employee of the Sheriff's Department Interrogate an accuse for a felony offense without proper surveillance. Whether it be witnessed or Recorded.

By Law, I have exceeded the years for the crime(s) I have committed. I have something to live for. Whether it be adressing these circumstances or living a sober life. I will prosper in my endeavors.

With Hope in The Creator,

Jeffrey Cromer

Contact Information

# [redacted]

Mother Cathy Cromer

South Carolina
Judicial Center

FILED
2014 AUG -4 PM 12:10
BETTY A. CARRIGG
CLERK OF COURT
LEXINGTON-SC

Jeffrey Cromer, Petitioner

South Carolina, Respondent

Proof of Service

I Jeffrey Cromer, Petition in the Above Action, Sworn under the penalty of perjury that I have, on the 28 of July 2014, have given a copy of my petition to have an alibi witness testimony added to the record and/or any Relief available to me. I have paid the Postage.

I can not afford representation, And I am not educated in the law. I am doing the best I can.

Jeffrey Cromer 197498
200 Prison Road
Enoree, S.C. 29335

Questions

1. What makes up Someone's credibility for the purposes of Court Proceedings?

2. Is credibility "factual" in Court?

3. When should credibility be used as the determing factor in the Court?

4. What is credibility's weight in Court?

Can these question be Answered for me / the public?

May God Bless us ALL

Mr Jeffrey Cromer

THE Enclosed CASE(S) where Jean Toal decides:
— EXACTLY the same INSTANCES — Where's equality?

I apologized for the markings on the cases. This is all I have.

I can't afford a lawyer, so I am doing the best that I can.

The innocent project is only doing DNA case, where LAW SUITS follow.

I don't want a law suit - I Just want what's Right and fair and that is relief.

I want to work for my future earnings. I am starting late, but at least I could pass good work ethics to those to come.

I will continue to fight for relief until the day the Good Lord calls me home. IF a TORT comes it'll be after I have completed this 25 year sentence.

I have proof through what many call common sense. But assuring that interrogation are legally bound, they'll have to be witnessed OR recorded. AND to INSURE that we move forward AS a people, IN the Court of LAW, we should be treated equal. May God help us All

Jeffrey Cromer

FILED

JEFFREY CROMER to JEAN TOAL
– NO EQUAL Justice –

B. The PCR Record

At the PCR hearing, PCR counsel asked trial counsel about the introduction of the three prior burglaries over his objections at trial. Counsel testified that he objected on a number of grounds, including the ground that it was more prejudicial than probative. R. p. 656, lines 14-22. Counsel further explained: "It was improper for them to introduce 3 burglary convictions to support his circumstance especially when they had already an aggravating circumstance... and then they introduced 3 rather than just 2 of these prior burglary convictions." R. p. 657, lines 1-5. Trial counsel testified that his trial strategy was "to preserve some error so that maybe he'll get a second chance, and maybe on that second chance he'll get a much better deal." R. p. 671, lines 18-21. Trial counsel also testified that after the Petitioner's trial the South Carolina Supreme Court decided State v. James, 355 S.C. 25, 583 S.E.2d 745 (2003) and held that "if two was sufficient that's all you can introduce and that this is subject to Rule 403 balancing." R. p. 22, lines 11-22.

At the PCR hearing, counsel also called Robert Pachak, Assistant Appellate Defender, to the stand. When asked about his decision to not address the introduction of the three prior burglaries, Mr. Pachak stated: "I noted that issue and I looked back on my notes and I've got Hamilton and Benton written down next to that issue which was the current law at the time." R. p. 687, lines 1-4. Mr. Pachak further testified that he received material from the Petitioner, which contained additional issues, but he did not add those issues to the Petitioner's appeal. R. p. 689, lines 4-10. The Petitioner's amendment was introduced by PCR counsel. R. p. 689, 739-754, lines 11-14.

During the Petitioner's testimony, he testified regarding his attempts to communicate with Mr. Pachak. R. p. 710. He also testified that he received a letter from



– I TAKE Great Responsibility for my Past. It's mine. I move forward with my.

Shortly after the Petitioner's trial in March of 2001, the South Carolina Court of Appeals issued their decision in State v. James, 346 S.C. 303, 551 S.E.2d 591 (Ct. App. 2001), which upheld the introduction of seven prior convictions to establish burglary in the first degree. As early as October 1, 2001, the Petition for Writ of Certiorari appeared as pending with the South Carolina Supreme Court pursuant to the Advance Sheets.

Similarly to James, the Petitioner's direct appeal was being handled by the Office of Appellate Defense. The Brief of the Appellant was not filed with the Court of Appeals until March 4, 2002. Therefore, the Petitioner's Brief was filed after the James case was pending in this Court.

At the PCR Hearing, appellate counsel testified that he knew that James was pending, yet he decided that the introduction of the Petitioner's three prior burglaries was not a meritorious issue. As a result, this issue was not presented to the appellate court for review. Furthermore, appellate counsel testified that he did not provide a copy of the Brief to the Petitioner and responded to his request for a copy by asking the Petitioner if he had "final brief envy." R. p. 738.

On February 20, 2003, the Supreme Court heard James, and the Opinion, a reversal and remand, was issued on July 14, 2003. James, 355 S.C. 25, 583 S.E.2d 745 (2003). In James, this Court agreed that "Hamilton stands for the proposition that the State cannot be forced to accept a defendant's stipulation to prior convictions". Id. at 34, 583 S.E.2d at 749. This Court further found:

> Nothing in Hamilton, however, suggests that any number of prior convictions would be admissible in a first-degree burglary prosecution. Further, none of the relevant authorities nullify the trial judge's traditional role in weighing the probative value of evidence versus its prejudicial effect or suggest that Rule 403 is displaced by operation of section 16-11-311(A)(2).

Jeans Took Expressed That none of the Defendant Authorities Nullify the Trial Judge's Traditional Role In Weighing the Probative Value of Evidence versus its Prejudicial Effect Id. at 34, 583 S.E.2d at 749-750. Or Suggest That Rule 403 Is Displaced By Operation of Section 14-11-31 (A)(2)

In conclusion this Court reasoned:

> There may be rare occasions where the admission of more than two prior burglary convictions is more probative than prejudicial and therefore proper, the potential for undue prejudice – for the impermissible interpretations of such evidence as propensity or character evidence – warrants great caution.

Id. at 35, 583 S.E.2d at 750.

Unfortunately, the Petitioner was never afforded the opportunity to have the introduction of his convictions reviewed by an appellate court. The Petitioner was also not afforded the "great caution" called for by this Court in James. Therefore, the Petitioner submits that appellate counsel was ineffective when he failed to raise this issue in the Petitioner's direct appeal. Appellate counsel was aware of the unstable state of the law as a result of James, yet he passed over the issue. The Petitioner would further submit that under Benton, a 403 balancing test should have been conducted. Therefore, even without the advantage of the Supreme Court decision in James the underlying issue, the failure to conduct a balancing test, existed for counsel to raise to the appellate court.

III. Appellate Counsel Rendered Ineffective Assistance of Counsel when the Appellate Brief Failed to Address Prejudicial Comments Made by the Solicitor and Defense Counsel's Motion for a Mistrial.

A. Trial Record

During the direct examination of Detective Joe Quig, the State elicited the following testimony:

> Q: Going back to the 22nd and the property that you recovered at the Cromer residence, were you able to determine whether any of the property at the Cromer residence was, in fact, Mr. Barnhill's property?



WAS Denied even when the LAW was in my favor!

8 of 68 DOCUMENTS

The State, Respondent, v. Tommy Lee James, Petitioner.

Opinion No. 25676

SUPREME COURT OF SOUTH CAROLINA

*2003 S.C. LEXIS 153*

February 20, 2003, Heard
July 14, 2003, Filed

NOTICE: [*1] THIS DECISION IS NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

PRIOR HISTORY: Appeal From Greenville County. Henry F. Floyd, Circuit Court Judge. *State v. James, 346 S.C. 303, 551 S.E.2d 591, 2001 S.C. App. LEXIS 92 (S.C. Ct. App., 2001)*

DISPOSITION: REVERSED AND REMANDED.

LexisNexis (TM) HEADNOTES - Core Concepts:

COUNSEL: Assistant Appellate Defender Robert M. Dudek, of the South Carolina Office of Appellate Defense, of Columbia, for Petitioner.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General, John W. McIntosh, Assistant Deputy Attorney General, Charles H. Richardson, Senior Assistant Attorney General, Norman Mark Rapoport, all of Columbia, and Solicitor Robert M. Ariail, for Respondent.

JUDGES: CHIEF JUSTICE TOAL. WALLER, BURNETT and PLEICONES, JJ., and Acting Justice John W. Kittredge, concur.

OPINIONBY: TOAL

OPINION: ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

CHIEF JUSTICE TOAL: Petitioner argues that the Court of Appeals erred in failing to grant him a new trial. *State v. James, 346 S.C. 303, 551 S.E.2d 591 (Ct. App. 2001).*

FACTUAL / PROCEDURAL BACKGROUND

On the afternoon of April 5, 1997, Ramona and Richard Granger observed Petitioner, Tommy Lee James ("James"), on the front porch of the home of Edyth Richards and Frances Gilbert. The Grangers cared for Ms. Richards [*2] and Ms. Gilbert's lawn and knew that the ladies were not at home on that day. While Mrs. Granger was mowing the lawn, her husband ran several errands. n1 When Mr. Granger returned from the last errand, he and Mrs. Granger noticed that a bicycle was propped against the fence. Soon after they noticed the bicycle, they testified that they saw James on the porch of the home. n2

n1 Mr. Granger returned to the house in between errands.

n2 Apparently, Mrs. Granger saw James first, three or four feet away from the front door, and Mr. Granger saw him a little further out on the porch. Both testified that the front screen door was closed when they saw James. Mr. Granger signed a statement on the night of the burglary that he saw James coming out of the door, but, at trial, he claimed that was incorrect.

Mrs. Granger asked James if she could help him with anything. James responded that he was looking for the "rent man." Mrs. Granger told James there was no such man at that address. James continued walking off the porch [*3] to his bike and began riding away. Mrs. Granger checked the front door and found it was ajar.

She told her husband, and he pursued James in his truck, and called the police from his cell phone. Mr. Granger testified that he lost James more than once as he followed him, but quickly found him again each time. Finally, James dismounted from his bike and attempted to hide behind a tree. Bystanders pointed James out to Mr. Granger and helped Mr. Granger hold James until the police arrived soon thereafter.

James had a screwdriver in his pocket and admitted to being on Ms. Richards and Ms. Gilbert's porch, but claimed he was looking for the "rent man" and that he did not steal anything from the residence. n3 Both of the Grangers identified James at trial as the man they saw on the porch. Additionally, a neighbor testified that James knocked on his door the same day. When the neighbor answered the door, James asked whether a camper parked in the neighbor's driveway was for sale. n4 After James left his house, the neighbor testified that he saw James enter the gate of Ms. Richards and Ms. Gilbert's home.

n3 Several items were missing from the home including thirteen rolls of quarters and some antique coins. The police recovered all of the stolen items, but the jury heard no testimony regarding where the police recovered the items because of a search and seizure violation. [*4]

n4 The camper was not advertised for sale.

James was indicted for first-degree burglary in violation of *South Carolina Code section 16-11-311*, which provides:

(A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:

(1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:

(a) is armed with a deadly weapon or explosive; or

(b) causes physical injury to a person who is not a participant in the crime; or

(c) uses or threatens the use of a dangerous instrument; or

(d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or

(2) the burglary is committed by a person with a prior record of *two or more* convictions for burglary or housebreaking or a combination of both.

(3) the entering or remaining occurs in the nighttime.

(B) Burglary in the first degree is a felony punishable by life imprisonment. For purposes of this section, "life" means until death. [*5] The court in its discretion may sentence the defendant to a term of not less than fifteen years.

*S.C. Code Ann. § 16-11-311* (Supp. 2002) (emphasis added). The burglary in this case was committed during the day without a weapon. The State based James's indictment for first-degree burglary on James's prior convictions for burglary. The State submitted certified copies of seven of James's prior convictions for burglary over James's objection.n5

n5 The prior convictions admitted were for first-degree burglary, which was charged in each case based on James's prior convictions for burglary.

James was convicted of first-degree burglary and sentenced to imprisonment for life without the possibility of parole. n6 The Court of Appeals affirmed his conviction and sentence. *State v. James, 346 S.C. 303, 551 S.E.2d 591 (Ct. App. 2001)*. The Court of Appeals denied James's petitions for rehearing and rehearing *en banc*. This Court granted James's petition for certiorari [*6] to address the following issue:

Did the Court of Appeals err in upholding the trial court's decision to allow evidence of *seven* prior burglary convictions pursuant to *S.C. Code Ann. § 16-11-311(A)(2)* when that statute only requires the State to establish two prior burglary convictions?

n6 *S.C. Code Ann § 16-11-311 (B)* makes life without parole a sentencing option, but the State served notice that it also sought life imprisonment under *S.C. Code Ann. § 17-25-45(A)*. The trial judge noted that the life sentence he imposed was appropriate under both *section 16-11-311(B)* and *section 17-25-45(A)* because burglary in the first-degree is a most serious offense.

LAW/ANALYSIS

James argues that the Court of Appeals erred in affirming the trial court's decision to allow evidence of *seven* of James's prior burglary convictions. We agree.

The admission of evidence is left to the discretion of the trial judge, and will [*7] not be disturbed on appeal absent an abuse of discretion by the trial judge. *Carlyle v. Tuomey Hosp.*, *305 S.C. 187, 407 S.E.2d 630 (1991)*.

This Court addressed the constitutionality of *S.C. Code Ann. § 16-11-311(A)(2)* in *State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000)*. In *Benton*, the defendant offered to stipulate that he had two prior burglary convictions in lieu of the State introducing evidence of the burglary convictions. *Id.* The State refused to accept the stipulation, and the trial judge declined to require the State to accept it based on the Court of Appeals' decision in *State v. Hamilton, 327 S.C. 440, 486 S.E.2d 512 (Ct. App. 1997)* (upholding trial court's refusal to accept defendant's offer to stipulate to two prior convictions for purposes of *section 16-11-311(A)(2)* in lieu of prosecution's introduction of evidence of the two prior convictions). n7 *Benton, 338 S.C. at 154, 526 S.E.2d at 229*. The *Benton* Court agreed that the State could not be forced to accept the defendant's stipulation, and thereby affirmed *Hamilton* and upheld the validity of *section 16-11-311(A)(2)*. [*8] *Id. at 155, 526 S.E.2d at 230*.

n7 *Benton* had not been decided at the time of James's trial, but *Hamilton* had been decided by the Court of Appeals and was the law of this state at the time of James's trial.

In upholding *section 16-11-311(A)(2)*, the *Benton* Court discussed the impact of *Old Chief v. United States, 519 U.S. 172, 117 S. Ct. 644, 136 L. Ed. 2d 574 (1997)*. In *Old Chief*, the defendant was charged with three crimes: (1) assault with a dangerous weapon, (2) using a firearm in relation to a crime of violence, and (3) violation of *18 U.S.C. § 922(g)(1)* (possession of a firearm by anyone with a prior felony conviction). *Id.* In *Old Chief*, the prosecution relied on the defendant's prior indictment for "assault causing serious bodily injury" to establish a violation of *18 U.S.C. § 922(g)(1)*, and introduced the order of judgment and commitment for the defendant's prior assault conviction. *Id.* The Supreme [*9] Court found that, although *relevant* under *Rule 402, FRE*, the evidence of the name and nature of the crime was unnecessary to prove the gun charge, and was highly prejudicial to the defendant as it was similar to the current assault charges pending against the defendant. *Id.* Weighing the probative value of the name and nature of the crime against its prejudicial impact, the Court held that introducing these details was unduly prejudicial under *Rule 403, FRE*. *Id.* The Court found that the defendant's admission that he committed a qualifying crime to be sufficient for purposes of proving a violation of *18 U.S.C. § 922(g)(1)* under these circumstances. n8 *Id.*

n8 Violation of *18 U.S.C. § 922(g)(1)* is triggered by prior convictions for many different crimes. *S.C. Code Ann. § 16-11-311(A)(2)* requires proof of prior convictions for only two specific crimes: burglary and housebreaking.

In *Benton*, this Court applied Rule 403, [*10] SCRE, and concluded that the "probative value of admitting the defendant's prior burglary and/or housebreaking convictions is not outweighed by its prejudicial effect." *338 S.C. at 156, 526 S.E.2d at 230*. Through this statement we recognized the potential for improper conviction resulting from the introduction of a defendant's prior burglary convictions under *section 16-11-311(A)(2)*. We even established steps for the trial judge to take to avoid such an improper conviction:

> to ensure a defendant is not convicted on an improper basis while allowing the State to prove the elements of first-degree burglary, the trial court should limit the evidence to the prior burglary and/or housebreaking convictions as it did here. Particular information regarding the prior crimes should not be admitted. Additionally, the trial court, as it did here, should, on request, instruct the jury on the limited purpose for which the prior crime evidence can be considered.

*Id. at 156, 526 S.E.2d at 231*.

In *Benton*, the State offered evidence of *two* prior convictions, the minimum number required by *section 16-11-311(A)(2)* to establish first-degree burglary. Thus, our [*11] Court's statement that the probative value of the defendant's prior convictions is not outweighed by their prejudicial effect was specific to that factual scenario. We recognized the interplay of Rule 403 and *section 16-11-311(A)(2)* in *Benton*, and after conducting a Rule 403 analysis, found introduction of the two prior convictions to be more probative than prejudicial.

In this case, the trial court did not weigh the probative value of the seven prior convictions against their prejudicial impact. The trial judge expressed dislike for the structure of the statute generally, and gave appropriate limiting instructions to the jury, but he did not conduct a Rule 403 balancing analysis. The trial judge had reservations about the propriety of admitting seven convictions, but was compelled to follow existing

precedent in the absence of any direction from this Court to the contrary. The following discussion took place regarding the number of convictions the State could admit:

THE: You can put certified copies of his prior record in.

[THE: Okay

THE: As to two prior burglaries, is that what you're relying on?

[THE: There's actually, I think, about a total of ten. And I was not [*12] going to submit the ones that are most serious offenses.

THE: All you've got to do is put two in.

[THE: You want me to go with a minimum of two, then?

THE: Pick any two you want, as long as they qualify.

[THE: Well, it says two or more, so I thought about admitting them all. If you prefer, I understand.

THE: I think that is a little bit of a problem. I mean -

[THE: Okay. I realize - I'll submit two.

THE: Well, let's see how you do. Two or more. Are you talking about burglaries, Mr. Seay?

[THE: Burglaries and housebreakings. He has both.

THE: Well, I'm not going to - [Defense Counsel], have you a position about that? Obviously, you don't want it?

[: I would object to more than two going in.

THE: I'm going to let you put as many as you want in, because if it's a problem with two, it's a problem with ten.

[: Then I'd like to know which ones he's putting in.

THE: Show him which ones you're going to offer.

The Court of Appeals upheld the trial court's decision on the ground that *section 16-11-311(A)(2)* does not limit the number of prior convictions and specifically states that evidence of "*two or more*" convictions will satisfy the statute. *James, 346 S.C. 303, 551 S.E.2d at 591.* [*13] The Court of Appeals placed great weight on the "*two or more*" language in the statute, reasoning that "had the General Assembly intended to limit the use of prior convictions the State may use to two in order to prevent the possibility of undue prejudice to the defendant, it could have easily done so." *Id. at 309, 551 S.E.2d at 593.* The Court of Appeals found that the trial judge had avoided prejudice in this case by "instructing the jury to limit its consideration of James' convictions to the particular purpose for which the convictions were offered." *Id. at 309, 551 S.E.2d at 594* (citing *Benton; Hamilton*).

In a concurring opinion, Judge Shuler agreed with the majority's decision to affirm, but wrote separately to express his view that the admissibility of prior convictions under *section 16-11-311(A)(2)* should be examined in light of traditional rules of evidence. *Id. at 310, 551 S.E.2d at 594.* Judge Shuler noted, "*Hamilton* and *Benton* do not dispense with the requirement that all evidence be more probative than prejudicial. Instead, these cases merely hold that *two* prior convictions for burglary, where necessary [*14] to prove an essential element of the crime charged, are inherently more probative than prejudicial." *Id. at 310-11, 551 S.E.2d at 595.* (emphasis added).

We agree with Judge Shuler. *Hamilton* stands for the proposition that the State cannot be forced to accept a defendant's stipulation to prior convictions because that would interfere with the State's right to prove its case with "evidence of its own choosing." *327 S.C. at 445, 486 S.E.2d at 514* (citing *Old Chief*). *Benton* upheld the constitutionality of the statute as applied in *Hamilton* and *Benton*, and found that the probative value of the two prior convictions was not outweighed by prejudicial effect. Nothing in *Hamilton*, however, suggests that *any* number of prior convictions would be admissible in a first-degree burglary prosecution. Further, none of the relevant authorities nullify the trial judge's traditional role in weighing the probative value of evidence versus its prejudicial effect or suggest that Rule 403 is displaced by operation of *section 16-11-311(A)(2).*

In our opinion, the Court of Appeals' observation that the General Assembly could easily have limited the [*15] number of prior convictions the State may enter to two in order to prevent the possibility of undue prejudice if it had so intended, ignores the judiciary's traditional role in determining the admissibility of evidence. The admissibility of prior convictions is always limited by the traditional rules of evidence. Accordingly, we find the probative value of James's seven convictions should have been weighed against their likely prejudicial effect under Rule 403. In balancing these interests, "'the probative worth of any particular bit of evidence is obviously affected by the scarcity or abundance of other evidence on the same point.'" *Old Chief, 519 U.S. at 185, 117 S. Ct. at 652, 136 L. Ed. 2d at 590* (quoting 22 C. Wright & K. Graham, Federal Practice & Procedure, § 5250, pp. 546-47 (1978)). Although the State is entitled to submit evidence of "its own choosing," it must do so within the confines of the established rules of evidence.

If the State had submitted evidence of two of James's prior burglary convictions, the jury would have had sufficient evidence to convict James of first-degree burglary without the prejudice accompanying admission of seven prior convictions. [*16] Under the rule of *Old Chief,* the probative value of the convictions entered beyond the two required by the statute decreases because of the already sufficient evidence submitted to prove that element. *Old Chief, 519 U.S. at 185, 117 S. Ct. at 652, 136 L. Ed. 2d at 590.* Although there may be rare occasions where the admission of more than two prior burglary convictions is more probative than prejudicial and therefore proper, the potential for undue prejudice - for the impermissible interpretation of such evidence as propensity or character evidence - warrants great caution.

We believe the probative value of all seven prior convictions was outweighed by the very great potential for prejudice to James, and crossed the line established in *Old Chief,* regardless of the judge's limiting instructions to the contrary.

## CONCLUSION

For the foregoing reasons, we **REVERSE** the Court of Appeals and **REMAND** for a new trial.

**WALLER, BURNETT and PLEICONES, JJ., and Acting Justice John W. Kittredge, concur.**

overkill

This letter is regarding Jeffrey D. Cramer SCDC # 197498.

When he was on Trial March 8, March 12, March 14 and March 21, 2001, I was not called by the prosecutor Nor the public defender to testify at his trial. Jeffrey has already served 13 years in Prison, but I feel that my testimony may have an impact on his case. I I thank you for reading my testimony, hopefully Jeffrey can get another trial.

Sincerely Yours,
Yolanda E. Watlington
/Yolanda E Watlington
Please see attached

Written 7/5/2013

A black male and two young caucasian males got out of the truck to smoke! The black male was whispering to Jeffrey and talking low when I was parking out the balcony. After they finished "smoking" the three of them got back in the truck and left. Jeffrey got in my car and left. He could not have gone to far because I purposely left no gas in the car. I want to make sure he does not go running to his dad's house again to meet Her? He always claims he's just using the phone? He was not gone long but I don't remember how long he was gone that night. He always go running to his dad's house around the corner. My guess was to get more Hard Liquor since I don't allow it in my home.

Jeffrey fell asleep on the couch, then I decided to go to sleep. Still mad at him because he is doing all this drinking and smoking. He stuff he knows I don't like but following his dad's footsteps. Now you've been at your dad's drinking, goes to the gas station and had more 24oz cans while you are playing that game machine

On March, 2000 around 10:30 pm, that night that it happened. My kids had already gone to bed. I can't sleep when my door is not locked, so I followed Jeffrey to the Shell gas station 3 times that night. He was playing the game machine in the store but I was waiting to see who he was coming to meet. I was waiting to catch Her with Him together!?!

When I saw him getting up from the game, I moved quickly back to my apartment so he would not see me watching him. He went to the back door and I had already come through the front door. I did not want him to see the curtins ~~swing~~ swing back and forth.

He sat on the back porch smoking a cigerett to come in for the night when a dark pick-up truck pulled up behind my apartment.

My bedroom window is right next to ~~right next~~ the kitchen window and balcony-back door. I was in the dark in my house so he could not see me watching him from the window and then the balcony.

Had your so called friends over for more smoking and drinking. Now you got the nerves to sleep on my couch with a can of beer!" I picked up that can of beer and threw it at him on the couch! He said something and went back to sleep wet with beer on him. I heard the truck come back to the back door and the guy was calling him from the window-balcony. "I dare you to wake up and go out there, maybe he will see Jeffrey's not coming back out there. Yea! you better stay asleep!" I going to sit right next to you to make sure you dont get back up cause you've got some explaining to do!

The next morning Jeffrey was still sleeping on the wet couch. My 14yrs old and I went to the phone booth to call my mom. My 10yrs old and 5yr old was still sleeping on a Saturday Morning. While on the phone with mom I ran out of change so I asked Cynthia to run back and get me more change.

She came back saying that their was a man at the door looking for JC? He had on a suit, hopefully its a man coming to take him to get another job cause that's what he was stressing about "no job"!?!

When we arrived at the apartment Jeffrey was being put in hand cuffs and my kids were sitting on the couch, the officer had woke them up and told him, them to sit on couch. The man in the suit and 4 officers were walking around the apartment looking for what?

The man in the suit asked me "Who's name is this apartment in"? I told him it's my apartment and Jeffrey is my boyfriend who lives here. He asked me if I know anything about the stolen stuff? What stolen stuff I asked him? The police officer open my balcony blinds and said that Stolen Stuff!! No! That was not there last night! You know since this is your apartment, you can go to jail and your kids will get taken from you!?

Wow!! I'm already going through a court battle with my ex husband! I watched them while Jeffrey was outside but when they returned I just assumed they came back to smoke more. I did not know how to defend myself if they attacked me while Jeffrey was drunk and knocked out on the couch. While Jeffrey was in hand cuffs, he did not say a word, like he could not wake up. Jeffrey had to sit down because of his highness, high on something.

The man in the suit and 2 officers had no paper work for coming to my apartment. They said just looking for a JC. One of the officers said to the man in the suit "There is no way he could have done this by himself because it's taking 3 of us to take it away.

They made me ask my 14 yr old come to the first court and not for Jeffrey. The man in the suit told me at the court room that if I help him I could go to jail in his place but if I go against him I would not

have to worried about the harassment and Jeffrey would not bother me no more. (Yes do want to see your kids grow up? Then don't help him or your "X" will have your kids

I AM CLASSIFIED AS VIOLENT which IS CONTRARY to MY being.

I HAVE a MOST Serious OFFENSE for writing on paper I was A lookout while someone stole tools from A garage 20 yards from the home. I recieved 25 yrs for buying Stolen goods.

STATE OF SOUTH CAROLINA )
COUNTY OF Lexington )
STATE VS. )
[redacted] )
AKA: )
Race: [redacted] Sex: [redacted] Age: [redacted] )
DOB: [redacted] SS#: [redacted] )
Address: [redacted] )
DL# _____ SID#: _____ )

IN THE COURT OF GENERAL SESSIONS )
INDICTMENT/CASE#:

[redacted]-GS-[redacted]
A/W#: [redacted]
Date of Offense: [redacted]
S.C. Code §: [redacted]
CDR Code #: [redacted]

☐ CASE RESTORED

SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: [redacted]
violation of § [redacted] of the S.C. Code of Laws, bearing CDR Code # [redacted]

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor _____ Defendant _____ Attorney for Defendant _____

THEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 25 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

**SPECIAL CONDITIONS:**

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
Fine: . . . . . $_____
14-1-206 (Assessments 100%). . . . $_____
14-1-211(A)(1) (Surcharge) . . . . . $ 20.00
14-1-211(A)(2) (Surcharge) . . . . . $_____
56-5-2995 (DUI Assessment). . . . . $_____
5% to County (if paid in installments). . . $_____
TOTAL . . . . . $ 20.00

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____

Clerk of Court/ Deputy Clerk

Court Reporter: [redacted]

PRESIDING JUDGE [redacted]
Judge Code: [redacted]
Sentence Date: [redacted]

White - Clerk Green - Corrections Canary - Probation Pink - Defendant

FILED

In the Court of Common Pleas
Eleventh Judicial Circuit

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Jeffrey Cromer
applicant
v
State of South Carolina
respondent

I Jeffrey D. Cromer, sworn under the penalty of perjury that I have, on the 11th of September, 2014, have sent a copy of my Amendment for PCR, 2012-CP-32-2197, and have giving a prima facie showing of the evidence; A statement is written by Alibi witness who is prepared to testify. (Yolanda E. Watlington)

The amendment sent is an objection to the order of dismissal. One copy sent to the Attorney General's office AT: Office of the Attorney General, J. Clayton Mitchell, Esquire - PCR Division - 11th Circuit P.O. Box 11549, Columbia, S.C. 29211 and also to: The Clerk of Court Ms Beth Carrigg

Lexington County, 305 E. Main Street, suite 146 - Lexington, S.C. 29072.

I've sent these documents from Tyger Rivers Correctional Institution, with proper postage.

Jeffrey Cromer
Tyger River U-3-124
Enoree, S.C. 29335

FILED
2014 SEP 16 P 1:25
BETH A. GARNER
CLERK OF COURT
LEXINGTON SC

Question:

Why is it Jeffrey Cromer versus State of South Carolina?

I am not against the State.

Is the State against me?

All These years I have thought that the Judicial System was here to get things in order with corrective actions. But I have realize that most that is within have other motives and methods other than what is "correct", "Just," and "reliable." My hope is in God that the people who are hearing this case be

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2014 SEP 16 AM 9:05

CARRIE
ERK OF COURT
LEXINGTON SC

fair enough as to grant me the most appropriate relief.

I am not against the State of South Carolina.

I have made mistakes in the past. I own my past. But now I am looking to make the best of my life now and for the future. And doing a 25 year sentence for buying stolen tools has placed thorns in my flesh, yet I believe I will be granted relief, so I'll have the opportunity to be civil.

Sincerely

Jeffrey A. Cromer

FILED

2011 SEP 16 AM 10:15

CLERK OF COURT
LEXINGTON SC

To The Honorable Beth Carrigan
Clerk of Court
305 East main street, Suite 146
Lexington, SC 29072-[redacted]

Re: Cromer v State (2012-CP-32-02197)
Amendment to PCR application

Dear Mr. Mitchell:

Enclosed is the Prima facie showing of evidence. A Statement of the alibi witness who is to testify.

This testimony will Coorberate the defense testimony.

The Solicitor who tried this case appealed to the Jurors for a conviction stating the defense had no witnesses to cooberate defendants testimony.

1. The newly discovered evidence of an alibi witness who have come forward was not discovered until November 2011. The Claim of newly discovered evidence was filed March 2012.

2. The alibi witness's testimony is material. Where the State's chief evidence of conviction rested on my credibility and

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CLERK OF COURT
LEXINGTON SC

my worth of belief. The alibi witness's credibility is outstanding. There is a high probability that with her testimony the Jurors verdict would have been different.

3. The alibi witness was not sought by investigation on an account that trial lawyer was conned by a civilian of Lexington County who impersonated a private investigator. It has also been put on record by defense counsel that SLED also told him that he was conned. Without that investigation that was paid for by State funding from the Indigent Defense, by the exercise of due diligence, such evidence could have been ascertained, but wasn't because of the crime against my trial Lawyer.

4. The alibi witness was not readily discoverable at the time of the trial or my previous PCR hearing due to the fact I was not in touch with this person. Nor did she know the circumstances of the trial, conviction or the evidence being used.

5. The alibi witness will put on record that the arresting officer in this case told her that if she said anything about this case to anyone

FILED
16 M 10:05
M A. CARRIGG
ERK OF COURT
EXINGTON SC

that he would make sure that her children are taken from her. The same employee of the Lexington County Sheriff's Department that took me in secret in an empty pod, and trick me to say (write) that I was a look out guy for the people who stole some tools to solidify myself as his witness to the crime. note: The guy who sold me the tools is the same guy who called (his neibor's) tools in stolen after a dispute that I pay him more money.

6. The alibi witness's testimony is not cumulative or impeaching. The alibi witness's testimony, cooberating defendants (my) testimony, haven't been heard. The testimony strengthens, confirms, and make more certain of the facts of my testimony, and the facts.

7. I ask that the alibi witness testimony be admissible to cooberate the testimony given. And whether it in fact cooberates my testimony, I ask that it be a question for the Jury.

* With this Amendment, I believe I have met all requirements *

I understand that if I recieve a new trial I could get more time and have to start all over again. I understand that. That's a risk I am willing to take.

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Res Judicata

CLERK OF COURT
LEXINGTON SC

This doctrine prohibits subsequent actions by the same parties on same issues. But the question is; If I had evidence that the ruling(s) were in error are those claim(s) still barred? A miscarriage of Justice?

Example/Issue 1.

The ruling and opinion in State v James 355 SC 25, 583 S.E. 2d 745 is a prima facie showing that I was/am entitled relief.

- In James, the trial Judge expressed dislike for the structure of the statute generally, and gave limited instructions to the Jury, but he did not conduct a Rule 403 balancing analysis.

*As so - the trial Judge in the case against me. see Cromer v State 2002-CP-32-03895 (writ)

- In James, the trial Judge had reservations about the propriety of admitting 7 convictions but was compelled to follow existing precedent (Hamilton and Benton) in the absence of any direction from the South Carolina Supreme Court to the contrary.

*The trial Judge in my case even went the distance to agree with my trial

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2014 SEP 16 A 11:03
DEBRA CARRIG
CLERK OF COURT
LEXINGTON SC

Attorney in stating that "I was being denied a fair trial and that my Due Process rights were being violated." But we was compelled to follow existing precedent (Hamilton and Benton) in the absence of any direction from the South Carolina Supreme Court to the contrary. 3-4 prior convictions) - In James, the trial Judge stated to the Solicitor: "I'm going to let you put as many as you want in, because if its a problem with two it's a problem with 10." (7 prior convictions were admitted)

South Carolina Supreme Court Chief Justice Jean Toal stated in her opinion that "limited instructions could not avoid the prejudice for which the convictions were offered." Further she noted that "none of the relevant authorities nullify the trial Judge's traditional role in weighing the probative value of evidence versus its prejudicial effect or suggest that Rule 403 is displaced by operation of section 16-11-311 (A)(2). She went on to rule that the admissibility of prior convictions is always limited by the

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traditional rules of evidence! And that in balancing these interest, the probative worth of any particular bit of evidence is obviously affected by the scarcity or abundance of other evidence on the same point.

CLERK OF COURT
LEXINGTON SC

-* In both James and Cromer's (my) case, if the state had submitted 2 prior convictions to the Jury, that would have been sufficient evidence to convict without the prejudice accompanying admission of James (7) Cromer (3) + (1 felony)

* The Solicitor stated to the Jury in the trial against me: "... Or that Mr. Cromer has two or more prior convictions for burglary for breaking into people's houses. You will find from the evidence that he is that type of person. He has more than two prior convictions for breaking into someones home." P. 226

*** I Plead guilty to someone taking a bike from off my neiber's porch.

**** I Plead guilty for some Jewelry being taken from a guys aunt's room.

Note: I'm saying this because of what the Solicitor told the Jury. That's wrong, "I was wrong also for aligning myself with those people"

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Due to State v James 355 S.C. 465, 586 S.E. 2d 106 S.E. 2d 745 and the lawyer who drew up my writ, I am entitle relief, James.

2006 SEP 30 P 3:58
CLERK OF COURT
LEXINGTON SC

Justice Jean Toal denied ~~the~~ writ and went against everything she said in James. But the doctrine of res Judicata bars this claim? I raised this Claim all the way to the federal Courts. I was simply Denied. No opinion to contradict James affirmation.

*I feel that I was mistakenly overlooked, so here is this issue again. Boldly saying, if this issue is barred then ~~the~~ does the Public has to Judge? I will continue."

Res Judicata

Example/ Issue 2

Enclosed is a copy of 390 S.C. 118 Court of Appeals of South Carolina case:

Margaret O'Shea

v

South Carolina Law Enforcement Division

This case clearly states that a private Investigator or Someone who is acting

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as such must be license and/or bonded

Enclosed is a statement from [illegible] after being ask if Bobby Ashill ever been licensed or bonded for investigational purposes.

CLERK OF COURT
LEXINGTON SC

Plus, trial Lawyer put on record in PCR that he was conned by Bobby Ashill impersonating a private investigator.

PCR Judge Keesley heard this, yet in his opinion, he deemed trial Attorney effective by stating: "The Court finds that Mr Chesser's representation was well within the professional standards of reasonable trial attorneys in this State. Mr Chesser ___ employed an investigator to assist him in his investigation, he sought and obtain discovery. . . . "

Judge Keesley concluded: "This Court finds that Mr. Chesser's representation of Applicant during each of the above motions was reasonable."

I was denied with prejudice. But I believe that Judge Keesley made a mistake by overlooking the crime against my trial lawyer which limited me to NO evidence.

I agree that Mr. Chesser did everything

FILED
SEP 16 AM 10 06
CARRIGG
CLERK OF COURT
LEXINGTON SC

he could do preserve what he could. I believe Judge Keesley would amend his ruling.

My PCR Attorney never subpoena Bobby Asbill to cross examine him on his scamming my lawyer and doing no investigation.

( The place where I was arrested was not visited. etal. That in itself says alot. )

Res Judicata

Example / Issue 3

The older I get I am coming to realize that we are not only in a war on drugs but we are still fighting In the war of racism.

Even though this Claim has never come from me, It's Reality.* There were Jurors struck because of where they lived and for where they work. And they were black.

I have always been against racism. But now there is a part of me that is saying that my race has prohibit me from relief.

Tommy Lee James is white and was given relief for the ~~Same~~ exact circumstances. I am black and was denied. Just denied. Rick Dowell is white and is the one who sold me the tools and was never charged.

FILED
JAN 10 06
CLERK OF COURT
LEXINGTON SC

He's also the one who called the tools in Stolen (from his neibors garage) to our dispute over more money he wanted from me. *I sent the Police to the place burglarized.*

Thadd Mays is a white male and is who I sold the tools to. He was never charged. Why? Is it race? Or who he know?

Bobby Asbill is a white male who conned money, The States grant money for the indigent defense, from my lawyer and provided no seruices. He could not rightfully provide no seruices. Was he Convicted? An eye was closed and Bobby Asbill wasn't held accountable for his actions through cross examination at my PCR examination. Because my race?

Is Jean Toal making rulings based on race? Did her political rankings withhold me from the federal Courts, to ignore my challeging hee rulings? I was never told, by law, why I was being denied. Just denied. She's white.

Am I not worthy? Being a black man alleging that a Lexington County Sheriff's Employee, Joseph Quig, who is white, got a conviction through illegal and

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BEN J. CARRIGG
CLERK OF COURT
LEXINGTON SC

unreliable method, is what is keeping me from relief.

I am telling the truth about this. "I am on the correct side in this war on drugs. I am on the correct side in this war on racism." I own my past. I ask, "Please grant me relief."

- For what IT's worth -

If anything comes of this - Please ensure that all interrogation inside the Sheriff's Department be either witnessed or recorded to make sure a person won't go through what I am going through. Plus it'll save the courts money.

I am not a lawyer, but I am ready to prove to myself and prove to Yo and my family and loved ones that I can be productive and civil in society.

~~or~~ Record interrogations inside Sheriff's Department

My Hope is in God

Jeffrey Cromer

Contact no. 803-754-0404

P.S. I can not afford a lawyer. I am trying to retain Tommy Thomas again.

Enclosed are 2 letters from him responding to my plea

11

(1)

This letter is regarding Jeffrey D. Cromer SCDC # 197498.

When he was on Trial March 8, March 12, March 19 and March 21, 2001, I was not called by the prosecutor nor the public defender to testify at his trial. Jeffrey has already served 13 years in Prison, but I feel that my testimony may have an impact on his case. I thank you for reading my testimony, hopefully Jeffrey can get another trial.

Sincerely Yours,
Yolanda E. Watlington
Yolanda E. Watlington
Please see attached

2

On March, 2000 around 10:30 pm, that night that it happened. My kids had already gone to bed. I can't sleep when my door is not locked, so I followed Jeffrey to the Shell gas station I think that night. He was playing the game machine in the store but I was waiting to see who he was coming to meet. I was waiting to catch Her with Him together!?!

When I saw him getting up from the game, I moved quickly back to my apartment so he would not see me watching him. He went to the back door and I had already come through the front door. I did not want him to see the curtains ~~swing~~ swing back and forth.

He sat on the back porch smoking a cigarett to come in for the night when a dark pick-up truck pulled up behind my apartment.

My bedroom window is right next to ~~right next~~ the kitchen window and balcony-back door. I was in the dark in my house so he could not see me watching him from the window and then the balcony.

A black male and two young caucasian males got out of the truck to smoke! The black male was whispering to Jeffrey and talking low when I was parking but the balcony. After they finished "smoking" the three of them got back in the truck and left. Jeffrey got in my car and left. He could not have gone to far because I on purpose left no gas in the car. I went to make sure he does not go running to his dad's house again to meet Her? He always claims he's just using the phone? He was not gone long but I don't remember how long he was gone that night. He always go running to his dad's house around the corner. My guess was to get more Hard Liquor since I don't allow it in my home.

Jeffrey fell asleep on the couch. then I decided to go to sleep Still mad at him because he is doing all this drinking and smoking the stuff he knows I don't like but following his dad's foot steps. Now you've been at your dad's drinking, go to the gas station and had more 24oz cans while you are playing that game machine

(4)

Had your so called friends over for more smoking and drinking. Now you got the nerves to sleep on my couch with a can of beer." I picked up that can of beer and threw it at him on the couch! He said something and went back to sleep wet with beer on him. I heard the truck come back to the back door and the guy was calling him from the window-balcony. "I dare you to wake up and go out there, maybe he will see Jeffrey not coming back out there. Yea! You better stay asleep." I going to sit right next to you to make sure you don't get back up cause you've got some explaining to do."

The next morning Jeffrey was still sleeping on the wet couch. My 14yrs old and I went to the phone booth to call my mom. My 10yrs old and 8yrs old was still sleeping on a Saturday Morning. While on the phone with mom I ran out of change so I asked Cynthia to run back and get me more change

She came back saying that their was a man at the door looking for JC? He had on a suit, hopefull its a man coming to take him to get another job cause that's what he was stressing about "no job"!?!

When we arrived at the apartment Jeffrey was being put in hand cuffs and my kids were sitting on the couch, the officer had woke them up and told him, them to sit on couch. The man in the suit and 4 officers were walking around the apartment looking for what?

The man in the suit asked me "Who's name is this apartment in"? as I told him it's my apartment and Jeffrey is my boyfriend who lives here. He asked me if I know anything about the stolen stuff? What stolen stuff I asked him? The police officer open my balcony blinds and said that Stolen Stuff!! No! That was not there last night! You know since this is your apartment, you can go to jail and your kids will get taken from you!?

9

Wow!! I'm already going through a court battle with my ex husband! I watched them while Jeffrey was out side but when they returned I just assumed they came back to work more. I did not know how to defend myself if they attacked me while Jeffrey was drunk and knocked out on the couch. While Jeffrey was in hand cuffs, he did not say a word, like he could not wake up. Jeffrey had to sit down because of his highness, high on something.

The man in the suit and 2 officers had no paper work for coming to my apartment. They said just looking for a IC. One of the officers said to the man in the suit "There is no way he could have done this by himself because it's taking 3 of us to take it away.

They made me admit my 14 yr old come to the first court and not for Jeffrey. The man in the suit told me at the court room that if I help him I could go to jail in his place but if I go against him I would not

(1)

have to worried about the harassment and Jeffrey would not bother me no more. Ifs do want to see your kids grow up? Then don't help him or your "X" will have your kids

# Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-8807
(803) 732-8808

FACSIMILE:
(803) 781-4228

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 86
IRMO, SC 29063

INMATE LINE
(803) 732-8842


August 28, 2012

Jeffrey Durrell Cromer #197498
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

Dear Jeffrey:

I am in receipt of your letter regarding the licensing of the Private Investigator. Please find enclosed a copy of a recent case that I found as well as the current statute. I agree with you that it appears that the investigator would be required to be licensed. However, I believe that you would have to show some sort of prejudice as a result of the investigator not being licensed. There would have to be some sort of deficient performance or that he missed something that would have been directly related to the fact that he was an unlicensed investigator. It has been quite a long time since I looked at your file, but I don't think that you would be able to show that prejudice requirement regarding the investigator.

I also noticed in your letter that you said something about an alibi witness. If there is a witness who can provide an alibi for you, who has just recently come forward, and was not discoverable at the time that we did your PCR action, then you may be able to Petition the Court for relief based upon after discovered evidence. If this is the case, I would be happy to discuss this matter with you to make a determination if I felt like I could convince the Court to have another evidentiary hearing.

I appreciate all the kind words. I am sorry that I was unable to see you when I was at Tyger River last week. For some unknown reason, your name was left off my final list of people to see.

I want you to know that I have always been dedicated to your representation. I truly believe that you received too much time in proportion to the crime that you were involved.

I wish you the very best and look forward to receiving the information regarding the potential alibi witness.

Yours truly,

Tommy A. Thomas
Attorney at Law

TAT/jem

# Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

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7288 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

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IRMO, SC 29063

INMATE LINE
(803) 732-2542


December 11, 2012

Jeffrey Durrell Cromer #197498
Tyger River Correctional Institution
200 Prison Road
Enoree. SC 29335

Dear Jeffrey:

I have reviewed the documents you sent to me as well as the documents that your Mother dropped off. I agree that your sentence is excessive. However, I am unable to determine any other avenue available to you to address this issue.

Enclosed please find a print out for the Innocence Project. I would suggest contacting them regarding your situation to see if they can assist you. I would be glad to speak with them if they agree to assist you.

I wish you the best of luck in your endeavors.

Yours truly,

Tommy A. Thomas
Attorney at Law

TAT/jem

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
*Governor*

MARK A. KEEL
*Chief*

January 16, 2013

Jeffrey Cromer, #197498
Tyger River C.I. U-3-124
200 Prison Road
Enoree, SC 29335

RE: Freedom of Information Act Request # 2013-002
Bobby Asbill

Dear Mr. Cromer:

A thorough search of our databases using the information provided in your letter received January 2, 2013, revealed nothing found under the name listed above.

Sincerely,

Agent Thomas Berry
Freedom of Information Coordinator

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

390 S.C. 118
Court of Appeals of South Carolina.

Margaret O'SHEA, Respondent,
v.
SOUTH CAROLINA LAW ENFORCEMENT DIVISION, Appellant.

No. 4739. | Heard May 19, 2010. | Decided Sept. 15, 2010.

**Synopsis**

**Background:** Death penalty mitigation specialist brought action seeking order directing South Carolina Law Enforcement Division (SLED) to renew specialist's private investigator's license, or an order declaring death penalty mitigation specialists were not subject to private investigator licensure requirements. The Administrative Law Court, Richland County, John D. Geathers, J., entered judgment in specialist's favor, and SLED appealed.

**Holding:** The Court of Appeals, Thomas, J., held that death penalty mitigation specialist was not required to be licensed as a private investigator.

Affirmed.

West Headnotes (1)

1 **Detectives and Security Guards**
◆ Licenses and regulations

Statutory provision that provided a person is exempt from the registration and licensing requirements for "this section" when the employer is not a private investigation business and the employee is exclusively employed by that employer did not subject death penalty mitigation specialist to any licensing requirement, regardless of whether statutory provision overrode any exemption specialist could claim under "exceptions from application of chapter" statute, and thus, specialist was not required to be licensed as a private investigator, where statutory provision included only registration provisions, and no licensing provisions. Code 1976, §§ 40-18-80, 40-18-140(3).

**Attorneys and Law Firms**

****255** Attorney General Henry McMaster, Assistant Attorney General J.C. Nicholson, III, Assistant Attorney General Natalie Armstrong, all of Columbia, for Appellant.

Christian Stegmaier, of Columbia, for Respondent.

**Opinion**

THOMAS, J.

***119** The South Carolina Law Enforcement Division (SLED) appeals an order from the Administrative Law Court (ALC) finding (1) Respondent Margaret O'Shea did not have to be licensed as a private investigator in order to work as a court appointed mitigation specialist on death penalty cases and (2) the files in O'Shea's possession were not subject to SLED's review because they were protected by the work product doctrine. We affirm.

## FACTS AND PROCEDURAL HISTORY

In 2001, following a thirty-year career as an investigative reporter covering high profile stories and court cases, O'Shea began working as a death penalty mitigation specialist. Based ***120** on advice that a professional license would be a good credential for obtaining work in her new field, she applied to SLED for a private investigator's license.

Currently, there are about six individuals doing death penalty mitigation work, four or five of which are licensed as private investigators. According to O'Shea, her work as a death penalty mitigation specialist includes: compiling social histories, gathering documents and other information, interviewing family members of clients and other individuals, and analyzing the material she acquires to help attorneys for capital defendants develop strategies. Although her work is geared toward the penalty phase of a capital case, she occasionally participates in the guilt phase. She rarely, if ever, testifies.

O'Shea described herself as "self-employed," with death penalty mitigation work as her primary job. She is usually contacted directly by an attorney desiring her services. If she

agrees to take the case, counsel then requests the presiding judge to appoint her. She charges by the hour according to the fee approved by the presiding judge. The approved **256 fees are paid by the Office of Indigent Defense. It is undisputed that O'Shea does not work exclusively for any one attorney or law firm. Nevertheless, she considers herself part of each defense litigation team that uses her services.

In 2007, after she had worked as a death penalty mitigation specialist for about six years, O'Shea was unable to renew her private investigator's license because of financial problems resulting mainly from medical problems that prevented her from working. As a result, her license lapsed on September 16, 2007. When she was able to resume working, she did not renew her license; however, she notified SLED that she was working on only one case and was not gathering any new information.

Later, however, a SLED agent contacted O'Shea to arrange an inspection of her records, explaining this was a routine procedure that should have been done every two years.[1] O'Shea initially intended to comply with the request until *121 SLED demanded access to all of her records for the past year. O'Shea refused to comply with this demand because of the volume of paper involved. She contacted the attorneys with whom she had worked in the past year, all of whom took the position that the files in her possession belonged to counsel and were protected by the work product doctrine. O'Shea offered to provide invoices with names redacted, but SLED did not respond to this offer.

On October 24, 2007, O'Shea applied to renew her license. SLED refused to authorize the renewal for several reasons, among them O'Shea's prior refusal to allow an inspection of her records. In December 2007, O'Shea, now represented by counsel, filed this action in the ALC, seeking an order directing SLED to renew her license or, in the alternative, an order declaring that death penalty mitigation specialists were not subject to the licensure requirements that applied to private investigators.

The ALC heard the matter on April 24, 2008, and issued a final order on June 4, 2008, holding (1) O'Shea was not required to be licensed as a private investigator in order to work as a death penalty mitigation specialist; (2) regardless of whether any licensing requirements applied to O'Shea, the files in her possession were protected by the attorney work product doctrine; (3) SLED needed to obtain a court order to inspect an individual's files while investigating whether that person is operating a private investigation business without a license if the subject asserts the files are privileged; and (4) because O'Shea did not need a private investigator's license to work as a death penalty mitigation specialist, there was no need for SLED to review the files in her possession. Following an unsuccessful attempt to alter or amend the ALC's decision, SLED filed its notice of appeal.

## ISSUES

I. Did the ALC err in finding O'Shea did not have to be licensed as a private investigator because she worked as a death penalty mitigation specialist?

II. Did the ALC err in holding O'Shea's files were entitled to protection under the work product doctrine?

## *122 STANDARD OF REVIEW

The standard of review for judicial review of a final decision of an ALC is set forth in section 1–23–610 of the South Carolina Code (Supp.2009). Under Paragraph (B) of this section,

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> **257 (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

## LAW/ANALYSIS

### I. Licensing Requirements

SLED challenges the ALC's ruling that O'Shea did not need to be licensed as a private investigator in order to work as a death penalty mitigation specialist, arguing the court misinterpreted portions of the statutory law on licensing and registration requirements for private investigators. We disagree.

Chapter 18 of Title 40 of the South Carolina Code is entitled "Private Security and Investigation Agencies." Under this chapter, "[a] person who desires to operate a private investigation business in this State must apply for a Private Investigation License from SLED and pay an annual license fee which must be set by SLED regulation." S.C.Code Ann. § 40–18–70(A) (Supp.2009). Under section 40–18–140(3), however, the provisions of Chapter 18 do not apply to "an attorney-at-law while in the performance of his duties."

The ALC relied on section 40–18–140(3) in ruling O'Shea did not need to be licensed as a private investigator in order to *123 work as a death penalty mitigation specialist. Citing ABA Guidelines, law review articles, and other authority, the court noted (1) a mitigation specialist is recognized as an essential component of a capital defense team and (2) the mitigation specialist's only role is to assist attorneys in the defense of death penalty cases. Based on this recognition, the ALC reasoned that in her work as a death penalty mitigation specialist, O'Shea was acting as an agent of the attorney representing the capital defendant and her performance would be monitored by extensive judicial oversight. Though acknowledging O'Shea's work was on a case-by-case basis, the ALC nevertheless found she was no less an agent of defense counsel, who requested her appointment, than a salaried paralegal, investigator, or associate. Based on the finding that O'Shea was acting as an agent for defense counsel while performing her duties as a mitigation specialist, the ALC found she was exempt from the licensing requirements of Chapter 18 pursuant to section 40–18–140(3).

In challenging this ruling, SLED argues only that the ALC failed to consider section 40–18–80(D) of the South Carolina Code (Supp.2009).[2] This paragraph provides as follows:

> A person is exempt from the registration and licensing requirements of *this section* when the employer is not a private investigation business and the employee is exclusively employed by that employer. The exemption from registration and licensing requirements applies only to work performed for the exclusive employer. If the person, during the period of his exclusive employment, performs or is available to perform investigative work for a different employer or more than one employer, the person must obtain a private investigation license or registration pursuant to *this section*.

*124 (Emphasis added.) A careful examination of section 40–18–80, however, reveals there are no licensing requirements whatsoever within that section. Therefore, under section 40–18–80(D), an individual performing private **258 investigation work for a single employer is exempt from registration requirements. The question before us is one of licensing and not registration. This section is therefore not applicable here.

The inclusion of the term "licensing requirements" in the first sentence of section 40–18–80(D) could suggest the legislature intended that the exemption in section 40–18–80(D) would apply to registration and licensing requirements within Chapter 18 rather than within only section 40–18–80. Nevertheless, the appearance of the word "chapter" elsewhere in several statutes within Chapter 18—including section 40–18–80 itself—indicates otherwise, i.e., that the legislature intended for the exemption in section 40–18–80 to be only from whatever registration or licensing requirements were provided within that particular section rather than other sections within Chapter 18. Because, as we have stated earlier, section 40–18–80(D) includes only registration provisions, it follows that, regardless of whether it overrides any exemption O'Shea could claim under section 40–18–140(3), it does not subject her to any licensing requirements.

In holding section 40–18–80(D) does not subject individuals who perform investigatory work for multiple law firms to any specific licensing requirements, we are following the established principle that "[w]here [a] statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Here, although section 40–18–80(D) references licensing requirements within the section, we do not believe the incongruity between this reference and the absence of any such requirements within the defined language presents a sufficient basis to reject the plain meaning of the statute in its present form on the ground that it would lead to an absurd result. *See Kiriakides v. United Artists Commc'ns*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (stating courts will reject the plain meaning of the language in a statutory provision "when to accept it would lead to a result so plainly absurd that it could *125 not possibly have been intended by the Legislature or would defeat the plain legislative intention").

**II. Work Product Doctrine**

The issue of whether O'Shea's files are protected by the work product doctrine arose in the context of whether they were subject to inspection by SLED as part of O'Shea's application to have her private investigator's license reinstated. Because we have determined that O'Shea is not required to be licensed as a private investigator in order to work as a death penalty mitigation specialist, a ruling on this issue is not necessary in deciding this appeal. *See Futch v. McAllister Towing of Georgetown*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when a decision on a prior issue is dispositive).

**CONCLUSION**

We affirm the ALC's determination that O'Shea is not required to be licensed as a private investigator in order to work as a death penalty mitigation specialist. Because this affirmance renders any ruling on the applicability of the work product doctrine unnecessary to the resolution of this appeal, we decline to address this issue.

**AFFIRMED.**

FEW, C.J., and PIEPER, J., concur.

**Parallel Citations**

700 S.E.2d 255

Footnotes

1 In its brief, SLED indicates that, pursuant to its protocol, a lapsed license automatically triggers a field visit by a SLED regulatory agent to the private investigator's office to inspect the investigator's file.

2 During oral argument, counsel for SLED acknowledged SLED did not dispute the ALC's determination that section 40–18–140(3) exempts not only attorneys but also their employees from licensing requirements and further conceded that an investigator who worked for only one law firm did not need a private investigator's license. Moreover, we agree with the ALC that the legislature has recognized, at least implicitly, that an individual performing investigatory duties under the supervision of an attorney does not need a private investigator's license. *See* S.C.Code Ann. § 40–18–70(E)(9)(b) (Supp.2009) (allowing SLED to issue a private investigator's license to a person who "has at least three years' experience ... as an investigator for a law firm ...").

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Code of Laws of South Carolina 1976 Annotated
Title 40. Professions and Occupations
Chapter 18. Private Security and Investigation Agencies

Code 1976 § 40-18-70

# § 40-18-70. Private Investigation License; applications; bond; renewal; display of license; qualifications of licensee; contract; reports to clients; arrest of licensee; inspections of business records; prior licensees.

Currentness

(A) A person who desires to operate a private investigation business in this State must apply for a Private Investigation License from SLED and pay an annual license fee which must be set by SLED regulation.

(1) If the applicant is an association or corporation, the chief executive officer of the association or corporation must be the applicant or must designate in writing the corporate officer or principal who is the applicant.

(2) If the applicant is a partnership, all partners must complete an application form.

(3) The application for license must be made, under oath, on a form approved by SLED. The application must state the applicant's full name, age, date and place of birth, current residence address, residence addresses for the past ten years, employment for the past ten years, including names and addresses of employers, the applicant's current occupation with the name and address of the current employer, the date and place of any arrests, any convictions for violations of federal or state laws, excluding traffic violations, and any additional information as SLED requires. Each applicant must submit with the application one complete set of the applicant's fingerprints on forms specified and furnished by SLED and one color photograph of the applicant's full face, without head covering, taken within six months of the application.

(B) The applicant must post a ten thousand dollar bond with SLED in a form approved by the Attorney General in favor of the State. The bond must be issued by a surety insurer licensed to transact surety insurance in this State. The surety on the bond may cancel the bond upon giving thirty days' notice to SLED and is relieved of liability for a breach of condition after the effective date of cancellation.

(C) Upon receiving the application, bond, and license fee and upon satisfaction after investigation of the competency and integrity and qualifications of the applicant, SLED must grant a license to the applicant to conduct the private investigation business stated in the application. Licensure is for one year and application for renewal must be on a form approved by SLED. The initial and annual renewal license fee for conducting a private investigation business must be set by regulation.

(D) Issuance of a license authorizes the licensee to engage in the private investigation business and to operate branch offices. Immediately upon receipt of the license certificate issued by SLED pursuant to this chapter, the licensee must post and at all times display the license in a conspicuous place at his primary place of business. A copy or duplicate of the license certificate must be conspicuously posted at each branch office. The licensee must immediately notify SLED of the address of each branch office opened or closed.

(E) SLED may issue a license to a person who:

(1) is at least twenty-one years of age;

(2) has a high school diploma or equivalent;

(3) is a citizen of the United States;

(4) has not been convicted of a felony or a crime involving moral turpitude;

(5) is of good moral character;

(6) does not unlawfully use drugs;

(7) does not use alcohol to such a degree as to affect adversely his ability to perform competently the duties of a private investigator, has not been adjudicated an incapacitated person without being restored to legal competency, and who has no physical or mental impairment which would prevent him from competently performing the duties of a private investigator;

(8) has not been discharged from the military service with other than an honorable discharge;

(9) has at least three years' experience:

(a) as a private investigator employed by a licensed private investigation agency;

(b) as an investigator for a law firm, a government agency, a private corporation, a nonprofit organization, or in a capacity that SLED determines has provided the requisite investigative experience; or

(c) as a sworn officer with a federal, state, county, or municipal law enforcement agency.

(F) A private investigator licensed under this chapter must, prior to commencement of services or investigation ordered by a client, secure a contract signed by the client and the private investigator, on a form approved by SLED, describing in detail the services to be provided, fees to be charged, and an understanding by both parties concerning delivery of the written report. A client may waive the right to a written contract by signing a form approved by SLED.

(G) A private investigator licensed under the provisions of this chapter must provide to each client, in compliance with the contract describing the investigation or other services, and within a reasonable time of the conclusion of contracted work, a written report accurately detailing hours worked, activities accounting for time charged, and results of an investigation. This requirement is satisfied if the private investigator maintains in his files a waiver of written report signed by a client.

(H) A private investigator licensed under the provisions of this chapter must maintain for a period of three years copies of all written service contracts and investigation reports.

(I) Evidence of criminal activity discovered by a licensed or registered private investigator must be immediately reported to the Chief of SLED.

(J) A licensee who is arrested must report the custodial arrest to SLED within seventy-two hours of the arrest.

(K) Licensees must make business records available during normal business hours for inspection by the Chief of SLED or his designee.

(L) A person initially licensed as a private investigator before the effective date of this section, and who has maintained his license, is not required to meet the requirements contained in subsections (E)(1), (4), and (8).

**Credits**

HISTORY: 2000 Act No. 372, § 1; 2002 Act No. 339, §§ 33, 34, 35.

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Code 1976 § 40-18-70, SC ST § 40-18-70

Current through End of 2011 Reg. Sess.

# State of South Carolina
# The Circuit Court of the Eleventh Judicial Circuit

WILLIAM P. KEESLEY
JUDGE

127 COURTHOUSE SQUARE
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EDGEFIELD, SOUTH CAROLINA 29824-0010
TELEPHONE: (803) 637-4095
FAX: (803) 637-2035
E-MAIL: wkeesley@sccourts.org

November 12, 2014

Mr. Jeffrey Cromer, #197498
U-3-124
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

J. Clayton Mitchell
Asst. Staff Attorney Gen.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

FILED
2014 NOV 17 A 11:53
BETTY J. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Re: Cromer v. State (2012-CP-32-02197)

Dear Mr. Cromer and Mr. Mitchell:

I received a letter from Mr. Cromer postmarked September 12, 2014, along with what is apparently his copy of a letter from Mr. Mitchell to Judge Russo regarding the proposed conditional order of discharge. Mr. Cromer asks several questions which I am not permitted to answer, and I have no knowledge upon which to answer most of the questions. As to the recusal, I assume that I indicated that another judge should decide any conditional order of dismissal issue because I was the judge who heard and denied the previous PCR (Case Number 2002-CP-32-03895). I have not seen the amended application, to the best of my recollection.

I am sending to Mr. Mitchell, Judge Russo, and the Clerk of Court a copy of the letter from Mr. Cromer. I am also sending to the Clerk the letter from Mr. Mitchell to Judge Russo dated September 4, 2014. Thank you.

Sincerely,

COPY

William P. Keesley

cc: ✓ w/enclosures: Clerk of Court's file
Hon. Thomas A. Russo (via email)

The Honorable Judge William P Keesley
Chief Administrative Judge
Eleventh Judicial Circuit
Post office Box 10
Edgefield, S.C. 29824

FILED
2014 NOV 17 A 11:53
BETTY A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Re: JEFFREY Cromer v State
2012-CP-32-2197

Thank You for giving me the 30 days to Amend the Application. But J. Clayton Mitchell took you from off of my case because of a conflict of interest. Why are you a conflict of interest? You are more familiar with the case. Did you request to be moved?

I was given Judge Thomas A. Russo. Could you let him know that you gave me to September 19th to amend my PCR application. I don't know if J. Clayton Mitchell told him.

Is J. Clayton Mitchell (Assistant Attorney General) like the Solicitor? He doesn't care if I deserve relief or not? To him I should stay in prison?

That's how Tav Swarat treated me, as

if I was a nothing. He lied and made up all sorts of things so the Jury would convict. His karma awaited him.

Is J. Clayton the same way? I thought that the Attorney General was supposed to do what's Just? I don't know, Judge Keesley. I have done over 1/3 of 25 years for buying stolen goods. I thought all officers are Just too.

If there is a way, Please make sure that all interrogations inside the Lexington County Sheriff's department be recorded or witnessed.

May Hope is in God

FILED
2014 NOV 17 A 11:53
BETTE A. HAGG
CLERK OF COURT
EXCLUSIVE
LEXINGTON, SC

The reason I am asking you about the intentions of the ASSISTANCE Attorney General is because he never once mention to Judge Russo on the Conditional order of dismissal that you have alotted me a few days to Amend my Application. He simple ask that He (Judge Russo) signed it.

Thanks For Your Righteousness

Jeffrey Comer

ALAN WILSON
ATTORNEY GENERAL

FILED
2014 NOV 17 A 11:53
BETTY W. CROSS
CLERK OF COURT
LEXINGTON, SC

September 4, 2014

The Honorable Thomas A. Russo
205 East Main Street
Lexington, South Carolina 29150

**Re:** **Jeffrey Cromer, #197498 v. State of South Carolina**
**2012-CP-32-2197**

Dear Judge Russo:

Enclosed please find an original proposed **Conditional Order of Dismissal** in the above-captioned case. The Honorable William P. Keesley, Chief Administrative Judge for the Eleventh Circuit, has a conflict of interest in this matter. Pursuant to the Order issued by Chief Justice Toal dated April 12, 2013, any circuit court judge residing in or assigned to an adjoining judicial circuit may sign in Judge Keesley's stead. Therefore, if this Order meets your approval, please sign and forward it to the Lexington County Clerk of Court for filing.

Sincerely,

J. Clayton Mitchell
Assistant Attorney General

JCM/sbm
Enclosures

cc: Jeffrey Cromer, #197498

ORIGINAL

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF LEXINGTON | IN THE COURT OF COMMON PLEAS<br>ELEVENTH JUDICIAL CIRCUIT |
| Jeffrey Cromer, #197498,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | 2012-CP-32-2197<br><br>**AMENDED RETURN AND MOTION TO DISMISS** |

In response to the post-conviction relief (PCR) application filed May 29, 2012, and amended September 16, 2014,[1] the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the January 2001 term of the Lexington County Grand Jury for First Degree Burglary (2001-GS-32-0217). Applicant was represented on the charges by Michael W. Chesser, Esquire. Applicant proceeded to trial before the Honorable J.C. Nicholson, Jr. on March 3-21, 2001. The jury convicted Applicant as charged. Judge Nicholson sentenced Applicant to confinement for a period of twenty-five (25) years.

Applicant filed a timely notice of appeal. Assistant Appellate Defender Robert M. Dudek represented Applicant on his appeal. Applicant made a Final Brief of Appellant on March 4, 2002 and raised the following issue on appeal verbatim:

[1] After Applicant initiated this action, the State made its Return and Motion to Dismiss (RMTD) on June 10, 2014. The State also submitted a proposed Conditional Order of Dismissal (COD). On August 21, 2014, the Honorable William P. Keesley issued an Order Regarding Motion for Conditional Order of Discharge, giving Applicant additional time to "state with more particularity the claim of after-discovered evidence and when he first learned of it." Due to a conflict, this matter is no longer before Judge Keesley. Applicant subsequently filed an amendment to his application.

1. Whether the trial court erred in overruling defense counsel's objection to the solicitors closing argument where he urged the jury not to victimize the victim again.

Respondent made its Final Brief of Respondent on March 11, 2002, through Senior Assistant Attorney General Harold Coombs. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Cromer, Op. No. 2002-UP-518 (S.C. Ct. App. filed August 26, 2002). The remittitur was issued on September 11, 2002. Applicant did not seek rehearing or certiorari to the South Carolina Supreme Court.

**2002-CP-32-3895**

Applicant subsequently filed an application for post-conviction relief on November 6, 2002, where he alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of counsel.
    a. Trial attorney failed to fully investigate case; did not pursue defense required by 6th amendment, USCA; was not fully prepared to go to trial; did not raise issues during suppression hearing.
2. Ineffective assistance of appellate counsel.
    a. Appellate counsel did not present meritorious issues to appeals court after being asked to.
3. Violation of due process.
    a. Due to aforementioned ineffective assistance of counsel, applicant was denied a fair trial and proper redress to court.

Respondent filed its return on or about February 7, 2003. Applicant amended the application on October 13, 2004, asserting the following:

1. Applicant is informed and believes that after discovered evidence has been obtained that indicates there is a witness who was unknown and/or had information unknown at the time of trial.

An evidentiary hearing was convened on February 10, 2005 at the Lexington County Courthouse before the Honorable William P. Keesley. Applicant was present and represented by counsel Tommy A. Thomas, Esquire. The State was represented by Assistant Attorney Daniel E.

Grigg. Applicant testified on his own behalf. Also testifying was Applicant's former counsel, Mr. Chesser and Mr. Pachak. On September 24, 2007, the Judge Keesley, issued an Order of Dismissal denying relief and finding that Applicant's allegations were without merit.

Applicant appealed the decision made by the PCR court and filed a notice of appeal. Applicant was again represented by Tommy A. Thomas, Esquire. On January 22, 2008, counsel filed a Petition for Writ of Certiorari in the Supreme Court of South Carolina. In the petition, Applicant asserted the following issues:

1. Whether appellate counsel rendered ineffective assistance of counsel when he failed to address the introduction of petitioner's three prior convictions to establish burglary in the first degree?
2. Whether appellate counsel rendered ineffective assistance of counsel when the appellate brief failed to address prejudicial comments made by the solicitor and defense counsel's motion for a mistrial?
3. Whether appellate counsel rendered ineffective assistance of counsel when he failed to address the introduction of redacted portions of the petitioner's statement during cross-examination of the Petitioner?

Respondent made its Return on May 22, 2008. On January 8, 2009, the South Carolina Supreme Court denied the petition. Applicant, through counsel Tricia A. Blanchette made a motion for reconsideration on January 16, 2009, which was denied on February 4, 2009. The remittitur was issued that same day, February 4, 2009.

**2009-cv-2235-MBS-PJG**

Applicant then filed a petition for writ of habeas corpus on August 24, 2009, in federal district court. Petitioner raised the following issues:

1. Cromer argues that trial court's decision to allow evidence of 3 prior burglary convictions and one felony in Florida (burglary) was in error.
2. Voluntariness of statement – use of statement was in error.
3. Solicitor's misconduct throughout trial – solicitor's closing.
4. Ineffective assistance of trial counsel – mistrial not successful.

On December 2, 2009, the Respondent filed its return and motion for summary judgment. The federal district court granted Respondent's motion for summary judgment by Order dated October 26, 2010, finding that Petitioner's claims were without merit. Applicant filed a Notice of Appeal on December 7, 2010. The Fourth Circuit Court of Appeals issued an order enforcing the judgment on May 13, 2011.

II.

In his *second* and current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons verbatim:

1. Newly, important, helpful evidence
    a. Alibi witness has come forward
2. Trial judge erred and abused his discretion
    a. He state and agreed Def. was deprived a fair trial and Def. Due Process rights violated
3. PCR judge abused his discretion
    a. Ruled investigation by non-liscense investigator is adequate for criminal trial.
4. Case lack proper investigation
    a. Civilian who imposed as an investigator scammed the Defense.
5. Prosecution used strikes because of jurors race deprived Def fair trial
    a. Black jurors struck because of where they work- where they lived.

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

III.

This Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief applications. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent also submits this Application for Post-Conviction Relief should also be dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to –160 (Supp. 2003). S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was found guilty on the offenses he challenges on March 21, 2001. The remittitur from Applicant's direct appeal was issued on September 11, 2002, so he was therefore required to file his application on or before **September 12, 2003**. This Application was filed on May 29, 2012, which was over nine (9) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

V.

Additionally, this Court should dismiss the Applicant's allegation of ineffective assistance of counsel as barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former

action. Id. This application presents allegations that could have been and were in fact raised in those prior collateral proceedings. The Applicant did raise the issue of ineffective counsel in his prior post-conviction relief proceedings. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss these claims as barred by *res judicata.*

VI.

Applicant contends that he is entitled to an evidentiary hearing because of newly discovered evidence of an alibi witness. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

> (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. The Respondent submits that the Applicant cannot satisfy *any* of these requirements to be granted a new trial. Addressing his amended application, Applicant has presented nothing new that was not and could not have been raised in his initial PCR application that he was

VII.

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

VIII.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to Applicant's previous PCR applications and was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN M. WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

PATRICK L. SCHMECKPEPER
Assistant Attorney General

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

By: P L Schmeckpeper
Attorneys for the Respondents

Columbia, South Carolina
September 30th, 2015

2013-CP-33-02197

BK

FILED

October 26th, 2015

I, Yolanda Washington duly swear and Will Testify that I followed Jeffrey Cromer to the Shell Gas Station thinking he was going to meet a woman, But he went to play the video poker machine. When he got ready to leave, I Beat him back to my apartment. When he got there Shortly after (about 3 minutes) I witnessed a dark truck drive up and a black guy came over and whispered something to Jeffrey and he and 2 white males unloaded stuff on my patio and left. Jeffrey walked back to the Shell Gas Station, bought some beer and walked back to the apartment where he later passed out on the couch. This was in March 2000 before 11pm but after 9pm.

During Jeffrey's Trial, I was not question or called to testify by the prosecutor or Jeffrey's Attorney. But the detectives/officers who came to arrest him told me if I tried to help Jeffrey in any way, I could go to jail in his place and asked me "Do you want to see your kids grow up?" Then don't help him (Jeffrey)

They did not have a search warrant when my 13yr old opened the door. I was at the phone booth at the Shell Station when they arrived.

ORIGINAL

Jeffrey and I started communicating again in October 2012 and the conversation came up about the night he went to the Shell Station. I let him know that I followed him there and that I saw the truck that same night.

I Iolando Watlington swear that this is True. No one ever called me or come to my home or Job and asked me about Jeffrey regarding that night or What happened that night. Nor was I called to testify in court.

Iolanda E. Watlington

FILED
2015 OCT 26 P 12:48
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON

SWORN to before me this
26th day of October, 2015
Linda J. Williams (L.S.)
Notary Public for South Carolina
My Commission Expires: 01-08-2020

LINDA J. WILLIAMS
NOTARY PUBLIC
SOUTH CAROLINA
My Commission Expires
2020

794

State of South Carolina
County of Lexington

Jeffrey Cromer 197499
Applicant
V
State of South Carolina
Respondent

In the Court of
Common Pleas Eleventh
Judicial Circuit
2012-CP-32-219

Summons

To: State of South Carolina

You are hereby Summons and required to serve upon Applicant, Jeffrey Cromer, whose address is Evans Correctional Institute 610 Hwy 9 west Bennettsville, SC 29512, an answer to the Application that is herewith served upon you, within 90 days pursuant to rule 12 a SCRCP. After service of this Summons upon you, exclusive of the day of service. If you fail to do so, Judgement of default may be taken against you for the relief demanded in the Application.

Clerk of Court

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF LEXINGTON | IN THE COURT OF COMMON PLEAS<br>ELEVENTH JUDICIAL CIRCUIT |
| Jeffrey Cromer, #197498,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | 2012-CP-32-2197<br><br>(Motion) To Grant PCR<br>[redacted] ORDER [redacted]<br>Evidentiary Hearing. |

This matter comes before this Court by way of an application for post-conviction relief filed May 29, 2012.

## I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the January 2001 term of the Lexington County Grand Jury for First Degree Burglary (2001-GS-32-0217). Applicant was represented on the charges by Michael W. Chesser, Esquire. Applicant proceeded to trial before the Honorable J.C. Nicholson, Jr. on March 3-21, 2001. The jury convicted Applicant as charged. Judge Nicholson sentenced Applicant to confinement for a period of twenty-five (25) years.

Applicant filed a timely notice of appeal. Assistant Appellate Defender Robert M. Dudek represented Applicant on his appeal. Applicant made a Final Brief of Appellant on March 4, 2002 and raised the following issue on appeal verbatim:

> 1. Whether the trial court erred in overruling defense counsel's objection to the solicitors closing argument where he urged the jury not to victimize the victim again.

Respondent made its Final Brief of Respondent on March 11, 2002, through Senior Assistant Attorney General Harold Coombs. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Cromer, Op. No. 2002-UP-518 (S.C. Ct. App. filed August 26, 2002). The remittitur was issued on September 11, 2002. Applicant did not seek rehearing or certiorari to the South Carolina Supreme Court.

**2002-CP-32-3895**

Applicant subsequently filed an application for post-conviction relief on November 6, 2002, where he alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of counsel.
   a. Trial attorney failed to fully investigate case; did not pursue defense required by 6th amendment, USCA; was not fully prepared to go to trial; did not raise issues during suppression hearing.
2. Ineffective assistance of appellate counsel.
   a. Appellate counsel did not present meritorious issues to appeals court after being asked to.
3. Violation of due process.
   a. Due to aforementioned ineffective assistance of counsel, applicant was denied a fair trial and proper redress to court.

Respondent filed its return on or about February 7, 2003. Applicant amended the application on October 13, 2004, asserting the following:

1. Applicant is informed and believes that after discovered evidence has been obtained that indicates there is a witness who was unknown and/or had information unknown at the time of trial.

An evidentiary hearing was convened on February 10, 2005 at the Lexington County Courthouse before the Honorable William P. Keesley. Applicant was present and represented by counsel Tommy A. Thomas, Esquire. The State was represented by Assistant Attorney Daniel E. Grigg. Applicant testified on his own behalf. Also testifying was Applicant's former counsel, Mr.

• Applicant dismissed after discovered evidence claim as hearsay. • Claim was not heard.

Chesser and Mr. Pachak. On September 24, 2007, the Judge Keesley, issued an Order of Dismissal denying relief and finding that Applicant's allegations were without merit.

Applicant appealed the decision made by the PCR court and filed a notice of appeal. Applicant was again represented by Tommy A. Thomas, Esquire. On January 22, 2008, counsel filed a Petition for Writ of Certiorari in the Supreme Court of South Carolina. In the petition, Applicant asserted the following issues:

1. Whether appellate counsel rendered ineffective assistance of counsel when he failed to address the introduction of petitioner's three prior convictions to establish burglary in the first degree?
2. Whether appellate counsel rendered ineffective assistance of counsel when the appellate brief failed to address prejudicial comments made by the solicitor and defense counsel's motion for a mistrial?
3. Whether appellate counsel rendered ineffective assistance of counsel when he failed to address the introduction of redacted portions of the petitioner's statement during cross-examination of the Petitioner?

Respondent made its Return on May 22, 2008. On January 8, 2009, the South Carolina Supreme Court denied the petition. Applicant, through counsel Tricia A. Blanchette made a motion for reconsideration on January 16, 2009, which was denied on February 4, 2009. The remittitur was issued that same day, February 4, 2009.

**2009-cv-2235-MBS-PJG**

Applicant then filed a petition for writ of habeas corpus on August 24, 2009, in federal district court. Petitioner raised the following issues:

1. Cromer argues that trial court's decision to allow evidence of 3 prior burglary convictions and one felony in Florida (burglary) was in error.
2. Voluntariness of statement – use of statement was in error.
3. Solicitor's misconduct throughout trial – solicitor's closing.
4. Ineffective assistance of trial counsel – mistrial not successful.

On December 2, 2009, the Respondent filed its return and motion for summary judgment. The federal district court granted Respondent's motion for summary judgment by Order dated

October 26, 2010, finding that Petitioner's claims were without merit. Applicant filed a Notice of Appeal on December 7, 2010. The Fourth Circuit Court of Appeals issued an order enforcing the judgment on May 13, 2011.

## CURRENT APPLICATION

In [redacted] second and current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Newly, important, helpful evidence
   a. Alibi witness has come forward
2. Trial judge erred and abused his discretion
   a. He state and agreed Def. was deprived a fair trial and Def. Due Process rights violated
3. PCR judge abused his discretion
   a. Ruled investigation by non-liscense investigator is adequate for criminal trial.
4. Case lack proper investigation
   a. Civilian who imposed as an investigator scammed the Defense.
5. Prosecution used strikes because of jurors race deprived Def fair trial
   a. Black jurors struck because of where they work- where they lived.

Before this Court are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Successiveness

The Court finds that the current application for post-conviction relief [redacted] be granted, IN part [redacted] is successive to the previous application for post-conviction relief. S.C. Code Ann. § 17-27-90 (2003) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally

> adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court grant current allegations of Newly Discovered evidence; and thus the current application is NOT barred under S.C. Code § 17-27-90. Applicant has established sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has met the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

**Statute of Limitations**

This Court further finds that this Application for post-conviction relief must also be Granted to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) (By way of Newly Discovered Evidence) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was found guilty on the offenses he challenges on March 21, 2001. The remittitur from Applicant's direct appeal was issued on September 11, 2002, so he was therefore required to file his application on or before **September 12, 2003**. This Application was filed on May 29, 2012. First Application was filed Nov. 6 2002.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court Grant the application for post-conviction relief for the time mandated by the Post-Conviction Procedure Act, due to Applicants first PCR Application.

**Res Judicata**

This Court further finds that the doctrine of *res judicata* upholds the Applicant's claims. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior actions bars supplement consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former actions. Id.

The Petitioner,

collateral attacks his conviction. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, this Court finds these claims deserves relief, and will finalize Public Judgement

**Newly Discovered Evidence**

Finally, Applicant's claim of alleged "newly-discovered evidence", Applicant has made a *prima facie* showing that he is in actual possession of such evidence & how that evidence likely would have changed the outcome at trial. Under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence *could have been* ascertained, Applicant has set forth with specificity what the evidence is, how it would have affected the outcome if used at trial, & why such alleged evidence was not readily discoverable at the time of trial or his previous PCR action. Before the Court will hold an evidentiary hearing, the Applicant must make a prima facie showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has make such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is entitled to an evidentiary hearing in the matter. Accordingly, this matter must be GRANTED.

## III. CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), the Respondent intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant was granted twenty (20) days from the date of service of the Order upon him to show why the Order should not become final.

The Applicant has file reasons he have with the Lexington County Clerk of Court and opposing counsel at the following address:

Office of the Attorney General
Patrick L. Schmeckpeper
PCR Division – 11th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this _____ day of _____, 2015.

Honorable R. Knox McMahon
Chief Judge for Administrative Purposes
Eleventh Judicial Circuit

_____, South Carolina

This case beains with me accepting responsibility and pray that you further the administration of justice in this state.

## Statement of Case & Facts

I Jeffrey Cromer was involved with some stolen Power tools that came from the garage/outhouse of a Piney Grove road resident. The evidence and testimony shows that m involvement beaan at 10pm and ended approximately 10:30pm.

Between the hours of 11pm and 4:30am the residence of the Piney Grove road property was burglarized (also more iten from the garage/outhouse/shop-taken.) But this crime occurred withc ny presence without my knowledge; No Plan No Spree No contir uous act - Nothing to hold Jeffrey Cromer liable.

**Two** distinct break-ins at **Two** distinct times on the sar Property was indicted as a sinale act! Against Petitioner.

(Please view Prosecutors misconduct where he alleged to the jur that since I was involved at 10pm - I was also involved [redacted] 11pm-4:30am

see marked 555

## [redacted] Evidence - Prima facie Showing

1. Trial A. Evidence for Indictment & Evidence use for conviction was a Written Confession by Petitioner. "At 10pm I was a lookout guy and saw them bring out tools.. rom garage then left."... Testimony was that of 10pm - 10:30pm 4-13-2000

B. The items the Petitioner possessed from the Piney Grove road Property was returned back to owner.

C. Trial was based on 1. Voluntariness of Confession. 2. Credibility. 3. Evidentary Spillover via 11pm-4:30am

(Not Evidence - if evidence why was I charg and convicted for a crime that happen from 11pm-4:

# Law

when a general verdict of guilty rests on two alternative theories of Prosecution, one valid and the other invalid, the verdict should be set aside if it is impossible to tell which ground the jury selected Yates v US

This Court is now made aware this is a rare 805(1)
where two seperate crimes of buralary-break-ins
happen on the same property without a common schem
plan or evidence of such.
One crime of buralary of the garage/outhouse 20
25 yards behind residence from the time of 10pm to 10:3
And a second crime of buralary of the residence
between the hours of 11pm and 4:30am.

## Primafacie showing of Alibi

1. Enclosed is a Prima facie showing that I am in actual Possession of the Alibi Witness Affidavit
2. Enclosed is a Prima facie showing that I never recieved an investigation for any Potential Alibi Witnesses, Evidence
3. Enclosed is a Prima facie showing that Alibi came forward after first (1st) PCR hearing & of Course after Trial
4. Without Knowledge of an Alibi Witness - I could not raise it in 1st PCR
5. I Filed approximately (1) one month after Witness Came forward.
6. Alibi is Prepared to testify. Alibi Testimony confirms states evidence as well as confirming the defense testimony.
7. Alibi Witness is Credible. (See) Trial - Credibility v Credibili
8. Alibi will testify as to Petitioners whereabouts betwee 04:5pm 4-13-2000 and 4:30am 4-14-2000.

## Affect of Alibi (if used) At Trial

. This Court can reasonably conclude that Trial Judge J.C. Nicholson would have easily intervened (& could have) directing the State Prosecutor TAV Swarat to try Petitioner only on proof that alleged the buralary of the garage/ou house at 10pm.
2. There is a high Probability that a not guilty

that would have eliminated the prosecutions
evidentiary spillovers, misconduct, personal feelings
etc. See Enclosed Transcript Pages marked
221-224, 529-532, 553-558; 550

3. A. It is impossible to tell whether the jury guilty verdi was that a the garage outhouse or home.

B. It was also error for state to comment on my only one testifuing for the defense - failing to call an Alibi witness.

4. Trial was based on Defendants Credibility versus a sole detectives credibility as to the voluntariness of a written confession. Therefore, an Alibi Witness testimony is material to the issue of guilt.

JEFFREY Cromer swears TO This Court that he ser J Clayton (assistant AG) his final copy of a document he obtained from sled that made a Prima facie showing that Bobby Asbill, the person Trial Lawyer Micheal Chess thought he had hired to investigate for evidence and witnesses, was never a licensed nor bonded Private investigator. He fell victim to a scam.

Trial Lawyer later found out (after the trial) that Bobby Asbill was a fraud who impersonated a a Private investigator—through illegal means.

Unfortunately, trial lawyer was billed and paid money (for no service) from the INDIGENT DEFENSE FUND

* Enclosed are Prima facie Showings where Trial Attorney Admitted hiring a non-unlicensed Person to do investigative footwork (000679-681 And admitting the importance of an investigation for the Defense (case), but an investigation was not done. By defense nor state (544)

uestion: A. Are there any cases where a Trial Lawyer go out o hire a Private investigator, but get(s) scammed by someone impersonating one Private investigator? On top of that - Provides NO services?

uestion: B. Are Trial Lawyers held accountable if they wer o hire an investigator who offered NO services?

Direct Relation as to NOT being licensed (P.I)

SLED will not allow that Person to examine evidence there. NO business will allow to view cameras (to wit Shell gas station Appointment of Counsel — (3.) A Person for whom Counsel is appointed shall be represented at every stage of Proceedings. This is a case where girlfriend have reasonable basis to have

Due Process (Alibi)

5. Do to the crime against the trial lawyer. Petitioner was denied a proper investigation that evidence could have been ascertained by the exercise of reasonable diligence.

It is Unordinary and rare that a Trial Lawyer be at the BUTT of a scam - as of the concern of an investigator. which direct relates to the fact that Trial Lawyer lack to verify Credentials are negligent.

It is Unordinary that a Trial Investigator never visit a crime scene.

It is rare that a Trial Investigator does not seek Potential witnesses.

It is Unordinary that a Person impersonates himself to a Trial Attorney as a licensed Private Investigator, Bills him, and provides no servic

"The crime of Fraud Unfortunately Happen to My Appointed Trial Lawyer. But the unfortunance fell on me."

Note: Trial Lawyer from Aiken, S.C. - case in Lexington, SC (1 hour 15min away) Trial Lawyer relied on investigation for independent footwork.

US v Prysock Oct 30, 2012
failed to investigate an
Alibi witness

A HE HAD DONE WORK FOR ME IT SEEMS TO ME FOR 8 OR 10 MONTHS OR A YEAR.

Q OKAY. SO YOU HAD SOME CONFIDENCE IN HIS ABILITY?

A I DID.

Q OKAY. IN SOUTH CAROLINA AS FAR AS INVESTIGATORS, ARE THEY LICENSED?

A THEY'RE SUPPOSED TO BE.

Q THEY ARE? DO YOU KNOW WHETHER OR NOT MR. ASBILL WAS LICENSED?

A WELL, IT CAME TO LIGHT AFTER THAT THAT SLED CALLED ME UP ONE DAY AND SAID HE WASN'T LICENSED, AND I DIDN'T KNOW THAT, AND I HAD USED HIM BECAUSE A LAWYER IN LEXINGTON MICKEY – I FORGET HIS LAST NAME, BUT HE USED HIM, AND THEN IT TURNED OUT THAT MR. ASBILL HAD NEVER HAD A LICENSE, AND IT WAS, YOU KNOW, HE ENDED UP, YOU KNOW, NOT GOIN' TO JAIL OVER IT, BUT IT WAS SOMETHIN' THAT MADE ME AND A NUMBER OF OTHER LAWYERS UNCOMFORTABLE.

Q DID YOU FIND THAT OUT BEFORE THIS TRIAL OR DURING THE TRIAL OR AFTER THE TRIAL?

A AFTER.

Q AFTER THE TRIAL.

MR. THOMAS: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

MR. BAX: NOTHING FURTHER FROM THE STATE, YOUR HONOR.

THE COURT: THANK YOU, MR. CHESSER. YOU MAY STEP DOWN.

A THANK YOU.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M SORRY FOR THE FACT THAT YOU HAD TO WAIT SO LONG THIS MORNING. WE HAD OUR FIRST

HAVE ANY INDEPENDENT RECOLLECTION OF THE FACT THAT WHETHER YOU WERE TALKING ABOUT WHEN YOU WERE DISCUSSING THIS WITH THE JURY IN YOUR STATEMENT WHETHER HE COULD STILL BE CHARGED BY THE SOLICITOR'S OFFICE AS FAR AS AN INDICTMENT, ALL THAT KIND OF THING, AFTER THIS FOR RECEIVING STOLEN GOODS?

A THAT'S WHAT I MEANT.

Q OKAY. WAS IT YOUR INTENTION OR DO YOU RECALL THIS TO KINDA PUT IN THE JURY'S MIND THAT, YOU KNOW, WHAT HE HAD DONE, THE FACT THAT THERE WAS ENOUGH EVIDENCE TO SHOW THAT HE HAD DONE SOMETHING AND THAT WHAT HE HAD DONE WAS NOT NECESSARILY BEING LET OFF. HE WAS NOT BEING LET OFF SCOTT FREE IF HE WASN'T FOUND GUILTY OF WHAT YOU'RE SAYING HE REALLY DIDN'T DO?

A THAT'S THE IDEA. THAT WAS IT.

MR. BAX: NO FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

THE COURT: REDIRECT?

MR. THOMAS: YOUR HONOR, I JUST HAVE ONE OR TWO ON REDIRECT IF I MIGHT.

<u>REDIRECT EXAMINATION</u>

<u>BY MR. THOMAS</u>

Q MR. CHESSER, YOU SAID THAT – COUNSEL HAD ASKED YOU ON CROSS ABOUT THE INVESTIGATOR, YOU HIRED AN INVESTIGATOR IN THIS CASE?

A RIGHT.

Q AND YOU HAD SAID THAT THAT WAS BOBBY ASBILL?

A YES, SIR.

Q OKAY. HOW LONG HAD MR. ASBILL WORKED FOR YOU?

# Victims Testimony on Time

Taking into account that Mr Barnhill's garage/outhouse was being robbed when he pulled into his driveway. Around 10pm 10:10pm

Shortly thereafter I left, followed by the three other people who had brought me the tools from out of the garage/outhouse: Mr. Barnhill's shop/workshop

As You see the Victim watched Television until 11 Pm then went to sleep.

Between 11pm - 4:30 am - which is when the victim awoke - the Television he had been watching was stolen, Plus other items from his home.

The Petitioner has **No** Knowledge of who what when or how.

This is a Prima facie Showing that another Crime occurred on the residence between the times of 11pm and 4:30am.

Again, this is a rare occassion where two distinct burglaries occurred at different times to different buildings on the Scene property.

Petioner has Alibi on his Whereabouts between the times 11pm 4-13-2000 and 4:30am 4-14-2000

See 531(1-6)

A Three grandchildren.
Q Mr. Barnhill, do you work? Are you employed?
A Yes, I am, with the U.S. Postal Service.
Q And how long have you been with the U.S. Postal Service?
A Thirty-five years.
Q Mr. Barnhill, I want to direct your attention to the night of April 13th. Do you recall that particular night?
A Yes, I do. I had gone out for just a little while. I came home, I guess, at 10:00 o'clock. My wife had gone to bed. I cut the T.V. on, flipped through 50 channels and could not find anything interesting. By then it was almost 11:00 o'clock, and I called it a night. I am an early riser, so I called it a night.
Q The T.V. that you were watching, where was it located inside your house?
A It's in what I call the sun room. It's my smoking room.
Q Will your wife let you smoke anywhere else in the house?
A No.
Q After you turned the television off, you went to bed?

A Yes.
Q Were you and your wife the only ones in the house that night?
A Yes.
Q You say you are an early riser, Mr. Barnhill?
A Yes.
Q What time did you wake up the following morning, the early morning hours of the 14th?
A I was up at 4:30. My wife had already gotten up. I said, "What are you doing up so early?" She said, "Well, I woke up at 4:00 o'clock, so I got up." I looked around and the first thing I noticed -- she had already made a pot of coffee -- was that the T.V. was gone.
Q That was in your smoking room where you been watching it the night before?
A Yes. I said, "Are you playing games?" I thought maybe -- I didn't know what had happened because the back door was still closed. She said, "No."

I said, "Well, the T.V. is gone." I said, "Where are the cameras that were out on the floor?" I had two cameras laying on the floor. I said, "The camcorder and the camera is gone," among other things, tripod and all.

# Spillover Effect by Prosecution T. Swara

1. Litigation related conduct

A. State Prosecutor Tav Swarat gave alternate theorie that created a spillover ~~effect~~ from the 11pm - 4:30Am break-in (then) to the 10pm buralary of the garage / outhouse, which is prejudicial. First, 10pm comes befor 11pm - 4:30am. ~~So how can~~ There are differences in inv ement. Different alleyations (1) garage/outhouse (2 home; at different times by different people. How i: that considered a single act?

2. Time here is an essential Part of the description of the offense. And so, the indictment.

3. I move to dismiss indictment to remedy vindictive prosecution where Prosecutor did an evidentiary "spillover that was Prejudicial. One Crime to an unrelated crime against Defendant. and unknown to Defendant.

Question: Is verbally altering evidence deemed harmless?

4. State Prosecutor twisted its Chief evidence (written Confession) to get ~~an~~ conviction. (Prima facie showing 554 also see Statement 000735-736

5. State Prosecutor Tav Swarat gave his personal feelings To Gain Conviction for two (2) distinct crimes indicted as a single act.

* Alibi Witness testimony should be heard.

Please read - 529 - 532 - 550, 553 - 558

## Actual Prejudice

Jurors likely merged both crimes to find a guilt

truth a little bit to suit their purpose.

You get to look at those things as you view from the jury box them testifying under oath. Those things are important: Whether what that say on the witness stand corresponds with what they have said prior, if they have given a prior inconsistent statement, said something that is inconsistent from what they said in front of you. Use all those things to determine their credibility because it's very important.

Ladies and gentlemen, one way you can determine the credibility of evidence is by corroboration. What does corroboration mean? It's just taking one fact, looking at one fact, and taking all the other facts surrounding it to decide whether this first fact is true.

It's kind of like building on the evidence. By showing you one thing, it leads you to conclude this thing you saw over here is true. We did that a lot with Mr. Cromer's statement, the things about the house at [redacted] and [redacted] Road.

Ladies and gentlemen, do y'all have any doubt that Mr. Barnhill's house at [redacted] and [redacted] was broken into? Did you have any doubt about that? Reasonable doubt or otherwise? Of

course not.

Do you have any doubt that a contractor was involved with Mr. Cromer and that Mr. Cromer sold him some of Mr. Barnhill's things? We have proved that in many different ways. We showed you things in that statement that are true because we brought other evidence in to show you that it is true.

We told you at the start of the case, we don't have to prove that Mr. Cromer went inside Mr. Barnhill's house. We do not have to prove he went inside the house. If we have proved to you beyond a reasonable doubt that he was involved in this crime, that he participated in any way whatsoever, he is guilty.

We told you at the start -- and we didn't try to stretch the truth with you -- there was one more person involved in this. That's based on common sense. That's the most important thing you bring into the jury box, your good common sense.

All those items that were stolen from Mr. Barnhill, many, many items, some of them very heavy items. It would have taken a lot of trips back and forth inside that house, inside that garage, to load those items up and cart them away from his residence that night.

Your good common sense tells you that wasn't the work of one man. We don't believe that Mr. Cromer did this crime alone, and we don't have to prove to you that he did. If anybody in that group went inside that house, everybody in the group is guilty of burglary.

If anybody in that group went inside that house and it was nighttime, everybody in that group is guilty of burglary in the first degree. If any one person in that group stole a weapon out of there, stole that ammunition and armed themselves, whether they were going in with a weapon or had the weapon while they were on the premises or left with a weapon, they are armed for the purposes of burglary in the first degree. It makes it burglary in the first degree.

The other aggravating factor we told you we could show you -- and we only have to prove one, any one of these three will do -- is that Mr. Cromer has two or more prior convictions for burglary, for breaking into someone else's house. We showed you he had three.

You will have those things back in the jury room with you. You will have a chance to look at all that evidence, every single piece of it. Take your

time, as much time as is necessary, for you to understand the role Mr. Cromer played in this break-in.

If he is involved at all, any activity whatsoever, whether he was the lookout guy, the getaway driver, the recipient of the proceeds, it doesn't matter. If he is involved at all, he is as guilty as the group. These were his associates, people that were aligned, combined with him.

Now, ladies and gentlemen, I will have another opportunity to speak to you about some of the specific facts in the case. I will talk to you at length about that later on.

But I will tell you this. This is the only chance that the people of Lexington County have for justice in this case. There will be no other chance whatsoever.

If you find Mr. Cromer is not guilty -- and if we haven't proved it, you should -- but if you believe he is guilty beyond a reasonable doubt -- and that's not beyond all possible doubt. That's a doubt that you evaluate from the use of your good common sense, those talents that you have.

If you believe, based on the evidence, he is guilty, find him guilty. If you find him not

dealing with rather unequal intellects or at least unequal in terms of experience. A case shouldn't depend on that, not when somebody's life and their future is riding on it. There is a lack of proof in this case.

I want to sort of end where I began, and that is talking about what is required. The State has to prove beyond a reasonable doubt that he participated, that he performed an active role in this. He either was a lookout or he went in.

They haven't proved that beyond a reasonable doubt. I submit to you that they have not, and then you must find him not guilty. He is not charged with receiving stolen goods. They can charge him with that tomorrow if they want to.

But he is not charged with it right now. The judge will be instructing you that that has nothing -- the idea of receiving stolen goods, he can't be found guilty of burglary first on that, being in possession of stolen goods. You shouldn't find him guilty for that.

Look at all the evidence and the lack of evidence. You shouldn't find him guilty. He is not guilty of burglary first. Ladies and gentlemen, the State has not proved their case beyond a reasonable

doubt. Please find Mr. Cromer not guilty.

THE COURT: Solicito

MR. SWARAT: May it lease the Court.

THE COURT: Yes, sir

MR. SWARAT: Ladies nd gentlemen, there is a con man in the courtroom wit you today. He is trying to sell you something. Mr. Cromer is trying to sell you something today. o you want to buy something from Mr. Cromer?

You have heard from onest Jeffrey. You have heard from honest Jeffrey Cromer up on the witness stand. Use your good ommon sense. Use what you saw and what you heard to valuate his credibility. Because their defense hinges completely on his credibility, his believability. If you don't believe him, he is guilty. If you don't believe him, he is guilty.

Now, ladies and gent emen, I submit to you not only have we proven our case, we have overwhelmingly proven our case. We would like, of course, to have more evidence. I have never walked in a courtroom where I didn't ant to have more evidence.

It's the evidence we do have, and I submit to you it's sufficient. There's two things I would

Marked 553

broken into? Some of his personal items were stolen, things that can never be replaced. We all have them in our household, those things that have sentimental value to us.

There was also things of monetary value that were never recovered. He has been victimized once, and no matter what the outcome of this trial, he can never get those things back. Ladies and gentlemen, I ask you not to victimize him again.

MR. CHESSER: I object, Your Honor. I renew my same objection.

THE COURT: Overruled.

MR. SWARAT: Follow that property. Mr. Cromer was arrested on the 2nd. A lot of this property was recovered from his residence. If you will look at the calendar, that is eight days later. Eight days later he is caught with 14 of Mr. Barnhill's items from that house, just eight days later.

Mr. Mays, let's talk a little bit about Mr. Mays and how important he is because it reduces that time. It boxes Mr. Cromer in on that time. What do you think he is doing with that property once he steals it?

Ladies and gentlemen, he said he is in the

Barnhill got items back / taking from garage is a lesser evil than taking from

Marked 554

tool buying business. No, sir. No, ma'am. He is in the tool stealing business and the tooling selling business.

MR. CHESSER: I object, Your Honor, under 404 (B).

THE COURT: Overruled.

MR. SWARAT: He is selling tools. You have heard testimony about it. He steals tools -- you heard it from his own lips on cross examination -- and he sells tools. He sold them to Mr. Mays. Is there any doubt about that?

When did Mr. Mays say he bought these tools from Mr. Cromer? The middle of May -- excuse me -- the middle of April on a Friday, the middle of April on a Friday.

It was the third time he had dealt with Mr. Cromer. The day after the break-in, the day after the break-in was a Friday; and it's the middle of April.

See Statement

What does Mr. Cromer's statement say? They went in the house. He was the lookout guy. They got tools, cordless drills, all these other items that they took out of the house, and they went up to the Shell Station and talked about selling them to a contractor.

He said the middle of April on a Friday. He wasn't even cross examined on that point. They don't want to mess with that. Mr. Mays was buying Barnhill property before he was caught. There is no question about that. He wasn't selling Barnhill property after he was arrested on the 22nd. He was in possession of those items.

Now, of course, when he talked to Detective Quig, he minimized his involvement in this case. I submit to you that the person that is the lookout guy that doesn't go into the residence, that doesn't load it up and doesn't steal it, he doesn't get the line share of the property.

He doesn't get the good cut of the good stuff. Does that make good sense to you that he gets those items? Ladies and gentlemen, I submit he had greater involvement than what he told Detective Quig, but we don't have to prove it. If you believe he was just the lookout guy, he is guilty.

These items were recovered from Mr. Mays in September. Detective Quig didn't know a Mr. Mays until September of 2000. But it's in Mr. Cromer's statement.. Do you think Detective Quig put it there or Mr. Cromer put it there?

Detective Quig didn't know a Jeffrey Cromer

Pet. had possessed 14 items from 1800 plus. of Barnhill's property.

until the 22nd. He didn't know about a break-in at the corner of Piney Grove Road and Broken Hill Road until Jeffrey Cromer himself told him about it.

It doesn't get much better than that. He doesn't know anything about the break-in, doesn't have any involvement in this investigation. He was reacting on a tip about some stolen property.

He investigated. He did his job. He went and looked to see if the person that was giving him this tip was telling him the truth. He went to the Shell Station. He testified about that.

He looked on the back patio and saw these items sitting on the back patio, consistent with what Mr. Dowell had told him. It was not an anonymous tip.

Mr. Dowell could have picked up the phone and said, "I just want to tell you about some stolen property. It's at [redacted]," and hung up the phone. He didn't. He gave his name. He gave his address. He gave his telephone number, he gave a lot of information.

Does he have a hidden agenda? Sure. What kind of fellow is he? Well, he is a friend of Jeffrey Cromer's. You know what kind of fellow he is if he runs with Jeffrey Cromer.

All these people involved that they are pointing the finger at, they are friends of Cromer's. They are Jeffrey Cromer's kind of folks. We would love to have every single one of them on trial today sitting with Mr. Cromer right now.

We don't because there is no evidence, other than from the mouth of Jeffrey Cromer. Ladies and gentlemen, I am not going to put a witness up there with the credibility of Jeffrey Cromer to point the finger at three people with no other evidence about them.

There was no property found on them. There was nothing at all to put them in this burglary, other than the mouth of Cromer. Ladies and gentlemen, I am not going to put him up there. I submit to you that he is not credible.

MR. CHESSER: Your Honor, I object to him making comments about what he believes in terms of credibility and so forth. That's not proper.

MR. SWARAT: I submit to you --

THE COURT: Solicitor, don't comment on your personal beliefs. Just comment on the conclusions from the facts, please, sir. I will sustain the objection.

MR. SWARAT: Thank you, Your Honor.

Marked 558

THE COURT: Ladies and gentlemen of the jury, disregard any statement the solicitor makes as far as his personal belief. He is supposed to draw conclusions from the facts and present them to you. Go ahead, Solicitor.

MR. SWARAT: Detective Quig followed up the information he received. He checked into it. He found it to be truthful because he found what the man told him that he would find:

Stolen items on his back patio, stolen items in his Tercel, in his Toyota Tercel, some of Barnhill's items in the Tercel, some of Barnhill's items on the back patio, some of Barnhill's items strewn throughout the house.

Mr. Cromer was having a yard sale, ladies and gentlemen, with Mr. Barnhill's property, his neighbor's property, a house he helped to violate. He is having a yard sale with his property. That's the kind of person he is, ladies and gentlemen.

That's the Jeffrey Cromer. That's the Jeffrey Cromer that if you believe, if you believe every word out of his mouth, he is not guilty. If you don't, he is guilty.

Now, ladies and gentlemen, he gave his statement on the 23rd. Detective Quig didn't know

# Please Grant PCR APPlication

There exists evidence of material facts not previously Presented and heard, that requires vacation of the conviction or sentence in the interest of Justice.

Petitioners Conviction or Sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, Proceeding, remedy.

In addition S.C. code ann § 17-27-70 (c) 1985 authorizes the court to grant a motion by either party for summary disposition of an application when it appears from the Pleadings

The requirement of exaustion is not jurisdictional and this Court may consider claims which have not been presented to the SC Supreme Court in limited circumstances.

Must Prove that specific errors infected the the trial and were of a constitutional dimensions.
U S V Frady 102 S Ct 1584

Petitioner have Shown sufficient cause of why claim ~~was~~ isn't raised and the actual Prejudice resulting from that failure. Petitioner has also shown that a Fundamental Miscarriage of Justice has occurred

## Conclusion

To not waste any of the Courts time, I am prepared to plead guilty to a resentencing hearing.

~~Furthermore, I will also conclude that both~~

STATE OF SOUTH CAROLINA )
COUNTY OF Lexington )
STATE VS. )
Jeffrey Darrell Cromer )
AKA: )
Race: Blk Sex: Male Age: 26 )
DOB: 11/1/74 SS# [redacted] )
Address: [redacted] )
DL#_____ SID#:_____ )

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
2001-GS-32-212
A/W#: G014715
Date of Offense: 9-14-2000
S.C. Code §: 16-11-311
CDR Code #: 010 1719
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Burglary 1st
in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 010 1719
☐ NON-VIOLENT ☑ VIOLENT ☐ SERIOUS ☑ MOST SERIOUS ☐ 17-25-45

The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor _____ Defendant _____ Attorney for Defendant _____

WHEREFORE, the Defendant is committed to the ☑ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 25 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

**SPECIAL CONDITIONS:**

RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms: _____
☐ set by SCDPPPS _____
_____
Recipient: _____

*Fine: ..... $_____
§14-1-206 (Assessments 100%) ..... $_____
§14-1-211(A)(1) (Surcharge) ..... $100.00
§14-1-211(A)(2) (Surcharge) ..... $_____
§56-5-2995 (DUI Assessment) ..... $_____
% to County (if paid in installments) ..... $_____
TOTAL ..... $100.00

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $_____ beginning _____
$_____ paid to Public Defender Fund.
Other: _____
_____
_____

Thomas H Crawford
Clerk of Court/ Deputy Clerk
Court Reporter: C Bottone

PRESIDING JUDGE [signature]
Judge Code: 011217
Sentence Date: 3/21/01

White - Clerk Green - Corrections Canary - Probation/PPP

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 01/13/03
OMCOMITA RELEASE DATE SCREEN MODZJOS
SCDC# > ?197498 LOC: LIEBER
CROMER, JEFFREY DARRELL SCDC CLASSIFICATION..: VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL PREDATOR..: NOT APP
DNA STATUS.....: COMPLETED

TOTAL SENTENCE..: 025-00-000 CONSECUTI[redacted]N
CURRENT SENTENCE: 025-00-000 CURRENT SENT START DATE: 04/27/2000
PROJECTED COMPLETION DATES
MAXOUT DATE .....: 07/21/2021 CURRENT EWC .: 3 F 5
YOA SIX YEAR DATE: / / CURRENT EEC .: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 07/27/2021 NEXT PAROLE HEARING DATE: 07/27/2021

TOTAL GT DAYS EARNED .....: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000232 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ....: 000000 OFFENSE > CAT 3
TOTAL EXTRA EARNED CREDITS .: 000
TOTAL SERVICE TIME EARNED ..: 000976

PFKEYS: 5:HISTORY OF DATE CHANGES

STATE OF SOUTH CAROLINA )
)
COUNTY OF LEXINGTON )

INDICTMENT FOR
BURGLARY FIRST DEGREE
§16-11-311

At a Court of General Sessions, convened in January 2001, the Grand Jurors of LEXINGTON County present upon their oath:

BURGLARY FIRST DEGREE

§16-11-311

That **JEFFREY DARRELL CROMER**, did in Lexington County on or about April 14, 2000, willfully and unlawfully enter the dwelling of Thomas Barnhill located at [redacted] without consent and with the intent to commit the crime of larceny therein, and in effecting entry or while in the dwelling the defendant was armed with a deadly weapon, to wit: 30-06 Remington Model 742 Rifle, and/or did so in the nighttime hours, in violation of Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended. AND/OR THE DEFENDANT HAS TWO OR MORE PRIOR CONVICTIONS FOR BURGLARY AND/OR HOUSEBREAKING. JOB 3-12-01

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A Strand JK
SOLICITOR
ASST.

NS

831 1 0060 8

**WITNESSES**

LCSD

Quig

**ARREST WARRANT NUMBER**

3014715

**ACTION OF GRAND JURY**

TRUE BILL

Michael E Babb

Foreperson of Grand Jury

Date: MB 3-12-01 01-11-01

**VERDICT**

Guilty

SB Bruce

Foreperson of Petit Jury

Date: 3/21/01

DOCKET # 2001-GS-32- 217

**The State of South Carolina**

**County of LEXINGTON**

**COURT OF GENERAL SESSIONS**

**JANUARY TERM 2001**

**THE STATE**
**vs.**

JEFFERY DARRELL CROMER

CDR# 79

**Indictment for**

Burglary First Degree
§16-11-311

**DONALD V. MYERS, SOLICITOR**

# ARREST WARRANT

014715G- 014715

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of LEXINGTON

THE STATE

against

JEFFREY DARRELL CROMER

Address [redacted]

Phone: M B SSN: [redacted] 150

Sex: Race: C Hei 6 0 1 1 2 1 8 9 Weight:

DL Sta [redacted] 3200

DOB: L Agency ORI#:

Prosecuting Agency: QUIG III, J. B.

Prosecuting Offi BURGLARY FIRST DEGREE

Offense:

16-1 Offense Code: 79

Code/Ordinance Sec.

This warrant is CERTIFIED FOR SERVICE in the ☐ County/ ☐ Municipality of _____. The accused to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date:

RETURN

I received this arrest warrant and served it on JEFFREY DARRELL CROMER defendant _____.

_____
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
BRUCE RUTLAND
650 KNOX ABBOTT DR.
CAYCE, SC 29033
803-796-7100

STATE OF SOUTH CAROLINA )
☐ County/ ☐ Municipality of LEXINGTON )

# AFFIDAVIT

Form Approved by S.C. Attorney General July 28, 1990 SCCA 516

832

J.B.QUIG DET.

Personally appeared before me the affiant JEFFREY DARRELL CROMER who being duly sworn deposes and says that defendant 04/14/2000 did within this county and state on _____ violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) in the following particulars: BURGLARY FIRST DEGREE

DESCRIPTION OF OFFENSE:

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON 4/14/2000, IN THE EARLY AM, THE DEFENDANT AND CO-DEFENDANTS DID WITHOUT THE OWNERS CONSENT BREAK INTO THE DWELLING AND GARAGE AT [redacted] COLUMBIA, LEXINGTON CT., SC. TAKING OVER $7000 IN GOODS AND A 30-06 REMINGTON MODEL 742 RIFLE. ITEMS FROM THE BURGLARY HAVE BEEN POSITIVELY IDENTIFIED BY THE VICTIM THAT WERE IN THE POSSESSION OF THE DEFENDANT. THE DEFENDANT ADMITTED TO HIS INVOLEMENT IN THIS BURGLARY IN A SIGNED VOLUNTARY STATEMENT.

Sworn to and subscribed before me on 04/20/2000

_____ (L.S.)
Signature of Issuing Judge SCOTT D. WHITTLE

Signature of Affiant L.C.S.D.
Affiant's Address 521 GIBSON RD. LEXINGTON, SC 29072
Affiant's Telephone 359-8230

STATE OF SOUTH CAROLINA )
☐ County/ ☐ Municipality of LEXINGTON )

# ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that JEFFREY DARRELL CROMER to believe that on _____ defendant _____ did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of 16-11-311 ) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY FIRST DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. 521 GIBSON RD.

_____ (L.S.)
Signature of Issuing Judge
Judge Code: 886

Judge's Address LEXINGTON, SC 29072
Judge's Telephone 951-2542
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

833

1ST APP
~~BAIL set by~~

Judge

on 4-29-2000

Type and Amount:

Name of Surety: 1st Appearance

**PRELIMINARY HEARING held by**

Judge

on

Defense Attorney:

Decision:

**DISPOSITION before**

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

**JURORS**

**WITNESSES**

Name:
Address:

Telephone:

Name:
Address:

Telephone:

Name:
Address:

Telephone:

Name:
Address:

Telephone:

Name:
Address:

Telephone:

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Telephone:

Name:
Address:

Telephone:

**CODEFENDANTS**

FILED

2000 MAY 11 P 2:38

THOMAS H. COMERFORD
CLERK OF COURT
LEXINGTON SC

[redacted]

[redacted]

[redacted]

000000

834

Pg 1 of 2 pgs

DATE 4/23/00 PLACE C.C.C.C. TIME STARTED 1300 P M.

I, the undersigned, Jeffrey Conner, am 25 years of age, my date and place of birth being the 23 day of April, 2000, at 13:10.

My present address is [redacted].

Before answering any questions or making any statements, D. Fe Query, a person who identified himself as a Deputy of the C.C.S.D.,

DULY WARNED AND ADVISED ME:

1. That I have the right to remain silent and not make any statement at all.
2. That any statement I do make can be used against me in court.
3. That I have the right to have an attorney present at any time during questioning.
4. That if I cannot afford an attorney, I can apply to the court to have one appointed at no cost to me.
5. That if I decide to talk to an officer without an attorney present, I may stop at any time and request an attorney be present for further questioning.

UNDERSTANDING THESE RIGHTS, I MAKE THE FOLLOWING STATEMENT:

[redacted]

I had a friend come and some smokes at my house (612 Sofia) That Rick, Quintera, And Celal brought it. I got them, in my possession. Rick Dan brought pots over to my house in the blue truck. And he lives on Piney Grove. [redacted]

A week ago at about 2 pm I drove my car and Quintera And Celal drove over to a house at The Corner of Piney Grove and Hwy 4 #283 C.C.S.D.

Witness

Notary Public

My Commission expires

Person giving Statement

04-23-00 13:10

Date

LCF 330 (9/19/83)

EXCL # 2A

Weathers + Burns + Hudson

10PM

NO Witness

U 8855 U U

VOLUNTARY STATEMENT OF VICTIM / WITNESS

Pg 2 of 2 pgs

and Buckner Hill Road. Right there I
Then look out garage and [redacted] Go in
the garage and brought out
Drills etc. Then from there we had to
Shell and sold them, Skill saws, Sa
Dewalt cordless drills, the case, pressure
washer (yellow) Then did it to a const

Garage is Attached
To Outhouse 20-25 yards
From residence.

Outhous/Garage

RULE 5
OCT 12 2000

I have read this page, initialed corrections or changes, if any, and received a copy of th
page. I certify that the facts contained herein are true and correct to the best of my kn
ledge.

Det. C.C.S.D.

Signature of person giving voluntary statemen

Sworn to before me this ___ day of ____ 19___.

NO Witness

Notary Public of South Carolina

LCE 604

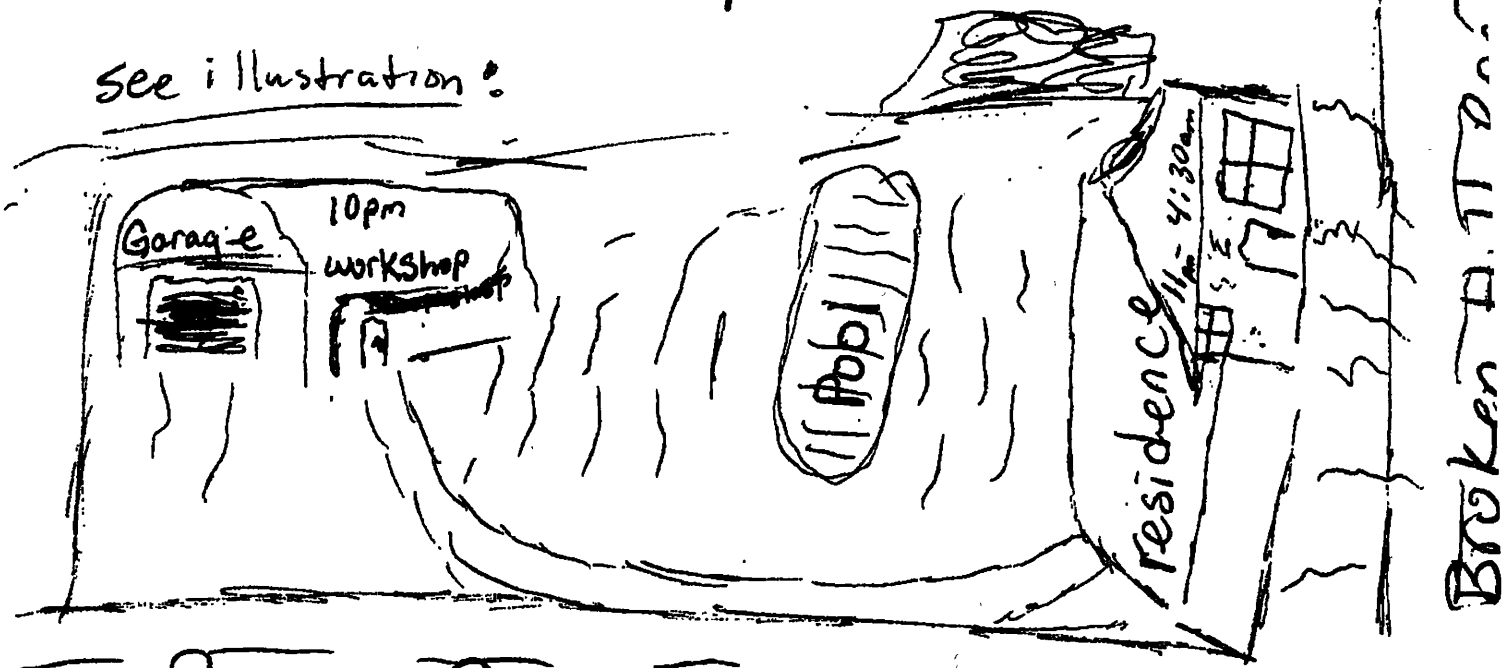
836

The burglary of a garage occurred at 10pm & 4-13-00 And the burglary of a residence occurred between the time(s) 11:15pm and 4:30am. 4-13-00 - 4-14-00 on

FILED
2016 FEB 23 P 12:1
BETTY A. CRAIG
CLERK OF COURT
LEXINGTON, SC

The same property, with but Different Dwellings, at
The same Violation Codes, Different Times

see illustration:






"It is safe to say that the burglary of the garage is the lesser evil than burglarizing the residence. That would be considered a greater evil. However, Both are evils but th

837

2002 CP 32-3895

2012 CP 32-3179

Two Crimes. One Night.

1.09

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2016 FEB 23 P 12:17
BETH A. CAHILL
CLERK OF COURT
LEXINGTON COUNTY



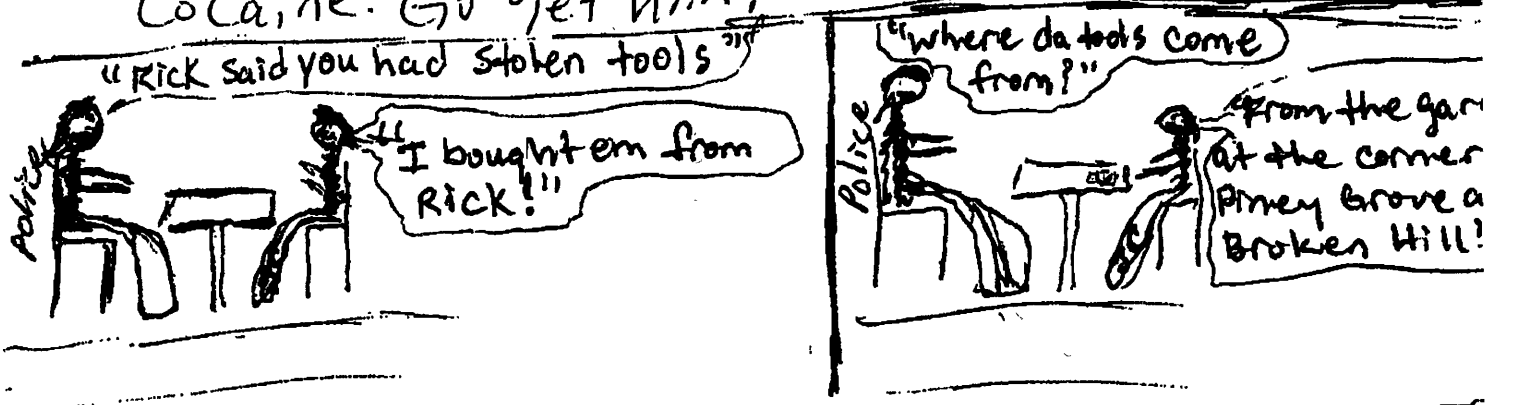
839

2002 CP 32-394

2012 CP 32 2179

Two Crimes: One Night



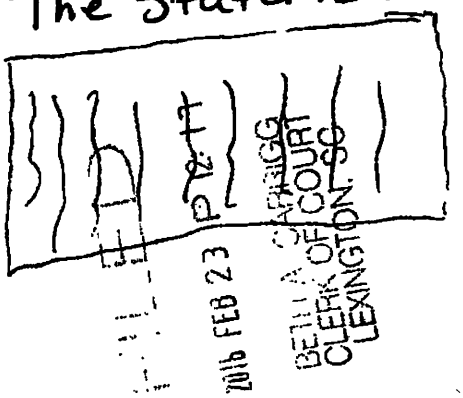







The Interrogator accepts the suggestion.

The Statement




= "At 10pm, I saw them take tools from garage of the house at the corner Piney Grove and Broken Hill Road. I the lookout." "Then we left, and the Sold me the tools."

841

2002 CP 32 3895

2012 CP 32 2179

Two Crimes, One Night

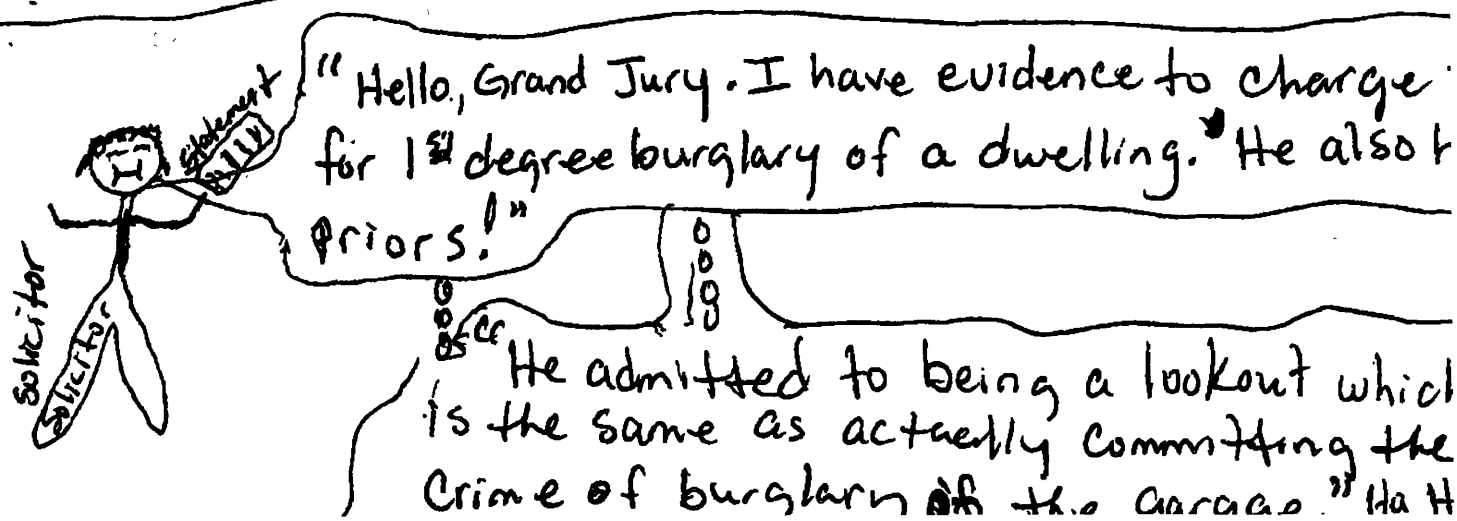
R. of 9




Two Crimes. One Night.

Separated from the f



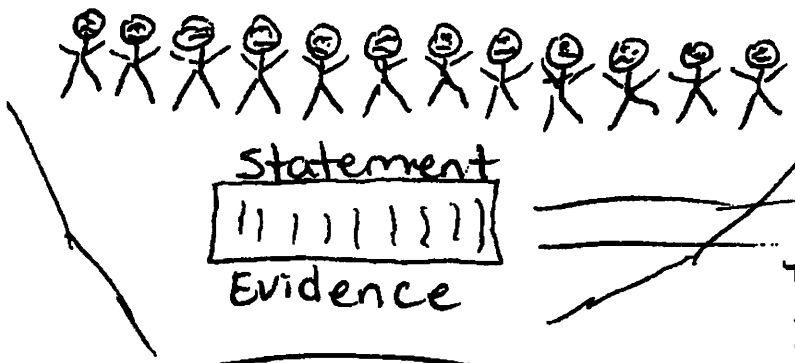
2002 CP 3895

2012 CP 32 2179

Two Crimes. One Night

4 of

# The Grand Jury




FILED
2016 FEB 23 P 12:17
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

"At 10pm, I saw them go int
the garage & take tools.
I was the lookout... Then we
left, and they sold me the to

Grand Jury

"The garage is within 200 yards of the residenc
That makes it a dwelling
"Okay, we will indict JC for the burglary of a dwelling in the nighttime"
"He has 3 priors, also
"and the police report says two rifles were taken."
We will indict for one crime
We will True Bill one indictment for the burglary of the garage, a dwelling.
"1st degree burglary of a dwelling it is"
"JC also possessed the tools from the garage"

The Solicitor




"I have one indictment, but two crimes. How can I make JC guilty of both crimes without evidence of the other crimes?"
"I will show he used drugs.

"I'm the Solicitor! I'll just amend the indictment
The violation codes are the same so I'll try JC for two burglaries under a single indictme

There is only proof to support a single burglary, but if JC don't plead guilty I will make sure he's convicted for both burglaries,

845

2002 CP 32-3895

2012 CP 32-2179

Two Crime- One Night

3 of 9

846




"I am the Solicitor! Plead guilty to 15 years or we go to trial!"

"For Burglary! "You Burglar!"

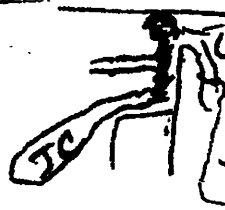



"I only bought them tools. I did not steal em."

(Glad I got off them drug




"we are going to go to trial and I am going to convic you of both burglaries. The burglary of the garage a the burglary of the residence."




"[redacted]. I don't know nothing about the house getting broken into"

"I only [redacted] garage"

In Court




"Ladies and gentlemen of the Jury. If we can pro that JC is involved with any crime on that proper The Law states under the hands of one hands of a he is guilty of them all. If I can prove JC was in volved with the burglary of the garage, you mus find him guilty for the burglary of the Residen

"And the Judge will tell you the same thing at the end."




"He wrote a statement saying he was the lookout when the garage was broken into."

"The Judge and the Solicitor say that he should be considered guilty of the residence, too."

"yeah. They said the hands of one is the hands of all"

"well, that's settled. JC is guilty of both crimes as one crime."

FILED
2016 FEB 23 P 12:17
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

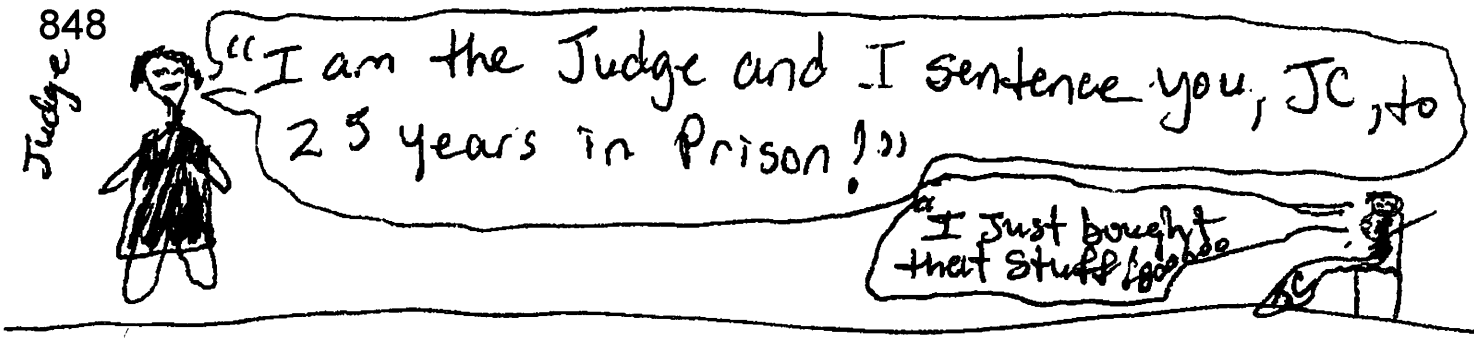
847

2002 CP 32-30

2012 CP 32-2179

Two Games, One Night

6 of 9




# FACTS

FILED
2016 FEB 23 12:1
BETTY CANNON
CLERK OF COURT
LEXINGTON, SC

1) Written Statement Placing JC at Crime 10pm 4-13-
2) Verbal Statement from Owner of garage & home statin that his home was also burglarize from 11:15pm 4-13-200 to 4:30am 4-14-2000.
3) JC admits to his involvement with the Stolen tool from 10pm - 10:15pm 4-13-2000
4) JC has an Alibi Witness from 11pm 4-13-2000 til sun-up 4-14-200

5) JC was in Possession of 14 garage tools that was give back to the owner.
2) JC was indicted for the burglary of a dwelling to wit: he garage which is within 200 yards from the residence
3) The Prosecution used the (2nd) burglary of the residen o preibe the jury to a guilty verdict for the (1st) burgla f the garage.
5) JC alibi witness is Prepared to testify.

## Prosecution Error

JC was indicted for 1 crime of Burglary of a dwelling i e nighttime, but convicted for two Burglaries of a dwellin sing the hands of one hands of all

2002 CP 32-3895

2012 CP 32 2179

Two Crimes, One Night

850 The South Carolina Prosecutor Tav Swarat, used evidence of another crime that was a product of a prior bad act or an act of a [redacted] common scheme or plan to conv Furthermore,

Another crime was added (~~that had the same Violation Codes~~) to the indictment that the Gran Jury handed down without being resubmitted to the Grand Jury.

Therefore, I have been prosecuted twice by one indictment, and it is safe to say that I (this Petitioner) was subjected to a transference of guilt and the jurys concentration was easily confused with the criminal actions of ~~the~~ [redacted] added offense of [redacted] burglary of the residence.

FILED
2016 FEB 23 P 12:17
BETTY A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2002 CP 32 3895

2012 CP 32 2179

Two Crimes. One Night

# Relief Sought

FILED
2017 FEB 23 P 12:18
BETH A. GAHRIGG
CLERK OF COURT
LEXINGTON, SC

Regarding PCR Case 2012-CP-32-97

"JEFFREY Cromer sincerely Requests that his Sentence be vacated and Remanded for a new trial where he is prepared to plead guilty to timed served. JEFFREY Cromer Also Request that Cathy Cromer his Mother and Micheal Glover his friend bot be Compensated for all of there hard earned money that they have provid me the(se) years I have been incarsera And I ask that the Bethelham Community Center be given charity for the good they are doing with the up and comm generation(s)."

"That is my Debt to Society!"

853

2002 CP 32-3895

2012 CP 32-279

Two Crimes. One Night.

Ms. Beth,-

Will you please file this Rough drafted illustration of My Situation and send a copy to Asst A.G. Schmeckpeper and Judge over my case.

Thanks for all your help.

AsstAG: Patrick Schmeckpeper
Judge R Knox McMahon

Hopefully I'll be home soon.

BETH A. CARR, JG
CLERK OF COURT
LEXINGTON, SC

2011 FEB 23 P 12:10

CASE-- 2012-CP-32-2197 - A New Trial is Warranted
Please Provide Applicant with An Evidentiary Hear.

To obtain a new trial based on after discovered evidence, the party must show that the evidence:

1. would probably change the result if a new trial is had;
A. New testimony will 1st account for the whereabouts of the Applica from 10:30pm 4-14-00 til the next day. That testimony will correct the ~~the~~ court from allowing the Prosecutor from Broadening the evidence which broaden the times and dates of the indictment; from 4-14-00 to 4-15-00.
B. New testimony will cooberate defendants testimony and cure vindictive Prosecution where he stated that defendant was only one to testify for defense.

2. has been discovered since trial;
A. New Testimony came forward in 2012.

3. could not have been discovered before trial
A. Trial Lawyer thought that he was hiring an investigator to investigate for the defense. But he was conned out of the indigent defense funds for the defendant. A civilian impersonating an investigator took Trial lawyers defense money and never provided any services.
B. Trial Lawyer Admitted to being conned in 1st PCR - But noted he did not find out til after the trial why he never received Any evidence or information from his "hired conman." Therefore, due to fraud, Defendant was not afforded an investigation to seek evidence or witnesses in the behalf of the defense.

4. is material to the issue of guilt or innocence;
A. Trial Prosecutor Broadened the Grand Jury Indictment and the subject of time was from 11pm 4-14-00 to 4am 4-15-00. Alibi witness will confirm Applicants whereabouts from 10:30pm 4-14-00 to the next day Break.
B. Alibi witness - witnessed culprits bring tools on truck to the apartment.
C. Alibi witness coorberates defense testimony

5. And is not merely cumulative or impeaching.
A. No one is contesting [illegible]

FILED
2016 AUG 18 A 10:42
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

ORIGINAL

856 Transcript of Record

01-GS-32-217 **ORIGINAL**

In The Court of Comm
Pleas for the eleventh
Judicial Circuit
Case# 2012-CP-32-219

FILED
2016 AUG 18 A 10:42
BETH A. GIBBS
CLERK OF COURT
LEXINGTON, SC

Jeffrey Cromer - Appellant, Petitioner, Applicant

v

State of South Carolina - Respondent, Attorney General, Asst Attorney Gen Schmeckpeppe of Lexington County

Presiding Judge:
Honorable R Knox McMahon

Motion to Grant Evidentiary Hearing t Newly Discovered Evidi And Supporting Law

The Applicant, Above Named, by and through pro se hereby will show cause to the State of South Carolina's Attorney Generals office and to The Honorable R Knox McMa that an Evidentiary hearing is warranted to allow newly discovered evidence to be heard.

I.

The Petitioner, Jeffrey Cromer, is presently Confi in the Evans Correctional Institution of the State of Sout Carolina Department of Corrections pursuant to orders o commitment of the Lexington County Clerk of Court. The Peti was indicted at the January 2001 term of the Lexingto

## II. Indictment & Information

Applicant objected to indictment before the jury wa sworn as Provided by § 17-19-90.

The Indictment reads: On 4-14-00, Jeffrey Cromer did without consent break into a dwelling at [redacted] Pine Grove Road.... - in the night time [redacted] - And was armed w a 30-06 remington rifle..... and has two or more prior convictions for burglary..... emphasis added

A.

Appellant moved for a directed verdict on the charg because Applicant claimed to have never seen a gun and the State failed to prove a weapon was taken and if a weapon was taken, the State failed to prove it to be readily available for use. State v McCaskill 468 SE2d &

B.

Appellants Counselor's secondly objected to ask ask for a directed verdict as to the entire indictment; The State failed to prove Applicant was present or was not present during the commission of the crime of burglar, of the Home from the time(s) 11pm on 4-14-00 to the early morning hour(s) of 4am on 4-15-00.

## III. Grand Jury & States' Evidence

The State Prosecutor offered Evidence of a written confession to the Grand Jury and later to the Petty Jur The Confession Reads: "At Approximately 10pm..... I was the lookout guy and saw them come out of the garage with tools, drills, etc..... Then left....." emphasis added

Note: garage is ATTACHED to outhouse 20 to 25 yards beh

## IIII. Indictment & Information #2

Applicant argues the indictment did not serve notice as to which dwelling on the Property to repel or rebu

*Every outhouse, garage, shed within 200 yards fro the dwelling-home is Considered a dwelling.

## V Rarity of incident

This is a rare case.

There were two distinct burglaries on the same property. The dwelling's outhouse/Garage was broken into at approximately 10pm on 4-14-00. And the dwelling's property home (residence) was burglarized between the times and dates of 11pm 4-14-00 to 4am 4-15-00.

This is a case that time is a material element that seperates the two crimes of burglary. This case also, when indicted, should have specified which dwelling's Place (building) to rebut and repel, becaus each particular dwelling's Place is an essential element that seperates the two crimes of burgla

Appellant was not Apprised of what must he be prepared to meet. Each crime was materially different from the other.

S.C. Code ANN. §17-19-10 S.C. Const. Art I §I.

## VI Trial

Directed verdict requests were denied.
The Jury found Appellant guilty of 1st degree burglary. And Appellant was sentenced to 25 years.

## VII Indictment Questions

When the indictment does not allege an essential element of the crime charged, trial Court does n. have subject matters jurisdiction.

(I) Did the indictment's failure to allege "which dwelling on the property" Appellant was being accuse of deprive the Court of Subject Matters Jurisdict to hear burglary charge of a dwelling?

(II) Did trial Court err by failing to direct a verd for Appellant on the charge of first degree burglar of a dwelling where NO evidence was presented tha the Appellant was present or knew about the burglar of the dwelling-home that happen between the hour of 11pm 4-14-00 and 4am on 4-15-00?

(III) Did the trial Court err by failing to direct a verdict in Appellant's favor on 1st degree burglary where the allege subject of burglary was directed towards # time(s) 11pm-4am, Not in evidence?

II. Did the indictment's failure to allege e element (s) in the night time hours of 11pm -14-00 through to the early morning hours of 4am -15-00, deprive the Court subject matters jurisdiction , hear first degree burglary charge of a dwelling?

II Did the trial Court err by failing to direct a erdict in Appellants favor where evidence presented as that Applicants only alleged involvement was n that of the dwellings outhouse/garage at the pproximate time of 10 pm on the date of 4-14-00; The welling's outhouse/garage is 20 to 25 yards behind he residence.

But the trial and conviction rests on a burglary f the dwelling-home that Proceeded at 11pm 4-14-0 hrough 4am on 4-15-00.

VIII Gentry Analysis

As noted in Gentry, by the Supreme Court in Cotte nd the Missouri Supreme Court in State v Parkhur 845 S.W. 2d 31 (92), subject matters jurisdiction of th Circuit Court and the sufficiency of the indictment are two distinct concepts and the blending of the concepts serves only to confuse the issue.

---

Wheretofore, there were two distinct burglaries

dwelling places (buildings), and merging and blending the two without proof of a common scheme or crime spree or plan, only Confused (es) the Jury. Furthermore, There is, nor was NO Evidence or knowledge by both Petitioner and State Prosecuto as to who the principles were or their intentions as to pertaining to the burglary of the residence from 11pm 4-14-00 to 4am 4-15-00.

The Jury was not Prevented from seperately deciding guilt or innocence with respect to each particular offense of burglary. thus creating uncertainty as to wheth the Applicants conviction was based on a unanimous decision by the Jury.

By LAW

When a general verdict of guilty rests on wo Alternative theories of Prosecution one valid and the other invalid, the verdict shouldt re set aside if it is impossible to tell e which ground the Jury selected. Yates v Us

## VIIII Prosecutorial Misconduct

May the Applicant move to dismiss indictmen to remedy Prosecutors misconduct and/or his Vindictive Prosecution?

Prosecutors Evidence was Substantial enough to recieve a Grand Jury indictment. Therefore, the evidence of the 10pm 4-14-00 burglary was enough to try the first degree burglary case before a Jury.

Why did the Prosecutor Stack both burglaries and Broaden the time(s) and date(s) of the incident?

### LAW

The fifth Amendment Prohibits other than by the Grand Jury action to broaden the date of an incident where time is an essential element.

### X. Broaden Time within indictment

The Grand Jury Action was Broaden from 10pm 4-14-00 (in the night time) to the hour(s) and date of 11pm 4-14-00 through to 4am 4-15-00 the following morning.

Applicant has a right to be tried upon the charge n the indictment as found by Grand Jury, USCA Const.Amend! The trial Court allowed Prosecutor to change the nature

An incident of the same property, but in different
dwelling Places (buildings) at different times of hourc

## XI Newly Discovered Evidence
## Alibi Witness

A. An Alibi Witness has come forward in the Petitione behalf, that is prepare to testify. The Alibi Witness ho visited the Lexington County Clerk of Court and has pr vided a (Prima facie) written Statement coobercating Applicants facts and testimony. That between the hour of 10:30pm 4-14-00 to the next daybreak, APPellants whereabouts are accounted for.

B. APPlicants Newly Discovered evidence issue has bee properly raised on his (my) second PCR Application as affidavit of the Subject Witness was not properly bef the Court of Appeals in the APPellants Writ of Certiorari because it was not a party of the lower Courts recor

C. There is evidence in the record to support that Applic Could not have discovered the new testimony prior to trial, and APPlicant is entitled relief, because the testimony constitutes evidence of material facts within the language of S.C. Code Ann. § 17-27-20(A)(

D. The South Caroling Uniform Post Conviction Proced Act Allows an APPlicant to file an Application of relief the APPlicant contends that there is Evidence of ma - - - - nt Previously Presented and heard that requi

864 27-45 (C)(2014) allows APPLICATIONS to be filed with could have been ascertained by exercise of reasonable diligence.

E. Traditionally, in South Carolina, to obtain a neutr bases on after discovered evidence, the Party must show that the evidence: 1. would Probably change the result if a new trial is had ☑; 2. Has been discovered since trial ☑; 3. Could not have been discovered before trial ☑; 4. is Material to the issue of guilt and innoc ence ☑; 5. And is not merely Cumulative or impeachin ☑. Quoting Clark v State 434 SE 2d 266 (93)

F. ANY Person who has been convicted of, or sentence for, a crime and who claims that there exists eviden of material facts, not previously Presented and hear that requires vacation of the Conviction or sentence In the INTEREST OF JUSTICE is entitled t seek Post Conviction relief. S.C. Code ANN. §17-27- (A)(4) (2014). Thus, by its Plain language, the South Carolina Uniform Post Conviction Procedure Act s Affords "any Person" the ability to seek Post convictions relief on the basis of Newly discovered evidence....

G. The Traditional, five factor newly discovered evidence test has been set and shown to Asst Attorn General Schmeckpepper und to The Honorable R. KNOX McMahon. APPLICANT ask that The Honorable R. KNOX McM weigh the new testimony against the provided at the P

based on the new evidence.

H. The Newly Discovered evidence is of such a weight and quality that, under the facts and circumstances of this particular case, The "INTEREST OF JUSTICE" Requires the Applicant to recieve an Evidentiary hearing; The requirement of the Interest of justice will Vacate conviction and sentence.

I. Applicant is Required by law to be exonerated for anything that happen on the Property (he/I was accused of committing a crime) after 10:15pm 4/14

J. A Court will normally find an indictment Sufficie unless it fails to state a material element o the offense. Here, There are elements of the tim and Place(s) that are Not specified. Therefore, A Evidentiary hearing will Prove more than Just Newly Discovered Evidence

## Conclusion

Applicant is asking for assistance in the INTEREST OF JUSTICE. And States that the Aforementioned arguments and Statements are the truth and of substance.

866

I, Jeffrey Cromer has been incarserated for going on 17 years on this 25 year sentence fo the 1st degree burglary. I maintain my Innocenc

The coerced written confession was NOT witnessed b any other officer but was taken in private. There were NO Recordings of the (coercive) interrogation. Audio Nor Video.

But, That same Evidence of that alleged confession, that le to an indictment, is the same evidence that proves and suggests I did Not commit Nor was involved with the Burgla of the Dwelling that occurred from 11pm 4-14-00 to 4am 4 00.

Therefore, AN Evidentiary Must be Granted.

Sincerely
Jeffrey Cromer

8-13-16

Contact Information:
Cathy Cromer
803-754-0404

ORIGINAL

To: Ms. Beth Carrigg Clerk of Court
Lexington County

From: Mr. JEFFREY Cromer Applicant

FILED
2016 AUG 18 A 10:42
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

RE: Request an Evidentiary Hearing
2nd PCR – Newly Discovered Evidence

Will you please send me a clock stamp copy of this Motion for an Evidentiary hearing. I am also sending a copy to Assistant Attorney General Schmeckpepper.

Ms. Beth, I've been in here a long time for my involvement with those tools from that garage/outhouse. I am prepare to prove my innocence and fight to prove it for the rest of my life.

Did you send a copy of the Affidavit Yolanda Watlington Brough you?

The Judge – R Knox McMahon haven't given me a date as of yet when my hearing will be.

Can You find out?

I am going to send him your clock stamped copy so He'll know the a copy has been filed with you. Or Can you Just send him a copy? If not, send me a copy of the Clock-filed copy of this motion.

868

TO: Ms Beth

FROM: Jeffrey Comer

ORIGINAL
FILED
2016 AUG 18 A 10:42
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Ms Beth,

Can You Please send me a copy of my Indictment, Please.

Thank You

I want to again appreciate your help over All these years. 16 years and 4 months, I've been trying to get relief.

May God grant my relief one of these days.

Sincerely
Jeffrey Comer

Jeffrey Comer
Evans 197499
610 Highway 9 West
Bennettsville, S.C.
29512

ORIGINAL

FILED
2018 MAR -5 AM 11:28
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA )
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Jeffrey D. Cromer, #197498, )

Applicant, )

2012-CP-32-2197

**ORDER APPOINTING COUNSEL**

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed May 29, 2012. This Court finds Applicant is entitled to an evidentiary hearing limited solely to the issue of whether his current application should be summarily denied and dismissed.

**IT IS THEREFORE ORDERED:**

1. That Kristy G. Goldberg, Esquire is hereby appointed to represent Applicant in this PCR action.

**AND IT IS SO ORDERED** this 1st day of March, 2018.

R. KNOX MCMAHON
Chief Administrative Judge
Eleventh Judicial Circuit

Lexington, South Carolina.

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF LEXINGTON | ) | IN THE COURT OF COMMON PLEAS<br>ELEVENTH JUDICIAL CIRCUIT<br>2012-CP-32-2197 |
| Jeffrey D. Cromer, #197498,<br><br>Applicant,<br><br>vs.<br><br>State of South Carolina,<br><br>Respondent. | ) | **ORDER OF CONTINUANCE** |

FILED
2018 APR 23 AM 8:43
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

This matter comes before the Court by way of an application for post-conviction relief filed May 29, 2012. An evidentiary hearing into the matter was scheduled for Wednesday, April 18, 2018, at the Lexington County Courthouse.

Applicant filed this action, his second application for post-conviction relief on May 29, 2012. In this application, Applicant presented five claims for relief, including a claim of newly discovered evidence. The State subsequently filed a Return and Motion to Dismiss on July 10, 2014. Applicant subsequently filed an Amended Application on September 16, 2014. The State filed an Amended Return and Motion to Dismiss on October 1, 2015.

By Order filed March 5, 2018 by the Honorable R. Knox McMahon, Chief Administrative Judge for the Eleventh Judicial Circuit, Kristy G. Goldberg, Esquire was appointed to represent Applicant. On March 19, 2018, Ms. Goldberg contacted counsel for Respondent to request a copy of the Attorney General's Office files regarding Applicant's convictions and challenges to those convictions. On March 20, 2018, counsel for Respondent provided copies of documents from the Attorney General's Office file from this action (thirty-seven documents), the prior federal habeas action (nineteen documents, including filings from



wta/1

the direct appeal, first PCR action, and PCR appeal), and additional documents from the first post-conviction relief action.

During her investigation for this action, counsel for Applicant determined that further investigation is warranted regarding Applicant's newly discovered evidence claims. After consultation, both parties agree additional time is needed to prepare for the evidentiary hearing. Based upon the representations of counsel for both parties, this Court finds this matter should be continued to the next term of court for post-conviction relief actions in the Eleventh Judicial Circuit.

IT IS THEREFORE ORDERED:

1. That this Post-Conviction Relief (PCR) matter shall be continued and rescheduled to the next term of court for post-conviction relief actions in the Eleventh Judicial Circuit; and

2. Applicant is remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 18 day of April, 2018.

#2761

The Honorable William A. McKinnon
Presiding Judge

Lexington, South Carolina

I SO MOVE:

Kristy G. Goldberg
Counsel for Applicant

I CONSENT:

Alphonso Simon Jr.
Counsel for Respondent

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|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF LEXINGTON | IN THE COURT OF COMMON PLEAS<br>FOR THE ELEVENTH JUDICIAL CIRCUIT |
| Jeffrey D. Cromer, # 197498,<br>Applicant,<br><br>v.<br><br>State of South Carolina,<br>Respondent. | Case No. 2012-CP-32-2197<br><br>**RESPONSE TO THE STATE'S MOTION TO DISMISS** |

FILED
2016 AUG 10 AM 8:51
LISA M. COSTER
CLERK OF COURT
LEXINGTON SC

This matter comes before the Court by way of an application for post-conviction relief filed by the Applicant on May 29, 2012. Respondent made its Return and Motion to Dismiss on or about July 9, 2014, and a subsequent Return and Motion to Dismiss on or about September 30, 2015, asserting that the Application is successive and the Applicant must make a *prima facie* showing of "newly-discovered evidence" before a hearing will be scheduled in this matter. Applicant hereby requests that this Court allow him the opportunity to have a hearing to determine whether or not he has sufficient legal grounds to justify Post-Conviction Relief at this time.

## PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the January 2001 term of the Lexington County Grand Jury for First Degree Burglary (2001-GS-32-0217). In March of 2001 Applicant proceeded with jury trial before the Honorable J.C. Nicholson. He was convicted as charged and sentenced to a twenty five year prison sentence.

Applicant properly appealed his trial and the Court of appeals affirmed his conviction and sentence. State v. Cromer, Op. No. 2002-UP-518 (S.C. Ct. App. Filed August 26, 2002). The remittitur was issued September 11, 2002 and Applicant did not seek rehearing or certiorari.

The Applicant then filed an application for post-conviction relief on November 6, 2002. An order dismissing his application was filed on September 24, 2007 by Judge Keesley. The Applicant then appealed that decision and the appeal was denied February 4, 2009.

The Applicant then filed a petition for writ of habeas corpus on August 24, 2009which was dismissed through a grant of summary judgment for the Respondent on October 26, 2010. This matter was also appealed and the original judgment was enforced on May 13, 2011.

The Applicant filed his current Application for Post-Conviction Relief on May 29, 2012. This Application was thereafter amended on September 16, 2014, and August 18, 2016[1]. The first Application for Post-conviction Relief raised the following issues:

1. Newly, Important, Helpful Evidence,
    a. Alibi witness has come forward
2. Trial judge erred and abused his discretion
    a. He stated he agreed defendant was deprived a fair trial and defendant due process rights were violated
3. PCR judge abused his discretion
    a. Ruled investigation by non-licensed investigator is adequate for criminal trial
4. Case lacked proper investigation
    a. Civilian who imposed an investigator scammed the defense
5. Prosecution used strikes because of jurors race, deprived defendant fair trial
    a. Black jurors worked where they lived.

In the Amended Application filed September 16, 2014 the Applicant provided a written statement from alibi witness, Yolanda Wattlington, and stated that this information was not known to the Applicant until November 2011, four months before the current Application was

[1] While this filed document states that it is a request for an Evidentiary Hearing, the contents of this document raise some additional allegations not previously raised in the Application and is clearly an attempt by the *pro se* litigant to raise additional allegations.

filed. In the Applicant's filing dated August 18, 2016 the Applicant argued the above allegations further but also made the following statements:

- Trial Prosecutor broadened the Grant Jury Indictment and the subject of time was from 11 pm 4-14-00 to 4 am 4-15-00;
- Applicant argues the indictment did not serve notice to which dwelling on the property to repel or rebut;
- This is a case that time is a material element that separates the two crimes of burglary. This case, also, when indicted, should have specified which dwelling place (building) to rebut and repel, because each particular dwellings place is an essential element that separates the two crimes of burglary. Appellant was not apprised of what must he be prepared to meet. Each crime was materially different from the other;
- When the indictment does not allege an essential element of the crime charged, trial court does not have subject matter jurisdiction.

In making these and additional statements regarding the indictment, it is clear that the Applicant has asserted a subject matter jurisdiction allegation regarding the sufficiency of his indictment.

In the Respondent's Amended Return and Motion to Dismiss filed September 30, 2015, the State asks this Court to dismiss the Applicant's current application as successive pursuant to South Carolina Code Section §17-27-90, as outside of the required statute of limitations pursuant to §17-27-45(a), and pursuant to the doctrine of *res judicata*.

At this time, the Applicant's request for a hearing is based only upon two very specific allegations not previously presented in the prior application for relief: after discovered evidence of an alibi witness, and subject matter jurisdiction.

## LEGAL ANALYSIS

Successive Application Analysis

The State first argues that this Application is successive. As the Court is aware, successive applications are disfavored but not prohibited. As the State correctly cites, successive post-conviction relief applications are forbidden *unless* an applicant can point to a "sufficient

reason" why new grounds for relief were not raised or were not properly raised in a previous application, and any new ground is limited to grounds that "could not have been raised ... in the previous application." Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991)(emphasis added).

Applicant contends that he could not have sufficiently raised this particular issue regarding the newly discovered evidence in a prior application because he did not know this information prior to November, 2011.

Newly Discovered Evidence

South Carolina Code Section 17-25-45(c) states "if the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant tor after the date when the facts could have been ascertained by the exercise of reasonable diligence."

A review of the Applicant's filings along with the statement of Yolanda Wattlington make a *prima facie* showing that the Applicant received the new alibi information in November of 2011. He filed his timely PCR Application within four months of that date. The Applicant submits that this gives rise to material facts not previously presented or heard in his prior PCR cases. If an evidentiary hearing is scheduled, Applicant would testify that he has acted with due diligence and filed a timely Application under §17-27-45(c). Therefore, the Applicant requests an evidentiary hearing to be granted on the merits of his allegation regarding newly discovered evidence to determine whether or not grant of a new trial would be appropriate under the factors laid out in Hayden v. State[2], 278 S.C. 610 (1983).

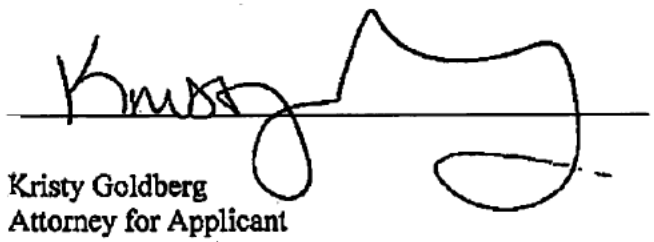
[2] "A party requesting a new trial based on after-discovered evidence must show that the evidence: (1) is such as would probably change the result if a new trial was had; (2) has been

Subject Matter Jurisdiction

The Applicant asks this Court to allow him to present testimony regarding the insufficiency of his indictment, as this allegation was not argued in his previous post-conviction relief action.

## CONCLUSION

Based on the foregoing, Applicant requests that this Court deny the State's Motion to Dismiss and allow the Applicant a hearing on the merits of his allegation.



Kristy Goldberg
Attorney for Applicant

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Columbia, South Carolina

This 25th day of July, 2018

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discovered since the trial; (3) could not by the exercise of due diligence have been discovered before the trial;(4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." Hayden v. State, 278 S.C. 610 (1983).

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| STATE OF SOUTH CAROLINA | ) | |
| | ) | COURT OF COMMON PLEAS |
| County of Lexington | ) | 2012-CP-32-02197 |
| | ) | |
| | ) | |
| JEFFREY D. CROMER, | ) | |
| | ) | |
| APPLICANT, | ) | |
| | ) | |
| vs. | ) | TRANSCRIPT OF RECORD |
| | ) | |
| STATE OF SOUTH CAROLINA, | ) | |
| | ) | |
| RESPONDENT, | ) | |

July 30, 2018
Lexington, South Carolina

*BEFORE*:

THE HONORABLE PERRY H. GRAVELY, JUDGE.

*APPEARANCES*:

KELLY OPPENHEIMER, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KRISTY GOLDBERG, ESQ.
Attorney for the Applicant

KAREN AMBROZIAK
Official Court Reporter

**C O N T E N T S**

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

MS. OPPENHEIMER: May it please the Court, Your Honor. This is Jeffrey Cromer vs. the State of South Carolina, docket number 2012-CP-32-02197. If Your Honor will bear with me, the procedural history is quite lengthy.

During its January 2001 term, the Lexington County Grand Jury indicted Applicant for first degree burglary. Michael W. Chesser, Esquire, represented him on this charge.

On March 6th, 8th, 12th and 13th and 19th and 21st of 2001, Applicant proceeded to a jury trial before the Honorable J.C. Nicholson, Jr. The jury convicted Applicant as indicted, and Judge Nicholson sentenced him to a term of imprisonment of 25 years.

Applicant filed a timely notice of appeal and Appellate Defender, Robert M. Pachak perfected an appeal on his behalf. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion on August 26th, 2002. The remittitur was issued on September 11th, 2002.

Applicant then filed his first post-conviction relief application on November 6th, 2002. In that application, he raised the following grounds: Ineffective assistance of counsel for failing to investigate, failing to present a defense, failing to prepare for trial, failing to raise

issues during suppression, ineffective of assistance of appellate counsel for failing to present medical issues and a due process violation.

Respondent filed his return on February 7th, 2003 requesting an evidentiary hearing on the allegations of ineffective assistance of trial and appellate counsel. Thereafter, on October 13th, 2004, Applicant, through his counsel, Tommy A. Thomas, Esquire, amended his application.

In that amendment, he raised the following additional grounds: The Applicant had after-discovered evidence and indicates there was a witness who was unknown and/or had information unknown at the time of trial.

An evidentiary hearing into the matter was convened on February 10th, 2005 at the Lexington County Courthouse before the Honorable William P. Keesley. Thereafter, on September 21st, 2007, Judge Keesley issued an order of dismissal denying and dismissing the application for post-conviction relief.

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf by Tricia Blanchette, Esquire, by written order dated January 8th, 2009.

The South Carolina Supreme Court denied the petition for writ of certiorari. On January 16th, 2009, Applicant filed a motion to reconsider, which was denied on

February 4th, 2009. The remittitur was issued the same day.

Applicant then filed a petition for federal habeas in the United States District Court on August 24th, 2009. In that petition, he raised the following grounds: Trial court's decision to allow evidence of three prior burglary convictions and one felony in Florida was in error, voluntariness of statement and use of statement in error, solicitor's conduct throughout the trial, as well as his closing and ineffective assistance of counsel, mistrial unsuccessful.

Respondent moved for summary judgment on December 2nd, 2009. Thereafter, on July 2nd, 2010, United States Magistrate Judge Paige J. Gossett issued a report and recommendation recommending respondent's motion for summary judgment be granted.

On October 26th, 2010, the Honorable Richard Mark Gergel issued an order adopting the recommendation and denying the certificate of appealability. Summary judgment was also entered for respondent that same day and the order and judgment were reissued on November 4th, 2007.

On May 29th, 2010, Applicant filed this present and second application for post-conviction relief raising newly discovered evidence alleging that an alibi witness

has since come forward, trial court error, PCR court error, improper investigation and prosecutor used strikes because of juror's race.

Respondent made a motion to dismiss on July 9th, 2014 reflecting the application be summarily dismissed as time barred and successive. Simultaneously, Respondent submitted a proposed conditional order of dismissal to Judge Keesley acting in his capacity as chief administrative judge. Applicant then submitted an objection to the conditional order dismissal.

On August 21st, 2014, Judge Keesley issued an order regarding the motion for conditional order of discharge denying that motion for a conditional order and requiring Applicant to submit an amended application for post-conviction relief specifically detailing his claims of after-discovered evidence.

Applicant filed his amendment on September 16th, 2014, in which he alleged Yolanda E. Watlington, an alleged alibi witness, had come forward in November 2011 and had no prior knowledge of Applicant's trial.

Respondent submitted an amended return and motion to dismiss on September 30th, 2015 requesting the application be dismissed as successive, time barred, barred by the doctrine of res judicata and for failing to make a prima fascia showing for newly discovered evidence.

A proposed conditional order of dismissal was simultaneously submitted to the Honorable Eugene C. Griffith, Jr. due to a conflict with Judge Keesley, and then after a status conference with the Honorable R. Knox McMahon, in his administrative capacity, Judge McMahon issued an order appointing Ms. Goldberg and ordering a hearing solely on the issue of whether this current application should be denied and dismissed.

Applicant is present today, and Ms. Goldberg represents him.

THE COURT: All right. Ms. Goldberg.

MS. GOLDBERG: Thank you, Your Honor, may it please the Court. As stated today, the purpose of this motion is for this Court to allow Mr. Cromer to have an evidentiary hearing since this is his second post-conviction relief application.

He raised several grounds in the application he filed. I've talked to him about those and I've been able to explain to him that, essentially, by and large, many of those that he raised were either things that were already ruled upon in his other hearings, his prior PCR or should have been raised and had the opportunity to rule on prior, so they were either already disposed or waived by not bringing them. There are only two remaining issues for this Court to consider.

One is an allegation of after-discovered evidence. Specifically, the Applicant has already provided the Court with a statement that's located within the documentation just to summarize, Ms. Watlington, who, for the Court's information, did originally provide a statement to law enforcement and did testify in the pretrial hearing at trial came forward in November of 2011 with information.

She told Mr. Cromer information that she had never told him or I believe anybody before, and this is essentially that on the night of the burglary, she had actually observed his whereabouts at different times and his interactions with other people without him knowing that she was watching him and so she could provide somewhat of an alibi of how he became in possession of certain items and where he was at certain times of the night.

Ms. Watlington did write this statement which Mr. Cromer provided to the Court previously. She is also here and present today and ready to testify should Your Honor consider that.

Mr. Cromer has stated in his filings that he came in possession of this information from Ms. Watlington in November of 2011 and filed this new PCR application about four months thereafter. So it was filed within one year of receiving this new information.

THE COURT: Did that application say that was newly -- I know there was an amendment that was --

MS. GOLDBERG: Yes. The application --

THE COURT: But that was put in four months later?

MS. GOLDBERG: The application that was originally filed four months later clearly stated after-discovered evidence. Then at some point thereafter, Judge Keesley said you have to tell us what that is, make a prima facie showing.

At that point, Mr. Cromer responded with this more detailed information and a copy of the actual statement itself -- or an actual statement. So that is one particular matter.

The other one is kind of unrelated and is a jurisdictional issue, so I don't know if you want me to go into the second issue or if you want to hear from the Attorney General on that.

THE COURT: Now, let me make sure I'm clear, too. The witness that came forward in November 2011, she was also previously a witness in the matter and had given a statement at the initial trial?

MS. GOLDBERG: That's correct, Your Honor. She had given a statement to law enforcement in writing and she had testified in the pretrial hearing. She did not testify in front of the jury, but none of -- but the State

and I have both been privy to that original written statement and the transcript testimony. Nothing that she is saying in her new statement is contained within that, so it is new substantively.

THE COURT: All right. And I know I've got the statement in here, but in this statement, does she say why she did not provide this information before?

MS. GOLDBERG: She did not say that specifically in writing.

THE COURT: Okay.

MS. GOLDBERG: So she would have to testify accordingly today.

THE COURT: All right. And your second ground?

MS. GOLDBERG: The second ground is a jurisdictional issue. In Mr. Cromer's filing prior to today, he filed in August of -- August 18th of 2016, he filed what he called a motion for an evidentiary hearing.

In reading it, it's clear that he is rehashing and, also, amending his application. He makes several references to contest over subject matter jurisdiction.

Mr. Cromer -- to explain the situation, Mr. Cromer is very focused on the facts of this case, so the burglary that he's convicted of, in reading the trial transcript, Mr. Cromer's assertion, and I don't think that the transcript contests this at all, is there was a burglary

of a house.

There was also a burglary of an outhouse, which was several yards away. They're both technically the same residence. There was one date listed on the indictment.

Even the State's position was that worst case scenario, this burglary would have involved several trips. Mr. Cromer's position is that there were actually two burglaries that night. There was a burglary of the outhouse. There was a separate home invasion. The transcript shows that they were most likely at separate times.

Mr. Cromer originally provided a statement, which he later retracted, but he originally provided a statement that he may have been on lookout in one of them, but not the other. The State introduced evidence as to both burglaries during his trial where he was only indicted for one count of burglary in the first degree.

Mr. Cromer asserts that because they provided evidence as to both crimes, which were not continuous, separate, separate buildings, separate timeframe, he was essentially tried for two burglaries rather than one and it would be impossible for anybody to know whether the jury convicted him essentially of the home invasion or of the outhouse.

For that reason, he believes he was essentially tried

by the State for a matter that he was not indicted for at all because there were two burglaries and one indictment and he believe there was a lack of subject matter jurisdiction of the Court because there was a lack of an indictment.

THE COURT: And why couldn't that have been filed in the previous PCR?

MS. GOLDBERG: You --

THE COURT: I mean, that's not some newly discovered evidence.

MS. GOLDBERG: Your Honor, there's some case law that says that subject matter jurisdiction is something that can be raised at any time.

THE COURT: But if you're not allowed to file a second petition, there's no vehicle in which to raise that, is there?

MS. GOLDBERG: I do not know of any facts or evidence or law that is new at this time that did not exist before. I would just rely on the case law --

THE COURT: Right.

MS. GOLDBERG: -- that says the subject matter jurisdiction issues can be raised at any time.

THE COURT: All right. Thank you.

Your response to the alibi witnesses and all --

MS. OPPENHEIMER: Your Honor --

THE COURT: -- that I'm concerned with?

MS. OPPENHEIMER: With regard to the alibi witness, the letter that the Applicant provided to the Court, it's not dated, so we don't really know when he got this.

It's also not a sworn statement by Ms. Watlington. Ms. Watlington and Mr. Cromer were dating at the time of this offense. She was available for trial. She was actually subpoenaed to appear and she did not, so a bench warrant was issued.

So she did appear pretrial, and there is -- or the record reflects that Mr. Chesser had a conversation with her or wanted to at that time. So trial counsel was clearly aware of this alleged witness.

Furthermore, the letter itself doesn't establish a clear alibi. In particular, it says at some point in the evening, Mr. Cromer left with three other individuals who had come to their house.

She does not know where they went. She says she guesses that he went somewhere to get liquor, but she doesn't know. Furthermore, in this letter, she admits that the Applicant was sleeping in another room so she did not know his full whereabouts the entire night.

Also, the applicant gave a statement to law enforcement in which he admitted to leaving the home at approximately 10:00 p.m. and going to a house on Piney

Grove.

In that statement, as Ms. Goldberg indicated, he admitted to being the lookout. Also, during trial, he testified on his own behalf and placed himself at the home on Piney Grove Road.

So anything now would be a recantation of his testimony, which the State would argue is an inconsistent statement that does not change the outcome at trial. Also, it needs to be looked at with the utmost scrutiny and they're ordinarily unreliable for recanted testimony.

So, Your Honor, we'd ask that you dismiss this application as there's no telling when the alibi witness gave this information. It's not a sworn statement and it would just be contradictory to the testimony presented at trial by the Applicant himself.

THE COURT: In looking at this, this is a little different than, you know, several -- sometimes you have the alibi witness that nobody knew about until well after the fact, but in this particular case, you have a person that not only they knew about, the Applicant had obviously some connection with this witness.

She came and she testified and there was obviously some conference between her -- the Applicant's attorney and this witness and at most, there is a possible change in her testimony, but I'm not sure that there is a

substantial change.

I'm not -- you can't really tell, but I don't believe that rises to the level of newly discovered evidence. I'm going to grant the State's motion to dismiss.

MS. OPPENHEIMER: Thank you, Your Honor.

MS. GOLDBERG: Thank you, Your Honor.

Your Honor, my client wants me to clarify for the record that you're considering both of his grounds and not just the alibi witness?

THE COURT: And I guess I deny the second one because I believe that should have been raised previously.

MS. GOLDBERG: Thank you, Your Honor.

THE COURT: Good luck to you, Mr. Cromer.

(Whereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA )
)
COUNTY OF LEXINGTON )

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Lexington County, South Carolina, on the 30th day of July, 2018.

January 25, 2019

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF LEXINGTON | IN THE COURT OF COMMON PLEAS<br>FOR THE ELEVENTH JUDICIAL CIRCUIT |
| Jeffrey D. Cromer, #197498,<br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | 2012-CP-32-2197<br><br>**ORDER OF DISMISSAL** |

FILED
2016 SEP 13 A 10:31
LISA M. COMER
CLERK OF COURT
LEXINGTON

This matter comes before this Court by way of an application for post-conviction relief filed May 29, 2012.

**PROCEDURAL HISTORY**

Jeffrey D. Cromer (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its January 2001 term, the Lexington County Grand Jury indicted Applicant for first-degree burglary (2001-GS-32-217). Michael W. Chesser, Esquire represented Applicant on this charge. On March 6, 8, 12-13, and 19-21, 2001, Applicant proceeded to a jury trial before the Honorable J.C. Nicholson, Jr. The jury convicted Applicant as indicted, and Judge Nicholson sentenced Applicant to a term of imprisonment of twenty-five years.

Applicant filed a timely notice of appeal, and Appellate Defender Robert M. Pachak, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, perfected an appeal on Applicant's behalf. On appeal, Applicant raised the following issue: "Whether the trial court erred in overruling defense counsel's objection to the solicitor's closing argument where he urged the jury not to victimize the victim again?" Following briefing, the South

Carolina Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion on August 26, 2002. *State v. Cromer*, Op. No. 2002-UP-518 (S.C. Ct. App. filed August 26, 2002). The Remittitur was issued on September 11, 2002.

**2002-CP-32-3895**

Applicant filed his first application for post-conviction relief November 6, 2002, alleging:

1. Ineffective Assistance of Trial Counsel;
    a. Trial attorney failed to fully investigate case; did not pursue defense required by 6th Amendment, USCA; was not fully prepared to go to trial; did not raise issues during suppression.
2. Ineffective Assistance of Appellant Counsel; [and]
    a. Appellant Counsel did not present meritorious issues to appeals court after being ask [sic] to.
3. Violation of Due Process.
    a. Do [sic] to the aforemention [sic] of ineffective assistance of counsel, Applicant was denied a fair trial and proper readdress [sic] to court.

Respondent made its Return on February 7, 2003, requesting an evidentiary hearing be held. Thereafter, through his counsel, Applicant filed an amended application for post-conviction relief on October 13, 2004. In this amended application, Applicant raised the following additional ground:

1. That the Applicant is informed and believes that after discovered evidence has been obtained that indicates there is a witness who was unknown and/or had information unknown at the time of trial.

An evidentiary hearing into the matter was convened on February 10, 2005, at the Lexington County Courthouse before the Honorable William P. Keesley. Applicant was present at the hearing and was represented by Tommy A. Thomas, Esquire. By Order dated September 21, 2007, Judge Keesley denied and dismissed Applicant's application for post-conviction relief with prejudice.

Applicant filed a timely notice of appeal, and an appeal was perfected on his behalf by Tricia A. Blanchette, Esquire. On appeal, Applicant raised the following issues:

1. Whether appellate counsel rendered ineffective assistance of counsel when he failed to address the introduction of [Applicant's] three prior convictions to establish burglary in the first degree?
2. Whether appellate counsel rendered ineffective assistance of counsel when the appellate brief failed to address prejudicial comments made by the Solicitor and defense counsel's motion for a mistrial? [and]
3. Whether appellate counsel rendered ineffective assistance of counsel when he failed to address the introduction of the redacted portions of [Applicant's] statement during cross-examination of [Applicant]?

By written Order dated January 8, 2009, the Supreme Court of South Carolina denied the Petition for Writ of Certiorari. Thereafter, on January 16, 2009, Applicant filed a Motion for Reconsideration, requesting the Court to reconsider its denial of the Petition and requesting Counsel be allowed to further brief the issues. The Supreme Court denied Applicant's motion on February 4, 2009, while simultaneously issuing the Remittitur.

**0:09-2235-MBS-PJG**

Applicant then filed a Petition for a Writ of Habeas Corpus on August 24, 2009. In this Petition, Applicant raised the following grounds:

1. [Applicant] argues the trial court[']s decision to allow evidence of 3 prior burglary convictions and 1 felony in Florida (Burglary was in err [sic];
2. Voluntariness of statement—use of statement was in err [sic];
3. Solicitor's misconduct throughout the trial—Solicitor's closing; [and]
4. Ineffective Assistance of Trial Counsel—Mistrial not successful.

Respondent made its "Return and Memorandum of Law in Support of Motion for Summary Judgment" on December 2, 2009, requesting the Petition be dismissed. Thereafter, on July 2, 2010, United States Magistrate Judge Paige J. Gossett issued a report and recommendation, recommending Respondent's motion for summary judgment be granted. On October 26, 2010, United States District Judge Richard Mark Gergel issued an order granting Respondent's motion

for summary judgment and denying the certificate of appealability. Judge Gergel reissued the same order on November 4, 2010.

## CURRENT APPLICATION

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

1. Newly, important, helpful evidence;
   a. Alibi witness has come forward.
2. Trial judge erred and abused his discretion;
   a. He stated and agreed [Applicant] was deprived a fair trial and [Applicant's] Due Process rights violated.
3. PCR judge abused his discretion;
   a. Ruled investigation by non-license [sic] investigator is adequate for criminal trial.
4. Case lacked proper investigation; [and]
   a. Civilian who imposed [sic] as an investigator scammed the defense.
5. Prosecution used strikes because of jurors['] race deprived [Applicant] fair trial.
   a. Black jurors struck because of where they worked and where they lived.

Respondent made its Return and Motion to Dismiss on July 9, 2014, requesting the applicant be summarily dismissed as successive and as untimely. Applicant then filed numerous *pro se* responses, requesting an evidentiary hearing on this application. Thereafter, on August 19, 2014, the Honorable William P. Keesley, in his capacity as Chief Administrative Judge for the Eleventh Judicial Circuit for Common Pleas, issued an "Order Regarding Motion for Conditional Order of Discharge." In said Order, Judge Keesley denied Respondent's motion for a conditional order of discharge and required Applicant to amend his application to "provide more specifics as to the claim of after-discovered evidence and when this information was obtained." Applicant filed his amendment to the application on September 16, 2014, alleging the purported alibi witness, Yolanda E. Wattlington, was not contacted by trial counsel or Applicant's investigator at the time of trial, nor was Ms. Wattlington in contact with Applicant at

the time. The application also included a handwritten letter from Ms. Wattlington. Respondent made its "Amended Return and Motion to Dismiss" on September 30, 2015, requesting the application be summarily dismissed as successive, as untimely, as barred by the doctrine of *res judicata*, and for failing to set forth a *prima facie* showing of newly discovered evidence. Thereafter, the Honorable R. Knox McMahon in his capacity as Chief Administrative Judge for the Eleventh Circuit for Common Pleas appointed Applicant counsel and ordered an evidentiary hearing be held on this application, solely as to the issue of whether the application should be summarily denied and dismissed. Subsequently, through his counsel, Applicant filed a "Response to the State's Motion to Dismiss" on July 25, 2018. In this response Applicant narrowed his grounds for relief to the following[1]:

1. After discovered evidence of an alibi witness; and
2. Subject matter jurisdiction.

A hearing into the matter was convened at the Lexington County Courthouse on July 30, 2018, before the Honorable Perry H. Gravely. Applicant was present at the hearing and represented by Kristy G. Goldberg, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent.

This Court also had before it the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's prior post-conviction relief records and the appeal therefrom, Applicant's appellate records, the records from Applicant's federal habeas proceeding, and the records from this current application.

[1] At the hearing, Applicant proceeded forward on the grounds raised in his July 25, 2018, filing.



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## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings and all relevant supporting documents and further listened to the arguments presented by counsels at the hearing. This Court makes the following findings of fact and conclusions of law:

### *Newly Discovered Evidence*

This Court finds Applicant has wholly failed to set forth a *prima facie* case, which would permit this application based on newly discovered evidence. The Uniform Post-Conviction Relief Act states a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

> (1) Is such as would probably change the result if a new trial was had;
> (2) Has been discovered since the trial;
> (3) Could not by the exercise of due diligence have been discovered before the trial;
> (4) Is material to the issue of guilt or innocence; and,
> (5) Is not merely cumulative or impeaching.

*Hayden v. State*, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)).

Applicant contends his alleged alibi witness, Yolanda E. Wattlington, came forward in November of 2011; and, therefore, he filed this current application within the requisite one year filing period. In support of this allegation, Applicant includes a handwritten note from Ms.

Wattlington.

As an initial matter, this Court notes the letter with which Applicant has provided this Court is neither dated nor a sworn statement. Given the absence of a date on this letter, it is impossible for this Court to determine whether or not Applicant did, in fact, learn of this alibi witness after trial. Furthermore, because of this deficiency, it is impossible to ascertain if Applicant did, in fact, file this current application within one year of discovering this alleged newly discovered evidence.

Furthermore, this Court notes it is simply inconceivable Applicant discovered Ms. Wattlington post-trial. Ms. Wattlington provided a statement to law enforcement on April 22, 2000, in which she indicated stolen items were brought into her home. Moreover, Ms. Wattlington was subpoenaed to appear at trial on March 6, 2001, and she failed to do so. Due to her failure to appear, a bench warrant was issued, and Ms. Wattlington was subsequently brought into court to address the trial court. *See* Trial Tr. 96. In addition, at the time of these crimes, Ms. Wattlington and Applicant were dating and living together. Accordingly, this Court finds Applicant was aware of Ms. Wattlington's presence at the time of trial, and he has not since discovered her alleged alibi testimony after trial. This Court further finds any allegation by Applicant Ms. Wattlington was unavailable at the time or unaware of the circumstances surrounding Applicant's trial are conclusively refuted by the record. Accordingly, this Court finds Applicant could have discovered Ms. Wattlington and her alleged alibi testimony with due diligence prior to trial.

Even if Applicant's allegation Ms. Wattlington did not come forward until 2011 were plausible, this Court finds the information provided in her letter does not establish an alibi. Through an alibi, an accused attempts "'to show that because he was not at the scene of the



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crime at the time of its commission, having been at another place at the time, he could not have committed the crime.'" *State v. Robbins*, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d Criminal Law s 136)). To do so, the accused must show "'he was at a place so distant that his participation in the crime was impossible.'" *Id.* Furthermore, the alibi must account for the entire time during which these crimes were committed. *Id.* In her letter, Ms. Wattlington indicates three men arrived at her home on the night of the commission of this burglary, and Applicant left with them. She further indicates she was unaware where Applicant and these men went, but she "guessed" Applicant went to the liquor store. Ms. Wattlington cannot account for Applicant's whereabouts during this time. Accordingly, this Court finds the information provided does not establish an alibi for Applicant, as Ms. Wattlington cannot account for his whereabouts during the time in which these crimes were committed. Therefore, this Court finds the testimony of Ms. Wattlington would not change the result if a new trial were had.

This Court finds Applicant has failed to make a *prima facie* showing he is entitled to relief based on the information set forth above. Specifically, this Court finds Applicant has wholly failed to establish the information provided by Ms. Wattlington would: (1) change the result if a new trial were had; (2) has been discovered since Applicant's trial; and (3) could not by the exercise of due diligence be discovered prior to trial. Accordingly, this application must be denied and dismissed with prejudice.

***Subject Matter Jurisdiction***

Applicant alleges the trial court lacked subject matter jurisdiction. An applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part*

*by Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499. *See also* S.C. Const. Art. V, § 7. Thus, an applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant was indicted by the Lexington County Grand Jury for first-degree burglary, and the indictment alleges the criminal offenses occurred in Lexington County. Moreover, Applicant was prosecuted for these charges in the Lexington County Court of General Sessions. Accordingly, this Court finds Applicant has failed to present any facts or evidence which would establish the convictions he challenges in this application are of a class over which the circuit court does not have the authority to preside. This allegation must be denied and dismissed with prejudice.



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## CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to and remain in the custody of the State

**AND IT IS SO ORDERED** this 6th day of Sept, 2018.

PERRY H. GRAVELY
Presiding Judge
Eleventh Judicial Circuit

Greenville, South Carolina

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| STATE OF SOUTH CAROLINA )<br>COUNTY OF LEXINGTON ) | IN THE COURT OF COMMON PLEAS<br>FOR THE ELEVENTH JUDICIAL<br>CIRCUIT |
| Jeffrey D. Cromer, # 197498, )<br>Applicant, )<br>)<br>v. )<br>)<br>)<br>State of South Carolina, )<br>Respondent. ) | Case No. 2012-CP-32-2197<br><br>**MOTION TO ALTER/AMEND JUDGMENT** |

On today's date counsel for the Applicant received the Order of the Court dismissing Applicant's claims for Post-Conviction Relief. Pursuant to South Carolina Rule of Civil Procedure Rule 59(e), the Applicant hereby requests this Court consider to Alter or Amend the current Judgment based upon the following argument:

Newly Discovered Evidence

The Applicant would object to the fact that the Court did not allow Ms. Yolanda Wattlington to testify before making a determination regarding the value of the evidence she could supply as well as the date when this information was provided to the Applicant. The Applicant and Ms. Wattlington were both present at the PCR hearing and able to testify under oath in Court. This Court's Order states that, due to the fact that Ms. Wattlington's previously submitted statements had not been dated or sworn, it "is impossible to ascertain if the Applicant" filed his application within one year of discovering this evidence. That is an incorrect statement, as the information was readily ascertainable and available on the date of Mr. Cromer's evidentiary hearing and the Court did not allow the testimony to be presented.

Subject Matter Jurisdiction

The Applicant objects to the Court's refusal to allow him the ability to testify regarding his Subject Matter Jurisdiction argument. The Applicant has asserted through counsel that, while he was indicted for one count of Burglary, the State presented evidence in his jury trial of two independent burglaries. One burglary occurring in an outhouse/garage prior to 10 p.m., and a second burglary occurring in a residence later that evening. While both structures have the same postal address, the Applicant argues that the trial transcript clearly shows that two distinct crimes occurred and it is impossible to determine for which burglary he was convicted. Therefore, the Applicant argues there is a reasonable probability that he was convicted of a crime for which he was not indicted. The Applicant asserts that his claim is appropriate at this time pursuant to State v. Gentry, 363 S.C. 93 (2005).

## CONCLUSION

Based on the foregoing, Applicant requests that this Court reconsider the original Judgment and allow the Applicant a new evidentiary hearing so that the issues can be fully explored.



Kristy Goldberg
Attorney for Applicant

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803-799-4059 (fax)
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Columbia, South Carolina
This 19th day of September, 2018

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF LEXINGTON | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE ELEVENTH JUDICIAL CIRCUIT |
| Jeffrey D. Cromer, #197498,<br>Applicant, | ) | Case No. 2012-CP-32-2197 |
| v. | ) | **RETURN TO APPLICANT'S "MOTION TO ALTER/AMEND JUDGMENT"** |
| State of South Carolina,<br>Respondent. | ) | |

Respondent, by and through undersigned counsel, making its Return to Applicant's "Motion to Alter/Amend Judgment," would respectfully show unto this Court:

I.

Jeffrey D. Cromer (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its January 2001 term, the Lexington County Grand Jury indicted Applicant for first-degree burglary (2001-GS-32-217). Michael W. Chesser, Esquire represented Applicant on this charge. On March 6, 8, 12-13, and 19-21, 2001, Applicant proceeded to a jury trial before the Honorable J.C. Nicholson, Jr. The jury convicted Applicant as indicted, and Judge Nicholson sentenced Applicant to a term of imprisonment of twenty-five years.

Applicant filed a timely notice of appeal, and Appellate Defender Robert M. Pachak, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, perfected an appeal on Applicant's behalf. On appeal, Applicant raised the following issue: "Whether the trial court erred in overruling defense counsel's objection to the solicitor's closing argument where he urged the jury not to victimize the victim again?" Following briefing, the South

Carolina Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion on August 26, 2002. *State v. Cromer*, Op. No. 2002-UP-518 (S.C. Ct. App. filed August 26, 2002). The Remittitur was issued on September 11, 2002.

**2002-CP-32-3895**

Applicant filed his first application for post-conviction relief November 6, 2002, alleging:

1. Ineffective Assistance of Trial Counsel;
    a. Trial attorney failed to fully investigate case; did not pursue defense required by 6th Amendment, USCA; was not fully prepared to go to trial; did not raise issues during suppression.
2. Ineffective Assistance of Appellant Counsel; [and]
    a. Appellant Counsel did not present meritorious issues to appeals court after being ask [sic] to.
3. Violation of Due Process.
    a. Do [sic] to the aforemention [sic] of ineffective assistance of counsel, Applicant was denied a fair trial and proper readdress [sic] to court.

Respondent made its Return on February 7, 2003, requesting an evidentiary hearing be held. Thereafter, through his counsel, Applicant filed an amended application for post-conviction relief on October 13, 2004. In this amended application, Applicant raised the following additional ground:

1. That the Applicant is informed and believes that after discovered evidence has been obtained that indicates there is a witness who was unknown and/or had information unknown at the time of trial.

An evidentiary hearing into the matter was convened on February 10, 2005, at the Lexington County Courthouse before the Honorable William P. Keesley. Applicant was present at the hearing and was represented by Tommy A. Thomas, Esquire. By Order dated September

21, 2007, Judge Keesley denied and dismissed Applicant's application for post-conviction relief with prejudice.

Applicant filed a timely notice of appeal, and an appeal was perfected on his behalf by Tricia A. Blanchette, Esquire. On appeal, Applicant raised the following issues:

1. Whether appellate counsel rendered ineffective assistance of counsel when he failed to address the introduction of [Applicant's] three prior convictions to establish burglary in the first degree?
2. Whether appellate counsel rendered ineffective assistance of counsel when the appellate brief failed to address prejudicial comments made by the Solicitor and defense counsel's motion for a mistrial? [and]
3. Whether appellate counsel rendered ineffective assistance of counsel when he failed to address the introduction of the redacted portions of [Applicant's] statement during cross-examination of [Applicant]?

By written Order dated January 8, 2009, the Supreme Court of South Carolina denied the Petition for Writ of Certiorari. Thereafter, on January 16, 2009, Applicant filed a Motion for Reconsideration, requesting the Court to reconsider its denial of the Petition and requesting Counsel be allowed to further brief the issues. The Supreme Court denied Applicant's motion on February 4, 2009, while simultaneously issuing the Remittitur.

**0:09-2235-MBS-PJG**

Applicant then filed a Petition for a Writ of Habeas Corpus on August 24, 2009. In this Petition, Applicant raised the following grounds:

1. [Applicant] argues the trial court[']s decision to allow evidence of 3 prior burglary convictions and 1 felony in Florida (Burglary was in err [sic];
2. Voluntariness of statement—use of statement was in err [sic];
3. Solicitor's misconduct throughout the trial—Solicitor's closing; [and]
4. Ineffective Assistance of Trial Counsel—Mistrial not successful.

Respondent made its "Return and Memorandum of Law in Support of Motion for Summary Judgment" on December 2, 2009, requesting the Petition be dismissed. Thereafter, on July 2, 2010, United States Magistrate Judge Paige J. Gossett issued a report and recommendation, recommending Respondent's motion for summary judgment be granted. On October 26, 2010, United States District Judge Richard Mark Gergel issued an order granting Respondent's motion for summary judgment and denying the certificate of appealability. Judge Gergel reissued the same order on November 4, 2010.

II.

On May 29, 2012, Applicant filed his second and current application for post-conviction relief. In this application, Applicant alleges he is being held unlawfully for the following reasons:

1. Newly, important, helpful evidence;
   a. Alibi witness has come forward.
2. Trial judge erred and abused his discretion;
   a. He stated and agreed [Applicant] was deprived a fair trial and [Applicant's] Due Process rights violated.
3. PCR judge abused his discretion;
   a. Ruled investigation by non-license [sic] investigator is adequate for criminal trial.
4. Case lacked proper investigation; [and]
   a. Civilian who imposed [sic] as an investigator scammed the defense.
5. Prosecution used strikes because of jurors['] race deprived [Applicant] fair trial.
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Respondent made its Return and Motion to Dismiss on July 9, 2014, requesting the applicant be summarily dismissed as successive and as untimely. Applicant then filed numerous *pro se* responses, requesting an evidentiary hearing on this application. Thereafter, on August 19, 2014,

the Honorable William P. Keesley, in his capacity as Chief Administrative Judge for the Eleventh Judicial Circuit for Common Pleas, issued an "Order Regarding Motion for Conditional Order of Discharge." In said Order, Judge Keesley denied Respondent's motion for a conditional order of discharge and required Applicant to amend his application to "provide more specifics as to the claim of after-discovered evidence and when this information was obtained." Applicant filed his amendment to the application on September 16, 2014, alleging the purported alibi witness, Yolanda E. Wattlington, was not contacted by trial counsel or Applicant's investigator at the time of trial, nor was Ms. Wattlington in contact with Applicant at the time. The application also included a handwritten letter from Ms. Wattlington. Respondent made its "Amended Return and Motion to Dismiss" on September 30, 2015, requesting the application be summarily dismissed as successive, as untimely, as barred by the doctrine of *res judicata*, and for failing to set forth a *prima facie* showing of newly discovered evidence. Thereafter, the Honorable R. Knox McMahon in his capacity as Chief Administrative Judge for the Eleventh Circuit for Common Pleas appointed Applicant counsel and ordered an evidentiary hearing be held on this application, solely as to the issue of whether the application should be summarily denied and dismissed. Subsequently, through his counsel, Applicant filed a "Response to the State's Motion to Dismiss" on July 25, 2018. In this response Applicant narrowed his grounds for relief to the following[1]:

1. After discovered evidence of an alibi witness; and
2. Subject matter jurisdiction.

[1] At the hearing, Applicant proceeded forward on the grounds raised in his July 25, 2018, filing.

A hearing into the matter was convened at the Lexington County Courthouse on July 30, 2018, before the Honorable Perry H. Gravely. Applicant was present at the hearing and represented by Kristy G. Goldberg, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent. After hearing arguments from both parties, this Court issued an order of dismissal on September 6, 2018, denying and dismissing the application with prejudice.

Subsequently, on September 19, 2018, Applicant, through his counsel, submitted a "Motion To Alter/Amend Judgment." Respondent received a copy of said motion on September 20, 2018. This motion was subsequently filed on September 25, 2018. This Return follows.

III.

In his "Motion to Alter/Amend Judgment," Applicant "objects to the fact this Court did not allow Ms. Yolanda Wattlington to testify before making a determination regarding the value of the evidence she could supply as well as the date when this information was provided to the Applicant." Applicant further asserts both he and Ms. Wattlington could provide such information to this Court, and were available to do so at the evidentiary hearing. Additionally, Applicant "objects to the Court's refusal to allow him the ability to testify regarding his Subject Matter Jurisdiction argument." Applicant contends two burglaries occurred: (1) in an outhouse or garage prior to ten o'clock in the evening and (2) in the residence later that same evening. Applicant further contends although these locations have the same address, it is impossible to determine for which crime he was convicted.

Respondent submits this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a)

SCRCP. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits this Court fully ruled on all issues properly presented through Applicant's post-conviction relief application and that Applicant's "Motion To Alter/Amend Judgment" should be denied. As each properly raised allegation was addressed fully in the order, Respondent submits Applicant's assertions are without merit.

IV.

WHEREFORE, having made its Return to the motion, the State requests the relief requested in the motion be denied and that said motion be dismissed.

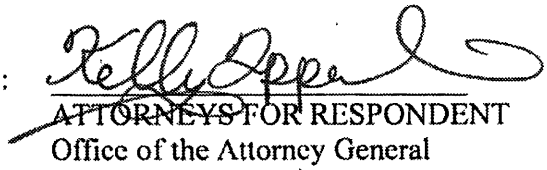
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

BY: 

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October 16, 2018

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| STATE OF SOUTH CAROLINA<br>COUNTY OF LEXINGTON | IN THE COURT OF COMMON PLEAS<br>FOR THE ELEVENTH JUDICIAL CIRCUIT |
| Jeffrey D. Cromer, #197498,<br>Applicant,<br><br>v.<br><br>State of South Carolina,<br>Respondent. | Case No. 2012-CP-32-2197<br><br>**ORDER DENYING APPLICANT'S "MOTION TO ALTER/AMEND JUDGMENT"** |

FILED
2012 OCT 29 AM 8:45
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

This matter comes before this Court by way of Applicant's "Motion To Alter/Amend Judgment," asking this Court to alter or amend its Order of Dismissal denying Applicant's application for post-conviction relief.

I.

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1. That the Applicant is informed and believes that after discovered evidence has been obtained that indicates there is a witness who was unknown and/or had information unknown at the time of trial.

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Subsequently, on September 19, 2018, Applicant, through his counsel, submitted a "Motion To Alter/Amend Judgment." Respondent submitted its return to Applicant's motion on or about October 16, 2018.

III.

[1] At the hearing, Applicant proceeded forward on the grounds raised in his July 25, 2018, filing.



PHH

This Court finds its Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds there is no basis for altering or amending its prior ruling.[2] Therefore, this Court hereby denies Applicant's motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes if Applicant desires to secure appellate review of this Order and the Order of Dismissal, a Notice of Appeal must be filed and served within thirty days of the service of this Order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

**AND, IT IS SO ORDERED** this 22nd day of Oct, 2018.

PERRY H. GRAVELY
Presiding Judge
Eleventh Judicial Circuit

Aiken, South Carolina

[2] The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. *See* Rule 59(f), SCRCP.

**WITNESSES**

LCSD

Quig

**ARREST WARRANT NUMBER**

G014715

**ACTION OF GRAND JURY**

Foreperson of Grand Jury

Date: 3-12-01

**VERDICT**

Guilty

Foreperson of Petit Jury

Date: 3/21/01

918

DOCKET # 2001-GS-32- 217

# The State of South Carolina

**County of LEXINGTON**

**COURT OF GENERAL SESSIONS**

JANUARY **TERM 2001**

**THE STATE**

**vs.**

JEFFERY DARRELL CROMER

CDR# 79

**Indictment for**

Burglary First Degree
§16-11-311

**DONALD V. MYERS, SOLICITOR**

STATE OF SOUTH CAROLINA )
)
COUNTY OF LEXINGTON )

INDICTMENT FOR
BURGLARY FIRST DEGREE
§16-11-311

At a Court of General Sessions, convened in January 2001, the Grand Jurors of LEXINGTON County present upon their oath:

BURGLARY FIRST DEGREE

§16-11-311

That **JEFFREY DARRELL CROMER**, did in Lexington County on or about April 14, 2000, willfully and unlawfully enter the dwelling of Thomas Barnhill located at [redacted], Columbia, SC, without consent and with the intent to commit the crime of larceny therein, and in effecting entry or while in the dwelling the defendant was armed with a deadly weapon, to wit: 30-06 Remington Model 742 Rifle, and/or did so in the nighttime hours, in violation of Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended. AND/OR THE DEFENDANT HAS TWO OR MORE PRIOR CONVICTIONS FOR BURGLARY AND/OR HOUSEBREAKING.

JOB 3-12-01

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A Strand #
ASST. SOLICITOR

STATE OF SOUTH CAROLINA )
920 )
COUNTY OF Lexington )
STATE VS. )
Jeffrey Darrell Cromer )
AKA: )
Race: Black Sex: Male Age: 26 )
DOB: [redacted] 74 SS#: [redacted] )
Address [redacted] )
Cola S.C. 29212 )
DL#_____ SID#:_____ )

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

2001 -GS- 32 - 217
A/W#: 601475
Date of Offense: 9-11-2000
S.C Code §: 16-11-311
CDR Code #: 010 12 17

☐ CASE RESTORED

SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Burglary 1st
in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 010 212

☐ NON-VIOLENT ☑ VIOLENT ☐ SERIOUS ☑ MOST SERIOUS ☐ 17-25-45

The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor _____ Defendant _____ Attorney for Defendant _____

WHEREFORE, the Defendant is committed to the ☑ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 25 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

☐ The Defendant is to be given credit for _____ days/months jail ~~time~~.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

**SPECIAL CONDITIONS:**

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms:_____
☐ set by SCDPPPS_____
_____
Recipient:_____
*Fine: . . . . . .$_____
§14-1-206 (Assessments 100%). . . . .$_____
§14-1-211(A)(1) (Surcharge) . . . . . .$ no cy
§14-1-211(A)(2) (Surcharge) . . . . . .$_____
§56-5-2995 (DUI Assessment). . . . . .$_____
3% to County (if paid in installments). . . .$_____
TOTAL . . . . . .$ no cy

Thomas H. Crosby
Clerk of Court/ Deputy Clerk
Court Reporter: C Bateman

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____
_____
_____

PRESIDING JUDGE
Judge Code: 011217
Sentence Date: 3/21/01

White - Clerk Green - Corrections Canary - Probation Pink - Defendant

3-21-01

SCCA 217 (1/2001)

**ARREST WARRANT**

14715 G- 014715

**STATE OF SOUTH CAROLINA**

☐ County/ ☐ Municipality of LEXINGTON

**THE STATE**

against

JEFFREY DARRELL CROMER

[redacted]

Address: COLUMBIA, SC 29212 [redacted]

Phone. M B SSN 6 [redacted]

Sex: ___ Race: C He[redacted] Weight ___

DL State: [redacted] 5200

DOB: ___ L ___ /Agency ORI #. ___

Prosecuting Agency RULG III, J. B.

Prosecuting Officer BURGLARY FIRST DEGREE

Offense: ___

16 /Offense Code 79

Code/Ordinance Sec ___

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of ___ The accused is to be arrested and brought before me to be dealt with according to law

___ (L.S.)
Signature of Judge

Date. ___

**RETURN**

A copy of this arrest warrant was delivered to JEFFREY CROMER

defendant ___

on 4-28-00

___
Signature of Constable/Law Enforcement Officer

**RETURN WARRANT TO:**

BRUCE RULAND
650 KNOX ABBOTT DR.
CAYCE, SC 29033
803-796-7100

**STATE OF SOUTH CAROLINA** )
☐ County/ ☐ Municipality of LEXINGTON )

**AFFIDAVIT**

Form Approved by
S C Attorney General
July 26, 1990
SCCA 518

Personally appeared before me the affiant J. B. RULG III. who being duly sworn deposes and says that defendant JEFFREY DARRELL CROMER did within this county and state on ___ violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of ___) in the following particulars: BURGLARY FIRST DEGREE

**DESCRIPTION OF OFFENSE:**

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts.

THAT ON 4/19/2000, IN THE EARLY AM, THE DEFENDANT AND CO DEFENDANTS DID WITHOUT THE OWNERS CONSENT BREAK INTO THE DWELLING AND GARAGE AT [redacted] COLUMBIA, LEXINGTON CO., SC. TAKING OVER $7000 IN GOODS AND A 30-06 REMINGTON MODEL 742 RIFLE. ITEMS FROM THE BURGLARY HAVE BEEN POSITIVELY IDENTIFIED BY THE VICTIM THAT WERE IN THE POSSESSION OF THE DEFENDANT. THE DEFENDANT ADMITTED TO HIS INVOLVEMENT IN THIS BURGLARY IN A SIGNED VOLUNTARY STATEMENT.

Sworn to and subscribed before me on ___ (L.S.)
Signature of Issuing Judge SCOTT [illegible] WHITTLE

Signature of Affiant L.C.S.D.
Affiant's Address 721 GIBSON RD. LEXINGTON [illegible]
Affiant's Telephone [illegible]

A TRUE COPY
Tex. Co

**STATE OF SOUTH CAROLINA** )
☐ County/ ☐ Municipality of ___ )

**ARREST WARRANT**

**TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:**

It appearing from the above affidavit that there are reasonable grounds to believe that defendant ___ on ___ did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of 16-11-311 ) as set forth below:

**DESCRIPTION OF OFFENSE:** BURGLARY FIRST DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. 721 GIBSON RD.

___ (L.S.)
Signature of Issuing Judge
Judge Code. 886

Judge's Address LEXINGTON, SC 29072
951-2540
Judge's Telephone ___
Issuing Court. ☒ Magistrate ☐ Municipal ☐ Circuit

**ORIGINAL**

1ST APP
~~BAIL HEARING~~

Judge Scott C

on 4-29-2000

Type and Amount

Name of Surety 1ST Appearance

**PRELIMINARY HEARING** held by

Judge

on

Defense Attorney

Decision

**DISPOSITION** before

Judge

on

by

(indicate jury trial, bench trial, plea, nol pros, etc.)

Disposition

Sentence

JURORS

**WITNESSES**

Name
Address
Telephone

Name
Address
Telephone

FILED

2000 MAY 11 P 2:38

Name
Address
Telephone

Name
Address
Telephone

Name
Address
Telephone

Name
Address
Telephone

Name
Address
Telephone

**CODEFENDANTS**

ARI
STATT
COPY

226

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF LEXINGTON | IN THE COURT OF GENERAL SESSIONS<br>ELEVENTH JUDICIAL CIRCUIT |
| The State of South Carolina,<br><br>Plaintiff,<br><br>vs.<br><br>Jeffrey Cromer,<br><br>Defendant. | VERDICT<br><br>2000-GS-32-217<br>Warrants: G 014715 |

✓ We, the jury, find the Defendant, Jeffrey Cromer, **guilty** of burglary in the first degree.

_____ We, the jury, find the Defendant, Jeffrey Cromer, **not guilty** of burglary in the first degree.

Date: March 21, 2001
Lexington, SC

S B Bruce
Foreperson

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.