

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Perry H. Gravely, Circuit Court Judge

WILLIAM BRUCE JUSTICE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001718

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

Lillian L. Meadows
Assistant Attorney General

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

ATTORNEYS FOR RESPONDENT

RECEIVED

MAY 14 2018

S.C. SUPREME COURT

INDEX

INDEX	i
TRANSCRIPT OF RECORD.....	1
APPLICATION FOR POST-CONVICTION RELIEF	251
RETURN.....	266
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED APRIL 19 & 21, 2016 ...	275
TRANSCRIPT DATED FEBRUARY 1, 2017	298
PLAINTIFF'S EXHIBIT #1 (VIOLATION REPORT).....	347
DEFENDANT'S EXHIBIT #1 (SCRIPT).....	349
ORDER OF DISMISSAL.....	350
INDICTMENT.....	363

**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
CD CONTAINING AUDIO OF PETITIONER'S PAROLE REVOCATION HEARING**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Honorable Marion H. Kinon, Judge

THE STATE,

RESPONDENT,

v.

WILLIAM BRUCE JUSTICE,

APPELLANT.

TRANSCRIPT OF RECORD

FRANKLIN W. DRAPER
Assistant Appellate Defender

South Carolina Office
of Appellate Defense
Suite 301, 1122 Lady Street
Columbia, S. C. 29201

ATTORNEY FOR APPELLANT.

T. TRAVIS MEDLOCK
Attorney General

HAROLD M. COOMBS, JR.
Assistant Attorney General.

MILLER W. SHEALY, JR.
Staff Attorney

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

DONALD V. MYERS, Solicitor
Eleventh Judicial Circuit

Lexington County Courthouse
Lexington, S. C. 29072

ATTORNEYS FOR RESPONDENT.

INDEX

INDEX	i
STATEMENT.....	ii
TRIAL TRANSCRIPT.....	1
STATE'S EXHIBIT #7.....	247
STATE'S EXHIBIT #8.....	248
DEFENSE EXHIBIT #3.....	249
DEFENSE EXHIBIT #4.....	252
DEFENSE EXHIBIT #5.....	253
STATE'S EXHIBIT #5 - VIDEO TAPE - ON FILE WITH THE SOUTH CAROLINA SUPREME COURT	
EXCEPTIONS.....	254
AGREEMENT.....	257

STATEMENT

Appellant William Bruce Justice was indicted February 27, 1989 in the Lexington County Court of General Sessions for two counts of petit larceny, two counts of grand larceny, and four counts of second degree burglary. On June 28, 1989, appellant was tried before the Honorable Marion H. Kinon, presiding judge, and a jury. On June 29, 1989, the jury found appellant guilty of all charges. Judge Kinon sentenced appellant to fifteen (15) years for each count of burglary, second degree, all to run consecutively. Appellant was sentenced to one (1) month on each count of petit larceny, concurrent, and ten (10) years on the two counts of grand larceny, concurrent. This case is now before this Court pursuant to appellant's timely notice of appeal filed in this Court on July 10, 1989.

25

THE COURT: All right, Solicitor, I can now conduct the

1 suppression hearing.

2 MR. MCMAHON: May it please the Court. The State would
3 call Sergeant Dennis Tyndall to the stand.

4 DENNIS TYNDALL is duly sworn.

5 DIRECT EXAMINATION BY MR. MCMAHON:

6 Q Sir, would you introduce yourself to the Court, please?

7 A Sgt. Dennis Tyndall of the West Columbia Police Depart-
8 ment.

9 Q And how long have you been employed with the West Colum-
10 bia Police Department?

11 A Just over five years.

12 Q And what is your present position?

13 A My present position, I'm detective sergeant.

14 Q And as a part of your duties and responsibilities
15 as a detective sergeant, do you become involved in an inves-
16 tigation of burglaries and larcencies along with other felony
17 type crimes?

18 A Yes, sir. I do.

19 Q Sergeant, were you involved in a particular investigation
20 toward the latter part of December of '88 and the first part
21 of January of '89?

22 A Yes, sir. We were having numerous commercial break ins
23 in the Cayce/West Columbia area. And I was assigned to work
24 with Cayce on those, which resulted in this.

25 Q All right sir. Now, how does the jurisdictional lines

1 or any common roadways where jurisdiction of Cayce and juris-
2 diction of West Columbia join, any particular roads or road-
3 ways?

4 A Charleston Highway, Knox Abbot Drive, the Cayce/West
5 Columbia jurisdiction runs in and out different sides of the
6 roads. A piece of property here will be Cayce and a piece
7 here will be West Columbia.

8 Q And generally where were these commercial type break-
9 ins occurring?

10 A Up and down Knox Abbott Drive and Charleston Highway.

11 Q As a result of this did the West Columbia Police Depart-
12 ment proceed to increase any of its efforts along that par-
13 ticular area, along the Knox Abbott Drive corridor?

14 A Yes, sir. We put some extra cars on the road on the
15 road in unmarked cars and stopping people at night that were
16 walking around pretty late a night and after hours, just
17 checking them out, to see if -- fill out FI cards we call
18 them, field interrogation cards.

19 Q And what would be done with a field interrogation card,
20 once it had been filled out by an officer?

21 A They would turn it in to the desk that night when they
22 got off shift, or the next morning. And when I come in in
23 the morning, I pick them up and go through them.

24 Q When you go through with them, what would you do with
25 them if a particular one came to your attention, Sergeant?

1 A I would follow up on it and go out and see the person,
2 talk to the person if something had happened in that area.

3 Q Are you familiar with the Crystal Motel?

4 A Yes, sir. I am.

5 Q Where would the Crystal Motel be located in relationship
6 to where these various burglaries were occurring? Very gen-
7 erally?

8 A Right there in the center pretty much.

9 Q We are talking about -- you are familiar with burglaries
10 that occurred at the Cherry Park Shopping Center?

11 A Yes, sir.

12 Q Were there burglaries other than those at Cherry Park?

13 A Yes, sir. There were.

14 Q So the total number -- approximately what are we talking
15 about?

16 A Twenty something.

17 Q Now, the Crystal Motel would be located where in relation

18 MR. HALL: Your Honor, I want to object to these other
19 twenty burglaries. He hasn't presented these indictments.
20 I think he needs to keep his testimony to the burglaries
21 that he's presented.

22 THE COURT: Solicitor.

23 MR. MCMAHON: Your Honor, I understood during the sup-
24 pression hearing on a consent to search issue, I was going
25 into both the good faith and reasonableness of the officers'

1 conduct.

2 THE COURT: Proceed, Solicitor.

3 Q Sergeant, on January the 3rd of '89, did you have a
4 reason to go to a particular location in the West Columbia/
5 Cayce area?

6 A The Crystal Motel.

7 Q Where is the Crystal Motel located? What is its address?

8 A I'm not sure of the address. It's right there on the
9 Charleston Highway between 302 and 321, right there by Piggie
10 Park.

11 Q Is it within the city limits of West Columbia?

12 A Yes, sir. It is.

13 Q Now, I want to show you an item and ask you if you can
14 identify this for me, please.

15 A Yes, sir. This is a contact card the officers filled
16 out on a John Caroyne Seay.

17 Q And what is the date of that card?

18 A January the 2nd '88 at 11:55 p.m.

19 Q You received that card when? When did you first look
20 at it?

21 A The following morning on January the 3rd.

22 Q Of '89?

23 A That's correct. I'm sorry.

24 Q '88 appears on the form. You received it January 3rd,
25 '89. Is that correct?

1 A That's correct.

2 MR. HALL: Your Honor, may I see the form if he's going
3 to be asking him questions about it?

4 THE COURT: Yes, sir. You've never seen it?

5 MR. HALL: I'm not sure that I have.

6 (The document is handed to counsel.)

7 MR. HALL: Your Honor, I haven't seen this form before.
8 I did get an entire copy of Mr. McMahon's file. I'm not
9 saying it wasn't an oversight; but I haven't seen this. I
10 would further object to it because on the face of the docu-
11 ment is a West Columbia Police Department report. And it's
12 reporting to establish Mr. Seay's, the witness he's referring
13 to, address. And I think it's awfully self serving. I
14 think we need to hear from Mr. Seay regarding where his ad-
15 dress was, rather than some police report.

16 THE COURT: This is a hearing, so it is proper. Proceed.

17 MR. MCMAHON: Yes, sir. Your Honor, just to follow up
18 on discovery very briefly. I did let him see a copy of my
19 file. I did not remove anything therefrom. I'm not saying
20 he has seen it; but I have provided everything.

21 THE COURT: As long as it was available, proceed. We
22 need to move along.

23 Q Now this particular form, you saw this first on the 3rd.
24 Is that correct?

25 A That's correct.

1 Q And it was filled out the night before. Is that correct?

2 A That's correct.

3 Q And what is the name of the individual that was inter-
4 viewed by the officers on the 2nd?

5 A John Caroyne Seay.

6 Q And what was his address?

7 A Crystal Motel, Room 31.

8 MR. HALL: Your Honor, I would also object to this. I
9 mean it's hearsay. At this point Mr. Seay is not in the room.

10 THE COURT: He may testify from his report. Proceed,
11 Solicitor.

12 MR. MCMAHON: All right, sir. As a result of you getting
13 that report, did you go to Room 31, Crystal Motel?

14 A Yes, sir. I did.

15 Q And about what time did you go there, approximately?

16 A I'd say approximately ten o'clock.

17 Q And this was on the evening of the 3rd. Is that right?

18 A That's correct.

19 Q How many officers went to Room 31?

20 A Originally it was myself and Officer Belk.

21 Q Officer Belk is a uniformed officer of the West Columbia
22 Police Department?

23 A That's correct.

24 Q And whose vehicle did you all go in?

25 A We went in his marked unit.

200 8

1 Q All right, sir, now, upon you all's arrival, what did
2 you observe standing outside of the room? What did you observe
3 about the appearance of Room 31?

4 A The lights were on when we pulled up to the front of it.
5 Somebody opened the curtain and looked outside.

6 Q As a result of that, what did you do?

7 A Knocked on the door and asked who was staying in that
8 room. And Mr. Seay came to the door and said he was, him and
9 his brother. And I asked if he would step outside, his
10 brother being the defendant, Mr. Justice.

11 Q Who is Mr. Seay's brother?

12 A William Bruce Justice.

13 Q Could you describe Room 31 of the Crystal Motel, the
14 interior very briefly?

15 A It's one room, a small little hallway where coats hang,
16 and a bathroom.

17 Q How many beds were in that room?

18 A One bed.

19 Q Could you see that from the door when you first went to
20 the door?

21 A Yes, sir.

22 Q All right, sir. You asked Mr. Seay to accompany you
23 where?

24 A I asked him if he'd step outside and talk to me because
25 there were a couple other people inside, a couple females

1 they had in there. And I wanted to talk to him in private.

2 Q So where did you go to talk to him at?

3 A We stepped outside. It was cold then and he didn't have
4 a shirt on. So I asked him if he'd mind sitting in the car.
5 We sat in the car where the heat was on and talked in the car.

6 Q Did you and Officer Belk sit in the front seat or the
7 back seat?

8 A We were in the front seat.

9 Q Where was Mr. Seay?

10 A He was in the back seat.

11 Q Did you ask Mr. Seay certain questions about who lived
12 in Room 31?

13 A Yes, sir. I did.

14 Q What did you tell him about why you were there, Sergeant?

15 A Because we were having numerous break-ins around there
16 and I was following up on this. I wasn't accusing him of
17 anything, just following up on the FI card they filled out on
18 him the night before. He was walking around late at night.

19 Q What did Mr. Seay relate to you as far as who were the
20 occupants or staying in that room?

21 A He said himself and Bruce Justuce, William Bruce Justus,
22 were staying there. And the two girls that were in there
23 were just some girls they had picked up.

24 Q Was Mr. Justus present at Room 31 upon your arrival?

25 A No, sir. He wasn't.

1 Q Did you ask or inquire of Mr. Seay any further about the
2 room and request to search the room?

3 A Yes, sir. I did.

4 MR. HALL: Your Honor, I have a continuing objection.
5 Mr. Seay is not here.

6 THE COURT: All right, sir. Overruled.

7 Proceed, Solicitor.

8 WITNESS: I asked him if he had a jacket in there and a
9 pair of tennis shoes in the room.

10 Q Why did you ask those questions?

11 A Because we have a film from Sandy's Hot Dogs and there
12 was a jacket and a pair of tennis shoes on the suspect.

13 Q A film of what?

14 A Of someone breaking in or had broken in, going through
15 the cash register at Sandy's Hot Dogs.

16 Q And what was Mr. Seay's reponse?

17 A He said no, that those items were not in there. And I
18 asked him if he minded if we looked around.

19 Q And his response?

20 A Yeh. Help yourself.

21 Q From that point, from him saying, "Yes, help yourself",
22 just tell the Judge mechanically what happened. How did you
23 all go back in the room?

24 A We got out of the car and went back to the door. I'm
25 not sure if someone from inside opened it or he had opened

1 it. But he opened the door and let us in.

2 Q And then did you then enter the room?

3 A Yes, sir. We did.

4 Q Was Mr. Seay present with you as you searched the room?

5 A Yes. He was.

6 Q As a result of that search --

7 Your Honor, I don't believe I have to go into the
8 actual evidence --

9 But as a result of that search, you received certain
10 items of evidence relating to some of these burglaries for
11 which we are proceeding on these indictments?

12 A Yes, sir. That's correct.

13 Q All right, sir. Now, was Mr. Seay ever placed in cus-
14 tody by you prior to you requesting permission to search Room
15 31?

16 A No, sir. Mr. Seay was never placed in custody.

17 Q Did you ever state to Mr. Seay that you had an arrest
18 warrant or a search warrant?

19 A No, sir. I did not.

20 Q And did you use any type of force or coercion on Mr.
21 Seay to get his permission to search that room?

22 A No, sir. I did not.

23 Q Did Mr. Seay appear to understand your request to search
24 the room?

25 A Yes, sir.

10' 12

1 Q And did you or any officer convey to him any type threat
2 regarding the consequences of not giving permission to search?

3 A No, sir. He was fully cooperative. We didn't say any-
4 thing to him in any nature like that.

5 Q Did it appear to be the product of his free will and
6 choice to allow you all to search?

7 A Yes, sir.

8 MR. MCMAHON: Your Honor, that would go to the consent
9 to search to issue.

10 No, if I could put one more document in.

11 Q Did you all have an occasion to go back to that location
12 on the 4th of January?

13 A Yes, sir.

14 Q Why did you all go back there on the 4th?

15 A We had seen some items in the room the prior evening that
16 I wasn't aware of that could have possibly been evidence
17 until I went back through the reports the following day.

18 Q So you went back on the 4th?

19 A We went back on the 4th to ask him if we could look
20 through it again.

21 Q Now when you went back on the 4th, to Room 31, where was
22 Mr. Justus?

23 A He was in jail.

24 Q He'd been place under arrest. Is that right? By who?

25 A By myself.

1 Q On what date and time?

2 A On the third. Or it might have been the 4th, in the
3 early hours of the morning. I'm not sure.

4 Q When you went back on the 4th, who was present in the
5 room?

6 A Mr. Seay, John Caroyne Seay.

7 Q What, if anything, did you request of him at that time?

8 A I asked him if we could look back through the room. I
9 had seen some more items yesterday that might be evidence.
10 And he said, "No problem. Come on in." I had him sign a
11 consent to search form.

12 Q Now he signed a consent to search form for your search
13 on January the 4th of '89. Is that correct?

14 A That's correct. When we went the night before to the
15 room, we were in Officer Belk's patrol car. And I rode with
16 him, and I didn't have any with me that night. So he signed
17 one for the subsequent night, also, showing that he had vol-
18 untarily let us go into the room.

19 Q On the night of the 3rd, you did not have any written
20 consent to search forms. Is that right?

21 A That's correct. I didn't have any in my pocket.

22 Q What did you do as far as Mr. Seay was concerned on the
23 4th, concerning the search you conducted on the 3rd?

24 A I ask that he sign two consent to search forms, one for
25 the previous evening and one for the 4th when we went back.

70 14

1 Q And are these copies of the forms which he signed on the
2 4th of January?

3 A That's correct.

4 Q And on the 3rd of January?

5 A That's correct.

6 Q Now that form dated the 3rd of January was actually
7 executed on the 4th. Is that what you are telling His Honor?

8 A That's correct.

9 MR. MCMAHON: Your Honor, I would like to mark these
10 three documents as a Court's Exhibit.

11 MR. HALL: No objection, Your Honor.

12 Except for my grounds that I will be arguing that it
13 was still involuntarily given.

14 (The documents are marked as Court's Exhibits 1, 2, and

15 Q Did you have any indication on the 3rd and the 4th that
16 Mr. Seay was not a resident of Room 31, Charleston Highway?

17 A No, sir.

18 Q Did you follow up on that by getting certain documents
19 from the South Carolina Department of Corrections?

20 A Yes, sir. I did.

21 Q Sir, I want to show you a document here entitled
22 Furlough Application. Can you identify that for His Honor,
23 please?

24 A South Carolina Department of Corrections Community Ser-
25 vice Grant for Furlough Application.

1 MR. HALL: Your Honor, I'm going to object to that docu-
2 ment on the ground of its relevancy. I'm aware of the parti-
3 cular document. And the application states furlough residence,
4 I believe, only through the 30th of December. I would ob-
5 ject on the grounds of relevancy. That shows no evidence of
6 residence at the time of the search. I would also object on
7 the grounds that I don't think he is the appropriate person
8 to be authenticating or identifying that particular document.
9 It's not a business record of the West Columbia Police De-
10 partment or the Cayce Police Department.

11 THE COURT: Solicitor, what's your position?

12 MR. MCMAHON: Your Honor, U.S. vs. Matlock was the case
13 out of Wisconsin where a woman the defendant was living with
14 gave permission for the officers to search the residence.
15 They had been living in Wisconsin, a bank robbery case. The
16 prosecution was allowed to go into the fact that the consenter
17 to the search, Mr. McGrath, had lived with Matlock, the defen-
18 dant in a common law relationship in the State of Florida.
19 I think going up to the 30th of December and prior thereto
20 is going to show that the consenter was more than a casual
21 visitor to Room 31.

22 THE COURT: You may proceed, Solicitor.

23 MR. MCMAHON: Thank you, Your Honor.

24 Q Now, did you secure that document from the Department of
25 Corrections?

10 16

1 A Yes, sir. I did.

2 Q And that is a furlough application by who? Who was
3 applying for furlough?

4 A John Seay.

5 Q What is the date of the application?

6 A December the 6th.

7 Q And does he place a location where he will be residing
8 and who he will be residing with during the furlough?

9 A Yes, sir. It says with his brother, William Bruce
10 Justus, at 1624 Charleston Highway in West Columbia.

11 Q 1624 Charleston Highway, is that the address of the
12 Crystal Motel?

13 A Yes, sir. It is.

14 Q And what are the periods, what are the dates?

15 A It doesn't say.

16 Q Let me show you this document and ask if you can identify
17 that.

18 A Yes, sir. This is a document I got from Watkins Pre-
19 release Center at the same time I got this furlough applica-
20 tion.

21 Q Does that show the furlough was approved?

22 A Yes, sir. It does.

23 Q And what were the dates of the furlough?

24 A Beginning at 9 AM on December the 24th and ending at
25 9 AM on December 30th.

1 Q Of '88?

2 A That's correct.

3 MR. MCMAHON: Your Honor, I'd offer these two documents
4 as court's exhibits.

5 MR. HALL: Subject to my objections.

6 (The furlough application is marked as Court's Exhibit
7 4; the Department of Corrections Leave of Absence as Court's 5.)

8 MR. MCMAHON: I won't have anything further on the con-
9 sent to search issue, Your Honor.

10 MR. HALL: Your Honor, may I cross examine?

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION BY MR. HALL:

13 Q Mr. Tyndall, do you know Mr. John Seay?

14 A I had met him on this occasion. Yes, sir.

15 Q When did meet him?

16 A On the second of third, whatever. Second probably.

17 Q You don't know Mr. Seay apart from that?

18 A Apart from that, no, sir. I do not.

19 Q He didn't tell you that he had just gotten out of the
20 Department of Corrections from Watkins PreRelease?

21 A Yes, sir. He did.

22 Q When did you obtain that document?

23 A I don't know what the date is. I will have to look at
24 it. I don't remember the date I obtained it.

25 Q Did you obtain it before the search?

70 18

1 A No, sir.

2 Q What was the reasoning behind your obtaining it after
3 the search?

4 A To show that he was a resident of the hotel.

5 Q Let me ask you this, Officer. Did you ask Mr. Seay
6 whether he was registered at the hotel?

7 A He told me that he was living there with his brother,
8 was all he said.

9 Q Well, that's not the question I asked you, sir. I just
10 asked you did you inquire of Mr. Seay whether he was regis-
11 tered at the motel. That's all I asked you.

12 A No, sir.

13 Q Did you ask the hotel manager or anybody in the hotel or
14 motel office?

15 A I talked to them. They told me he was staying there.
16 I think the room was in his brother's name, though. I don't
17 remember the exact conversation, but I am under the impression
18 that it was in Bruce Justus' name.

19 Q Mr. Seay didn't tell you that he had just gotten out of
20 jail and he didn't want to go back?

21 A Did who tell me that?

22 Q Mr. Seay did not tell you that he had just gotten out
23 of jail and didn't want to go back?

24 A He didn't say nothing about going back, but he did tell
25 me he had just gotten out of jail.

1 Q And he told you he wasn't going back, didn't he, because
2 you were threatening him with jail time from two to twenty?

3 A No, sir. I never threatened him with jail time.

4 Q What kind of condition were the defendants in when you
5 got there? What was going on in the room?

6 A I don't know what was going on inside the room.

7 Q You don't know what was going on?

8 A No, sir. I don't. There were two females and a male in
9 there. What they were doing, I don't know.

10 Q What did the room look like when you got in there?

11 A What do you mean, specifically? It was just a room with
12 clothes around.

13 Q Was there any drinking going on?

14 A Probably from what I seen.

15 Q Did you see any drinking?

16 A I didn't see anybody drinking. I seen some alcoholic
17 beverage and stuff and stuff around there.

18 Q Did you ask Mr. Seay whether he was under the influence
19 or not?

20 A No, sir.

21 Q Did he appear to be under the influence?

22 A I had smelled some on him.

23 Q You had smelled some alcohol?

24 A But he seemed to be coherent. There was no problem.

25 Q These consents to search are permissions to search? Is

1 that what they are called?

2 A Yes, sir.

3 Q Why did you go back and obtain them after the fact?

4 A Well, it was prior to the fact the next day. It was
5 after the fact the first day because I went in another offi-
6 cer's car and didn't have them with me. And he had no prob-
7 lem signing one for the previous day. And he had nothing to
8 drink then.

9 Q I'm sorry. I must have misunderstood your testimony.
10 Isn't it true that on the first day that you didn't get a
11 consent to search in the form of a writing?

12 A That's correct.

13 Q And so you sent back and got that after the fact? Isn't
14 that correct?

15 A That's correct. I went back to go through the room
16 again to collect some more items. And he signed one for
17 then; then he also signed one for the previous day that I
18 told him I didn't have one with me, "Would you mind signing
19 it?" And he said, "No." And he signed it.

20 Q What were the additional items that you obtained?

21 A I think it was a clock radio -- I don't have the evidence
22 sheet before me. I can't tell you what it was.

23 MR. HALL: I beg the court's indulgence.

24 Q You did not consider this furlough application at the
25 time of the search, did you?

1 A No, sir. He told me that he was on furlough, though.

2 Q He told you he was on furlough in February?

3 A He told me he was on furlough; he was living with his
4 brother; he had maxed out on the 30th, I believe is what he
5 said. And he was staying there with his brother. He was
6 maxed out from his time.

7 Q I'm sorry. I didn't understand. He had maxed out when?

8 A I believe on the 30th was when he maxed out.

9 Q Officer, you don't have any evidence in this courtroom
10 today that he was a registered motel guest, Mr. Seay that is?

11 A I don't have anything in writing that he was registered.
12 No.

13 Q Well, you don't have any verbal testimony, either, do you,
14 that he was a registered guest?

15 A That's what he told me.

16 MR. HALL: Your Honor, I don't have any further questions
17 of this witness.

18 THE COURT: You may come down.

19 MR. HALL: Your Honor, I would like to hand up a Brief
20 that we have prepared on this issue. I have a copy for the
21 Solicitor, as well.

22 (The document is handed to the Court.)

23 MR. HALL: Your Honor, at this point I would move before
24 calling any witnesses to exclude the evidence on the grounds
25 that evidence that he was merely a guest in the hotel room

1 does not establish dominion or control to warrant the admis-
2 sion of the evidence.

3 THE COURT: Solicitor, he's saying the brother didn't
4 have the authority to consent to the search. What is your
5 position?

6 MR. MCMAHON: Your Honor, my position would be both un-
7 der the ruling South Carolina authorities and the United
8 States Supreme Court authorities that he would meet the test.
9 First off, I assume that he is not questioning the issue of
10 the voluntariness of the consent. He only said his brother
11 could not give consent.

12 MR. HALL: Your Honor, I would suggest both of them.
13 I believe I stated my grounds in cross examination on that
14 point, as well.

15 MR. MCMAHON: I was just inquiring to see if I needed
16 to go any further before the Court for purpose of my motion
17 of voluntariness and the fact that ---

18 THE COURT: Are you raising both issues?

19 MR. HALL: Yes, sir, Your Honor. For the purposes of
20 the motion at this time before calling any witnesses of my
21 own.

22 MR. MCMAHON: Your Honor, it's my understanding on the
23 consent issue - what the State must prove is that the consent
24 was voluntarily given, and whether any undue coercion or
25 pressure was brought to bear on the consenting party.

1 THE COURT: Well, he's saying this party didn't have
2 the right to consent. That's the issue.

3 MR. MCMAHON: That's the issue you want me to speak
4 to, third party consent? All right. On the third party
5 consent, Your Honor, there's a line of federal cases going
6 on up to U.S. vs. Matlock, which I am sure His Honor is
7 familiar with. In that particular case, Your Honor, the de-
8 fendant, Matlock, was arrested for bank robbery, I believe,
9 in the yard. The officers then went on up to the door and
10 Mrs. McGrath appeared at the door. They got consent from her
11 and our Supreme Court said that consent is obviously not
12 limited to the consent of the defendant only, but can be ob-
13 tained from a third party who possessed common authority over
14 it.

15 THE COURT: That's his point. He's saying he didn't
16 have the authority.

17 MR. MCMAHON: Yes, sir. And then, if you go into State
18 vs. Pressly, State vs. Wallace, and particularly, I think,
19 State vs. Middleton -- Middleton is a case where a third par-
20 ty gave consent to search to the officers when the third
21 party possessed common authority. What you have in this case
22 is the defendant Justice has left Room 31; he is not present
23 when the officers arrived. Answering the door is John Seay.
24 He comes out with the officer; he said, "Who stays in that
25 room?" "I do and my brother, William Justice." Mr. Justice

1 has not, as we know, placed any restriction over Mr. Seay's
2 use of that one room motel room. A case in South Carolina,
3 a Curlee case, Your Honor, where an individual loaned, I
4 believe, his girl friend's automobile. And while she was out
5 driving the automobile, she came in contact with the police
6 who asked consent from her to search that vehicle, including
7 the trunk. Our Supreme Court says that that defendant assumed
8 the risk that she would consent. Now she is only a bailor or
9 bailee -- I am getting into a little bit of civil terms I am
10 not really familiar with; but she is only temporarily using
11 it. He has all the indicia of complete and total common
12 authority and other indications of his relationship with that
13 room, that he can give total and absolute consent to a search
14 of that room. I don't think the officers can go to the motel
15 owner and get consent. There are cases directly on point.
16 Your Honor, there is a case out of New York -- when I was
17 looking up a little bit of this -- where a gentleman was
18 charged with shooting at the officers, People vs. Adams is
19 the name of the case. His girl friend went to the police and
20 said, "He's got guns and ammunition in this closet and I'm
21 afraid he's going to come kill me." She took them to the
22 location or residence, unlocked the door for them; they went
23 in and searched the apartment; they left the apartment; she
24 locked the door with a key. Later on the police found out
25 she didn't even live there, didn't even live there. They

1 said, "That's fine. That's a good search." There's a case
2 out of the Eighth Circuit and also a case out of the Ninth
3 Circuit, Your Honor, on these. In the Ninth Circuit, U.S.
4 vs. Gallman, where an informant was given a key to a motel
5 room -- not an informant -- a bad guy was given a key to
6 the motel room; he turned it over to an undercover officer.
7 He had never been to that room.

8 THE COURT: I'm ready to rule.

9 Is there anything further?

10 MR. HALL: Your Honor, the only thing I would say is
11 there is a great distinction between the automobile cases he
12 has raised and I believe, Your Honor, in a motel room some-
13 body has a reasonable expectation of privacy.

14 THE COURT: All right, sir. Mr. Seay was living at
15 this room. He was the one that had authority to the room.
16 Mr. Seay had the right to give the consent to search. The
17 consent to search is proper.

18 Are there any other matters before I bring the jury?

19 MR. HALL: Your Honor, I would like to put on the record,
20 as a further offer of proof, subject to the Court's ruling,
21 if there be an appeal in this case, the testimony of the motel
22 operator and the testimony of my client regarding that parti-
23 cular issue.

24 THE COURT: Bring them around.

25 MR. HALL: I call mr. Barry Metz.

BARRY ROBERT METZ is duly sworn.

1 DIRECT EXAMINATION BY MR. HALL:

2 Q State your full name, please, sir.

3 A Barry Robert Metz.

4 Q And I believe you were formerly employed by the Crystal
5 Motel. Is that correct?

6 A Yes, sir.

7 Q And how long were you employed there?

8 A About three years and eight and a half months.

9 Q Were you employed between December and January the
10 15th of 1988 and 1989?

11 A Yes.

12 Q Do you recall Mr. William Bruce Justus as having been a
13 registered motel guest in a room at the Crystal Motel?

14 A Yes, sir. Room 31.

15 Q Okay. Was Mr. John Seay ever a registered motel guest
16 on January the 3rd and 4th of 1989?

17 A Not on the third. I think he took over on the 4th, reg-
18 istered under his name.

19 Q But at the time -- I want to hand you these records and
20 ask you to identify them for the Court.

21 A I don't know if it was on the 4th or -- looks at
22 documents handed to him.

23 Q Do you know what those are? Is that your handwriting?

24 A Yes. It is.

25 MR. HALL: Let me show them them to the Solicitor.

1 MR. MCMAHON: That's all right.

2 Q That is your handwriting?

3 A It sure is.

4 Q Does Mr. Seay appear anywhere on those -- well, first
5 of all, let me ask you what those sheets are.

6 A These are our daily reports.

7 Q And what are those reports for?

8 A They are to keep up with who's in the room, how much
9 who's paid, and how much they have left on the room.

10 MR. HALL: I would offer these as an exhibit.

11 MR. MCMAHON: No objection.

12 MR. HALL: Defense Exhibit 1. Do you have any further
13 objection if at the trial these come in?

14 MR. MCMAHON: Certainly. I don't think consent to search
15 is an issue.

16 MR. HALL: Well, I think it would be similar to a con-
17 fession, that I'd be entitled to argue to a jury that a search
18 was ---

19 THE COURT: Search is a matter of law. Confession is
20 different.

21 MR. HALL: All right.

22 Q With respect to these particular sheets here, does it
23 indicate anywhere on there that John Seay was a registered
24 motel guest?

25 A Not on here.

1 Q No on either one of them?

2 A No.

3 Q And one of those, of course, is on the 4th. Is that
4 correct?

5 A Wednesday, January the 4th. He's not on there.

6 Q So on January the 3rd or the 4th you have no record ---

7 A Not as a registered guest.

8 MR. HALL: I beg the Court' indulgence. I may be through
9 with this witness.

10 (There is a pause.)

11 No further questions, Your Honor.

12 CROSS EXAMINATION BY MR. MCMAHON:

13 Q Now, Mr. Metz, you were aware there was another gentle-
14 man staying in the room with Mr. William Bruce Justus? Is
15 that right?

16 A Yes, sir.

17 Q And you told the officers that?

18 A Yes, sir.

19 Q And you were aware this other gentleman had been staying
20 with him up to January 3rd and some days prior to January
21 the 3rd? Correct?

22 A Well, we were aware he was visiting the room; but we
23 couldn't prove, you know, that he spent the night or anything

24 Q You were aware he stayed there, though, just like you
25 told me. Correct?

1 A He was there.

2 Q And you subsequently found out that person was John
3 Seay?

4 A Yes, sir.

5 Q You found out he was the one you had been seeing at and
6 around the room. And you had suspicions that he was actually
7 staying there?

8 A Yes, sir. We had felt he was; but, like I say, we
9 couldn't prove it.

10 MR. MCMAHON: I don't have any further questions.

11 MR. HALL: Just a couple to follow up.

12 REDIRECT EXAMINATION BY MR. HALL:

13 Q Mr. Metz, you were aware he was staying there, but you
14 had no proof?

15 A We had an idea that he was staying in the room. But,
16 like I said, he was only paying for one person and, if we
17 could have proved that Mr. Seay was living with him, we
18 would have asked Mr. Justice to pay the extra balance for two
19 people.

20 Q So you didn't have any proof that he was staying over
21 night in that room?

22 A Right.

23 MR. HALL: No further questions. You may step down.

24 Your Honor, we would next call to the stand Ms. Robin

25 Chick from Watkins Pre-Release.

1 THE COURT: Well, how can she have anything to say about
2 the consent?

3 MR. HALL: Your Honor, I'm trying to establish whether
4 there was actually dominion and control over this room. They
5 have alleged that putting that there on the application for
6 furlough establishes some evidence of his residence.

7 THE COURT: Proceed.

8 ROBIN M. CHICK is duly sworn.

9 DIRECT EXAMINATION BY MR. HALL:

10 Q Did you bring certain records with you today?

11 A I did.

12 Q Under subpoena? May I have those, please ma'am.

13 A The furlough application is the front part.

14 (Hands documents to counsel.)

15 MR. HALL: I think we already have it in evidence,
16 anyway. It's already an exhibit.

17 Q Is this an application or an approval for furlough?

18 A Yes.

19 Q Are you in charge of -- and I am referring to Court's
20 Exhibit Number 4. Are you familiar with the furlough appli-
21 cation process?

22 A Yes, I am.

23 Q In fact, are you involved in it significantly at Watkins
24 Pre-Release?

25 A Yes.

- 1 Q What is the purpose of furlough?
- 2 A It's for them to search for employment or for housing.
- 3 Q So one of the purposes is to seek a permanent residence?
- 4 A Yes. And employment.
- 5 Q Do you consider where a person will be residing during
- 6 the time of furlough their permanent residence?
- 7 A Some times.
- 8 Q Do you have any evidence in this case that the Crystal
- 9 Motel was Mr. Seay's permanent residence?
- 10 A No.
- 11 Q Do you have any evidence of what his permanent residence
- 12 is in that file?
- 13 A No. It doesn't state whether it is temporary or perm-
- 14 anent.
- 15 Q Do you know what this particular document I'm referring
- 16 to -- I believe it's entitled Case Management Record?
- 17 A Yes.
- 18 Q What does that record indicate his permanent address was?
- 19 A This record indicates the address he was living when
- 20 he came into the Department of Corrections.
- 21 Q Do you have any evidence that was his address afterwards?
- 22 A No. This is just what he tells the case manager.
- 23 Q Is that all the records that you have with you today,
- 24 that you have got in your hands here?
- 25 A Yes.

30 32

1 MR. HALL: Your Honor, I don't have any further ques-
2 tions.

3 THE COURT: Solicitor?

4 CROSS EXAMINATION BY MR. MCMAHON:

5 Q Ms. Chick, when they do this application for furlough,
6 I believe you actually try to contact the sponsor?

7 A Yes.

8 Q To verify the information?

9 A That is correct.

10 Q And so as a result of Court's Exhibit Number 5, did you
11 try to contact the person known as William B. Justice?

12 A Yes.

13 Q And did you talk on the telephone to someone who iden-
14 tified themselves to you as William B. Justice?

15 A Yes.

16 Q And did that person tell you where Mr. Seay would be
17 staying while he was on that furlough?

18 A Yes. He did. He said he would be residing with him in
19 the motel. We went into that it was unusual for a person to
20 be living in a motel, if I remember. And he told me, "Well,
21 I own it. My brother's going to be living here and I will
22 be responsible for the bill."

23 Q And prior to December of '88, you were familiar with Mr.
24 Justus, weren't you?

25 A I had known him. Yes.

1 Q And you, then, approved the application for furlough,
2 Court's Exhibit Number 4, dated December 16?

3 A Yes. I document the information I receive for approval
4 and then the team approves it.

5 Q So you talked to this individual on the telephone iden-
6 tifying himself to you as Mr. Justus prior to December the
7 16th?

8 A Oh, yes, sir.

9 Q Now, Mr. Seay, what was going to happen to him on Dec-
10 ember the 30th of '88, as far as the Department of Corrections
11 was concerned?

12 A He was released as of nine o'clock in the morning.

13 Q He did not have to come back?

14 A No, sir.

15 Q He had maxed out?

16 A Yes, sir.

17 Q And let me ask you about an address given when he came
18 in. I believe Mr. Seay was incarcerated when?

19 A I don't remember the exact date. All I am responsible
20 for is just pre-release.

21 Q Well wasn't it about two years ago or three years he
22 had been in the Department of Corrections?

23 A I would think so. The records would have all that infor-
24 mation.

25 Q I understand. And you say you don't have any evidence

1 that Room 31 was Mr. Seay's permanent address; therefore, you
2 don't have any evidence that it was not?

3 A No, sir. That is correct.

4 MR. MCMAHON: Thank you. I appreciate you coming.

5 THE COURT: You are excused. Thank you for being with
6 us.

7 MR. HALL: I have one more witness on this issue.

8 We call Frank Thompson to the stand from the Department
9 of Vocational Rehabilitation.

10 FRANKLIN V. THOMPSON is duly sworn.

11 DIRECT EXAMINATION BY MR. HALL:

12 Q Mr. Thompson, did you bring certain records with you
13 from the Department of Vocational Rehabilitation?

14 A That's correct.

15 Q Pertaining to John Seay. Is that correct?

16 A Correct.

17 Q What did you have to do with John Seay?

18 A I was John's Vocational Rehab counselor.

19 Q And I guess you were trying to help get him a job?

20 A Correct. I met John on December the 19th while he was
21 incarcerated.

22 Q And in the course of your counseling, is that what you
23 do? Are you a counselor with Vocational Rehab?

24 A Yes.

25 Q In the course of your counseling, did you see any documents

1 pertaining to his file, his address, et cetera?

2 A Correct.

3 Q I believe I have documents from your file out on the
4 front of the folder.

5 Do you know what this particular document is?

6 A This is the initial application we take with Voc Rehab.

7 Q The initial application?

8 A Uh, huh. It probably was taken about 12/1.

9 Q What is the exact date on that particular application?

10 A (Refers to document). 12/7.

11 Q 12/7 of what?

12 A '88.

13 Q So would that have been the date you took the applica-
14 tion?

15 A I didn't initiall take the first application.

16 Q All right. Well, is that the first application?

17 A To my knowledge, this is the first application.

18 Q Is that a record maintained in the course of the
19 Department's business?

20 A Correct.

21 Q What is the address of the -- I guess, the client. Is
22 that what they call them in Voc Rehab?

23 A Correct.

24 Q What does the address of Mr. Seay indicate on there as
25 being?

71 38

1 A On the initial application it was 127 Cadillac Street,
2 Cayce.

3 Q All right, sir.

4 MR. HALL: I would offer that as an exhibit.

5 THE COURT: Do you have a copy? Mr. Thompson needs to
6 keep that for his records. We will be recessing in a minute.
7 You can photocopy this and substitute a copy.

8 MR. HALL: Well, I'm comfortable with the record of the
9 document, itself. I believe the testimony will suffice.

10 THE COURT: You are not offering it?

11 MR. HALL: No. I would withdraw the offer.

12 THE COURT: Solicitor, any questions?

13 MR. MCMAHON: No questions.

22 TERESA STEWART CANNON is duly sworn.

23 DIRECT EXAMINATION BY MR. MCMAHON:

24 Q Ms. Cannon, would you introduce yourself to the jury,

25 please?

1 A Okay. My name is Teresa Cannon. I work for Credit Thrift
2 It's a business in the shopping center.

3 Q What is your position with Credit Thrift?

4 A I'm a branch manager.

5 Q And what is the address and the location for Credit
6 Thrift?

7 A Okay. 1344-E, Knox Abbott Drive in Cayce. It's in
8 Cherry Park Shopping Center.

9 Q And how long have you been employed with Credit Thrift?

10 A Since November. I have been at Cayce Branch since
11 December of '88.

12 Q Will you describe just very briefly and simply to the
13 jury the lay out of Cherry Park Shopping Center?

14 A It's sort of L-shaped. We are in the corner in the back.
15 There's a jewelry store on the right hand side. Over here
16 on the left next to us there's a hair styling salon, a
17 tanning salon and Sandy's Hot Dogs.

18 Q Of those buildings that you identified, Sandy's would be
19 the one closest to Knox Abbott?

20 A Right.

21 Q And as you come down the line, what's next?

22 A Okay. Right after Sandy's, there is a little empty
23 space. Then there's the tanning salon. Then there's the hair
24 styling salon. There's another empty space and a jewelry
25 store.

1 Q Of all those buildings, do you know if any of them have
2 any type of burglar alarm system?

3 A Metz Jewelers had a burglar alarm.

4 Q That was the only one to your knowledge. Is that
5 correct?

6 A To my knowledge.

7 Q Ms. Cannon, the layout of Credit Thrift, particularly,
8 that particular office, how many entrances or exits is it
9 and what type of locks are on those doors?

10 A There's one entrance that's a glass door with a flip
11 type lock that you lock with a key, a dead bolt lock.

12 Q Is there back doors to that building?

13 A There's no back door.

14 Q I want to direct your attention back to the evening of
15 December 21st of '88. Did you work that particular day?

16 A I did.

17 Q And who do you recall as being the last to leave you
18 all's office on that particular day, Ms. Cannon?

19 A I was the last one out the door. The staff all left
20 together, but I was the last one out. I locked the door,
21 turned on the light, the night light.

22 Q Was the building secured upon your departure?

23 A It was.

24 Q And was it dark when you left that particular evening?

25 A It was.

1 Q Did you return any time during the night time hours of the
2 night of the 23rd or the morning of the 22nd?

3 A No. I didn't get back until about quarter til eight the
4 next morning.

5 Q And upon your arrival back, to your knowledge were you
6 the first to arrive back at that particular shopping center
7 that morning?

8 A I was. The parking lot was empty.

9 Q And about what time was it?

10 A It was just a few minutes before eight o'clock.

11 Q What did you observe about you all's office upon your
12 return on the morning the the 22nd?

13 A Okay. I went up to the door. The whole lock was missing.
14 There was a round hole; you could see straight through it. The
15 lock was gone. So I didn't go in.

16 Q And what did you do after you observed the lock missing
17 from the door?

18 A I went next door to the Pizza Hut. They have a pay phone
19 outside. And I called 911.

20 Q Go ahead.

21 A Okay. I went back over and I wasn't there two minutes
22 before the Cayce Police were there.

23 Q All right, ma'am. Now, thereafter, did you enter into
24 you all's office area?

25 A No. Not at that point. The police officers told me to

1 wait outside. They went in.

2 Q Did you ultimately get an opportunity to check the inter-
3 ior of the building?

4 A Yeh. A few minutes later when they had determined that
5 nobody else was in there, they let me go on in.

6 Q Now specifically, the condition of the door there at
7 Credit Thrift, the lock was missing so you could have opened
8 it or closed it with no problem with no key. Is that right?

9 A With nothing.

10 Q And what type lock was on it, what type lock had been on
11 it?

12 A A dead bolt.

13 Q When you checked the interior of the building, would you
14 describe for the jury the condition of the building and what,
15 if anything, was missing.

16 A Okay. Missing was a polaroid camera, a radio, about
17 fifty dollars in cash. A bank bag had been torn open, a zipper
18 bank bag which locks. It had been torn open it looked like with
19 letter opener. A file cabinet that had the bank bag locked
20 in it, the locks were broken on two of those drawers. Our
21 desk drawers were broken, two of those that had been locked.
22 Nothing was in them of any value; but they were broken.

23 Q What was the approximate value of -- I believe you said
24 a radio and a camera. What was the approximate total value of
25 those two items?

1 A I'd say close to a hundred dollars, the two together.

2 Q And what was the amount of money that was missing?

3 A Right around fifty dollars.

4 Q So the total is around a hundred and fifty dollars. Is
5 that correct?

6 A That's correct.

7 Q That morning did you have the opportunity to observe
8 the condition of any of the other buildings or shops located
9 in Cherry Park?

10 A I did. The officers, when they got there, they checked
11 the other doors. Locks were broken on every business except
12 the jewelry store.

13 Q That was every building that was then occupied by a
14 client or a tenant. Is that right?

15 A Right.

16 Q Except the jewelry store?

17 A Except the jewelry store.

18 MR. MCMAHON: Thank you, ma'am.

19 I don't have any further questions of this witness.

20 MR. HALL: If it please the Court.

21 CROSS EXAMINATION BY MR. HALL:

22 Q Ms. Cannon, do you recall signing a victim impact state-
23 ment?

24 A I do.

25 Q Do you recall when that was?

1 A I don't remember the date.

2 Q Let me show you a copy which purports to have your sig-
3 nature on there. Is that your signature?

4 A That's my signature.

5 Q That appears to be a true copy of what you signed?

6 A It does.

7 Q What does the date reflect on that?

8 A My signature is dated March 29th.

9 (The document is shown to counsel.)

10 MR. MCMAHON: I don't know the relevancy. If you want
11 to put it into evidence, I don't have any objection.

12 MR. HALL: I would offer it as defense exhibit 1 for
13 identification, and into evidence with no objection.

14 THE COURT: Admitted into evidence without objection.

15 (The victim impact statement is marked as Defendant's
16 Exhibit Number 1.)

17 Q And you signed this, I believe, in March of 1989. Is
18 that correct?

19 A That's correct.

20 Q And you reported these items as being stolen at that
21 time?

22 A We reported them as being stolen in December.

23 Q Okay. But you didn't sign this statement until March?

24 A Right.

25 Q You didn't see the gentlemen that's accused of this crime

1 there that evening, did you?

2 A No.

3 Q Okay. You weren't there.

4 And the total amount of merchandise that you recall
5 allegedly having been taken was less than two hundred dollars?

6 A Right.

7 MR. HALL: No further questions of this witness, Your
8 Honor.

9 MR. MCMAHON: Just very briefly.

10 REDIRECT EXAMINATION BY MR. MCMAHON:

11 Q Ms. Cannon, do you recognize this document here, ma'am?

12 A I do.

13 Q What is that?

14 A This is the incident report from the day of the break-
15 in.

16 Q On what day did you report it to the police?

17 A 12/22 of '88.

18 Q And what did you report stolen on 12/22 of '88?

19 A Stolen. I reported ---

20 MR. HALL: Your Honor, I'd like to object to her testi-
21 fying from that unless she recognizes the document of her own
22 knowledge. I believe she's testifying to an out of court
23 statement. She didn't sign the incident report; she didn't
24 make the incident report. I think she can testify from her
25 own knowledge; but I don't think she can testify from that

1 report.

2 THE COURT: Solicitor.

3 MR. MCMAHON: Your Honor, he is -- I don't want to make
4 a jury argument in front of the jury; but by this document
5 he's implied that she did not report these items stolen until
6 March.

7 THE COURT: Proceed.

8 MR. MCMAHON: Thank you.

9 Q Ms. Cannon, what items did you report stolen on the morn-
10 ing of the 22nd of December of '88?

11 A I reported stolen the camera, the radio, and the money.

12 Q And I believe you testified just a few minutes ago
13 that's approximately a hundred and fifty dollars. Is that
14 right?

15 A That's right. And there was a bank bag that was damaged.

16 Q What did you report on that morning? If you didn't have
17 a hundred and fifty, what did you have down there?

18 A Okay. Down here -- I don't see the value.

19 Q On the very bottom. Do you see that figure?

20 A Okay. The value says one forty eight.

21 Q A hundred and forty eight dollars?

22 A Uh, huh.

23 Q Now this includes -- what is the value on this document?

24 A This document says a hundred and ninety five dollars
25 and eighty cents.

1 Q What's the difference?

2 A The difference was the bank bag. It wasn't stolen; it
3 was damaged and had to be replaced. This says property and
4 economic loss.

5 MR. MCMAHON: Thank you so much, Ms. Cannon. I don't
6 have any further questions.

7 RECROSS EXAMINATION BY MR. HALL:

8 Q Do you recall what kind of clock radio it was?

9 A It was a small flat clock radio, a GE brand. The type
10 you sit on a desk or counter.

11 MR. HALL: No further questions.

12 MR. MCMAHON: Thank you, Ms. Cannon. You can step down.
13 I would call Tina Clark.

14 TINA R. CLARK is duly sworn.

15 DIRECT EXAMINATION BY MR. MCMAHON:

16 Q Ma'am, would you introduce yourself to the jury, please?

17 A I'm Tina R. Clark.

18 Q And, Ms. Clark, where are you employed?

19 A At Credit Thrift Finance Company.

20 Q And how long have you been employed with Credit Thrift?

21 A Less than a year and a half.

22 Q You had been at the Cayce branch how long in December
23 of '88? About how long had you been in that office?

24 A Less than a year.

25 Q How long had Ms. Cannon been there as manager in December

1 of '88?

2 A She started in our office in December.

3 Q Could you describe for the jury, please, the radio that
4 you all had down there for the employees?

5 A It's a GE portable AM/FM radio, digital clock, small.

6 Q And you had the opportunity to examine this item prev-
7 ious to today? Have you seen this radio previous to today?

8 A Yes, sir.

9 Q And how does this radio compare with the radio that you
10 all had down at Credit Thrift in December of '88?

11 A It's the one or made just like it.

12 Q You had no particular identifying characteristics, but
13 it's either this radio or one exactly like it? Is that
14 correct?

15 A Yes, sir.

16 MR. MCMAHON: Your Honor, I would offer this for identi-
17 fication purposes only at this time.

18 (The radio is marked for identification as State's Exhi-
19 bit Number 1.)

20 MR. MCMAHON: Thank you, ma'am. I don't have any other
21 questions.

22 CROSS EXAMINATION BY HALL:

23 Q Ms. Clark, is that your name?

24 A Yes, sir.

25 Q Have you ever seen a GE clock radio like this before?

- 1 A Yes, sir.
- 2 Q Where have you seen them?
- 3 A I have seen one in our office.
- 4 Q Have you seen one in places other than your office?
- 5 A In stores.
- 6 Q In stores?
- 7 A Uh, huh.
- 8 Q Where? K-Mart?
- 9 A Yes.
- 10 Q You have seen them in various stores, have you not?
- 11 A Right.
- 12 Q There is no particular way you could identify this par-
- 13 ticular radio as the one that was in your store other than
- 14 the fact that it just looks like it. Isn't that correct?
- 15 A Right. It sat in front of my desk for over a year.
- 16 Q It doesn't have any markings on there that would indi-
- 17 cate that it belonged to Credit Thrift?
- 18 A No, sir.
- 19 Q So it could have come from K-Mart, as far as you know.
- 20 Do you recall who purchased that particular clock radio?
- 21 A No. I do not.
- 22 Q So you don't know how much it cost, then, do you?
- 23 A No, sir.
- 24 Q Do you know if the manager bought it?
- 25 A No, sir.

1 MR. HALL: No further questions, Your Honor, of this
2 witness.

3 MR. MCMAHON: Thank you, Ms. Clark. You can step down.
4 The State calls Gregg Sandel.

5 GREGG SANDEL is duly sworn.

6 DIRECT EXAMINATION BY MR. MCMAHON:

7 Q Sir, would you introduce yourself to the jury, please?

8 A My name is Gregg Sandel. I work at Cherry Park Hair
9 Styling, and am a partner in a partnership there.

10 Q (Mr. McMahon shows a diagram to counsel.)

11 MR. HALL: No objection to the diagram as long as he
12 identifies it as being fairly accurate.

13 Q Now, Mr. Sandel, where is your business located at?

14 A On Knox Abbott Drive in Cherry Park.

15 Q And what type of business is it, again?

16 A It's a hair styling salon.

17 Q And who are you in business with?

18 A My partner.

19 Q Let me ask you this very briefly, Mr. Sandel. This
20 particular diagram - is this a fair and accurate diagram of
21 at least the lay out of Cherry Park shopping center?

22 A Yes. It is.

23 Q Would this assist you in your testimony before the jury
24 today?

25 A Yes, sir.

1 MR. MCMAHON: Your Honor, I would offer this without ob-
2 jection.

3 (The diagram is marked as State's Exhibit 2.)

4 Q If you would, Mr. Sandel, could you step on this side
5 of the diagram for me?

6 A Okay. (The witness comes down to the diagram.)

7 Q First off, just to begin with, to orientate the jury to
8 this particular diagram, where would Knox Abbott Drive be on
9 State's Exhibit Number 2?

10 A Knox Abbott Drive would be down this way.

11 Q All right, sir. And now where would Love Chevrolet be?

12 A Right across the street from Sandy's Hot Dogs.

13 Q All right, sir. Now, if I were coming from Richland
14 County, if I was coming from the river, this would be on my
15 right or my left?

16 A It would be on the right hand side.

17 Q All right, sir. Now, as you enter into Cherry Park, if
18 you would, just lay out for the jury what the different bus-
19 inesses are and where they are located, or where they were
20 located in December of '88.

21 A As you come into the shopping center, going down Knox
22 Abbott Drive, you turn into the right. There's a hot air
23 balloon sign right here. It had the listing of the shops.
24 Sandy's Hot Dogs is going to be on your right. There are
25 two vacant buildings here for lease. This is the tanning

1 salon right next to our salon. It says Nexxus, but the name
2 of the shop is called Cherry Park Hair Styling. Right by us
3 is a little walkway with a little cover over the top of it.
4 All these shops right through here do have red canvases with
5 lights under them. But, anyway, this is the Credit Thrift,
6 right through here. And then they have a few other vacant
7 buildings right through here; and then they have Metz Jewelers.
8 Metz Jewelers is the only one with the burglar alarm system
9 on it.

10 Q Now, this is where your business was located on December
11 22nd or December 21st of '88? Is that right?

12 A Correct.

13 Q And you say Nexxus is a -- I had asked you about that
14 previously. Why did we pick up the word, Nexxus?

15 A We have a sign out front.

16 Q And what is Nexxus?

17 A It's a hair care product.

18 Q All right, sir. Now, on your particular building, while
19 you are still standing here, State's Exhibit 2, would you
20 point out to the jury the entrance and exits and whether
21 there is or is not a rear door to the building?

22 A There is no rear door. The only way out is through the
23 front door.

24 MR. MCMAHON: Thank you. I don't have any further ques-
25 tions on the diagram. Mr. Sandel, you can take the stand.

1 (The witness returns to the witness stand.)

2 Q Now, do you recall the evening of December 21st of '88?

3 A Yes. I do.

4 Q Did you work that particular day?

5 A Yes, I did.

6 Q And approximately what time did you leave?

7 A Around 7:30.

8 Q Were you the last to leave?

9 A Yes. I was.

10 Q And what was the condition of the building and what, if
11 anything, did you do upon securing the building upon your
12 departure?

13 A Like every evening, we clean up. Or I clean up the shop,
14 lock the door, and left for the evening.

15 Q What type of lock is on the front door? And describe
16 that front door for us.

17 A The front door is just basically a glass door, so to
18 speak, with a dead bolt lock on it.

19 Q All right, sir. And that was secured upon your depar-
20 ture?

21 A Yes, it was.

22 Q Now, what, if anything, occurred on the morning of the
23 22nd, upon your arrival?

24 A When I got there that morning, the police officers were
25 already there.

1 Q Approximately what time did you arrive?

2 A Well, I had an 8:30 appointment, and I got there maybe
3 a few minutes before 8:30. And the police officers were
4 already there. I noticed the front door, that the lock had
5 been wrung off. And you could just go in as you please.

6 Q Let me ask you this. Backing up just a minute. Are the
7 front doors on all of these businesses pretty much consis-
8 tent one with the other, similar types, similar locks?

9 A They are all the same, basically.

10 Q If you would go ahead.

11 A Well, when I walked in, I noticed that some of my tools
12 were scattered a little bit. I had several pair of hair
13 cutting shears out there; but I had two brand new pair of
14 shears in my drawer. And I had two other pair on my back
15 bar that were not there; and the cash drawer was broken into.
16 But we only had pocket change in there. All the money had
17 been taken for the evening home.

18 Q Would you describe in best detail you can for the jury
19 the items of shears that were missing?

20 A I work with a pair of tandeo shears. They are a German
21 surgical steel blad shear, and they sell ---

22 Q Now, how do you say that word? How do you spell it?

23 A Tandeo? It's just a German shear named tandeo. It's a
24 German shear.

25 Q All right, sir. And go on and describe it a little more

70 54

1 for me.

2 A They are a surgical steel blade. They are corrugated on
3 both sides, and that's what makes the shear unique. It's
4 like the cadillac of shears.

5 Q All right. How many were missing?

6 A My partner and I both were missing three pair each.

7 Q A total of six?

8 A Yes.

9 Q Now, sir, when I go buy a pair of -- I call them scissors.
10 Of course, I'm not in your occupation. If I were going to go
11 buy one of these, what do they cost? What's the value of
12 these shears?

13 A They cost me around a hundred dollars apiece.

14 Q Each?

15 A Yes, sir.

16 Q So what is the total value of the property, not the
17 pocket change you are talking about, but of the property that
18 was missing?

19 A The main thing we were missing were the hair cutting
20 shears; and they were valued at a hundred dollars apiece. We
21 were missing six. Six hundred dollars.

22 Q Has any of those items been returned to you or your
23 partner in the business?

24 A My partner received his three pair back; but I did not
25 get mine.

- 1 Q And who returned them back to him?
- 2 A I really don't know.
- 3 Q Was it a law enforcement officer?
- 4 A Yes.
- 5 Q And have you had the opportunity to view certain items
- 6 of shears that have been shown to you?
- 7 A Yes, I have.
- 8 Q And what officer or agency showed these items to you?
- 9 A We had -- basically you showed them.
- 10 Q All right, sir. Let me show you some items now. Can
- 11 you identify these items for me, please, Mr. Sandel?
- 12 A Yes. I can.
- 13 Q What are those items?
- 14 A These are the tandem shears.
- 15 Q Have you ever seen them before?
- 16 A Yes, I have.
- 17 Q Where did you last -- or when did you -- did you ever
- 18 see them on the evening of the 21st of December?
- 19 A Yes. I did.
- 20 Q Where were they at?
- 21 A Well, I had two pair in my drawer and this pair was
- 22 on top of my back bar.
- 23 Q And, now, were they there on the morning of the 22nd?
- 24 A No.
- 25 Q Are those your shears?

71 56

1 A They are.

2 Q And explain to me one more time why they cost a hundred
3 dollars apiece.

4 A Because they are corrugated on both sides. And one
5 thing is kind of unique about this particular shear is you
6 can see the little ---

7 Q Hold it up for the jury a little bit.

8 A (Witness compleis.) They have a little blue point right
9 here on the end of the shear. This is the old model of the
10 shear. And the tandeo shear usually lasts for three years
11 without being sharpened. And the newer models have the dark
12 blue little point on the bottom of the shear.

13 Q This being the newer model?

14 A Right. I buy shears and I keep them for purposes -- you
15 know, if I drop a pair I have to have them re-sharpened, or
16 whatever. And I need tools to work with. That's why I keep
17 extra shears on hand.

18 MR. MCMAHON: Your Honor, I would offer these for identi-
19 fication purposes only at this time.

20 (The shears are marked as State's Exhibit Number 3 for
21 identification only.)

22 Q Now, as I understand it, three of them have been return-
23 ed to you all's business. Is that right?

24 A Right.

25 Q There are two of them there. There is still one more

1 correct?

2 A That's correct.

3 MR. MCMAHON: Thank you.

4 I don't have any further questions of this witness, Your
5 Honor.

6 MR. HALL: If it please the Court, Your Honor.

7 CROSS EXAMINATION BY MR. HALL:

8 Q Mr. Sandel, how long have you been in the hair cutting
9 business?

10 A Roughly ten years.

11 Q How long have tandeo scissors been around?

12 A Many years.

13 Q Many years? Do you know anybody else in the profession
14 that uses them?

15 A I sure do.

16 Q People outside of your particular location there?

17 A I have friends that I went through hair styling school
18 with that use the shears.

19 Q Would it be fair to say that it's a fairly popular brand
20 of shears?

21 A No.

22 Q Well, would you say that a lot of people use them?

23 A It's hard to say. Various hair stylists use different
24 equipment.

25 Q Are they available in town?

1 A No. They are not.

2 Q But you know people that use them, other than yourself
3 and others and in the Nexxus barbershop in West Columbia or
4 Cayce?

5 A The only people that are going to use a tandeo shear is
6 a hair dresser or hair stylist. A barber is not going to use
7 these particular type of shear.

8 Q Why not?

9 A Because who wants to pay a hundred dollars for them just
10 to do regular barber work?

11 Q You are saying that they are a hundred dollars, then?

12 A Yes.

13 Q Let me ask you this -- are there any distinctive markings
14 on those scissors that would enable you to positively identify
15 them as yours?

16 A Yes, sir. I just told the jury that the little markings
17 on the end of the shear, itself. One is light blue and the
18 other is dark blue. They don't make the light blue little
19 point on the bottom of the shear anymore.

20 Q Can you show me that?

21 A Yes, I can. See this right here? See this dark blue,
22 and this light blue?

23 Q Okay. How long have you had those scissors?

24 A I would say roughly six years.

25 Q No serial numbers on them?

- 1 A Yes. There's a serial number on there.
- 2 Q Do you know that that's yours?
- 3 A Yes. That's my shear.
- 4 Q I just asked how do you know the serial number?
- 5 A Well, I don't look at the serial number.
- 6 Q Okay.
- 7 A But they are identified.
- 8 Q Did you ever take care to list these particular items on
- 9 an insurance document?
- 10 A No.
- 11 Q So you could make a claim if they were stolen?
- 12 A No.
- 13 Q Were you aware the the Columbia Beauty and Barber Supply
- 14 handles those brand of shears?
- 15 A No. I was not.
- 16 Q Do you ever purchase any items from the Columbia Beauty
- 17 and Barber Supply?
- 18 A No.
- 19 Q Have you ever been in there?
- 20 A Yes, I do. All the time.
- 21 Q Okay.
- 22 A I'm not sure -- excuse me -- that Columbia Beauty and
- 23 Barber would carry that style of shear.
- 24 Q I believe your testimony was you didn't know one way or
- 25 the other?

1 A Well, I've never seen them in there is what I am saying.

2 I go to Columbia Beauty at least three times a week.

3 Q Well, my question is to you -- you don't know, for a
4 fact, whether they are there or not, do you?

5 A Not one hundred percent. No.

6 Q All right. Let me ask you this. You reported six pairs
7 being stolen. Is that what you are saying?

8 A Correct.

9 Q Do you recall signing a victim impact statement?

10 A Correct.

11 Q (Hands document to witness) Is that your signature?

12 A Yes. It is.

13 MR. HALL: We ask that this be marked as Defendant's
14 Number 2 for identification.

15 Q When did your partner get his scissors back?

16 A I really don't know.

17 Q You don't know when he got them back?

18 A I didn't ask him.

19 Q Was it soon after the burglary? Was it more than a month?
20 Less than a month?

21 A I would say over a month.

22 Q Over a month before he got them back?

23 A Correct.

24 Q So I guess -- was it more than two months?

25 A I would say -- I think maybe February. I do not know.

1 Q What part of February?

2 A I really couldn't tell you for sure. I don't know.

3 Q Were you in February of 1989 still claiming that those
4 scissors were stolen? The ones that had been returned?

5 A See my partner works on hisself and I work on myself. I
6 don't keep up with his personal stuff. He's in business for
7 himself like I am. I don't keep up with his.

8 Q You don't keep up with his stuff?

9 A No.

10 Q Well, you seemed to keep up with it, sir, when you report-
11 ed the six pairs missing that morning.

12 A We were both there at the same time. When the officer
13 asked us what was stolen, I told him what was missing from my
14 area and he told the officer what was missing from his area.

15 Q Is he here in this courtroom today?

16 A No. He's not.

17 Q Did you overhear him?

18 A I was there with him.

19 MR. HALL: I don't have any further questions.

20 MR. MCMAHON: Did you offer that document?

21 MR. HALL: I didn't offer it.

22 REDIRECT EXAMINATION BY MR. MCMAHON:

23 Q This document here, Gregg, shows how many pair missing?

24 A Six pair.

25 Q That's what you reported missing on the morning of the

1 22nd of December of '88?

2 A Correct.

3 Q Do you recall what agency sent you this form to fill out?

4 A I really don't know.

5 Q But that wasn't done until when?

6 A 2/23/89.

7 MR. MCMAHON: Your Honor, I'd offer this.

8 MR. HALL: No objection.

9 (The victim impact statement which was marked for
10 identification as Defense Exhibit 2 is marked into evidence
11 as State's Exhibit.)

12 MR. MCMAHON: Thank you. I don't have any further ques-
13 tions.

14 The State would call Lisa Reeves.

15 LISA REEVES is duly sworn.

16 DIRECT EXAMINATION BY MR. MCMAHON:

17 Q Young lady, would you introduce yourself to the jury,
18 please?

19 A I'm Lisa Reeves. I'm a former employee of Tan Easy Tanning
20 Center.

21 Q And that was Tan Easy -- On State's Exhibit Number 2, will
22 you point that out for the jury, please?

23 A (The witness complies.)

24 Q Now, were you employed there in December of 1988?

25 A Yes, I was.

1 Q And do you recall the evening of the 21st of December of
2 '88?

3 A Yes. I closed up at approximately eight o'clock. And
4 just simply locked the door.

5 Q Eight o'clock p.m.?

6 A Yes, sir.

7 Q Was it dark at that time?

8 A Yes, sir.

9 Q And describe the door and the type of locking device on
10 that door, Ms. Reeves.

11 A It's just like all the others. Glass front, plain glass
12 door with a dead bolt lock.

13 Q Now, upon your return, what, if anything, did you find?

14 A The only thing I found missing -- our dollars were miss-
15 ing. He had left the change. The change was still there.

16 Q What was the condition of the lock?

17 A The lock on the door?

18 Q Yes, ma'am.

19 A It was totally gone, missing.

20 Q And were you able to check and determine approximately
21 how much currency was missing, Ms. Reeves?

22 A It was approximately forty three dollars. The way I de-
23 termined that amount -- we had twenty five dollars in just
24 change for the day; and then I figured up how many customers
25 we had had in that day and what we would have taken in.

1 Q The only thing that was missing, though, was money. Is
2 that right?

3 A Yes.

4 MR. MCMAHON: Thank you, ma'am. I don't have any further
5 questions.

6 CROSS EXAMINATION BY MR. HALL:

7 Q I didn't catch your name. I'm so sorry.

8 A Lisa Reeves.

9 Q Ms. Reeves, you said that it was a "he" that broke in.
10 You don't know whether it was a "he" or a "she", do you?

11 A No.

12 Q You said how much was taken, to your knowledge?

13 A Approximately forty three dollars is what I determined.

20 MARTY HILYER is duly sworn.

21 DIRECT EXAMINATION BY MR. MCMAHON:

22 Q Mr. Hilyer, would you introduce yourself to the jury,
23 please?

24 A I'm Marty Hilyer. I'm a manager with Sandy's Hot Dogs.

25 Q You are still manager down at Sandy's at Cherry Park,
Marty?

1 A No, I am not. Four or five weeks ago I was transferred
2 to the Richland Memorial location.

3 Q Now, you were the manager of this Sandy's that we are
4 speaking of at Cherry Park back in December of '88?

5 A Yes, sir.

6 Q Would you -- I tell you what. It may be easier to use
7 this diagram very briefly. Would you just step down here?

8 A (The witness comes down.)

9 Q Would you just very briefly kind of orient the jury to
10 the lay out there at Sandy's, as far as entrances and exits
11 are concerned?

12 A Yes, sir. We have two entrances to the building, one over
13 on this side, the Knox Abbott Drive side; one door over here.
14 You go in. This is a lobby area here. Back over in this
15 area we have restrooms and an entranceway to go back into our
16 stock room area. And then back behind our counter where we
17 serve our ice cream and hot dogs. The office is right over on
18 this side, on the other side of the hot dog register. We have
19 three registers in the building, two right over here just out-
20 side the office, one on the back counter behind the ice cream
21 display cabinet.

22 Q This area back here, that's restricted to the public?
23 The public does not go back in there. Is that right?

24 A That's correct.

25 Q Do you all have any type of internal security system in

1 there, Marty?

2 A Yes, sir. We have a camera system, video camera system
3 in the store.

4 Q Could you point out to the jury the location the cameras
5 are in the store?

6 A We have one camera up in this area towards our registers
7 in the hot dog section; one camera right up here aimed towards
8 our register in the ice cream section.

9 Q So coming from this camera this way, generally what would
10 that be a view of down in here now?

11 A You would get a portion of the ice cream counter right in
12 here, just a little bit out front of the lobby area; but it's
13 primarily centered on the cash register.

14 Q And then on this camera, it's going in which direction
15 and, generally, what is in the building there?

16 A It's going in this area here. You can see the registers,
17 a portion of the hot dog counter here, and just a portion of
18 where the customers stand right here.

19 MR. HALL: Your Honor, I've got a matter of law to take
20 up with the Court.

21 THE COURT: If you will approach the bench, we will see
22 if we can resolve it here.

23 (The bench conference is within the presence of the jury,
24 but outside of the jury's hearing, and off the record.)

25 MR. HALL: Your Honor, just for the record, my objection

1 would be to any video tape coming in on the grounds of rele-
2 vancy. And I will state more particularly the grounds at a
3 recess.

4 THE COURT: It is marked as heard. And I will hear you
5 further.

6 Q Now, Marty, could you explain to the jury how the camera
7 system works? And its hours of operation, so to speak?

8 A Right. It's operated 24 hours a day. The way it works
9 we have one recorder that's located in the office and also
10 monitored so that, wherever you are in the office, if you need
11 to replay the tape or observe what's going on in the store,
12 you can. Both cameras run into one monitor and we have a
13 timing system that switches back and forth between each camera.
14 And you can vary the intervals from several seconds to up to,
15 I would say, approximately a minute between the switching
16 between cameras.

17 Q So you are saying that on your security system you would
18 see a picture of your hot dogs, let's call it, one time; and
19 then your ice cream the next?

20 A That's correct. It alternates between two cameras.

21 Q And what is the gap in time between those two views?

22 A I would say approximately ten or fifteen seconds.

23 Q Now how long does one video tape run?

24 A We can set it on different lengths of time. Normally
25 it is 72 hours for one tape.

1 Q Then what happens after the 72 hours?

2 A Well, it's usually changed every day or every other day.
3 so that the tape never runs completely out. We want to always
4 allow ourselves time. We don't want to ever have a time in
5 the store when the tape is not in operation.

6 Q Is there any type of date or timing information incorpor-
7 ated into you all's system?

8 A Yes. There is. It's displayed on the screen; also it's
9 displayed on the tape, the date and time, AM or PM, and the
10 day of the week.

11 Q All right, sir. Now when you left the building on the
12 21st of '88, approximately what time did you leave?

13 A I would say some time between five and six o'clock is
14 usually when I left.

15 Q And could you tell us the condition of the building on the
16 morning of the 22nd?

17 A Yes, sir. When I -- I received a call right before I
18 left for work from the Police Department saying that we had
19 had a robbery. When I arrived at the building, the lock had
20 been removed from one of my doors, the one ---

21 Q Stay right there. I will just hold it up for you.

22 (Holds up State's Exhibit 2.)

23 A The door, not the Knox Abbott Drive, but this door here
24 (Indicates). And it had the lock removed from it. When I went
25 into the store, I walked back behind the hot dog counter and

1 there were some cash register drawers open. There was some
2 change lying around on the floor.

3 Q The hot dog area -- where are you talking about?

4 A Right over in this area here.

5 Q Okay.

6 A Also, the door to the office which was locked when I
7 left the previous night. It had been forced open and the
8 office was in disarray; and our deposits that were made the
9 night before -- not the actual deposits, but when they counted
10 out the register and taken the money -- they slip it through
11 a little slot in the office door. And that money was missing.

12 Q The money was just stuck in there with a rubber band or
13 what?

14 A No, sir. It was in little bank bags, not a locking bank
15 bag, but just a regular little zipper bank bag.

16 Q And were you able to determine what, if anything, was
17 missing?

18 A Yes, sir. From what I was able to determine, we were
19 missing \$397.40.

20 Q How much?

21 A Excuse me. \$387.40, I believe.

22 Q And that's what you reported to the police on the morning
23 of the 22nd? Is that right, Marty?

24 A Yes, sir.

25 Q Now, did you have an opportunity to check your video

1 camera that morning?

2 A I did not check it myself. I rewound the tape and gave
3 it to Detective Blackwell, who was down to investigate the
4 break in.

5 Q You turned that tape over to Detective Blackwell. Is
6 that right?

7 A Yes, sir.

8 Q Was that machine still functioning properly on the morn-
9 ing of the 22nd when you came in?

10 A Yes, sir.

11 Q And did you change or alter it in any way beyond turning
12 it over to Detective Blackwell?

13 A No, sir.

14 Q Marty, let me ask you this. Is this the tape that you
15 turned over to Detective Blackwell?

16 A To the best of my knowledge, yes, sir. This is my
17 writing on the label here on the tape and also a date when
18 I purchased the tape because after I run the tapes about three
19 months I would change them because they wear out. So the
20 tape was approximately a month old.

21 Q When was the tape bought?

22 A In 11/88, November of '88.

23 Q And there's also a date here. You are saying this is
24 your writing right here. Is that correct?

25 A Yes, sir.

1 Q What does that say?

2 A That says Cherry Park and tape number 1. I would keep
3 the tapes for approximately a week and then re-use them, if
4 there was no reason to review the tapes.

5 Q And this is not your writing?

6 A No, sir.

7 Q But there is a date that appears on there. Is that
8 correct?

9 A Yes, sir.

10 Q And what is that date?

11 A 12/22/88.

12 Q Did you see who put that notation on there?

13 A No, sir.

14 MR. MCMAHON: Your Honor, I would offer this at this
15 time.

16 MR. HALL: Your Honor, can I see the markings on there?
17 (The tape is shown to counsel.)

18 MR. HALL: You are offering this for identification?

19 MR. MCMAHON: No. I'm offering it to show to the jury.

20 MR. HALL: Subject to my objection, as stated earlier,
21 Your Honor.

22 THE COURT: It is admitted into evidence subject to the
23 objection made at the bench conference, which will be put on
24 the record later.

25 (The video tape is marked as State's Exhibit Number 5.)

1 MR. MCMAHON: Your Honor, at this time I would offer to
2 publish State's Exhibit Number 5 to the jury.

3 Or I can wait until after cross examination.

4 THE COURT: Let's clear him and save that for last.

5 MR. MCMAHON: I can show it at any time, for that matter,
6 Your Honor. That will be fine.

7 MR. HALL: No questions, Your Honor.

8 THE COURT: You may come down.

9 Bring in in your machine.

10 Solicitor, have you seen this tape before?

11 MR. MCMAHON: Yes, sir.

12 (The tape is shown to the jury. At its conclusion
13 there is a bench conference held in the jury's presence but
14 out of the jury's hearing and off the record.)

3 (The following takes place outside of the presence of
4 the jury.)

5 THE COURT: You may proceed, Solicitor.

6 MR. MCMAHON: The State would call Officer Bloxom to the
7 stand, Your Honor.

8 KELLY BLOXOM is duly sworn.

9 DIRECT EXAMINATION BY MR. MCMAHON:

10 Q Sir, would you state your name for the Court, please?

11 A Kelly Bloxom.

12 Q And you are employed by the West Columbia Police Depart-
13 ment. Is that correct?

14 A Yes, sir.

15 Q How long have you been so employed?

16 A Approximately three years.

17 Q Officer Bloxom, were you on duty on the evening of Jan-
18 uary the 3rd of '89?

19 A Yes, sir. I have been working a special detail in plain
20 clothes and unmarked car because of several burglaries we had
21 in the area.

22 Q On that particular evening you were not in uniform. Is
23 that correct?

24 A That's correct.

25 Q And what type of vehicle were you in?

70 74

- 1 A An unmarked car.
- 2 Q Officer, did you have an occasion to go to Room 31,
3 Crystal Motel?
- 4 A Yes, sir. I did.
- 5 Q And what was the purpose or who all was there when you
6 arrived?
- 7 A Sgt. Tyndall and Officer Bell.
- 8 Q Did you received certain information while at Room 31?
- 9 A Yes, sir.
- 10 Q As a result of receiving certain information, did you
11 go to another location?
- 12 A Yes, sir. I did.
- 13 Q What information did you receive and why did you go to
14 this next location, Officer Bloxom?
- 15 A We were looking for William Justice.
- 16 Q And why were you looking for Mr. Justice? Why did you
17 want to see or find Mr. Justice?
- 18 A We wanted to question him about some of the burglaries
19 that we had had.
- 20 Q Did you receive a description of Mr. Justice while you
21 were at the Crystal Motel?
- 22 A Yes, sir. I did.
- 23 Q And what description, just very generally, were you
24 given, Officer Bloxom?
- 25 A Heavy set white male with a beard and long hair.

1 Q When you say heavy set, what range are you putting him
2 in?

3 A Approximately two hundred pounds.

4 Q Now, what location did you go to?

5 A I went to the Parking Place Lounge on Platt Springs Road.

6 Q Where is that in relation to the Crystal Motel?

7 A Approximately a mile and a half or two miles.

8 Q And were you requested to go there by a particular
9 officer?

10 A Yes, sir.

11 Q And what was the request specifically for you to do?

12 A Sgt. Tyndall had asked me if I could go locate William
13 Justice. And, if he would, on his own free will come back to
14 the motel room.

15 Q Were you directed to place him under arrest?

16 A No, sir.

17 Q And Sgt. Tyndall was your supervisor, so to speak, or a
18 higher ranking officer than you?

19 A He was the highest ranking officer on the scene. Yes,
20 sir.

21 Q Now you went to this parking lot lounge. Is that cor-
22 rect?

23 A Yes, sir.

24 Q And how many people were there, citizens, were in that
25 place approximately?

- 1 A Maybe ten.
- 2 Q Were any other officers with you?
- 3 A No, sir.
- 4 Q And you were not dressed in uniform?
- 5 A No, sir. I was in plain clothes.
- 6 Q Did you go in there and see a person that, based on your
7 description, you identified as being William Justice?
- 8 A Yes, sir. I did.
- 9 Q And what was this person doing at the time?
- 10 A He was playing the poker machine.
- 11 Q Did you immediately roust him, so to speak, or approach
12 him? Or what did you do, Officer?
- 13 A No, sir. I observed him for a few minutes.
- 14 Q About how long?
- 15 A Thr to five minutes, maybe.
- 16 Q And did he continue playing the machine?
- 17 A Yes. He did.
- 18 Q Now, why didn't you say something to him right off,
19 Officer?
- 20 A Honestly, he was doing good on the machine and I didn't
21 want to pull him away from it.
- 22 Q You mean he had credits?
- 23 A Yes, sir. He did.
- 24 Q So you just stood there and watched. Is that right?
- 25 A That's correct.

1 Q Now after a period of time did you say something to this
2 individual?

3 A Yes, sir. I did. I asked him was he William Justice.
4 At this time he stated that he was.

5 Q And that's the individual here today, the defendant here
6 today. Is that right?

7 A Yes, sir.

8 Q After you asked him if he was, what did you ask him next?

9 A I asked him would he come outside and talk to me for a
10 few minutes. He said, "Sure", that he didn't mind at all.

11 Q And when you went outside, were you following him or was
12 he following you? Do you recall who went out the door first?

13 A I believe I did.

14 Q And he was behind you?

15 A I believe he was. Yes, sir.

16 Q And when you got out to the parking lot, what did you do
17 by way of identifying yourself?

18 A I just advised him that I was a police officer with the
19 City of West Columbia and would he mind coming back to his
20 motel room with me, at which time he stated he didn't mind at
21 all.

22 Q No objection whatsoever?

23 A No, sir.

24 Q You didn't question him in any manner?

25 A No, sir. I sure didn't.

1 Q He voluntarily accompanied you from the parking lot to
2 where?

3 MR. SALLEY: Objection to leading, Your Honor.

4 THE COURT: Do not lead.

5 MR. MCMAHON: I don't have any further questions of this
6 witness.

7 CROSS EXAMINATION BY SALLEY:

8 Q Mr. Bloxom, is this the two hundred pound description --
9 is it your testimony -- stand up, Mr. Justice.

10 A (The defendant stands.)

11 Q Is it your testimony that this is the two hundred pound
12 individual that you were looking for?

13 A I said approximately.

14 Q Does he look like he's approximately two hundred pounds?

15 A Well, I weigh one eighty five. So ---

16 MR. SALLEY: I don't have any further questions.

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

18 MR. MCMAHON: I call Officer Tyndall to the stand.

19 MR. SALLEY: Your Honor, I would like to reserve the
20 right, however, to recall Mr. Bloxom.

21 MR. MCMAHON: He can call him as his witness.

22 MR. SALLEY: I understand that. But I mean at the trial.
23 I don't want him to leave the courtroom.

24 THE COURT: All right, sir.

25 MR. MCMAHON: We call Sgt. Tyndall.

1 DENNIS TYNDALL is duly sworn.

2 DIRECT EXAMINATION BY MR. MCMAHON:

3 Q Sergeant, just to get back to where we were, I think we
4 left you at the Crystal Motel on January 3, '89, conducting
5 a search. Is that correct?

6 A That's correct.

7 Q Did you request Officer Bloxom to go to a particular
8 location?

9 A That's correct.

10 Q Why was that?

11 A Mr. Seay had told me that Mr. Justice was at a bar on
12 Platt Springs Road. And I wanted to get a look at him. I had
13 viewed the film.

14 Q Let me stop you there. When you say you had viewed the
15 film, are you referring to State's Exhibit Number 5?

16 A That's correct.

17 Q When had you seen that and where had you seen it?

18 A I had seen it at Cayce within probably two or three days
19 after they received it.

20 Q Did you receive a description of Mr. Justice from Mr.
21 Seay?

22 A Yes. I did.

23 Q As a result of that, what did you want to do as far as
24 Mr. Justice was concerned?

25 A I wanted to have a look at him and see if he matched up

1 in any way with what the film looked like.

2 Q Now you were requesting the officers to go to the parking
3 lot. What directions or instructions did you give Officer
4 Bloxom? What orders? What did you tell him to do?

5 A I told him to ask him if he would come back to the room
6 and ask him some questions.

7 Q Did Officer Bloxom leave?

8 A Yes, he did.

9 Q And he returned with who?

10 A William Bruce Justice.

11 Q Who did he return with?

12 A William Bruce Justus.

13 Q This gentleman here?

14 A That's correct.

15 Q So, regardless of how much he says he weighs, is that the
16 man that Officer Bloxom walked in the door with?

17 A That's correct. When you see the film, you can't tell
18 the height of the ---

19 MR. HALL: We object, Your Honor. That's not responsive
20 to the question.

21 THE COURT: Proceed, Solicitor.

22 Q Now, officer, upon Mr. Justus's arrival, did you have
23 an opportunity to look at him at that time?

24 A That's correct.

25 Q And what, if anything, occurred at that time between you

1 and Mr. Justus, as far as any conversation?

2 A Conversation?

3 Q Yes, sir.

4 A Uh, I asked him where some of the items that I recognized
5 from being stolen items, where they had come from, where he
6 had gotten them. Mr. Seay had said they were Bruce's. He
7 told me he had gotten them at a swap meet.

8 MR. HALL: I am sorry. I didn't hear.

9 WITNESS: He told me he got them at a swap meet. He
10 told me he got just about everything from a swap meet.

11 Q Detective Tyndall, as a result of your search, had you
12 located items that were stolen from some of the burglaries?

13 A Yes, sir.

14 MR. HALL: Your Honor, I would object to that. That's
15 a question for the Court. He's stating that those were the
16 items.

17 MR. MCMAHON: I don't have a jury in here. I'm trying
18 to move along, Your Honor.

19 THE COURT: Proceed, Solicitor.

20 Q After recovering these items, having seen that film, and
21 looking at Mr. Justus, what action did you take as far as Mr.
22 Justus was concerned?

23 A At that time I placed him under arrest for burglary.

24 Q And what, if anything, did you advise him of?

25 A I read him his rights.

82

1 Q Specifically what rights?

2 A The Miranda rights.

3 Q All right, now, did you question him at any time?

4 A No, sir. Not at that point. The only thing I questioned
5 him about before that point was where he got the stuff from
6 and after that I didn't ask any more questions.

7 Q All right, sir. What rights did you tell him? What
8 did you tell him his rights were?

9 A He had the right to remain silent; he had the right to
10 an attorney and have him present before and during questioning
11 if he could not afford an attorney, one would be appointed
12 to him by the Court.

13 Q Did you question him after you had advised him of his
14 rights?

15 A No, sir. I didn't.

16 Q None whatsoever?

17 A Well, not until later on. I didn't question him. He
18 volunteered some stuff to me later on.

19 Q When are you talking about, in time?

20 A I'm talking a week later.

21 Q All right. Now, you are talking on up to another week
22 in January. Is that correct?

23 A That's correct.

24 Q Before you placed him under arrest, and you advised him
25 of his rights, he was going to be taken where?

1 A To the jail.

2 Q What jail?

3 A The West Columbia jail.

4 Q Was he questioned at any time by you that night or dur-
5 ing the morning hours of January 4 by you?

6 A No, sir.

7 Q Does he, in any way, ever request an attorney?

8 A No, sir.

9 Q Does he ever tell you -- if you don't question him, does
10 he ever tell you, "I don't want to talk to you"?

11 A No, sir.

12 Q You place him under arrest and turn him over to who?

13 A Turn him over to one of the uniformed men. I really
14 don't know who.

15 Q Did the uniform officer transport him?

16 A Yes, sir.

17 Q Is this standard procedure -- let me ask you. Who was
18 the detective supervisor, over all the detectives?

19 A Captain P.K. O'Neill.

20 Q Is Captain McNeill here?

21 A That's correct.

22 Q Then Captain O'Neill?

23 A Correct.

24 Q And in a case like this would he be notified in any
25 manner of this arrest?

^0' 84

1 A At that time I didn't notify him. I sent him on to the
2 police department.

3 Q All right, sir. But you advised him of his rights and
4 did not attempt to question him in any manner?

5 A That's correct.

6 Q What was his physical condition?

7 A He seemed fine to me.

8 MR. MCMAHON: I have no further questions. Thank you.

9 CROSS EXAMINATION BY MR. HALL:

10 Q You arrested him at the Crystal Motel. Is that correct?

11 A Correct.

12 Q Isn't a fact Mr. Justus asked you for a search warrant?

13 A Excuse me.

14 Q At this Crystal Motel, didn't you obtain certain items
15 from his hotel room that day?

16 A That's correct.

17 Q Day of his arrest?

18 A That's correct.

19 Q Isn't it a fact he asked you for a search warrant?

20 A No, sir.

21 Q He didn't ask you for a search warrant?

22 A No, sir.

23 Q How many people were in the room?

24 A At what point?

25 Q Was Mr. Seay in the room at that point? Do you remember

1 Mr. Seay?

2 MR. MCMAHON: I don't know what point he's talking about.

3 MR. HALL: The point I am talking about is the time of
4 the arrest at the Crystal Motel room.

5 A I think he was. I believe he was.

6 Q He was there exactly at the point of the arrest?

7 A I think he just pretty much was for the duration.

8 Q Did you arrest him in the room?

9 A Yes, sir. In the room.

10 Q Officer, did you order someone to take William Justus
11 to the Lexington County Hospital the day following his arrest?

12 A No. I did not.

13 Q Do you know if he was taken, of your own knowledge?

14 A No. I have no idea.

15 Q How did you happen to be looking for William in the first
16 place?

17 A Well, we had numerous break ins in the Cayce and West
18 Columbia area and I was out to work those break ins along
19 with Cayce; and the FI card on his brother identified him
20 close to midnight walking the streets in a high crime area,
21 in fact across the street from where the break ins were.

22 Q His brother?

23 A John Caroyn Seay. From that point we got the FI card,
24 reviewed it, and we found in his pocket an item also that was
25 reported stolen.

70 86

1 Q What items was that?

2 A It was a Olympic coin.

3 Q Do you have that coin in the courtroom with you today?

4 A I didn't -- it wasn't seized at that point. I don't
5 know whether it was seized later on or not. One of the
6 officers told me he had that in his pocket.

7 Q One of the officers told you Mr. Justus had it?

8 A Mr. Seay had that in his pocket. So we went back to the
9 room. Knocked on the door, and Mr. Seay came to the door
10 and let us search the room. We saw items that were stolen
11 items and asked where Mr. Justus was, asked him what he
12 looked like. He told me what he looked like basically, and
13 I sent an officer over to see if he could find him and talk
14 to him.

15 MR. HALL: I don't have any further questions.

16 MR. MCMAHON: Thank you. You can step down.

17 I call Captain O'Neill to the stand.

18 CAPTAIN P. K. O'NEILL is duly sworn.

19 DIRECT EXAMINATION BY MR. MCMAHON:

20 Q Would you introduce yourself to the Court, please?

21 A Officer P. K. O'Neill.

22 Q How much law enforcement experience do you have?

23 A Thirteen years.

24 Q By whom are you presently employed?

25 A The Solicitor's office here in Lexington.

1 Q And when were you hired by our office?

2 A Approximately two weeks ago.

3 Q And what's your position with our office?

4 A I'm an investigator.

5 Q And previous to that time you were employed by ---

6 A The City of West Columbia Police Department.

7 Q And what was the most recent position you held with West
8 Columbia?

9 A I was the Chief of Detectives with the rank of captain.

10 Q All right, sir. Were you the captain of detectives back
11 on January 4 of '89?

12 A I believe I was a lieutenant at that time.

13 Q A lieutenant at that time. Made captain and then left?

14 A Yes, sir.

15 Q Okay. Now, Captain O'Neill, were you notified of the
16 arrest of William Justice during the early morning hours of
17 January 4?

18 A Yes, sir. I was.

19 Q Approximately what time were you notified?

20 A Approximately 6:30.

21 Q As a result of that, what did you do when you arrived at
22 the West Columbia office that morning?

23 A I came into headquarters and went back to the jail.

24 Q And for what purpose?

25 A I wanted to talk to Mr. Justice in reference to the
break ins.

1 Q Now, when you went back to the jail, to what location
2 did you take Mr. Justice originally?

3 A When I first went back to the jail, I identified myself
4 to Mr. Justice. I showed him my ID badge, told him who I was,
5 and at that time I advised him of his rights verbally.

6 Q What rights did you advise him of?

7 A I told him he had the right to remain silent and anything
8 he said could be used against him in a court of law. He had
9 a right to an attorney. If he could not afford an attorney,
10 one would be appointed for him without cost. I asked him if
11 he understood those rights. He told me yes. I think asked
12 him if he wanted to talk to me, and he told me yes.

13 Q Go ahead.

14 A As a result of that I took him out of the jail; I brought
15 him upstairs to the detective office.

16 Q Could you describe that detective's office very briefly
17 for His Honor?

18 A Yes, sir. It's a fairly big room. It used to be the old
19 fire department's sleeping quarters. It's pretty open; it's
20 got four desks in it.

21 Q And what, if anything, did you do with Mr. Justus upon
22 your arrival in your office?

23 A Once we got upstairs, I took out a rights form, which
24 has your rights on top and a waiver on the bottom of that
25 form.

1 Q I want to show you an item and ask if you can identify
2 it for us, please.

3 A Yes, sir. That's the form we use to advise the person
4 of his rights.

5 Q And who filled out this particular form?

6 A I put the date and time on it, and witnessed it. And
7 Mr. Justice signed it.

8 Q And what is the date and time?

9 A The date is January 4, 1989. 7:45 AM is when I explain-
10 ed his rights again to him, at which time he signed them.
11 And then there was a waiver form on the bottom, which was
12 the same day at 7:50 A.M.

13 MR. MCMAHON: Your Honor, I would offer this as a Court's
14 Exhibit.

15 MR. HALL: No objection, Your Honor.

16 (The Miranda warning form is marked as Court's Exhibit
17 6.)

18 Q Now, Detective O'Neill, you filled out everything but
19 what, now?

20 A The signature for the subject, which there's two places
21 for his signature, one at the bottom of the rights which
22 states he understands his rights, and one at the waiver of
23 rights.

24 Q Did you go over those rights with him again?

25 A Yes, sir. I did.

1 Q And did he appear to understand those rights, both that
2 you had give him verbally and in writing?

3 A He understood them completely.

4 Q And did he indicate to you in any manner his understand-
5 ing of them?

6 A Yes, sir. He told me, said, "I understand my rights; I
7 know my rights better than you know them.

8 Q All right, sir. Now, did you threaten him or coerce him
9 in any manner, Detective O'Neill?

10 A No, sir. I did not.

11 Q Was there any show of force?

12 A No, sir.

13 Q Back when you were with the West Columbia Police Depart-
14 ment, was it your habit to even wear a weapon?

15 A I did not wear a weapon.

16 Q What was his physical condition on the morning of the
17 4th, when you had this conversation with him, Captain?

18 A When I arrived at the jail, he was up. He was standing
19 up in the cell. He appeared sober to me, coherent. He under-
20 stood what was going on, and he understood where he was at.

21 Q Did you make any promises or hopes of reward to him in
22 return for any statements?

23 A No, sir. I did not.

24 Q Did he ever ask at that time for an attorney?

25 A At that time, no, sir.

1 Q Would you just describe for His Honor what transpired in
2 you all's conversation from the giving of his rights and then
3 what occurred?

4 A Again, he signed both that he understood the rights and
5 the waiver. We then started a conversation in reference --
6 basically it started out he was telling me his life story.
7 Then it got around to the burglaries we were investigating.
8 He indicated to me that he had committed these burglaries,
9 but his only problem was that he couldn't remember all the
10 names of the places he had broken into.

11 THE COURT: Solicitor, I'm more interested in voluntari-
12 ness and Miranda rights.

13 MR. MCMAHON: Your Honor, I was just going to ask the
14 guidance from the Court. I will wait on ---

15 THE COURT: What he said is not the issue that I'm
16 handling now.

17 MR. MCMAHON: I understand.

18 THE COURT: There is no need of going into that.

19 MR. MCMAHON: I don't have any further questions of
20 this officer at this time.

21 CROSS EXAMINATION BY MR. HALL:

22 Q Officer O'Neill, did you ever take a written statement
23 from a defendant?

24 A Have I ever taken a written statement?

25 Q Yes.

1 A Yes, sir. I have.

2 Q Get them to sign it just like they signed this Miranda
3 warning here. Isn't that correct?

4 A That's correct.

5 Q He gave you no trouble signing this Miranda warning ack-
6 nowledging that you gave him his rights?

7 A No, sir.

8 Q So what happened that day is that you got him in the car
9 and rode him around. Isn't that correct?

10 A We got in the car. Yes, sir.

11 Q And that's when the alleged statements that you are say-
12 ing he made to you came out. Correct?

13 A That's when he confessed to me. Yes, sir. When we were
14 in the car.

15 Q All right. Now, when a witness has voluntarily given you
16 such information and signed statements, it would make sense,
17 wouldn't it, to go ahead and get a written statement from
18 him, since he was so cooperative, wouldn't it?

19 A That's correct. When you go over it verbally first,
20 then the ideal situation is to get a written statement at the
21 end. That's correct.

22 Q In fact, he was very cooperative that evening, wasn't he?

23 A He sure was. It was in the morning.

24 Q You rode him around, and he just made these statements
25 to you?

1 A In the morning. Yes, sir.

2 Q But you didn't take him back and sit him down and get
3 him to sign a written statement, did you?

4 A I took him back to get a written statement.

5 Q Well, where is the written statement?

6 A When we got back to headquarters and took him upstairs --
7 I took him upstairs -- to get the written statement, he ad-
8 vised me at that time because of his record that he was fear-
9 ful that he was going to get life in the penitentiary. And
10 he asked me did I think it a good idea for him to contact an
11 attorney at that time. I took that to mean that he wanted an
12 attorney, so I called the public defender's office for him.

13 Q So you didn't think it was important to make notes, et
14 cetera, of what he was saying to you when you were riding
15 around?

16 A What do you mean, take notes?

17 Q Did you make specific notes?

18 A He took me around to each place that he broke into. And
19 he said, "I broke into there and this is how I got in there."

20 Q Sir, I just asked you whether or not you took specific
21 notes. I'm not asking you ---

22 A Did I write down anything?

23 MR. MCMAHON: Your Honor, he doesn't have to take that
24 tone with the officer. He's not even in front of the jury.
25 There's no reason for that.

20 94

1 WITNESS: I did not take notes. No, sir.

2 Q That's my answer. Thank you, sir.

3 What about a tape recorder? Did you bring a tape re-
4 corder?

5 A No, sir. I don't take taped statements.

6 Q Did you take Mr. Justice to the Lexington County Hospital
7 that evening?

8 A No, sir. I did not.

9 Q Did he ask to go?

10 A He didn't ask me to go to the hospital.

11 Q Did he ask anybody to go, to your personal knowledge?

12 A Sir, to my knowledge, I don't know anything about the
13 hospital.

14 Q He didn't complain to you that he was having stomach
15 cramps when you were driving him around?

16 A No, sir. He did not.

17 Q Well, let me just ask you this way. Isn't it true that
18 you had a weapon on you that day?

19 A No, sir. I did not.

20 MR. HALL: No questions further at this time, Your Honor.

21 MR. MCMAHON: Nothing further, Your Honor.

22 THE COURT: You may come down.

23 How many more witnesses for the State?

24 MR. MCMAHON: That is all.

25 THE COURT: We will take a recess at this time.

1 Are you going to offer any testimony?

2 MR. HALL: Your Honor, we did want to offer some testi-
3 mony at this particular time. I have got a couple things I
4 need to do. I need to put on the record the reasons for my --

5 THE COURT: Mr. Hall, it's one o'clock.

6 MR. HALL: Yes, sir. I will do it whenever you want me
7 to.

8 THE COURT: At this time we will recess until two p.m.

9 (The following takes place after the lunch recess.)

10 MR. MCMAHON: Your Honor, could I just very briefly re-
11 call Detective O'Neill?

12 THE COURT: All right, sir.

13 DETECTIVE P.K. O'NEILL returns to stand.

14 THE COURT: You have already been sworn. Please have a
15 seat.

16 REDIRECT EXAMINATION BY MR. MCMAHON:

17 Q Detective, you testified previously as per Court's Exhi-
18 bit Number 6 that you advised Mr. Justice of his rights in
19 writing on the morning of January 4th of '89. Is that
20 correct?

21 A Yes, sir.

22 Q And did you go over each and every one of the rights on
23 that particular form with Mr. Justice?

24 A Yes, sir. I did.

25 Q Specifically what rights did you go over with him and in

7C 96

1 what order did you go over them with him?

2 A I take this form out and I read off the form.

3 The Constitution requires that I inform you that:
4 1) You have the right to remain silent; 2) Anything you
5 say can and will be used in court as evidence against
6 you; 3) You are entitled to talk to a lawyer now and
have him present now or at any time during questioning.
4) If you cannot afford a lawyer, one will be appointed
to you without cost.

7 I then ask him, "Do you understand these rights?"

8 Q Did he indicate he understood those rights?

9 A Yes, he did.

10 Q And how did he indicate that?

11 A He said, "Yes, sir. I understand them. I know them
12 better than you know them."

13 Q All right, sir. And were there any others you advised
14 him of?

15 A Then I tell him, "If you decide to answer questions now
16 without a lawyer present, you will still have the right to
17 stop answering at any time. You also have the right to stop
18 answering at any time until you talk to a lawyer."

19 Q Did you advise him of that?

20 A Yes, sir.

21 Q Thereafter did he indicate an understanding of those
22 rights?

23 A Yes, sir. He did.

24 Q And did he indicate in any manner that you had advised
25 him of those rights, number 1 through 6?

1 A Yes, sir. He signs his signature. There's a spot on
2 the paper for it.

3 Q Thereafter, the lower part of that form, what is that
4 entitled?

5 A Waiver of Rights of Miranda Warnings.

6 Q Did you go over that part of Court's Exhibit 6 with Mr.
7 Justice?

8 A Yes, sir.

9 Q And specifically what did you advise him as far as the
10 waiver?

11 A Well, after he signed that he understood his rights, I
12 told him, "I am going to read this to you." And then I told
13 him that, "This statement which is a waiver says that 'I am
14 willing to make a statement and answer questions. I do not
15 want a lawyer at this time. I understand and know what I am
16 doing. No promises or threats have been made to me, and no
17 pressure or coercion of any kind has been used against me.'"

18 Q Thereafter did he indicate that you went over that waiver
19 aspect of the form with him?

20 A Yes, sir. He signed that, also.

21 Q And you witnessed both his signature on the notice,
22 understanding and acknowledgment of his rights and on the
23 waiver of his rights. Is that correct?

24 A Yes, sir.

25 Q Detective O'Neill, you had previously advised him verbally

96 38

1 of his rights. Is that correct?

2 A That's correct, sir.

3 Q And those rights that you advised him of verbally, were
4 they the same as the rights that appear on the written form,
5 Court's Exhibit Number 6?

6 A Yes, sir.

7 Q Specifically what rights did you advise him of verbally?

8 A I told him, "You have the right to remain silent. Any-
9 thing you say can and will be used against you in court. You
10 have the right to an attorney. If you cannot afford an
11 attorney, one will be appointed to you without cost." I said,
12 "Do you understand your rights?" And he said he did. I then
13 told him, "If you want to talk to me now, I will take you up-
14 stairs and let you discuss what we are going to do. I don't
15 want you to come up -- or if you come up and decide to ans-
16 wer questions now, you don't have to answer them if I get to
17 a point and you don't want to answer." He said ---

18 Q You followed that up with a written form?

19 A That's correct. And he indicated to me at that time he
20 wanted to go upstairs.

21 Q Did he ever ask for an attorney?

22 A Not at those times. No, sir.

23 Q Did he ever ask that questioning be stopped at any time?

24 A No, sir. Not at that time.

25 MR. MCMAHON: Thank you. I don't have anything further

1 of this witness, Your Honor.

2 MR. HALL: No questions.

3 THE COURT: You may come down.

4 MR. MCMAHON: That's all I would have, Your Honor.

5 THE COURT: All right, I will hear from you, Mr. Hall,
6 if you wish to offer any testimony.

7 MR. HALL: Your Honor, at this particular time, I will
8 state my objections more particularly for the objections to
9 the video tape.

10 THE COURT: Let's take it one thing at a time. I'm in
11 a Deno vs. Jackson Hearing. Let me get that out of the way
12 first.

13 MR. HALL: Your Honor, at this time we'd like to call
14 Mr. John Seay to the stand with respect to the issue of --
15 well, I'd like to re-open the record, Your Honor, if I may.

16 THE COURT: We are having a little communication problem.
17 Now listen close. I want to conclude the Deno vs. Jackson
18 hearing, which is the voluntariness of the statement. Once
19 I have concluded with that, I will hear anything else you have
20 got; but I don't want to intermingle them.

21 MR. HALL: Yes, sir, Your Honor.

22 At this time we call Mr. Justus to the stand.

23 WILLIAM BRUCE JUSTICE is duly sworn.

24 DIRECT EXAMINATION BY MR. HALL:

25 Q Mr. Justice, do you recall the day that you were being

100

1 driven around by Detective O'Neill?

2 A Sort of.

3 Q And how long had you been in jail at that time?

4 A I had been in jail since about eleven o'clock that previous night.

6 Q Did you have a drug addiction problem at the time?

7 A Yes, sir. I'm a heroin and cocaine addict. And also
8 I'm an alcoholic.

9 Q All right. The morning that you were being driven
10 around, what was the state of your health at that time?

11 A I was coming off heroin and cocaine.

12 Q Tell the Court what occurred when you were driving
13 around to these various places?

14 A Well, Mr. O'Neill would ride me around to the place.
15 He would ask me, "This is one of the places that was broke
16 into." And I looked at the place. He says, "Now how was it
17 got into?" And he would point right at where the door was
18 messed up on the building. I said, "Through the door."
19 I never gave the gentleman no confession because I'm not going
20 to tell him I did something when I didn't do it.

21 Q Did he have a weapon on him that day?

22 A Yes, sir. He sure did.

23 Q Did he make any comments regarding what might happen if
24 you were to run?

25 A Well, what scared me was when he first started to take

1 me out the door because I have got two previous escapes on
2 my record. One of them for a period of nine years and two
3 months, and he's taking me out the front door and he tells
4 me, he says, "I'm not going to handcuff you or secure you,
5 but don't try to run." He said, "I wouldn't want to have to
6 shoot you."

7 Q All right, sir. Now, did you have some sort of an
8 illness come upon you while you were driving around?

9 A Yes, sir. I was having severe stomach cramps; I was
10 coming off the heroin. My eyes were running; my nose was
11 running. And I asked Mr. O'Neill about getting help, and
12 he told, if I cooperated, they would give me all the help I
13 wanted.

14 Q What kind of help were you referring to?

15 A Something to ease the withdrawals.

16 Q Did you -- how long did you all continue to ride around
17 while you were having these withdrawals?

18 A I have no idea how long we rode around.

19 Q Did he tell you that you had a right to a lawyer at that
20 time?

21 A Yes, sir.

22 Q Did you ask for one at that time?

23 A Yes, sir. I sure did. And he tried to call a public
24 defender by the name of Katherine Evatt, but she wasn't in
25 the office at that time.

1 THE COURT: You may come down.

2 MR. HALL: Your Honor, at this time we would call Dr.
3 Richard Boyer.

4 RICHARD ALLEN BOYER is duly sworn.

5 CLERK: State your name for the Court, please.

6 WITNESS: My name is Richard Allen Boyer.

7 DIRECT EXAMINATION BY MR. HALL:

8 Q Where do you work, please?

9 A In Lexington Medical Center in the Department of Emer-
10 gency Medicine.

11 Q And do you recall whether or not you were working on
12 January 4, 1989?

13 A I was.

14 Q Do you recognize this gentleman sitting here today,
15 Mr. Justice, the defendant?

16 A Yes.

17 Q How do you recognize him?

18 A Just from recall.

19 Q Recall from what?

20 A Recall from his visit that night.

21 Q What was he brought to the hospital for?

22 A He was brought for symptoms of withdrawal from drugs.

23 Q Did you bring some records with you?

24 A Yes. I have a zerox copy of the emergency room card
25 and the laboratory items that were generated by myself that

1 evening.

2 Q This is your handwriting?

3 A Yes.

4 Q These are your notes?

5 A Yes.

6 Q That you made with respect to the treatment of the de-
7 fendant?

8 A That is correct.

9 MR. HALL: I would offer these as Court's Exhibit.

10 (The emergency room record is marked as Court's Exhibit
11 Number 7.)

12 Q What do your records reflect that you treated him for
13 that night?

14 A When he arrived, he stated his complaint to the nurse,
15 that he was having a hard time coming off drugs. And his main
16 complaint was one of abdominal cramps.

17 Q Did you prescribe any medicine for him?

18 A I did.

19 Q Why did you prescribe that medicine?

20 A To help make the abdominal cramps a little bit more
21 tolerable.

22 Q You would not have prescribed that medicine if you had
23 thought there was no reason for it, would you?

24 A That is correct.

25 Q And did you believe what the defendant was telling you?

112

- 1 A His complaint was a subjective one that I responded to.
2 Yes.
- 3 Q Did you not find any objective findings?
4 A That is correct.
- 5 Q You could not rule it out, however, could you?
6 A Rule out what?
7 Q Rule out the validity of his complaint?
8 A Oh, no. I couldn't. That's something that you couldn't
9 do.
- 10 Q Subjective or objective?
11 A Objective I could have; but subjectively I couldn't.
- 12 Q You could not?
13 A No.
- 14 Q What are the symptoms of drug withdrawal?
15 A Which drug are you talking?
16 A Heroin, for instance?
17 A Heroin withdrawal is similar to what one would experience
18 with a bad case of flu. Aches and pains, cramps in the legs,
19 cramps in the abdomen, sometimes sweating, sometimes tearing.
- 20 Q Did he appear to be in pain?
21 A No.
22 He wasn't sweating and he wasn't tearing?
23 A That's correct. He was not.
- 24 Q Let me ask you this. Did you make any note of that in
25 your records?

1 A On the physical exam I made the note that he was in no
2 acute distress; that his lungs, heart, and abdominal exam were
3 all normal.

4 Q May I see that?

5 A Sure. (Document is handed to counsel.)

6 Q Doctor, you would not have prescribed a medicine, though,
7 if you did not believe there ---

8 MR. MCMAHON: That's been asked and answered, I believe.
9 I understand this is in camera.

10 THE COURT: I will permit it and then let's proceed.

11 MR. HALL: This is my last question.

12 Q You wouldn't have prescribed the medicine, though, if
13 you didn't believe he was in pain?

14 A That is correct.

15 MR. HALL: I have no further questions.

16 MR. MCMAHON: Doctor, just very briefly.

17 CROSS EXAMINATION BY MR. MCMAHON:

18 Q Doctor, just very briefly, you were presented with a
19 patient from the West Columbia jail. You had knowledge he
20 was brought from the jail?

21 A Yes, sir.

22 Q That says, "I'm having abdominal pain." And the history
23 he gives you is possible drug withdrawal. That is, he's hav-
24 ing a hard time coming off drugs?

25 A Yes.

1 Q And I misunderstood a little bit, Doctor. I know I got
2 to talk to you very briefly this morning. Did you or did you
3 not do any lab tests?

4 A I did lab tests to exclude other disease processes that
5 could masquerade and mislead the patient into thinking that
6 it was drug related. I wanted to make sure he didn't have
7 appendicitis, didn't have pancreatitis, that he wasn't dehy-
8 drated.

9 Q I understand. Did you do tests to determine if he had
10 drugs in his system or anything like that?

11 A I did not.

12 Q So you don't know one way or the other, objectively, as
13 Mr. Hall was asking you. Correct?

14 A That is correct.

15 Q And of the symptoms you are telling us about, the heroin
16 withdrawal, symptoms similar to the flu, he had no aches, no
17 pains, no sweating, no tearing. He complained of abdominal
18 cramps; but his abdominal examination was normal. Is that
19 correct?

20 A Yes, sir.

21 Q So you are put in an unique position, Doctor, of having
22 to believe this individual just solely based on the history,
23 which you all are put in very often. Is that correct?

24 A Abdominal cramps can be caused by many different things,
25 one of which would be heroin withdrawal.

1 Q Did he appear coherent?

2 A Yes.

3 Q Able to respond appropriately to questions? Oriented in
4 all three or four spheres, however many spheres there are,
5 Doctor?

6 A He was oriented.

7 MR. MCMAHON: Thank you, Doctor.

8 REDIRECT EXAMINATION BY MR. HALL:

9 Q Dr. Boykin, you didn't perform any tests to see whether
10 there were any drugs in his system?

11 A No, I did not.

12 Q So you cannot rule out objectively, can you, sir ---

13 MR. MCMAHON: That's been asked and answered.

14 THE COURT: Proceed.

15 MR. HALL: Thank you very much.

16 Q Therefore, you cannot rule out objectively whether or
17 not there were any drugs in his system, can you?

18 A No, I cannot. I cannot tell you if there were drugs
19 present or absent.

20 RECROSS EXAMINATION BY MR. MCMAHON:

21 Q He did not appear to be under the influence of drugs or
22 alcohol?

23 A No, sir.

24 MR. MCMAHON: Thank you.

25 THE COURT: Doctor, you may come down.

1 had done been through it one time before. And he told me
2 wanted me to sign a consent form for that night. And I
3 signed it. Then he said, "Wait a minute. I want you to sign
4 the one for the night before."

5 Q Did you have a key to that room?

6 A No, sir.

7 Q Could you come and go in and out of that room freely?

8 A Not unless I left the door jimmied.

9 Q I am sorry.

10 A Not unless I left the door jimmied, if I didn't pull it
11 tight all the way.

12 Q Did your brother give you permission just to go in the
13 room any time you wanted to?

14 A Sometimes. But not all the time.

15 Q What about on the date after your furlough ended?

16 A No.

17 MR. HALL: No further questions. Please answer any ques-
18 tions Mr. McMahon may have.

19 CROSS EXAMINATION BY MR. MCMAHON:

20
21 Q Mr. Seay, you have a 1981 conviction for committing a
22 lewd act on a minor?

23 A Yes, sir.

24 Q Then you have a 1986 conviction for criminal sexual con-
25 duct with a minor in the second degree?

1 A Yes, sir.

2 Q All right, sir. Now, you were fixing to be maxed out
3 December 30th of '88. Is that correct?

4 A Yes, sir.

5 Q And on your application for furlough dated December 6
6 of '88, what did you put as your sponsor and your sponsor's
7 address that you requested to go to during the furlough period?

8 A William B. Justice. The relationship was brother; and
9 the address was 124 Charleston Highway.

10 Q 1624 Charleston Highway, wasn't it?

11 A 1624 Charleston Highway.

12 Q That's the Crystal Motel. Correct?

13 A Yes, sir.

14 Q And thereafter on December 16th of 1988 you got an
15 approval back. That'd be Court's Exhibit Number 4?

16 A Yes, sir.

17 Q Where you could stay at that address during furlough --
18 from what date was your furlough going to run?

19 A The 24th until the 30th.

20 Q Then you didn't have to go back to the penitentiary,
21 did you?

22 A No, sir.

23 Q And the request of the approval on the furlough was the
24 same address?

25 A Yes, sir.

122

1 Q 1624 Charleston Highway, West Columbia. Correct?

2 A Yes, sir.

3 Q So -- we have got 31 days in December, January 1st; then

4 we come to the night of January 2nd, when you were stopped by

5 Officer Lawton and Officer Bloxom.

6 A Yes, sir.

7 Q You remember that, don't you?

8 A Yes, sir.

9 Q Now this was January the 2nd, now. Correct?

10 A Yes, sir.

11 Q They asked you for some identification. Correct?

12 A Yes, sir.

13 Q And you tell them, John Kerrin Seay?

14 A Yes, sir.

15 Q What address did you give them?

16 A I gave them my brother's address because that was the

17 location that I was in.

18 Q So you were still staying there January 2nd?

19 A No, sir.

20 Q Sir?

21 A No, sir. I was not staying there; I was visiting.

22 Q That was a lie?

23 A No, sir. It wasn't a lie. I thought they wanted to get

24 in touch with me, and I gave them the closest address I was

25 at.

1 Q So if they wanted to get in touch with you, if they
2 wanted to find John Kerrin Seay, they'd have to go to Room
3 31, Crystal Motel. Correct?

4 A If they wanted to find me, yes.

5 Q Because that's where you were going to be at?

6 A No.

7 Q Sir?

8 A No, sir.

9 Q You didn't want to tell them where you were going to be
10 at, Mr. Seay? You can't have it both ways, sir.

11 A I did not want to tell them where I was at, regardless
12 of my family.

13 Q I understand, Mr. Seay.

14 You said your brother was in the room with a woman and
15 you wanted to give them some privacy. Isn't that right?

16 A Yes, sir.

17 Q So you had all intentions of going back to Room 31,
18 Crystal Motel on the night of January 2nd, Mr. Seay?

19 A I was going back there that night.

20 Q That is where you were going to stay that night?

21 A No, ;sir.

22 Q Where were you going to stay?

23 A I was staying at another friend's house.

24 Q Where?

25 A 127 Cadillac Court.

- 1 Q Who?
- 2 A T. K. Greene.
- 3 Q T. K. what?
- 4 A Greene.
- 5 Q G-r-e-e-n?
- 6 A e.
- 7 Q G-r-e-e-n-e?
- 8 A Yes.
- 9 That's a relative of yours?
- 10 A No, sir. She's a friend.
- 11 Q A friend of yours?
- 12 A Yes, sir.
- 13 Q A female friend of yours?
- 14 A Yes, sir.
- 15 Q And what's that address?
- 16 A [REDACTED].
- 17 Q Is she here?
- 18 A No, sir.
- 19 Q Does she still live there?
- 20 A Yes, sir.
- 21 Q Now, the police come January 3rd of '89. Lo and behold,
- 22 there you are at Room 31, Crystal Motel. Isn't that right,
- 23 Mr. Seay?
- 24 A Yes, sir.
- 25 Q But you had evidently gone to Cadillac Court on the night

1 of the 2nd?

2 A I was headed that way. I never made it.

3 Q You made it to Room 31, Crystal Motel, didn't you?

4 A Yes.

5 Q And you stayed there on the night of the 2nd of January
6 on up to the day of the 3rd of January.

7 A I did not stay there all night.

8 Q No, sir. You might have gone out to give your brother
9 some privacy. But you know what I'm talking about, don't you,
10 Mr. Seay?

11 A I have a general idea. But no. I did not spend the
12 night there.

13 Q Where did you spend the night on the night of the 2nd of
14 January of '89? Where did you spend the night?

15 A It beats me.

16 Q It beats you. But on the evening of January 3rd of '89
17 you were at Room 31, Crystal Motel. Correct?

18 A Yes.

19 Q And when the officers got there, your brother wasn't
20 there, was he?

21 A No, sir.

22 Q You and two young ladies. Isn't that right?

23 A Yes.

24 Q This officer in plain clothes, and there was one other
25 officer there in uniform. Isn't that right?

- 1 A Yes, sir.
- 2 Q You agreed to walk out the door and speak to them, didn't
- 3 you?
- 4 A Yes, sir.
- 5 Q And they told you why they were there; they identified
- 6 themselves as officers of the law, didn't they?
- 7 A Yes, sir.
- 8 Q Now, that was your brother's room, wasn't it?
- 9 A Yes, sir.
- 10 Q That's what your testimony is?
- 11 A Yes, sir.
- 12 Q Your brother went to jail that night, didn't he?
- 13 A Yes, sir.
- 14 Q Now tell the judge when you packed up all your stuff and
- 15 toted it on out of there.
- 16 A My brother had called me back that night.
- 17 Q No, sir. Tell the judge when you packed up all your be-
- 18 longings and moved out of Room 31.
- 19 A It was about a week and a half later?
- 20 A Yes.
- 21 Q That's on up to about the 11th, 12th of 13th of January.
- 22 MR. HALL: Judge, I'm going to object on the grounds
- 23 that what happens way after the date is not relevant.
- 24 THE COURT: Whether or not he was still at that place is
- 25 the issue, how long he stayed. It could mean whether he was

1 a transient or whether he was staying there for any length of
2 time.

3 MR. HALL: All right, sir. Thank you very much.

4 Q So we are on up to about the 13th of January, aren't we,
5 Mr. Seay?

6 A Somewhere around in there. Yes.

7 Q And I asked you about packing up all your stuff and
8 moving out. If you had had to move out, you would have had
9 to take clothes, wouldn't you?

10 A I had a few of my belongings; but I also had my
11 brother's belongings, too.

12 Q Yes, sir. But you hadn't packed up yours, because they
13 were there, weren't they?

14 A A few of my clothes. Yes.

15 Q And when your brother left to go get beer or cocaine or
16 wherever he went, and you stayed there with the two girls,
17 he didn't tell you not to let nobody in, did he?

18 A He didn't say that.

19 Q He didn't say nothing one way or the other, did he? Sir?

20 A No.

21 Q And you were totally in charge of that room while he
22 was gone, weren't you?

23 A Not in charge of the room, no. I was just sitting there
24 waiting on him to come back.

25 Q You were in charge of that room while he was gone,

1 werent' you?

2 A No.

3 Q Sir?

4 A The room was not mine. The room belonged to my brother.

5 Q So anybody could have come in there and ordered you and
6 these two young ladies out. Right?

7 A Uh, no.

8 Q You were in charge of that room, weren't you?

9 A No. The room belonged to my brother; but yet also I
10 was to protect his stuff.

11 Q And you signed these statements because this officer
12 threatened you with two to twenty years?

13 A Yes, sir.

14 Q Court's Exhibits Number 2 and 3. Look at those. Did
15 you sign those?

16 A Yes, sir.

17 Q And I guess he threatened you in front of another offi-
18 cer that witnessed those statements?

19 A No, sir. He told me that out in the car. He didn't tell
20 me that ---

21 Q Sir?

22 A He told me I could still go back to jail.

23 Q Uh, huh. The truth of the matter is - the date you went
24 on -- tell the Judge the truth. From the date you went on
25 furlough up through January 13th of '89 ---

1 MR. HALL: Your Honor, he's arguing with the witness.

2 MR. MCMAHON: I'm asking him a question.

3 THE COURT: Proceed.

4 Q That's where you were staying, wasn't it?

5 A No, sir.

6 Q But you were there the night of the 2nd, the night of
7 the 3rd, and the night of the 4th, weren't you?

8 A I was not there all night on the second. I was on the
9 3rd and after that.

10 MR. MCMAHON: I don't have any further questions.

11 MR. HALL: No questions, Your Honor.

12 THE COURT: You may come down.

13 Is there anything further?

14 MR. MCMAHON: I don't have anything further, Your Honor.

15 MR. HALL: Nothing further on that issue, Your Honor.

16 THE COURT: All right. I find that the search was
17 consented to by a man who had custody of the room, who had
18 been there for some while. He had authority to give the
19 search; the search was proper.

20 Give me the jury, please.

21 MR. HALL: Your Honor, I want to go ahead and put my
22 other grounds on the record.

23 THE COURT: Wait a minute.

24 MR. HALL: I am sorry, Your Honor. I'm going to do it
25 quickly.

130

1 THE COURT: You don't have to do it quickly. Let's just
2 do it.

3 MR. HALL: Yes, sir. With respect to the issue of the
4 videotape, my objection goes to the relevancy of it because
5 no one has identified the person on the videotape as being
6 the defendant. That is my objection.

7 THE COURT: Well, it would be of no harm to you. For
8 whatever probative value the jury gives it.

19 DENNIS E. TYNDALL is duly sworn.

20 CLERK: Please state your name for the Court.

21 WITNESS: Dennis E. Tyndall.

22 DIRECT EXAMINATION BY MR. MCMAHON.

23 Q Sir, would you introduce yourself to the jury, please.

24 A Sgt. Dennis E. Tyndall of the West Columbia Police De-
25 partment.

1 Q How long have you been employed with the West Columbia
2 Police Department?

3 A Just over five years.

- 17 A I went to the Crystal Motel, Room 31, with another off-
18 icer in a marked unit. We pulled up to the front door. The
19 lights were on; somebody peeks through the curtains.
- 20 Q The lights were on in Room 31?
- 21 A That's correct.
- 22 Q Now approximately what time are we talking about that you
23 and this one other officer go to the location?
- 24 A I think around ten o'clock, something like that.
- 25 Q In the evening?

1 A That's correct.

2 Q And when you arrive, what do you observe?

3 A Like I say, the lights were on. Somebody peeps through
4 the curtain. And we went up and knocked on the door. There
5 was a male and two females in the room. I asked, "Who lives
6 here?" Or "Who stays here?" I don't know exactly what I
7 said. And Mr. Seay said, "I do." And I said, "Can I talk to
8 you outside?" Because I didn't want to talk to him around
9 the two girls. He comes outside; he didn't have a shirt on.
10 I don't remember if he had shoes on or not, but it was cold,
11 in January. I asked him did he want to sit in the car where
12 the heat was. So we sat in the car. And I asked him some
13 questions about ---

14 Q Let me stop you right there just a minute. This gentle-
15 man over here on the front row in the blue shirt -- do you
16 know that gentleman?

17 A Yes, sir. That's John Kerrin Seay.

18 Q Is that the gentleman that answered the door or responded
19 to your knock at Room 31 on the evening of January 3rd?
20 Is that correct?

21 A That is correct.

22 Q And one other thing. Before you went to Room 31 at the
23 Crystal Motel on the 3rd, had you had an opportunity to view
24 what's been marked as State's Exhibit Number 5, this film?

25 A Yes, sir. I did.

1 Q Who had shown you this particular film?

2 A Detective Blackwell from Cayce.

3 Q All right. Now, in interviewing Mr. Seay, did he gener-
4 ally appear then as he does now?

5 A Mr. Seay does pretty much. Yes, sir.

6 Q You had a conversation with him. Is that correct?

7 A That's correct.

8 Q Were you able to determine how many occupants of Room
9 31 that were staying there?

10 A He told me that him and his brother stayed there, and
11 that the two girls were some girls they just picked up.

12 Q Was Mr. Justice present at this time?

13 A No. He wasn't.

14 Q What did you tell Mr. Seay was your purpose in being
15 there?

16 A I told him we had had numerous break ins in the area, and
17 I was just following up a lead on this sheet that I had re-
18 ceived from my road men. And I asked them who all were
19 staying in the room. And he told me him and his brother.
20 As far as the film, I could see that he really didn't look a
21 whole lot like that in my mind. So I asked him what his
22 brother looked like. And he told me. I asked him where he
23 was. He told me he was at a bar over on Plat Springs Road.

24 Q What else, if anything, did you ask Mr. Seay?

25 A I asked him if I could look through the room. I asked

1 him if he had some other items in there. He said, "No." I
2 said, "Well, do you mind if I look around and see?" He said,
3 "Yeh, help yourself." Or "Go ahead." I forget which one it
4 was.

5 Q Now, you were interested in looking in Room 31, and Mr.
6 Seay gave you permission. Is that correct?

7 A That's correct.

8 Q Were you familiar with various items that had been stolen
9 from various locations?

10 A That's correct.

11 Q I want to show you what has been marked State's Exhibit
12 Number 2. I want to show you the back of this. Are you
13 familiar with this diagram?

14 A Yes. That's a diagram of the hotel room.

15 Q Of Room 31?

16 A That's correct.

17 Q And is this the general lay out of that particular room?

18 A That's correct.

19 MR. MCMAHON: Your Honor, I believe that that's been
20 offered in evidence on the back of State's Exhibit 2?

21 MR. HALL: If he is testifying that that is an accurate
22 lay out, I have no objection.

23 Q This is a fair and accurate description, not to scale,
24 of course, of Room 31?

25 A That is correct.

136

1 (The back of the diagram is marked as State's Exhibit
2 Number 2-a.)

3 Q Now just step down here very briefly.

4 A (The witness comes down.)

5 Q Now, Room 31, how many rooms are we really talking about,
6 this particular room, 31?

7 A It is actually just one room. And then it has a little
8 hallway like here, and then the bathroom, one room, one bed
9 and one bath.

10 Q As a result of Mr. Seay giving you consent and the other
11 officer to go in that room, did you all enter the room?

12 A Yes, sir. We did.

13 Q And would you point out for the jury, please, what item
14 or items, if any, you located in that room?

15 A Scissors, clock radio.

16 Q All right, now, where -- I am talking about on the night
17 of the 3rd on the first search, where in the room did you
18 locate the scissors?

19 A The scissors were in this area right here. There were
20 several pairs of scissors. We got some from under this table
21 and some from the dresser.

22 Q I want to show you what has previously been marked as
23 State's for Identification Number 3. Will you identify those
24 items for us, please, and tell us what the disposition of
25 those items were on the night of the 3rd?

1 A Yes, sir. These scissors were in the room, along with
2 some others. They were hair cutting scissors, which was one
3 of the things I was looking for.

4 Q Physically, what did you do with those items that night,
5 Sergeant?

6 A We took them from the room.

7 Q There were other scissors similar to these also. Is
8 that correct?

9 A That is correct.

10 Q And what did you do with those other scissors?

11 A Those were returned to ---

12 Q Did you take them into custody that night?

13 A Yes, sir.

14 Q And they were thereafter returned to the owner, the
15 owner being who?

16 MR. SALLEY: Your Honor, I am going to object to the
17 supposition that these scissors were owned by anybody ---

18 MR. MCMAHON: I will rephrase the question.

19 THE COURT: All right.

20 Q You took these scissors and other scissors into custody
21 that night?

22 A That is correct.

23 Q Thereafter were other scissors returned to an individual?

24 A Yes. They were.

25 MR. SALLEY: Your Honor, again my objection as to the

138

1 use of the word, returned.

2 THE COURT: Rephrase it, Solicitor.

3 Q What did the West Columbia Police Department do with

4 those scissors?

5 A We gave them to a fellow at a hair salon who works at

6 the Nexxus -- not Nexxus, but the Cherry Park Hair Salon.

7 Q The partner of Mr. Sandel. Is that correct?

8 A That is correct.

9 Q Who works right here. Is that correct?

10 A That is correct.

11 Q All right. You can re-take the stand.

12 A (The witness returns to the witness stand.)

13 Q At this point now you have taken these and other items

14 into custody. Is that correct? Into your possession?

15 A That is correct.

16 MR. MCMAHON: Your Honor, I would offer these items into

17 evidence at this time, the scissors.

18 MR. SALLEY: Without objection, Your Honor:

(The two pair of scissors are marked as State's Exhibit

Number 3.)

Q Had you received a description of Mr. Justice by this

time, Sergeant?

A Yes, sir.

Q And as a result of that description, finding the scissors and such, what was the focus of your investigation?

1 as Mr. Justice was concerned?

2 A As far as his description, the scissors, and viewing
3 the tape, I wanted to see Mr. Justice and have a talk with
4 him about the items.

5 Q Did you request another officer to go to another loca-
6 tion?

7 A Yes, sir. I did.

8 Q And what officer?

9 A Kelly Bloxom.

10 Q And this is Officer Bloxom right here. Is that correct?

11 A That is correct.

12 Q And to what location did you send Officer Bloxom?

13 A I don't remember the name of the bar; but it was a bar
14 on Platt Springs Road, up by the Piggly Wiggly.

15 Q And what was the purpose of you sending Officer Bloxom
16 over to this bar on Platt Springs Road?

17 A We wanted to ask him if he would come back to the hotel
18 room and talk to me.

19 Q Ask who?

20 A William Bruce Justice.

21 Q And did Officer Bloxom leave for a period of time and
22 return?

23 A Yes. He did.

24 Q And who, if anyone, was in his presence upon his return?

25 A William Bruce Justice was with him.

1 Q All right. Now, at the point of Mr. Justice's return,
2 what action do you take as far as Mr. Justice is concerned?

3 A I ask him questions about the -- asked him where he got
4 the property from. Because his brother said it was his.

5 Q Said it was whose?

6 A Said it was Bruce Justice's.

7 Q All right, sir. Go ahead.

8 A So I asked him where he got it from. He said he got it
9 from a swap meet.

10 Q A what?

11 A A swap meet.

12 Q All right, sir.

13 A Everything that was there he said he got from a sway mee
14 so I didn't know what was what. He wasn't giving me any
15 answers I wanted to hear, plus with the evidence there, the
16 tape, description; and, although the tape isn't real specific
17 on the face ---

18 Q As a result of all that, what did you do, Sergeant?

19 A I placed him under arrest.

20 MR. SALLEY: Your Honor, I'm going to object to all of
21 this. He made conclusions of law that I think are reserved
22 for the jury. Conclusions of fact.

23 MR. MCMAHON: I think conclusions of law are reserved
24 for His Honor. I don't quite understand his objection.

25 THE COURT: Overruled. Proceed, Solicitor.

1 MR. MCMAHON: Thank you..

2 Q Now what, if anything, at that time, Sgt. Tyndall, after
3 you placed the man under arrest, what do you specifically
4 advise him of?

5 A His Miranda rights.

6 Q And specifically what rights do you tell him he has?

7 A He has the right to remain silent; anything he says can
8 and will be used against him in a court of law. He has the
9 right to an attorney. If he can't afford an attorney, one
10 will be appointed to him by the Court.

11 Q Was it your intent at that time to question him in any
12 manner?

13 A No, sir.

14 Q Did you ask him any questions after you took him into
15 custody that evening?

16 A No, sir.

17 Q What was the disposition of Mr. Justice -- about what
18 time are we talking about now, Sergeant?

19 A Probably close to around eleven o'clock. If I got there
20 at ten, it was close around eleven. Whatever time I got
21 there, it was about an hour after. I'm not exactly sure what
22 that hour was.

23 Q You placed him under arrest; you advised him of his
24 rights. What do you do with him?

25 A I had Officer Watson, I believe was the one -- one of

1 the uniform officers. I am not sure which one. I had him
2 transport him to the West Columbia jail.

3 Q And what charges did you arrest him for?

4 A I told him he was charged with burglary.

5 Q You placed him in the West Columbia jail. Where is Mr.
6 Seay?

7 A He's still in the room.

8 Q Did he remain in the room upon your and the other offi-
9 cer's departure?

10 A Yes, sir. He did.

11 Q And thereafter did you have occasion to go back and re-
12 view the incident reports of various items that had been
13 stolen?

14 A Yes, sir. I did.

15 Q As a result of that, where did you go on January the
16 4th, the next day?

17 A I went back to the room. Mr Seay answered the door. I
18 asked if he minded me looking around again. I had seen some
19 more items that I wanted to look at. He signed a consent to
20 search form; I went inside and seized the items.

21 Q Among those items seized on the 4th, can you identify for
22 us State's Exhibit Number 1?

23 A Yes, sir. It's a digital alarm clock, GE brand radio.

24 Q And that was seized from where?

25 A From Room 31, Crystal Motel.

1 Q On the 4th?

2 A That's correct.

3 Q All right, sir. Now you state that Mr. Seay signed a
4 Consent to Search form?

5 A That's correct.

6 Q Can you identify this document for us, please?

7 A That's the permission to search form that he signed for
8 the 4th.

9 Q Now that Permission to Search form, this is the one signed
10 on the 3rd, or the 4th. And this item here, what is this?

11 A This is one, also for the 3rd. I didn't have any with
12 me the first night. He signed it the second day, showing
13 that he gave me consent to search for the night before, also.

14 Q Why didn't you have any written consent to search forms
15 with you on the evening of January 3rd?

16 A I keep them in my car, but I was riding with one of the
17 uniform men that night. And when we went there, he didn't
18 have any, and I didn't have any.

19 Q Did he ever object to signing the form on the 4th, or
20 the form for the 3rd on the 4th?

21 A No, sir. He never objected.

22 MR. MCMAHON: Your Honor, I would offer these two items
23 into evidence.

24 MR. SALLEY: Without objection, Your Honor.

25 (The permission to search forms are marked as State's
Exhibits Number 7 and 8.)

1 Q Both of these forms, State's 7 and 8, read the same ex-
2 cept for the date?

3 A Except for the date.

4 Q All right, sir. I want you to, if you would, read to
5 the jury what you advised him of and whose writing is located
6 where.

7 A Okay. It says, "I, John Kerrin Seay (which he wrote his
8 name in) have been informed by Sgt. D.K. Tyndall and PFC Billy
9 Belk who made proper identification as an authorized law en-
10 forcement officer with the West Columbia Police Department,
11 that my constitutional right not to have a search made of
12 the premises and property owned by me and/or under my care,
13 custody and control without a search warrant. Knowing of my
14 lawful right to refuse to consent to such a search, I will-
15 ingly give my permission to the above named officers to con-
16 duct a complete search of the premises and property, includ-
17 ing all buildings, vehicles, both inside and outside of the
18 property located at 1624 Charleton Highway in West Columbia.
19 The above said officers further have my permission to take
20 from my premise and property any letters, paper, materials
21 or any other property or things which they desire as evidence
22 for criminal prosecution in the case or cases under investi-
23 gation. This written permission to search without the
24 search warrant is given by me to the above officers volun-
25 tarily and without any threats or promises of any kind at

1 8:05 p.m. on this 4th day of January, 1989." Signed John
2 Kerrin Seay. And I witnessed it and Officer Belk witnessed
3 it.

4 Q All right, sir. That's State's 8. Did State's 7 read
5 the same except for the date and time?

6 A That is correct.

7 Q But it was actually signed when?

8 A At 8:05 p.m. on the 4th.

9 Q All right, sir. Now, Sergeant, who was the detective
10 supervisor over the entire detective division of West Columbia
11 back in December and January, December of last year, January
12 of this year?

13 A P. K. O'Neill at that time was our lieutenant.

14 Q And was he notified by the office of the arrest of Mr.
15 Justice for the burglary?

16 A He was notified the next morning, but not by myself.
17 By someone else.

18 MR. MCMAHON: Thank you. I don't have any further
19 questions.

20 MR. SALLEY: Your Honor, if it please the Court.

21 THE COURT: Yes, sir.

22 CROSS EXAMINATION BY MR. SALLEY:

23 Q Detective Tyndall, you did not actually do the field in-
24 vestigation on January the 2nd? Another officer did it. Is
25 that right?

1 A You mean the FI card?

2 Q Right.

3 A Yes, sir. Another officer did it.

4 Q And when you -- in the course of your follow up, was Mr.
5 Seay the suspect in any crime?

6 A Before I got to the hotel, he was. Yes, sir.

7 Q All right. Do you normally investigate all suspicious
8 people who are observed out at night?

9 A Well, we had to put out a special patrol for this. We
10 were trying to find who did it, you know, so it wouldn't keep
11 happening. That's why we did it this particular night. If
12 we get FI cards and something is going on in a high crime
13 area, yes, sir. I follow it up.

14 Q And how many follow ups do you make a day? How many did
15 you make this day?

16 A Actually just that one.

17 Q Just that one?

18 A That was the first one I went to.

19 Q Did you ever notice that when you find something you
20 have lost it's always in the last place that you look?

21 MR. MCMAHON: Is that a question?

22 MR. SALLEY: I withdraw it, Your Honor.

23 Q Now, when you went to the Crystal Motel that night and
24 went up to the room, a party was going on, wasn't it?

25 A I have no idea if it was a party or not. I know there

1 was Mr. Seay and two girls inside the room.

2 Q And they were alone at the time. Is that correct?

3 A That's correct.

4 Q You knocked on the door, and Mr. Seay didn't have his
5 clothes on, did he?

6 A He didn't have a shirt on.

7 Q And at that point he went back in to get dressed. Isn't
8 that right?

9 A No, sir. When he came to the door, he had his pants on.

10 Q When he went out to the car, did he have a shirt on then?

11 A No, sir.

12 Q He went to the car?

13 A We stepped outside; it was cold. I asked him did he
14 want to sit in the car where it was warm. I had the heat on
15 in the car.

16 Q Now at some point did Mr. Seay tell you he had just gotten
17 out of prison?

18 A Yes, sir.

19 Q And did you inform Mr. Seay that he was a suspect in a
20 criminal investigation at that point?

21 A I informed him of that when I first talked to him. I
22 told him I had the FI card and I was following up on every
lead, and this was the first place I just happened to be at.

is
as following up on the FI cards from the previous night.

, if I understand it right, at that point he knew that

1 he was a suspect in a criminal investigation and he had just
2 gotten out of jail. And did he appear to be concerned or
3 afraid?

4 A Not especially. I told him that he wasn't -- I assured
5 him that he wasn't under arrest or charged with anything. I
6 was just following up on this information that the officers
7 took the night before. That's what I told him when I first
8 sat him down.

9 Q And did he indicate he didn't want to go back to jail?

10 A I don't remember him ever stating that. I am sure he
11 wouldn't, however.

12 Q At any point did you threaten that "I'm going to send
13 you back to jail if you don't cooperate."?

14 A No, sir. At no point did I do that.

15 Q Now at the point where he allegedly gave his consent to
16 enter the room, you didn't have him sign these forms at that
17 time, did you?

18 A No, sir. I didn't have them with me.

19 Q Now, this search took place before or after the point
20 at which you went to look for Mr. Justice?

21 A Before.

22 Q Before?

23 A Yes, sir.

24 Q So Mr. Justice did not have an opportunity to give his
25 consent to search this room, did he?

1 A No, sir. I didn't send for Mr. Justice until after I
2 seen the property in the room.

3 Q On which day did you find these scissors?

4 A I can't be sure if I got them all the same day or not.
5 But most of them I believe on the first day when I was there

6 Q So you think you found all of it on the first day. Is
7 that right?

8 A I can't say that.

9 Q This permission to search, one was signed on the 3rd
10 and one was signed on the 4th?

11 A That's correct.

12 Q Now, is this an official statement? I mean why do you
13 have the occupant sign a consent to search?

14 A Because I didn't have a search warrant.

15 Q Of course. And did you tell him at the time that he was
16 making a -- did you tell him at the time he was making a
17 false statement when he dated that on the 3rd for the 4th?

18 A No, sir. I asked if he would sign one for the day be-
19 fore because I didn't have any with me at that time. And he
20 said, "No problem." Because he did give me verbal consent the
21 day before.

22 Q Now the location at which this clock radio was found
23 was right up on top of the dresser, wasn't it?

24 A I am not sure about the radio. There was one on both
25 dressers probably. I am not sure which dresser that one was

1 on. It might have been the one by the bed or the long one.

2 Q Well, a few minutes ago didn't you state that this was
3 an accurate representation of the way that the room appeared?

4 A That's correct.

5 Q Now, was it the dresser or was it the night stand?

6 A Well, there was one on the night stand, and there was
7 one on the dresser. I can't say exactly -- remember which
8 one exactly that one came off of.

9 Q It wasn't plugged in, was it?

10 A I don't remember.

11 Q All right. So you don't remember whether it was next to
12 the night stand, or whether it was next to the dresser, and
13 you don't remember whether it was plugged in?

14 A Well, I didn't actually pick it up and take it, myself.
15 Another officer there that was with me got it. That's where
16 I found it.

17 Q You indicated that Mr. Seay said he picked these things
18 up at a swap meet. Is that the same thing as a flea market?

19 A I have no idea. I didn't know what a swap meet was. I
20 figured it would be the same, but I don't know.

21 Q Have you ever been to a flea market?

22 A Yes, sir. I have.

23 Q Have you noticed the prices at a flea market are usually
24 lower than the prices you find at a retail store?

25 A The time I went it was.

1 MR. SALLEY: I beg the Court's indulgence just one minute,
2 Honor.

3 No further questions, Your Honor.

4 MR. MCMAHON: Thank you, Sgt. Tyndall.

6 P. K. O'NEILL is duly sworn.

7 DIRECT EXAMINATION BY MR. MCMAHON:

8 Q Sir, would you introduce yourself to the jury, please?

9 A I'm P. K. O'Neill.

10 Q And your present occupation?

11 A I'm employed with the Solicitor's officer here in Lex-
12 ington County.

13 Q And your position with our office?

14 A I'm the investigator in charge of the Solicitor's
15 Alliance Against Drugs.

16 Q All right, sir. Now, Detective O'Neill, how long have
17 you been employed with the Solicitor's office?

18 A I just started with the Solicitor's office about three
19 weeks ago.

20 Q Prior to that, did you have any law enforcement exper-
21 ience?

22 A Yes, sir. Thirteen years.

23 Q And would you relate where and approximately how many
24 years?

25 A I started with the Columbia Police Department for

1 approximately two years or two and a half years. Then I
2 went to the West Columbia Police Department. I have been
3 with them about ten and a half years before I came here.

4 Q And you started off with the rank of what in West Colum-
5 bia?

6 A Patrolman.

7 Q And you left three weeks ago holding what rank?

8 A I was the chief of detectives, with the rank of captain.

9 Q Were you the commanding officer of the detective divi-
10 sion of the West Columbia Department in December of 1988 and
11 January '89 of this year?

12 A Yes, sir. I was.

13 Q As a result of being in that position, did you receive
14 some notice on the morning of January 4th concerning an arrest
15 that had been made the evening before on the 3rd?

16 A Yes, sir. I did.

17 Q And who were you notified had been arrested and for what?

18 A I was notified that William Bruce Justice was arrested
19 for burglary and grand larceny.

20 Q Had you all had any particular type of investigation or
21 beefed up patrol, so to speak, going on at that time?

22 A Yes, sir. We had the regular uniform patrol out, as well
23 as several officers that were actually uniform officers, but
24 they were in plain clothes and unmarked cars on the Charles-
25 ton Highway and Knox Abbott Drive area.

1 Q As a result of these burglaries?

2 A That's correct, sir.

3 Q As a result of receiving notice that an arrest had been
4 made, what was the procedure that was going to be taken, as
5 far as that individual, Mr. Justice, who had been arrested was
6 concerned?

7 A He needed to be questioned.

8 Q All right, sir. When you arrived at work that morning,
9 Captain, where was Mr. Justice?

10 A Mr. Justice was in the West Columbia city jail.

11 Q And what action did you take as far as Mr. Justice was
12 concerned upon your arrival?

13 A When I arrived at work that morning, I went back into
14 the jail area. And Mr. Justice was in one of the cells, and
15 I identified myself to him, showed him my ID badge, and told
16 him who I was.

17 Q And did you advise him of anything further?

18 A I advised him of his rights, his Miranda warnings.

19 Q All right, sir. Now, specifically, what rights did you
20 personally tell Mr. Justice that he
21 had?

22 A That morning verbally in the jail area I advised him
23 that -- I told him, "You have the right to remain silent;
24 anything you say can and will be used against you in court;
25 you have the right to an attorney. If you cannot afford an

1 attorney, one will be appointed to you without cost. I then
2 asked him if he understood what I had just explained to him.

3 Q Did he respond to you in any manner?

4 A He told me yes, he did understand his rights.

5 Q Did you advise him of anything further at that time?

6 A I asked him if he wished to talk to me; but I wanted to
7 talk to him and advised him that, if he wanted to, I would
8 take him upstairs to the Detective Division and we could talk
9 about that I was not going to hurt him in any way or threaten
10 him to make a statement.

11 Q Did he respond to you in any manner?

12 A He told me he wanted to make a statement; he wanted me
13 to take him upstairs.

14 Q Did you advise him of anything concerning the right to
15 stop answering?

16 A At that time I verbally told him that I was going to
17 bring him upstairs, again; and that I wasn't going to threaten
18 him or make him tell me anything. And that if he wanted to
19 talk and that, if any time he wanted to stop, we would stop
20 and I would put him back downstairs.

21 Q About what time of day are we talking about now, Detec-
22 tive O'Neill?

23 A I received the information at approximately 6:30; and I
24 got there about 7:30 in the morning.

25 Q What was Mr. Justice's condition?

1 A When I went back to the jail area, he was standing up
2 in his cell and he appeared to be sober, coherent, and seemed
3 to understand where he was at.

4 Q Did he verbalize any complaints to you?

5 A No, sir. He did not.

6 Q You took him from the jail at West Columbia to where?

7 A I took him upstairs to the Detective Division.

8 Q Now, will you describe that area generally for the jury?

9 A Yes, sir: The Detective Division is the old sleeping
10 quarters where the fire department was, so it's a fairly
11 big area. It's a pretty good sized room; it has got four
12 desks in it and several chairs.

13 Q Is it out away from the jail area?

14 A It's up over the jail.

15 Q You don't have to go through barred doors to get to the
16 Detective Division?

17 A No, sir.

18 Q All right, sir. Now, when you got Mr. Justice upstairs,
19 what, if anything, did you advise him of at that time?

20 A When we got upstairs, I sat behind my desk and there was
21 a chair by my desk, which he sat in. And there is a form
22 with your rights on the form that you immediately -- anybody
23 you question, you take that form out and you read it to them.

24 Q Detective O'Neill, realizing you were an officer and Mr.
25 Justice was under arrest at that time, could you give the

1 jury an indication of the level of hostility, if any, that
2 was going on between you and Mr. Justice?

3 A There was no hostility whatsoever.

4 MR. SALLEY: Objection, Your Honor. He's calling for
5 an opinion.

6 MR. MCMAHON: I am asking him to describe the circum-
7 stances in the opinion of the witness.

8 THE COURT: Proceed.

9 MR. MCMAHON: Thank you.

10 Q Now, did you produce one of these forms with the written
11 rights on it for Mr. Justice?

12 A Yes, sir. I did.

13 Q And I want to show you an item and ask if you can iden-
14 tify it for us, please, Detective.

15 A This is the form that I brought out. This is the normal
16 form.

17 Q What did you do with that form? Just tell the jury in
18 your own words. As far as you and Mr. Justice sitting there
19 across the desk from each other?

20 A I took this form out, advised him that I knew I had al-
21 ready verbally told him what his rights were downstairs, but
22 that by law I had to read them to him and explain them to
23 him again upstairs. It is entitled Miranda Warnings on the
24 form. I told him that. And I dated it January 4th, 1989,
25 7:45 A.M.; and I told him, "I'm going to read this form to

1 you." And I read the Constitutional requirements.

2 I inform you that: 1) You have the right to
3 remain silent; 2) Anything you say can and will
4 be used in court as evidence against you;
5 3) You are entitled to talk to a lawyer now and
6 have him present now or at any time during
7 questioning; 4) If you cannot afford a lawyer,
8 one will be appointed to you without cost.

9 And then the fifth thing I asked him was, "Do you understand
10 your rights?" And at that time he told me, "Yes, I under-
11 stand them. I probably know them better than you do." I then
12 told him, "If you decide to answer questions now without a
13 lawyer present, you will still have the right to stop answer-
14 ing at any time. You will also have the right to stop answer-
15 ing at any time until you talk to a lawyer." I asked him
16 again did he understand that, and he indicated he did. And
17 there's a line there for him to sign if he understood,
18 which he signed "William B. Justice."

19 Q His signature appears twice on that form. Is that
20 correct?

21 A Yes, sir.

22 MR. MCMAHON: Your Honor, I would offer this into evi-
23 dence at this time.

24 MR. SALLEY: Without objection.

25 (The Miranda form is marked into evidence as State's
Exhibit Number 9.)

Q Now, Detective O'Neill, what was the procedure you were
going to use, as far as taking the statement from the suspect,

1 from the defendant?

2 A After I read him a waiver, if he indicates he wants to
3 talk, we usually verbally go over what he's going to tell me.
4 And after he verbally tells me, depending on what the situa-
5 tion is, we usually try to get a written statement at that
6 time.

7 Q What's the purpose of going over it verbally, as
8 opposed to just taking a written statement initially?

9 A It's a procedure I've used in the years I have been in
10 law enforcement. I find that when you initially talk to an
11 individual, if you stop and take a note and tell them to
12 hold on, they are going to forget what they are telling you,
13 they are going to leave something out. So just as a procedure
14 I use, I just let them go verbally through it. Let them get
15 all they could without interruption. And then we go back
16 and try to get a written statement with a little more detail.

17 Q Was that the procedure you were going to use in this
18 particular case with this particular defendant?

19 A Yes, sir.

20 Q And did that procedure change somewhat, not necessarily
21 unusually so, but did it change? Did you all decide to do it
22 in a different manner?

23 A Yes, sir. We did.

24 Q Before we get into the actual statement given, Detective,
25 had you threatened Mr. Justice in any manner that morning?

1 A No, sir. I did not.

2 Q Did you promise him anything for giving you a statement?

3 A No, sir. I did not.

4 Q Did you tell him you were going to dismiss all his
5 charges?

6 A No, sir. I did not.

7 Q Did you offer him any reward for giving you a statement?

8 A No.

9 Q Did you use any type of undue influence, coercion,
10 threats in any manner on Mr. Justice before you talked with
11 him?

12 A No, sir. I did not.

13 Q Did he affirmatively waive his rights to you?

14 A Yes, sir.

15 Q Did he ever ask you for an attorney at any time prior to
16 you taking his statement?

17 A No, sir. He did not.

18 Q Now, sir, what occurred after you gave him his rights,
19 after you got the waiver? What occurred? What transpired?

20 MR. HALL: I am going to object, Your Honor. I think
21 the question is a question for the Court.

22 THE COURT: At first Mr. Salley objected. Under the
23 rules, only one attorney a side for a witness may object.

24 MR. SALLEY: Your Honor, I would object.

25 MR. MCMAHON: I withdraw the question.

1 THE COURT: All right.

2 Q Tell the jury what occurred after the defendant signed
3 State's Exhibit Number 9, Waiver of Rights of Miranda Warn-
4 ings. What happened?

5 A He verbally started to tell me about the break ins.

6 Q And what, if anything, did you and he decide to do? Or
7 how as the decision made to change that?

8 A He was having problems remembering the names of the
9 places; so I suggested that we go in my police car to the
10 locations.

11 Q And you and him went -- how many other officers did you
12 take with you, Detective O'Neill?

13 A Just Mr. Justice and myself went.

14 Q Did you handcuff him in any manner?

15 A No, sir. I did not.

16 Q So you and he left the West Columbia Police Department in
17 what vehicle?

18 A In my unmarked police vehicle.

19 Q And as between you and him, who was driving?

20 A I was driving.

21 Q And where was the defendant?

22 A Sitting beside me in the front seat.

23 Q Unhandduffed. Correct?

24 A That's correct.

25 Q And what location did he take you to?

1 A We went to Cherry Park. The shopping center area across
2 from Love's Chevrolet on Knox Abbott.

3 Q Did he lead you to that location?

4 A Yes, sir.

5 Q And what, if anything, did he tell you about Cherry
6 Park?

7 A We pulled up in the parking lot. I positioned the
8 vehicle in the parking lot to look at the front of all the
9 buildings.

10 Q Let me -- using the diagram again, State's Exhibit 2 --
11 and just keep your seat. I think the jury can see it from
12 here by holding it up.

13 A (Indicating) We came in off Knox Abbott. And I kind
14 of pulled the vehicle like this and parked it with the front
15 facing toward the front of the buildings.

16 Q All right, sir. And what, if anything, was said?

17 A He told me that he broke into four locations in that
18 shopping center.

19 Q And what else did he say specifically or in detail about
20 those break ins?

21 A He started down at the credit place first. He said,
22 "I went into that one." And I said, "The credit place?"
23 And he said, "Yes." And he said, "I went into that one",
24 which I call the barber shop. It's a hair styling place.

25 Q Yes, sir.

1 A Then he went on to the Tan Easy and to Sandy's. And I
2 asked him, "How did you get in?" To be perfectly honest, I
3 did not know there were not back doors to those locations.
4 And I wasn't sure how those places had been broken into.

5 Q Were these actually in the jurisdiction of West Columbia
6 or Cayce?

7 A They are in the Cayce jurisdiction. That's why I wasn't
8 aware of it.

9 Q All of these, of course, are in Lexington County?

10 A That's correct.

11 Q So you weren't aware actually of the method of entry
12 of these four?

13 A That's correct.

14 Q Go ahead.

15 A I asked him, you know, how did he get in. And he indi-
16 cated to me he had a pair of channel lock pliers that he
17 would put onto the lock and wring it one time real hard. And
18 he said, "The whole lock will pop out." He said he went into
19 all of them. And I said, "You went into the front door of
20 all four places in one night?" And he said, "Yes, I did."
21 And I asked him wasn't he afraid the police were going to
22 catch him, going in through the front door like that. And
23 he indicated to me that "All you have to do is watch the
24 police. When they come by one time, you know you are good
25 for an hour or an hour and a half because they are going to

1 have to go check the rest of the property." And that's what
2 he said he did that night.

3 Q So, did he give you an indication of -- let me ask you
4 this. What was the conditions of the doors on these build-
5 ings when you were there on the morning of the 4th, Detective
6 O'Neill?

7 A You couldn't see from the car if there were any pry
8 marks on the doors. The locks were, of course, replaced.
9 And there was no glass broken, or anything like that.

10 Q And you didn't know how these break ins had occurred.
11 Correct?

12 A No, sir. I did not.

13 Q Again, do you recall if he told you anything, or what,
14 if anything, he said about the property or properties he
15 got from these locations?

16 A Yes, sir. He told me that he was kind of disappointed.
17 He said, "I got some money out of Sandy's; I got a radio out
18 of the credit place." He didn't indicate anything else out
19 of the credit place. He said a radio. And then he said he
20 got some change out of Tan Easy and some hair cut scissors
21 out of the styling place.

22 Q The barber shop?

23 A The barber shop.

24 Q Okay. Now throughout the course of this statement that
25 Mr. Justice had given you, could you describe for the jury --

1 I'm not sure how to ask the question -- let's say, perhaps,
2 the mood of that conversation, if you will, between you and
3 Mr. Justice?

4 A Out of all the people I've interviewed, he was one of
5 the most pleasant. I mean he was cooperative; he was talka-
6 tive. We got along fine, no problem.

7 Q Did you say anything to him about the film, State's
8 Exhibit Number 5?

9 A Yes, sir. I did.

10 Q What, if anything, was your statement to him and his re-
11 sponse to that?

12 A I indicated to him that -- I said, "Did you know there
13 were cameras in Sandy's?" And he said, "No, I didn't know
14 that." And I said, "Well, from what I understand" -- I had
15 not seen the film at that time. I said, "From what I under-
16 stand, I believe they have got you on a film." And he just
17 laughed.

18 Q Now, looking at Mr. Justice today, how does he compare
19 today with how he looked back January the 1st or back January
20 the 4th, I should say?

21 A He appears that he's lost a little bit of weight; and
22 he's definitely got a hair cut.

23 Q Is State's Exhibit Number 6 a fair and adequate depiction
24 of how he looked on -- I believe that was actually taken on
25 the 6th -- but of how he looked on the 4th of January?

1 A Yes. That's exactly how he looked.

2 Q Now, sir, after he had taken you to this location, De-
3 tective O'Neill, you all returned to West Columbia?

4 A Yes, sir.

5 Q Did you reduce his statement to writing?

6 A No, sir. We did not.

7 Q When you say we, you are talking about who?

8 A Mr. Justice and I did not.

9 Q What happened when you all got back to the West Columbia
10 Police Department?

11 A We went back upstairs to the Detective Division, and I
12 sat down with him and told him I'd like to get a written
13 statement at that time.

14 Q And why was that not accomplished?

15 A He indicated to me at that time that he wished to have
16 an attorney present when the written statement was given.

17 Q When a suspect, a defendant, asks for an attorney, what
18 are you required to do?

19 A To stop questioning him at that time.

20 Q That's the requirement, correct?

21 A Yes, sir.

22 Q Did you stop questioning him at that time?

23 A Absolutely.

24 Q Did you then go further and do something affirmatively
25 for the defendant?

1 A I did something that I normally don't do. Normally at
2 that time we usually put them back downstairs, and it's left
3 up to the Court people in West Columbia to contact an attorn-
4 ey. But because we had got along so well, I called an attor-
5 ney for him.

6 Q When you say you called an attorney -- I don't want to
7 leave the impression you are out there getting business for
8 attorneys -- whose office did you call?

9 A I called the Public Defender's office in his behalf.

10 Q All right. And what, if anything, did you advise the
11 Public Defender's office about Mr. Justice?

12 A I advised them that he had been arrested, what he was
13 arrested for, and that he was presently in our jail, and that
14 he had verbally told me what had happened, but that he wish-
15 ed to have their counsel, you know, before a written state-
16 ment was given.

17 Q And you were doing this for whose benefit?

18 A Mr. Justice's benefit.

19 Q All of these statements, going around and showing you
20 these locations and all, Detective O'Neill, did you form an
21 opinion as to whether or not this was the result of Mr. Jus-
22 tice's free will?

23 A Yes, sir. I did.

24 Q Was it?

25 A Yes, sir.

1 Q You didn't overbear him in any manner?

2 A Not at all.

3 MR. MCMAHON: Thank you. I don't have any further ques-
4 tions.

7 CROSS EXAMINATION BY MR. SALLEY:

8 Q Detective O'Neill, you have been through the South Caro-

6 Q At any point did Mr. Justice tell you he was a cocaine
7 addict?

8 A Mr. Justice indicated to me that he had used drugs in
9 the past.

10 Q Did he indicate to you that he was an alcoholic, that he
11 was a heroin addict?

12 A I know he mentioned cocaine. I believe he did mention
13 heroin. In fact, he did say he had drank.

14 Q During the course of your leisurely drive around Cayce,
15 did he tell you that he was withdrawing from cocaine and
16 heroin, that he was in terrible pain?

17 A No, sir. At no time.

18 Q At any point did William Justice ever beg you or ask you
19 to take him to the doctor because of the pains and ---

20 A No, sir. He did not.

21 Q Sir, did you know if Mr. Justice went to the doctor for
22 these symptoms?

23 A I have no personal knowledge if he did.

24 Q When you were driving around -- excuse me. Let me back
25 up. You stated that, "I suggested we go to the area of the

1 break in because he could not remember all the places he broke
2 in." Is that correct?

3 A Yes, sir.

4 Q And it was your suggestion to drive him there. Isn't
5 that right?

6 A Yes, sir.

7 Q And he could not remember, could he, sir?

8 A Could not remember what?

9 Q He could not remember all the places he had allegedly
10 broken in?

11 A He remembered all the places he broke in.

12 Q Sir, did you -- when you suggested that you go to the
13 area of the break-ins, did you also suggest where the break
14 ins occurred?

15 A No, sir. I did not.

16 Q Did you suggest, sir, or did you drive directly to the
17 areas where these alleged break ins occurred?

18 A No, sir. When we got in the vehicle -- I want to clarify
19 something. Maybe I didn't make myself clear. He knew where
20 he had broke into. He didn't know some of the names of the
21 places. When we got in the vehicle, I told him, "I'm going
22 to drive. You tell me how to get there." And he gave me
23 directions to the places.

24 Q Yes, sir. Sir, you did not suggest certain places that
25 had been broken into or certain places having been burglarized?

179

1 A No, sir. I did not.

25 REDIRECT EXAMINATION BY MR. MCMAHON:

25

Q All right, sir. And in that statement what does it say

1 as to the statement Mr. Justice gave you? Publish that for
2 the jury, please.

3 A Do you want me to read this whole thing?

4 Q Yes, sir.

5 A It's in reference to William Bruce Justice charged with
6 burglary. Officer: Captain P. K. O'Neill of the West Col-
7 umbia Police Department.

8 On January 4, 1989, I arrived at work at
9 approximately 7:45. I was advised that Sgt.
10 Tyndall had arrested William Bruce Justice for
11 burglary. I went to the jail cell and showed
12 my ID badge to Mr. Justice and told him who
13 I was and advised him of his rights and asked
14 him if he wanted to talk. He told me "yes",
15 and I got him out and brought him upstairs to
16 the detective office. I advised him of his
17 rights again and he signed the rights form and
18 a waiver. Mr. Justice then told me he broke
19 into several places around the Crystal Motel
20 and by Wal Mart on Hwy Number 1. Mr. Justice
21 told me he couldn't remember the names of all
22 the places, but he could show me where they
23 were. Mr. Justice then went in my police car
24 and he pointed out which places he broke in.
25 He also told me what he took from each place.

Do you want me to read the second one?

Q No, sir. The second one goes into a different officer.
Is that correct? Page 2?

A That is correct.

Q And among those places he showed you -- was it Cherry
Park?

A Yes, sir.

Q Did you lead him there, or did he lead you there?

1 A He took me there. He told me how to get there.

PENGAD/INDY MUNCIE IN 47302

SF-AZ-13

8 MR. HALL: Your Honor, prior to the call of my client
9 and in participation that he may testify, we would move in
10 limine to suppress any prior convictions which he has been
11 convicted of that are ten years or older.

12 THE COURT: Solicitor, what offenses would you use for
13 impeachment purpose? Let's take them one by one.

14 MR. MCMAHON: All right, sir. 1969, October, bank burg-
15 lary, Federal conviction, indeterminate youthful corrections.

16 THE COURT: That would be remote, '69.

17 MR. MCMAHON: 1970 -- do you want me to start at a
18 particular date, Your Honor?

19 THE COURT: The ones that you are going to use are the
20 only ones I want. I believe you would agree that one is
21 remote. Any that you plan to use is all that I am interest-
22 ed in.

23 MR. MCMAHON: 1970, entering a bank with intent to com-
24 mit a felony, six years indeterminate.

25 THE COURT: That would be remote. It has got to come

1 within the ten years. Proceed further.

2 MR. MCMAHON: 1977, Your Honor. Housebreaking, two
3 counts. Two sentences of four years each; thereafter es-
4 caped and was not re-arrested until '87, I believe it was,
5 Your Honor, in the State of Washington.

6 THE COURT: What's your position on that?

7 MR. HALL: Your Honor, my argument would be the escape
8 was not necessarily a crime of moral turpitude. And he can't
9 go into the '77.

10 THE COURT: Do you have any authority that escape is not?
11 I believe our cases hold that it is, don't they, Solicitor?

12 MR. MCMAHON: Your Honor, I did not check my laundry
13 list of cases which I have in my files in my office and can
14 send for.

15 THE COURT: You had better send for it. We need to be
16 sure about that.

17 But let's go into the housebreaking and grand larceny
18 while you are sending for your cases.

19 MR. HALL: Your Honor, my objection being that, if you
20 let in the escape, you are going to be getting into the
21 issue of what he was in jail for.

22 THE COURT: No, sir. If you bring in the crime, you
23 can't go into the circumstances surrounding the crime.

24 MR. HALL: Your Honor, with that, then, I believe it
25 would be entirely proper, if escape is a crime of moral

1 turpitude, to permit that to come in. But I would ask the
2 Court to instruct that they don't go into 1977. That is ten
3 years old.

4 THE COURT: Just the fact that it is ten years old is
5 not the main test. It is the amount of the sentence that
6 makes the difference. What is your position?

7 MR. HALL: What was the amount of the sentence?

8 MR. MCMAHON: Four years, each count.

9 THE COURT: Consecutive or concurrent?

10 MR. MCMAHON: Consecutive.

11 THE COURT: That is not remote.

12 MR. MCMAHON: Your Honor, just prior to that is a
13 1976 -- I have a 1973 housebreaking and larceny, five years.

14 THE COURT: That would be remote.

15 MR. MCMAHON: And another 1973, five years.

16 THE COURT: Remote.

17 MR. MCMAHON: Then I come forward to the State of Wash-
18 ington, '86, twenty five months, burglary second, Spokane
19 County, Washington.

20 THE COURT: Do you agree that's moral turpitude?

21 MR. HALL: No question about it, Your Honor.

22 THE COURT: What else, Solicitor?

23 MR. MCMAHON: Judge, I believe the only other one in
24 question, if I understood the Court, a 1977 is not remote?

25 THE COURT: That's right.

1 MR. MCMAHON: I wanted to make sure.

2 MR. HALL: That is because of time consecutively, Your
3 Honor?

4 THE COURT: Well, he escaped for part of it. It's not
5 remote.

6 MR. MCMAHON: So I'm all right on the '77 housebreaking,
7 two counts, four years each. And we are to determine if
8 escape is a crime of moral turpitude.

9 THE COURT: I think it is. But I'd rather, before you
10 go into that, have a case in front of me.

11 MR. MCMAHON: And burglary second, Count 1, Spokane,
12 Washington, 1986.

13 That would be all I would have.

22 RICHARD ALLEN BOYER is duly sworn.

23 DIRECT EXAMINATION BY MR. HALL:

24 Q Dr. Boyer, would you introduce yourself to the jury?

25 A I'm Dr. Richard Allen Boyer. I work at Lexington Medical

1 Center and in the Department of forensic medicine.

2 Q And were you working on January 3rd, 1989?

3 A I'm not sure about the 3rd; but on the 4th I was. I
4 think that's the date.

5 Q That evening were you assigned to the emergency room?

6 A Yes, sir.

7 Q And you are an emergency room physician?

8 A Yes, sir.

9 Q Do you recognize the defendant?

10 A Yes.. I do..

11 Q Do you recall him coming to the Lexington County Hospital
12 on the date in question, January 4?

13 A I do with the help of the medical record.

14 Q Do you have your medical records with you? I believe we
15 have made them an exhibit. Are these the medical records you
16 brought with you?

17 A Yes, sir.

18 Q That's your handwriting?

19 A Yes.

20 Q Those are the records you made pertaining to the defen-
21 dant on that evening?

22 A Yes, sir.

23 MR. HALL: Your Honor, we are going to offer these as a
24 defense exhibit.

25 MR. MCMAHON: No objection.

1 (The medical records which were marked for identification
2 at page 125 are marked as Defendant's Exhibit Number 3.)

3 Q Looking at Defense Exhibit Number 3, Dr. Boyer, does it
4 reflect what the defendant came into the emergency room for?

5 A Yes. He offered the complaint that he was having abdom-
6 inal cramps that he felt was a result of coming off drugs,
7 particularly cocaine and heroin.

8 Q Doctor, you didn't test him to see whether he was on
9 drugs or was not drugs, did you?

10 A That's correct.

11 Q So you have no objective evidence that he was not on
12 drugs, to rule it out?

13 A I have no objective evidence that he was not on drugs.
14 That is correct.

15 Q And I believe he complained about abdominal cramps, did
16 he not?

17 A He did.

18 Q And what did you do as a result of that complaint?

19 A I examined the patient, particularly paid attention to
20 his abdomen since that was the source of his chief complaint.

21 Q Did you prescribe him any medicine?

22 A I did after doing some laboratory tests to make sure that
23 there was nothing else medically that could be causing his
24 problem.

25 Q You wouldn't have prescribed him the medicine if you

1 did not think it would help, would you?

2 A I would not have.

3 MR. HALL: I have no further questions of this witness.

4 CROSS EXAMINATION BY MR. MCMAHON:

5 Q Doctor, you examined -- well, let me back up just a
6 minute. About what time was this on the 4th?

7 A He arrived at 17:58, just a few minutes before six.

8 Q And was he coherent?

9 A Yes, sir.

10 Q Was he able to respond appropriately to all your ques-
11 tions?

12 A He did.

13 Q And his complaint was abdominal cramps. Is that right?

14 A Yes.

15 Q That was the only complaint that he had?

16 A That's right.

17 Q Did you examine his abdomen?

18 A Yes.

19 Q Was your examination or the results thereof a normal
20 finding?

21 A His exam was totally normal.

22 Q Did he appear to be under the influence of any drugs?

23 A No, sir.

24 MR. MCMAHON: Thank you, Doctor. I don't have any
25 further questions.

1 REDIRECT EXAMINATION BY MR. HALL:

2 Q Doctor, did you prescribe any medication?

3 MR. MCMAHON: He has been asked that question, Your
4 Honor, and he has answered.

5 MR. HALL: Your Honor, I think it's proper cross examin-
6 ation.

7 THE COURT: First, let me hear his question. Then we
8 will go from there.

9 Q Doctor, if you truly believed he was not under the in-
10 fluence of drugs or having problems with respect to abdominal
11 cramps, would you have prescribed the medicine?

12 A His medication was prescribed for abdominal cramps for
13 whatever etiology they were coming from.

14 Q That just wasn't responsive to my question.

15 MR. MCMAHON: It is his witness.

16 THE COURT: This is your witness. You may not cross
17 examine your own witness.

18 Q Did you prescribe them for the symptom that he was de-
19 scribing?

20 A Yes, sir.

21 Q Were those symptoms consistent with withdrawal from
22 drugs?

23 A Yes, sir.

24 Q And, as a result, did you not prescribe the medicine?

25 A Yes, sir.

1 MR. HALL: No further questions.

2 REDIRECT EXAMINATION BY MR. MCMAHON:

3 Q Symptoms consistent, Doctor. And the only thing he had
4 was a complaint of abdominal cramps. Correct?

5 A Yes.

6 Q Just by history. But your examination was normal.
7 Correct?

8 A Yes.

9 Q My understanding is that when you withdraw from heroin
10 you have flu type symptoms?

11 A You can.

12 Q Achy in the joints? Extremities?

13 A Yes.

14 Q Did he complain of that?

15 A No, sir.

16 Q Sweatiness?

17 A No, sir.

18 Q Did he appear sweaty?

19 A I did not notice.

20 Q Tearing of his eyes?

21 A No, sir.

22 Q You have listed the only thing, by history, abdominal
cramps. No other symptoms whatsoever. Isn't that right,
Doctor?

Yes, sir.

1 Q And in your opinion, in viewing this individual right
2 before six o'clock on the evening of the 4th, is that your
3 objective opinion is he was not under the influence of any
4 drugs. Correct?

5 A That's correct.

6 MR. MCMAHON: Thank you, Doctor. I don't have any fur-
7 ther questions.

8 MR. HALL: No further questions.

9 THE COURT: You are excused, Doctor. Thank you for being
10 with us.

1 BARRY METZ is duly sworn.

2 DIRECT EXAMINATION BY MR. HALL:

3 Q Mr. Metz, you are here under a subpoena today, are you
4 not?

5 A Yes, sir.

6 Q Where did you work in January of 1989?

7 A The Crystal Motel.

8 Q On January 3rd did you work there?

9 A Yes, sir.

10 Q Did William Justice have a hotel room registered in his
11 name at the Crystal Motel at that time?

12 A Yes, sir.

13 Q How long had he been staying there?

14 A Him?

15 Q That's correct.

16 A He checked in on December 1st.

17 Q And do you see the gentleman sitting back there in the
18 blue shirt, Mr. Seay, I believe his name is?

19 A Yes, sir.

20 Q Was he a registered guest at the motel on January 3rd?

21 A No, sir.

22 Q Was he a registered guest there on January the 4th?

23 A No, sir.

24 MR. HALL: Your Honor, I beg the Court's indulgence to
25 try to put my hands on these exhibits. I think they have

1 already been admitted into evidence. They have been marked
2 for identification.

3 Q Are these your records that you kept there?

4 A Yes. They are.

5 Q They don't reflect that Mr. Seay was a resident of that
6 hotel room?

7 A No. They don't.

8 Q All right, sir. Do you recall ---

9 MR. HALL: I would offer these.

10 (Hands motel registrations which have been marked as
11 defendant's exhibits 4 and 5 for identification to counsel.)

12 Q Do you recall whether or not Mr. Justice had a car that
13 he kept there?

14 A Yes, sir. He did.

15 Q And do you know whether or not that car was wrecked?

16 A On Christmas Day, I believe.

17 Q What did he do with the car?

18 A It was there when he was arrested. I believe a couple
19 days later someone towed it off.

20 Q Did he do anything to the car while it was sitting there
21 wrecked?

22 A He covered it.

23 Q What did he cover it with?

24 A I'm not exactly sure. I don't know.

25 Q Could you see the car?

1 A It wasn't totally covered.

2 Q How much of it was covered?

3 A Well, the front end, you could see it.

4 Q How much of it was covered?

5 A Basically just the top, over around the doors. And some
6 of the back.

7 Q Which way was the vehicle parked?

8 A It was parked facing away from the building that he was
9 staying in.

10 Q Mr. Metz, do you recall the police officers coming to
11 investigat these burglaries?

12 A I recall a night or two before that they arrested Mr.
13 Justice one came in and asked me a couple questions.

14 Q What did he ask you?

15 A He asked me about the gentleman staying in Room 29.

16 Q Do you recall who that was in Room 29?

17 A His name was Steven Urey.

18 MR. HALL: No further questions for Mr. Metz.

19 Answer any questions that Mr. McMahon has.

20 CROSS EXAMINATION BY MR. MCMAHON:

21 Q Mr. Metz, isn't it correct that you had suspicions back
22 at the end of December or 1st of January that John Seay was
23 staying there with Mr. Justice, his brother?

24 A We thought he might be.

25 Q You couldn't quite prove it, but you had seen him in and

1 out of there a good bit and you thought he was. Isn't that
2 correct?

3 A Correct.

4 Q And Mr. Justice's car was wrecked when?

5 A Christmas day.

6 Q And what day was Christmas?

7 A December the 25th.

8 Q December the 25th, of '88?

9 A Yes, sir.

10 MR. MCMAHON: Thank you. I don't have any further ques-
11 tions.

d

20 JOHN KERRIN SEAY is duly sworn.

21 DIRECT EXAMINATION BY MR. HALL:

22 Q Introduce yourself to the jury, Mr. Seay.

23 A John Kerrin Seay.

24 Q Where do you live at?

25 A At this time I live at 2550 Charleston Highway, Lot 19.

1 Q What did you consider your permanent address on January
2 the 3rd, 1989?

3 A [REDACTED], Cayce.

4 Q What is your job?

5 A I'm a grill operator for Waffle House.

6 Q When did you get that job?

7 A About the middle of January.

8 Q Are you related to the defendant?

9 A Yes, sir. I am. I'm his brother.

10 Q All right. Where did you reside prior to December 24?

11 A I was incarcerated.

12 Q What were you incarcerated for?

13 A Criminal sexual conduct, second degree.

14 Q How much time did you do?

15 A I did three years.

16 Q Did you serve the full length of your sentence?

17 A With work credits and all, I maxed my sentence out.

18 Q And what did you do on December the 24th, 1989?

19 A December 24th I was granted my furlough.

20 Q Where did you make application for furlough to?

21 A To my brother's motel room.

22 Q When did your furlough end?

23 A Sometime on the 30th.

24 Q Did you do anything about obtaining a residence after
25 that day?

1 A I talked to a friend of mine and I stayed with her for
2 a little while.

3 Q All right. Do you recall the date your brother was
4 arrested?

5 A I believe it was the 3rd.

6 Q What were you doing on that day?

7 A We were having a small party.

8 Q Where at?

9 A At his motel room.

10 Q And what time did this party start?

11 A On the 27th. I mean actually I partied all week; but he
12 had to work. It started with him on the 2nd.

13 Q Why were you celebrating?

14 A Three reasons. My release from the penitentiary, our
15 being reunited, and New Years.

16 Q How long had it been since you had seen your brother?

17 A About twelve or thirteen years.

18 Q Do you recall the police coming to the hotel that day,
19 the motel, on January the 3rd?

20 A Yes, sir. I do.

21 Q What happened when they came?

22 A I heard some noise outside, and I looked out the window
23 and I saw it was the police.

24 Q All right.

25 A And, when someone knocked on the door, I opened it up.

1 Q Were you dressed?

2 A I was wearing a pair of walking shorts.

3 Q Did you have your shirt on?

4 A No, sir.

5 Q What did the police officer say when he knocked on the
6 door?

7 A He asked me if I would step outside for a minute, and I
8 told him to let me put some pants on.

9 Q Did you go outside after that?

10 A Yes, sir. I did.

11 Q What happened then?

12 A He asked me if I wanted to sit in the car.

13 Q What did you tell him?

14 A I told him sure, since it was cold.

15 Q What happened after you got in the car?

16 A He told me that I was a suspect in some burglaries that
17 had happened around that area.

18 Q And what did you say to him?

19 A I told him I couldn't have been because I had just gotten
20 out of the penitentiary and I wasn't making no plans of going
21 back.

22 Q What happened after that?

23 A He told me that right now he could get me anywhere from
24 two to twenty years.

25 Q Why did he say that?

1 A I don't know why he said it.

2 MR. MCMAHON: Your Honor, he can't testify as to why
3 somebody else made a statement.

4 MR. HALL: I withdraw the question, Your Honor.

5 Q Did he ask you to search the room?

6 A Yes. He did.

7 Q When did he ask to search the room?

8 A After he told me he could get me anywhere from two to
9 twenty.

10 Q What did you tell him?

11 A I told him to go ahead. I would have give him permission
12 to search anybody's room he wanted to.

13 Q Why did you do this?

14 A Because I didn't want to go back to the penitentiary.

15 Q Do you remember when your brother came back to the motel?

16 A Yes, sir.

17 Q How did he get there?

18 A I believe one of the officers brought him back.

19 Q What did your brother do when he got back?

20 A He came inside. He leaned up against the desk in there.

21 He asked me what was going on. I told him I didn't have no
22 idea except that they told me that I was a bur-
23 glary suspect.

24 Q Was there any conversation about a warrant, search
25 warrant?

- 1 A Yes, sir. My brother asked them for one.
2 Q What did they say?
3 A The officers said that I gave them permission.

6 CROSS EXAMINATION BY MR. MCMAHON:

- 7 Q Mr. Seay, you have a 1981 conviction for committing a
8 lewd act on a minor?
9 A Yes, sir.
10 Q And that's in addition to your 1986 conviction that you
11 told the jury for criminal sexual conduct, second degree?
12 A Yes, sir.
13 Q That's not exactly criminal sexual conduct second de-
14 gree. It's criminal sexual conduct with a minor in the second
15 degree. Correct?
16 A The way it reads on my report - it goes under criminal
17 sexual conduct, second degree.
18 Q Yes, sir. But the way it read when you signed pleading
19 guilty, Mr. Seay, was criminal sexual conduct with a minor,
20 second degree. That's what you pled guilty to, wasn't it?
21 A That's what it reads there. Yes.
22 Q Yes, sir. Now, on December 6 of 1988 you applied to get
23 a furlough?
24 A Yes, sir.
25 Q You filled out an application form to do that?

t 194

1 A Yes, sir.

2 Q And that furlough was because you were going to get out
3 of the penitentiary December 30 of 1988. Correct?

4 A Yes, sir.

5 Q They couldn't hold you any longer because you were
6 maxing out. Correct?

7 A Yes, sir.

8 Q So you applied to get a furlough. And that furlough was
9 for the purpose of you going out and getting a job. Isn't
10 that right?

11 A Yes, sir.

12 Q You have to have a sponsor when you go on furlough?

13 A Yes, sir.

14 Q And on your application your sponsor was William Bruce
15 Justus?

16 A Yes, sir.

17 Q 1624 Charleston Highway, West Columbia, was what you
18 listed as to who and where you would be staying?

19 A Yes, sir.

20 Q From December 24 to December 30?

21 A Yes, sir.

22 Q And you stayed there those six days, didn't you?

23 A Yes, sir.

24 Q Now on January -- let me show you those forms, by the
25 way. This is your application for furlough, is it not, Court?

1 Exhibit Number 5?

2 A Yes.

3 Q With that information and address that I just gave.

4 And this is your approval for the furlough dated December
5 16th?

6 A Yes, sir.

7 Q On January the 2nd of 1989 you were stopped by two
8 officers of the West Columbia Police Department. Isn't that
9 correct?

10 A Yes.

11 Q And you were stopped about 11:55 p.m.?

12 A Yes, sir.

13 Q And on January 2nd of '89 you told those officers your
14 address was Crystal Motel, Number 31?

15 A I told him that. Yes.

16 Q And you said you had left that room, that you stayed
17 with your brother who was in the room with a woman and you
18 were giving them privacy?

19 A I was visiting with my brother. Yes.

20 Q That's not what you told them that night, is it?

21 A Yes, it was.

22 Q It was? So what they wrote down here is incorrect?
23 That's a lie?

24 A Well, what they wrote down is what they wrote down.
25 What I told him is what I told him.

- 1 Q What did you tell them your address was?
- 2 A I told him the motel because he was standing there with
- 3 the motel room in his hand.
- 4 Q Excuse me.
- 5 A The motel key room.
- 6 Q You had the key to the motel room?
- 7 A Yes.
- 8 Q In your possession?
- 9 A Yes.
- 10 Q In your pocket?
- 11 A Yes.
- 12 Q That's where you were staying?
- 13 A Yes -- no.
- 14 Q January 3rd your brother was arrested. Isn't that right?
- 15 A Yes.
- 16 Q You had some personal items there, didn't you, Mr. Seay?
- 17 A I had a few of my clothes. Yes.
- 18 Q Did you pack up and move out when the officers took your
- 19 brother to jail?
- 20 A No, sir. I didn't.
- 21 Q You stayed there another ten days or two weeks?
- 22 A Something like that. Yes, sir.
- 23 Q You remained in there that entire period of time. Isn't
- 24 that right?
- 25 A Sir?

1 Q You remained in there for a good period of time after
2 your brother was arrested. Isn't that right?

3 A Yes. I did.

4 Q Yes, sir. Now you didn't know anything about these
5 scissors, did you?

6 A They were in there. Yes.

7 Q You didn't know who stole them, did you?

8 A I didn't know who stole them.

9 Q They were in your room, though, weren't they?

10 A Yes.

11 Q In your brother's room, weren't they?

12 A Yes.

13 Q And this radio was in the room, too, wasn't it?

14 A Yes, sir.

15 Q Along with a number of other items? Sir?

16 A Yes.

17 MR. MCMAHON: Your Honor, I would offer these two docu-
18 ments in to evidence, Court's Exhibits Numbers 4 and 5.

19 MR. HALL: I have no objection.

20 (The furlough application is marked as State's Exhibit
21 Number 10; the leave of absence is marked as State's Exhibit
22 Number 11.)

23 Q This is the officer that you are telling this jury
24 threatened to get you two to twenty years. Is that correct?

25 A Yes, sir. That's what he told me.

1 Q He threatened you?

2 A That's what he told me.

3 Q He was very demanding, coercive upon you?

4 A He told me that he could get me anywhere from two to
5 twenty.

6 Q And that's why you gave him consent to search. Is that
7 right?

8 A I'd have gave him permission to search your house.

9 Q Sir?

10 A I would have gave him permission to search your house.

11 Q He didn't ask you to search my house, did he, Mr. Seay?

12 A I'd have gave him permission to search anybody's house.

13 Q He's the one that threatened, was abusive and coercive
14 to you. Is that right?

15 A He's the one that told me he could give me from two to
16 twenty.

17 Q Two to twenty years?

18 A Yes, sir.

15 MR. HALL: If it please the Court, ladies and gentlemen
16 of the jury, we call the defendant, William Bruce Justus to
17 the stand.

18 THE COURT: Before he takes the stand, let me charge the
19 jury on one matter.

20 Ladies and gentlemen, I charge you that evidence of a
21 prior conviction of a crime of moral turpitude can only be
22 considered by you as to the witness's credibility. Such
23 evidence of a prior crime cannot be considered by you for any
24 other purpose. That would apply to this witness who just
25 testified and any other witness where a crime of moral

1 turpitude is involved.

2 Now you may swear the defendant.

3 WILLIAM BRUCE JUSTICE is duly sworn.

4 DIRECT EXAMINATION BY MR. HALL:

5 Q Please introduce yourself to the jury.

6 A My name is William Bruce Justice.

7 Q What is your nickname?

8 A B. J.

9 Q Do you recall the events of January the 3rd, 1989?

10 A Yes, sir. I do.

11 Q What were you doing on that day?

12 A I was having a party at my motel room.

13 Q Why were you partying?

14 A Well, there were several occasions. One is a reunion,
15 the first time me and my brother had been back together phy-
16 sically. I had had family visits with him in CCI when they
17 brought me back from the State of Washington. And the first
18 time I had been with him physically in thirteen years. Too,
19 we were both free; and it was New Year.

20 Q What do you mean, when they brought you back from the
21 State of Washington?

22 A I escaped from the South Carolina State penitentiary in
23 1978. January of 1978.

24 Q And what were you doing time for?

25 A Housebreaking.

1 Q And why did you escape?

2 A For the simple reason I felt that I was unjustly accused
3 of a crime that I didn't ---

4 MR. MCMAHON: Your Honor, I don't believe he can go into
5 that.

6 MR. HALL: I withdraw the question. Let's go on to
7 something else.

8 Q Did you have a job on January 3rd, 1989?

9 A Yes, sir.

10 Q What was your job?

11 A I worked with Uniconstruct Construction out of Michigan.
12 I was a glazer and a steel setter.

13 Q Where did you learn that trade?

14 A I just learned it over the years, working around high
15 rise buildings and working around windows.

16 Q Where did you grow up?

17 A Lexington County.

18 Q Do you know any of these officers who testified here
19 today?

20 A I know one officer who testified here today.

21 Q Who was that?

22 A Mr. D. I. Blackwell.

23 Q And how long have you had this job as a glazer?

24 A Since September.

25 Q What were you doing in September?

- 1 A What was I doing in September?
- 2 Q Before September?
- 3 A I was in the Department of Corrections, CCI.
- 4 Q How much money did you make as a glazer?
- 5 A For the first eight hours I made seven dollars an hour.
- 6 Anything over eight hours a day we would make fourteen dol-
- 7 lars an hour.
- 8 Q All right. Now, on January 3rd, 1989, I believe you
- 9 left the motel you were staying at for a period of time, did
- 10 you not?
- 11 A Yes, sir. I did.
- 12 Q Where did you go?
- 13 A I went over to a tavern to pick up more beer for a party
- 14 that we were having going on, plus I am an intravenous drug
- 15 user, and I was supposed to have quit using drugs, and I did
- 16 not want my brother to know that I was doing the drugs. And
- 17 I left the motel for that purpose.
- 18 Q Now, did you have a car at that time?
- 19 A No, sir. Mine was wrecked Christmas day.
- 20 Q What car were you in when you went to the store?
- 21 A On December the 31st I had met this girl over there --
- 22 her name was Renee -- at the Party Place. I have no idea
- 23 what her last name is; but I was driving her car.
- 24 Q And do you recall when the police officers came to this
- 25 place you were at?

1 A Yes, sir.

2 Q What were you doing there?

3 A I was playing the poker machine.

4 Q And what did the police officer say when he came up to
5 you?

6 A He walked up to me, and he asked me, he said, "Is your
7 name William Justice?" And I said, "Who wants to know?"

8 Q What did he say?

9 A He said, "I want to know." I said, "Well, who are you?"
10 And that's when he presented his credentials as West Columbia
11 police.

12 Q What happened then?

13 A He asked me would I step outside and talk to him, and I
14 told him, "Yes, I will. I will go out there and talk with
15 you." And I went out the door first. And he followed me out
16 the door. Then when I got out there, there was about three
17 patrol cars more out there, police officers. And they all
18 got out of their cars and they surrounded me.

19 Q And what happened?

20 A He asked me would I ride back over to the motel room
21 with him. And I told him, "I guess so." And he says, "Well,
22 you know, if you don't want to go, we can take you over there."
23 And then he said first, "Would it be all right if I search
24 this new Honda sitting over there?" And I said, "Have I got
25 an alternative to you searching it?" He just walked over and

1 looked in the trunk of it and then he asked me, said, "Is that
2 your VCR in the trunk?" I said, "No, sir, it is not. It's
3 not even my car."

4 Q What did you do next?

5 A He put me in the car and took me over to the motel.

6 Q What happened on the way? Did anything happen in
7 between?

8 A No, sir.

9 Q What happened when you got to the motel?

10 A When we got to the motel, Officer Kelly asked me to stay
11 in the car. And that's when Mr. Tyndall came out the door,
12 and he told me, he said, "All right, William, we know you did
13 all these burglaries. I want you to own up to them." He
14 said, "If you don't, I'm going to arrest everybody in the
15 room." I told him, "I don't know what you are talking about
16 on the burglaries because I haven't done them." I said, "So
17 you just best load us all up and take us to jail."

18 Q And then what happened?

19 A No, sir.

20 Q I mean what happened next?

21 A Officer Kelly came out the door with a set of ink pens
22 I had bought at the flea market when I was up there with my
23 sister shopping about a week before Christmas. And he says,
24 "These ink pens come out of a burglary and we can match them.
25 He said, "Because this ain't a matched set in this container."

1 And the guy says he put this lead pencil and this ink pen in
2 there." And he said, "And we can prove it." He said, "So
3 you better own up to them." He said, "You don't want the rest
4 of these people getting into trouble." I said, "I don't know
5 what you are talking about. I haven't done none of the bur-
6 glaries."

7 Q Did you ask him about a warrant?

8 A Yes, sir. Then he took me in my room.

9 Q What happened in your room?

10 A When I walked in my room, Mr. Blackwell sitting over
11 there, he had everything I owned, all the way down to my tooth-
12 brush container, packed up in a box. And I said, "What's
13 going on here?" And he said, "We know all these items are
14 stolen", you know. And I said, "Well, may I see your search
15 warrant?" And he said, "We don't need a search warrant."
16 And at first I thought he said, "Your brother's already signed
17 a consent to search." And so I asked, "Well, let me see the
18 consent to search." And he said, "No, your brother gave us
19 consent to search." I said, "Well, my brother doesn't live
20 here." I said, "Just like these two ladies on the bed, he is
21 merely nothing but a guest." He pays no bills around here,
22 and he doesn't stay here."

23 Q Well, what did he tell you?

24 A He told me that he didn't have to show me nothing; that
25 he was taking me to jail for burglary.

1 Q Why did you have your brother there in the motel?

2 A Well, my brother needed a place to furlough, but on
3 account of his record there's members of my family, you know,
4 I got some members of my family -- I couldn't explain it, how
5 they feel about his record. But that's my brother. He need-
6 ed a place to come to find a job. I offered him that place
7 to come to find a job because the place he was supposed to
8 live at was not immediate family members. So he could not
9 furlough there. It had to be to an immediate family member.

10 Q Was he a registered motel guest?

11 A No, sir.

12 Q Did he have a key to your room?

13 A No, sir.

14 Q At what point did they arrest you for the burglaries?

15 A It was at the point right after I asked them to -- well,
16 it was right after the point where I told them that my broth-
17 er had no right giving them his consent.

18 Q When did they serve the warrants on you?

19 A The next day.

20 Q Where was that at?

21 A The West Columbia jail.

22 Q Where were you booked at?

23 A The West Columbia jail.

24 Q Who were the officers who took you over to the jail?

25 A Officer Kelly Bloxom was the one that took me to the

1 jail. He kept asking me about a set of ink pens, a set of
2 ink pens. I couldn't figure out about a set of ink pens.

3 Q When you got to the jail, what happened?

4 A The very next morning that I was in the jail, Detective
5 P.K. O'Neill came down and identified himself to me. He ad-
6 vised me of my rights.

7 Q I'm talking about the first day.

8 A The first day?

9 Q Yes.

10 A No. They just took me in and booked me and put me in
11 the back room.

12 Q Did you have any drugs with you?

13 A No, sir.

14 Q Did you take anything while you were in jail?

15 A The only thing I took while I was in jail was prescribed
16 medication for withdrawal.

17 Q I will get to that in a minute. All right, sir, what
18 happened the next morning?

19 A Detective P.K. O'Neill came down there and talked to me.

20 Q What did he talk to you about?

21 A He come down there and advised me of my rights and asked
22 me did I want to talk. And I never told him I wanted to talk.
23 He asked me would I come upstairs. So I went upstairs with
24 him. And then he started getting me frightened because he
25 asked me, he says, "Well, come on, let's go and ride around

1 town here," you know. And he showed me the places that was
2 all burglarized and all. And this man is -- he really had me
3 worried and scared because the man has knowledge of my
4 escapes. I have two prior escapes on my record. Well, three.
5 Because one from the reformatory, one from the chain gang,
6 and one from Kirkland Correctional Institution. And this man
7 takes me out of this jail, wanting me to confess to crimes
8 that I haven't done, with no handcuffs, no restraints at all.
9 And he takes me out of this jail. And scared the daylights
10 out of me. I didn't know what he was going to do to me. And
11 then he tells me when he was taking me out of the jail, he
12 says, "Now, William", he says, "Don't you run because I don't
13 want to have to shoot you."

14 Q Where did you go after you got in the car?

15 A He rode me up to an area called Wal Mart, there on
16 Number 1.

17 Q What time of day was this?

18 A It was early in the morning. I don't really know what
19 time it was, because they had took my watch from me.

20 Q And how were you feeling?

21 A I was really sick. And before we left, I told Mr.
22 O'Neill that, "I am a heroin addict and that I am going into
23 withdrawals. And I am going to have trouble. I am going to
24 need help." He said, "We will get you the help you need."
25 He said, "Just cooperate with us."

1 Q And so he took you to the Wal Mart area. And then what
2 where did you go? What kind of questions was he asking when
3 you were in the car?

4 A He took me over to the Wal Mart area, and he pulls up
5 about from here to the jury here away from the doors. And
6 he asks me, says, "Is this one of the places that was broken
7 into?" I gave the gentleman no answer at all. Then he
8 says, "Well, how was it got into?" And he points right at
9 the front door. The front door is all scratched up. And I
10 said, "Through the front door?"

11 Q What did you mean when you told him that?

12 A I was asking him a question with his question. I was
13 scared to do anything else with the man.

14 Q Were you in pain?

15 A Yes, sir. I was.

16 Q What did he do for you?

17 A Not a thing. When he took me back to the jail, he told
18 me, he said, "I'll be back to see you." He said, "In just a
19 few minutes." And that man ain't even come back to talk to
20 me or been back to see me since I have been arrested. And
21 every time he walked by the jail door, I'd yell at him to
22 come back there. And he just -- "I'll be back there in a
23 minute, William." And he would just keep on getting it.
24 Finally the booking sergeant told Mr. Tyndall there, she
25 said, "What kind of withdrawals is this" ---

1 MR. MCMAHON. Objection to hearsay.

2 THE COURT: That would be hearsay.

3 WITNESS: I am sorry.

4 MR. HALL: You can't say what somebody else said if they
5 are not here to testify.

6 WITNESS: Well, finally later on that evening they did
7 get me to the doctor.

8 Q Did you confess to any of these burglaries that they
9 have indicted you here for today?

10 A No, sir. I have not.

11 Q We've had some scissors introduced into evidence.

12 A Yes, sir.

13 Q Do you recognize those scissors?

14 A Yes, sir. I do.

15 Q Where did you get those scissors?

16 A I bought the one pair that's in the box. I had two pair
17 that's brand new I bought from Columbia Beauty and Barber
18 Supply and the reason -- I had three other pair that was
19 used. And the reason why I had them I was so surprised when
20 I got at this flea market -- here I go pay over eighty nine
21 dollars apiece for two pair of scissors. And this guy's up
22 at the flea market selling them for less than twenty. So I
23 bought them.

24 Q What do you do with the scissors?

25 A I studied barbering when I was in the reformatory and

1 also in the federal reformatory. And I was planning on be-
2 coming a barber when I got too old to do skilled work.

3 Q What about this GE clock radio?

4 A I bought that -- that's a GE clock radio. That's called
5 a space saver. I bought that at K-Mart for \$14.67.

6 Q How many other radios were in that room?

7 A There was one other that belonged to the motel. But it
8 had a tendency -- I had to get up at 5:30 in the morning.
9 Sometime it would wake me up at 1:30 in the morning; some-
10 time it would wake me up at 8:30 in the morning. It woke me
11 up whenever it wanted to.

12 Q Why did you have need for a radio?

13 A I had to get up and go to work.

14 Q What time did you get up to go to work?

15 A Five thirty in the morning.

16 Q How much did they pay you? I think you might have said
17 that.

18 A Yes, sir. It was seven dollars an hour, but anything
19 over eight, we got double time, fourteen. On account of us
20 working from thirty to forty feet up in the air and ever so
21 high we got up in the air, we'd get more money, too.

22 Q Did you ever weigh two hundred pounds?

23 A Never in my life, sir.

24 Q How tall are you?

25 A Five five.

- 1 Q I believe you said you were doing some time for house-
2 breaking and grand larcency?
- 3 A Yes, sir.
- 4 Q All right. When was that conviction?
- 5 A 1976.
- 6 Q All right. And if you were going to steal, would you
7 have stolen from some place like the Crystal Motel in West
8 Columbia?
- 9 A I wouldn't have stolen from nowhere near around my house.
- 10 Q How long have you been out on parole?
- 11 A Since September.
- 12 Q Do you care about going back to jail?
- 13 A I sure didn't want to go back to jail.
- 14 MR. HALL: Your Honor, I beg the Court's indulgence. I
15 may just have a couple more questions.
- 16 Q William, do you have a bald spot on your head?
- 17 A Yes, sir. I do.
- 18 Q Will you step down and show the jury?
- 19 A (The witness comes down.)
- 20 Q Just turn around and show that to the jury.
- 21 A It's right in the back of my head here.
- 22 Q You are losing your hair?
- 23 A Yes, sir. I been like that for a couple years.
- 24 Q All right.
- 25 (The witness returns to the stand.)

1 Q Why do you believe you were charged with these
2 burglaries?

3 A For my record.

4 MR. MCMAHON: Object to relevance.

5 THE COURT: Is that an issue?

6 MR. HALL: Your Honor, I believe it is.

7 THE COURT: All right. He's answered it. Proceed.

8 WITNESS: I believe I'm charged with these burglaries
9 for my record, the fact that there was six pairs of scissors,
10 so called allegedly stole from this one place. I had five
11 pair, you know; but they claimed six pair I guess new ones.
12 Mine weren't new. Only two pair of mine were new. I had
13 a GE clock radio. But there was a lot of other items stolen
14 that wasn't taken out of my place that was alleged in these
15 indictments.

16 MR. HALL: I beg the Court's indulgence. I may be
17 through.

18 Q B.J., is there anything else you would like to tell the
19 jury before you get off the stand?

20 A I'd like the jury to be ---

21 MR. MCMAHON: No, sir. That's not a proper question.

22 THE COURT: You must ask the questions, Mr. Hall.

23 MR. HALL: I withdraw the question. Answer any
24 questions Mr. McMahon has.

25 WITNESS: Yes, sir. I will.

1 CROSS EXAMINATION BY MR. MCMAHON:

2 Q You say there were a lot of other items removed from
3 your room that were stolen?

4 A No, sir. You are assuming. I did not say that.

5 Q I asked you a question. Did you say that, Mr. Justus?

6 A No, sir. I did not say that.

7 Q Well, what did you just finish saying about these other
8 items?

9 A I just said there were other items that were stolen that
10 wasn't removed from my room.

11 Q Yes, sir. And there were other items that were stolen
12 that were removed from your room. Isn't that right?

13 A No, sir. There wasn't.

14 Q You said they were in the indictments.

15 A No. I did not, either.

16 Q I believe you did.

17 A No, sir. I did not.

18 Q There were a lot more items removed from your room than
19 these items, wasn't there, Mr. Justice?

20 A Yes, sir. There sure was.

21 Q Sir?

22 A Even my toothbrush holder.

23 Q Yes, sir. Even a small pair of vice grips? Isn't that
24 right?

25 MR. HALL: Judge, I am going to object. It's not in

1 evidence.

2 THE COURT: He can ask him about it.

3 MR. MCMAHON: He brought it up.

4 Q Isn't that right?

5 A What? A pair of vice grips?

6 Q Yes, sir.

7 A Yes, sir. There were a pair of vice grips in there.

8 Q Belonged to an individual whose business had been broken
9 into. Isn't that right?

10 A It didn't belong to no individual whose business had
11 been broken into. No, sir.

12 Q Where did you get them from?

13 A My brother picked them out of the middle of the lot,
14 right out there at the motel.

15 Q Your brother picked them up?

16 A Yes, sir.

17 Q Commemorative coin, also?

18 A The commemorative coin I bought over at the Parking
19 Place for a measly four bucks. One troy ounce of silver.

20 Q You work how many days a week?

21 A I work anywhere from five to seven days a week.

22 Q Not less than five?

23 A Not less than five.

24 Q Monday through Friday at the minimun?

25 A Yes, sir.

1 Q Do you work hard?

2 A Yes, sir.

3 Q Do you have to get up at 5:30 in the morning?

4 A Yes, sir.

5 Q You were there at the motel on the night of January
6 the 3rd partying with your brother and these two young ladies?

7 A Yes, sir.

8 Q But when the police found you you were over there at
9 the Parking Lot after eleven o'clock at night playing the
10 poker machine, weren't you?

11 A We had to work Christmas and New Years, so my boss gave
12 us the 2nd, the 3rd, the 4th and the 5th off.

13 Q So you weren't working the 2nd, the 3rd, the 4th and
14 the 5th?

15 A No, sir.

16 Q That's what you are telling the jury now?

17 A No, sir. I wasn't. That was my Christmas holiday.

18 Q You were over there playing the poker machine and buying
19 cocaine?

20 A Yes, sir.

21 Q And, of course, your salary alone would support your
22 cocaine habit?

23 A Yes, sir.

24 Q Now you were convicted -- let me see if I can get this
25 straight -- you pled guilty in 1977 to housebreaking and

1 received a four year sentence?

2 A Yes, sir.

3 Q You also pled guilty to another housebreaking in 1977
4 and received a four year sentence?

5 A Yes, sir.

6 Q And you escaped -- is that what you testified to for your
7 lawyer?

8 A Yes, sir.

9 Q Escaped in 1978 from Kirkland Correctional Institution?
10 Is that right?

11 A Yes, sir.

12 Q You resurfaced out in the State of Washington?

13 A Yes, sir.

14 Q Eight years later?

15 A Yes, sir.

16 Q Arrested in Washington State for burglary second?

17 A Yes, sir.

18 Q Spokane County, Washington?

19 A Yes, sir.

20 Q Served time out there, received a 25 month sentence at
21 Walla Walla State Penitentiary. Is that right?

22 A Yes, sir.

23 Q That's a pretty tough penitentiary, isn't it?

24 A Yes, sir. It is.

25 Q Worse in the country they say, don't they? Up in the

6 217

1 top five?

2 A No. I believe CCI is about one in the top five.

3 Q You have been to CCI?

4 A Yes, sir.

5 Q You think it's in the top five?

6 A Yes, sir.

7 Q But you were afraid of Detective O'Neill, weren't you?

8 A Detective O'Neill got a gun, and he's also got help,
9 you know. Back there behind the walls we don't have guns.

10 Q When did you see him have help?

11 A Please, I had rather not argue the point.

12 Q When did you see his gun?

13 A When he told me he didn't want to shoot me.

14 Q When did you see -- tell this jury when you saw his gun.

15 A I did not see his gun. I did not look for a gun.

16 Q No, sir. Because he wasn't wearing one, was he?

17 A I don't know that.

18 Q And when did he have help in that patrol car with you?

19 A He didn't have no help in the patrol car with me.

20 Q You said he had help.

21 A I thought he had the gun.

22 Q You were scared of him, but CCI, that ain't no problem?
23 Right?

24 A What reason would anybody have to hurt me back there be-
25 hind CCI?

- 1 Q Is that what you are telling us?
- 2 A I'm not a snitch.
- 3 Q Is that what you are telling us, Mr. Justice?
- 4 A What's that?
- 5 Q Is that what you are telling the jury, you were afraid
- 6 of him?
- 7 A Yes, sir.
- 8 Q You were afraid of Detective O'Neill? He threatened
- 9 you; you were afraid he was going to shoot you because you
- 10 escaped before. Is that right?
- 11 A I didn't know, sir.
- 12 Q Well, now, let me ask you something. Were you on
- 13 cocaine on the night of the 3rd of January?
- 14 A Yes, sir.
- 15 Q You were?
- 16 A Yes, sir.
- 17 Q Does that affect your ability to -- I don't know. Drive
- 18 an automobile or talk, be coherent?
- 19 A Yes, sir.
- 20 Q It does? Does it affect your ability to win games on
- 21 the poker machine?
- 22 A Uh, sheer luck lets you win games on the poker machine.
- 23 Q Does taking cocaine affect your ability to manipulate
- 24 whatever you have to manipulate on the poker machine?
- 25 A No. I don't guess it does.

1 Q Huh? You were able to manipulate that. Put your money
2 in there, weren't you?

3 A Yeh, mash a button.

4 Q Yes, sir. You were able to walk out with the officers,
5 weren't you?

6 A Yes, sir.

7 Q And you knew the officer identified himself and who he
8 was, that he was an officer. Isn't that right?

9 A Yes, sir.

10 Q And was able to go back over there. No problem there,
11 was it? You remember all that, don't you?

12 A Yes, sir.

13 Q Yes, sir. The next day, the next morning you were in
14 pain and you did not confess to Detective O'Neill, did you?

15 A No, sir. I did not confess to Detective O'Neill.

16 Q He took you down there to Cherry Park Shopping Center.
17 Right?

18 A He took me to Wal Mart.

19 Q Oh, you never even went to Cherry Park?

20 A I don't remember going to Cherry Park. I went to Wal
21 Mart.

22 Q You never even went to Cherry Park Shopping Center?

23 A I don't remember us going to Cherry Park. I remember him
24 taking me to Wal Mart.

25 Q Yes, sir. When did you buy the scissors, the new

1 scissors?

2 A Oh, it must have been about the first of November.

3 Q Do you have a receipt?

4 A No, sir. I don't.

5 Q When did you buy the radio?

6 A I bought the radio about the middle of December.

7 Q Got your receipt?

8 A No, sir. I don't.

9 Q This is a fair representation of how you looked on

10 December the 22nd, isn't it?

11 A No, sir. I didn't look quite so rough. I hadn't slept
12 in the jail. Didn't have a comb or no way to clean up
13 or anything.

14 Q Does this accurately reflect your hair style, your
15 size, your weight on January 6 of '89?

16 MR. HALL: He's answered the question.

17 MR. MCMAHON: No, sir. It's not the same question.

18 WITNESS: No, sir. That don't reflect my hair style.
19 This reflects my hair style except my hair was about that
20 long.

21 Q Is this a picture of you, Mr. Justice?

22 A Yes, sir.

23 Q And a picture of your hair?

24 A Yes, sir.

25 Q And you weighed what, a 175 pounds here?

- 1 A No, sir. I was booked in at the Cayce Police Department
2 at 160. West Columbia just asks your weight.
- 3 Q Sir?
- 4 A West Columbia just asks you about what your weight is.
- 5 Q Yes, sir. And you told them?
- 6 A No, sir.
- 7 Q Sir?
- 8 A I told them I had no idea. They were the ones that
9 guessed my weight.
- 10 Q You told them everything else, didn't you? Huh?
- 11 A Did I tell them everything else? No, sir, I didn't.
12 The only thing I answered was Uniconstruct Construction, my
13 address, my daughter.
- 14 Q You didn't tell them your social security? They
15 guessed at that?
- 16 A No, sir. I told them my social security number.
- 17 Q You didn't tell them your date of birth? They guessed
18 at that?
- 19 A I told them my birth date.
- 20 Q You didn't tell them your age. They guessed at that?
- 21 A I told them my -- you just asked my birthdate. That's
22 the same thing.
- 23 Q Age? I didn't ask you your age.
- 24 A Yes, sir. I told them my age.
- 25 Q You didn't tell them your height. They guessed at that?

1 A The approximate.

2 Q How tall are you?

3 A Approximately five five.

4 Q What do they have on there?

5 A Five five.

6 Q That was a pretty good guess, wasn't it?

7 A Yes, sir.

8 Q By the way, you said these officers arrested you because
9 of the scissors, the radio and your prior record. Is that
10 right?

11 A Yes, sir.

12 Q It didn't have anything to do with that video, did it?

13 A That's not me in the video.

14 Q You had an automobile on the 22nd of December, didn't you,
15 Mr. Justice?

16 A Yes, sir.

17 MR. MCMAHON: Thank you.

18 MR. HALL: No further questions, Your Honor.

19 THE COURT: You may come down.

20 WITNESS: Thank you.

21 THE COURT: Ladies and gentlemen, I charge you that
22 evidence of a prior conviction of a crime of moral turpitude
23 can only be considered by you as to the defendant's credibi-
24 lity. Such evidence of a prior crime cannot be considered by
25 you for any other purpose.

10 REDIRECT EXAMINATION BY MR. MCMAHON:

11 Q Detective Tyndall, did you threaten John Kerrin Seay
12 by telling him if he did not consent you would see that he
13 would get from two to twenty years in the penitentiary?

14 A No, sir. I did not.

15 Q Did you threaten him in any manner?

16 A No, sir. I didnot.

17 Q Did you threaten Mr. William Justice in any manner on
18 the night of January the 3rd of '89?

19 A No, sir. I did not.

20 Q Did you have any idea of Mr. Justice's prior record at
21 the time you placed him under arrest?

22 A No, sir. I did not.

23 Q You didn't even know who he was until you went to that
24 address, did you?

25 A That's correct.

1 MR. MCMAHON: I don't have any further questions.

2 MR. HALL: No further questions.

3 THE COURT: You may come down.

4 MR. MCMAHON: We call Captain O'Neill.

5 REDIRECT EXAMINATION OF P.K. O'NEILL BY MR. MCMAHON:

6 Q Captain, would you tell the jury what your normal
7 practice was, as far as wearing a weapon?

8 A I do not carry a weapon.

9 Q Did you carry a weapon on January 4, '89?

10 A No, sir. I did not.

11 Q How did you come to be an officer and get in the habit
12 of not carrying a weapon?

13 A Several reasons. I would take a weapon if we went on a
14 search warrant or we went to arrest somebody or something
15 like that. Obviously I would have my weapon. In interrogating
16 people I just didn't carry it. I made it a habit not to
17 have the weapon on so it wouldn't be an intimidating factor.

18 Q Captain, did Mr. Justice complain to you in any manner
19 on the morning of January 4 about abdominal pains, withdrawing
20 from cocaine, heroin, anything of that nature?

21 A He did not. No.

22 Q Did he ask you to get him any medical attention in any
23 manner on the morning of January 4?

24 A No, sir. He did not.

25 Q Captain, tell the jury what statement was made to Mr.

1 Justice to frighten him.

2 A I never made any statements to Mr. Justice to frighten
3 him or scare him or coerce him in any way.

4 Q Did you try to imply to him that you were going to shoot
5 him if he escaped, Captain?

6 A I never told him or anybody else that.

7 Q Now, Captain, you actually took him to Cherry Park. Is
8 that correct?

9 A The first place we went to was Cherry Park.

10 Q At whose direction?

11 A Mr. Justice's direction.

12 MR. MCMAHON: Thank you. I don't have anything further.

13 RECROSS EXAMINATION BY MR. SALLEY:

14 Q Sir, you provided that summary of Mr. Justice's
15 alleged confession?

16 A Yes.

17 Q You said you went to Wal Mart, didn't you?

18 A We sure did. Yes, sir.

19 Q You didn't say anything about Cherry Hill, did you?

20 A I'd have to look at it again.

21 MR. SALLEY: I beg the Court's indulgence for just one
22 second, Your Honor.

23 Q (Handing document to witness) Sir, do you see Cherry
24 Hill mentioned anywhere in there?

25 A It's Cherry Park. And -- again, the request was made

1 that I write a summary of the cases in West Columbia. And
2 that's what this summary is about. The first place he took
3 me to in the vehicle, directed me to, was Cherry Park. My
4 main concern, to be perfectly honest with you, sir, was not
5 Cherry Park because it was Cayce's jurisdiction. My concern
6 was the places in West Columbia. We went from Cherry Park
7 down Charleston Highway to several places. And then the last
8 place we went to was Wal Mart.

9 Q But you didn't mention Cherry Park in your statement,
10 did you, sir?

11 A No, sir. Because it was a statement in reference to
12 West Columbia.

15 MR. HALL: If it please the Court, ladies and gentlemen
16 of the jury, as you can see on the podium I have this check
17 list which I may or may not refer to from time to time.
18 You all have been very patient and I appreciate that.

19 You all are charged with a very serious responsibility
20 today, and that is to determine whether or not Mr. Justice
21 is guilty of crimes for which he could face sixty years in
22 jail, possibly. That would be the remainder of his life.
23 That is very serious, and I know that you all will take that
24 responsibility very seriously.

25 It also calls upon you to weigh some very serious

1 evidence and questions that came from this witness stand.
2 And I have some things that I would like you to think about
3 as you go to your jury room to deliberate. Does it make
4 sense for William Justice to get up here and testify when he
5 didn't have to and expose the criminal record that he had to
6 and face sixty years in jail.

7 MR. MCMAHON: Your Honor, I am going to object at this
8 point now. I didn't object the first time. But that is
9 not a proper jury argument, the sentence.

10 THE COURT: Mr. Hall, sentencing is not an issue for the
11 jury. That is a matter for the Court. Please do not argue
12 sentence.

13 MR. HALL: Yes, sir, Your Honor.

14 But Mr. Justice has got on the stand and testified.
15 The Judge is going to charge you that you cannot consider evi-
16 dence of his prior conviction in determining his guilt with
17 respect to the charges he's facing today. That is a strong
18 task, but that is what the law calls upon you to do, to
19 separate that, and to determine his guilt or innocence simply
20 based on the evidence presented from this witness stand.
21 Certainly you are entitled to consider it as to credibility.
22 I want you to take into consideration, however, that he did
23 take this stand. You know, when you are a lawyer and you
24 look at the facts, you look at the evidence, one of the most
25 important things a trial lawyer must do and especially a

1 criminal defense lawyer, is to develop why this occurred.
2 What is the theme in this case? You know, the police have a
3 hard job. They are out there to do a job to protect us,
4 protect the citizens of Lexington County. I don't bemoan
5 that. On the other hand, our Constitution states that no
6 man is above the law; and I think we've recently learned
7 that in the last, I guess, ten or fifteen yers with what all
8 goes on in Washington today. I want you to consider that.
9 That's very important. I think you would want that same
10 consideration, if you were on trial.

11 As I look at this case I see a man, William Justice, who
12 was recently exonerated from prison -- he testified to that --
13 and a man in my mind -- and you consider the evidence. That's
14 your job; and, if you remember it differently than I do, I
15 don't want to misquote it; and I'm up here to summarize it.
16 A man that probably did not want to go back to jail. I think
17 you need to consider that. A man that grew up in Lexington
18 County and, in fact, I believe even knew this police officer
19 over here, a man that the police knew had a record, some of
20 which was for housebreaking and burglary. You heard those
21 addressed by Mr. McMahon. He brought those points up, and
22 that was his job to do that. I would have done the same thing.
23 But I think you also need to consider that there was a flurry
24 of break ins going on in West Columbia. And that the defen-
25 dant, William Justice, was living in at the Crystal Motel.

1 Wasn't it convenient, wasn't he a convenient suspect? Does
2 it make sense, if you are going to steal, that you do it
3 right in your own back yard? I don't know; I don't know.
4 Does it make sense, ladies and gentlemen on the jury, that
5 he would want to go back to jail, just having been out since
6 September? That's a strong consideration, and I want you to
7 think about it very carefully.

8 You know, when I first started looking at this case and
9 as the evidence progressed throughout the trial, I thought to
10 myself, you know, one of the favorite things I like to tell
11 juries is that this is not like tv. You
12 know, what goes on in the courtroom is not like, you know,
13 Perry Mason. It's not like Matlock. But as I began to see
14 the evidence unfold from this witness stand and as I began
15 hearing State's witnesses testify, it really did become a
16 lot like Matlock. Because what happened in this case, ladies
17 and gentlemen of the jury, is that what appeared to be at
18 first overwhelming evidence began and turned into overwhelming
19 doubt. And I made a little checklist, and I am going to
20 cover those points for you. I am going to show you what the
21 doubt is.

22 Remember that proverb that Mr. Salley quoted for you
23 when he spoke up here. You know one man's story seems true
24 until another person cross examines him or questions him.
25 It's an old principle of cross examination. I want you to

1 think about the points that I am going to raise that were
2 brought out on cross examination. Because I submit to you,
3 ladies and gentlemen of the jury, there was not created in
4 this case a little bit of doubt or one or two doubts, but a
5 lot of reasonable doubt.

6 The Judge is going to charge you that, if you have any
7 reasonable doubt, you have got to return a verdict of not
8 guilty. That's a tall order. It's a tall order, especially
9 in light of discerning the truth and the credibility of the
10 witnesses in view of Mr. Justice's bad record. We are asking
11 you to separate that. That's a hard job; but the Judge is
12 going to charge you that you have to do that.

13 Now, I want to turn to some of the State's witnesses.
14 This clock radio, State's Exhibit Number 1. The State's
15 own witness got up and testified that he could not definitely
16 identify this as being the radio that came out of the Credit
17 Thrift. Mr. Justice testified that he bought it at K-mart.
18 I don't know if any of you are familiar with West Columbia;
19 but the Crystal Motel I believe the testimony established is
20 not very far from K-Mart. He had a job; he had to get up and
21 go to work. The State hasn't been able to prove that he was
22 not working; they didn't bring any witnesses in here to say
23 that Mr. Justice did not have a job. I would say that probab-
24 ly everyone of us in this room may have a clock radio. She
25 couldn't identify it.

1 And I also want to get into this matter of the scissors.
2 Mr. Justice testified he had been trained in barbering in
3 prison. Where are the six pairs of scissors? You saw a
4 Victim Impact Statement that was introduced into evidence.
5 You will have that in the jury room. Where is the partner
6 of this Mr. Sandel? How easy that would have been to issue
7 a subpoena to him and have the State bring him in here and
8 say, "Well, those appear to be my scissors." Why aren't the
9 scissors here? Why aren't all of them here? I want you to
10 consider that. I also want you to consider in terms of reason-
11 able doubt that the State's own witness, Mr. Sandel, got up
12 and testified that he didn't remember seeing any scissors in
13 Columbia Beauty and Barber Supply. That he had been in that
14 store many times. I mean that was unsolicited on cross ex-
15 amination. I didn't even have to probe him for that. Ms.
16 Margaret Hall comes in and testifies from Columbia Beauty and
17 Barber Supply that they do, in fact, carry these brands of
18 scissors, tandeo scissors, shears. That barbers
19 and hair styling people buy them. They offer them for sale
20 there.

21 I want you to consider -- well, I don't even know if you
22 can consider it. I am trying to think of the best words to
23 couch it in, ladies and gentlemen. The video. That sort of
24 speaks for itself. I couldn't tell you ---

25 MR. MCMAHON: That is not appropriate, what his opinion

1 is.

2 THE COURT: You cannot give your opinion, Mr. Hall. It's
3 up to the jurors.

4 MR. HALL: I submit to you, ladies and gentlemen of the
5 jury, the video is so unclear that you couldn't tell that from
6 Adam's housecat. Well, he had a bald spot. I didn't see a
7 bald spot on that particular person's hair. You remember the
8 evidence, however, as you remember it. As I recall it, it is
9 not a very clear picture. To send a man to jail on something
10 as unclear as that, to me establishes tremendous reasonable
11 doubt.

12 He was a convenient suspect. They went out and found a
13 man with black hair and a beard. They knew William Justice.
14 This gentleman sitting over here knew William Justice. He
15 grew up in Lexington County. I want you to consider the tes-
16 timony of Officer P. K. O'Neill who got up on this witness
17 stand and testified that he had taken a statement, a confess-
18 ion from the defendant. Wouldn't it have been nice to have
19 heard the confession on a tape recording? You heard him on
20 cross examination admit that he had ben taught that at the
21 Criminal Justice Academy. Also, he testified that he doesn't
22 use it. I wonder why he doesn't use it. Wouldn't it have
23 been helpful to you, as members of the jury, to actually hear
24 the confession coming out of the defendant's own mouth? We
25 dont' have that evidence here.

1 I also want you to consider the summary that was pro-
2 vided. I believe the criminal rules state that the substance
3 has got to be provided. I may stand to be corrected, but I
4 read it before I came in here this morning. The substance of
5 the defendant's statement, if it was oral, must be provided.
6 I want you to consider the substance of this summary, lacking
7 in great detail. I don't know why. Why didn't we have the
8 substance to be able to cross examine him with? To test him
9 with it? We didn't have that.

10 I want you to look at the absence of fingerprints in
11 there. I don't recall -- you recall the video. I don't re-
12 call the defendant or allegedly the defendant in the video --
13 that's what they are accusing -- of having worn gloves. But
14 the picture, I will leave that up to you to look at that.
15 No fingerprints.

16 I want you to consider the testimony from Mr. Barry Metz,
17 the gentleman who was here yesterday from the Chat and Rest
18 Motel, that they had also gone to look for another man at
19 another room to question him.

20 I want you to consider the testimony of Officer Watson
21 who said he was looking for a two hundred pound man. I don't
22 know where that description of two hundred pounds came from,
23 but it came from somewhere. I can tell you right now that
24 Mr. Justice -- I don't know what he would look like if he was
25 two hundred pounds; but I submit to you that he would look a

1 little bit more rotound at five foot five than he is today
2 here in this room. And you have got the picture at the time
3 he was arrested.

4 I think there was also some testimony that there was a
5 jacket and some tennis shoes that they got out of Mr. Justice'
6 room, allegedly. Or perhaps it was the jacket and tennis
7 shoes on the video. Where are those? Why isn't that in here?
8 Wouldn't that have been helpful to the jury? Sure, it would
9 have been helpful.

10 I want you to consider the voluntariness of this con-
11 fession, this leisurely drive that was taken around in West
12 Columbia, when Mr. Justice was complaining of stomach cramps.
13 You heard the testimony of the doctor. He prescribed the
14 medication; he could not rule out that Mr. Justice's com-
15 plaints were legitimate; he would not have prescribed the
16 medicine had he not believed that. He could have tested him
17 for drugs. He didn't rule that out. I submit to you, ladies
18 and gentlemen of the jury, that doctors don't prescribe med-
19 icine for false complaints. The medicine was prescribed.
20 This leisurely drive that the defendant was taken on, where
21 he confessed to all these burglaries that he's indicted for
22 here today. Very cooperative, a man that had just spent a
23 lot of time in jail, I submit to you who was familiar with
24 the process. And, if he had confessed, would have known that
25 he was going right back to jail. Does that seem reasonable

1 that this leisurely drive was taken? We don't have the tape
2 recording. Wouldn't it be nice to have the tape? Very ser-
3 ious allegations.

4 He's taken the stand; he's testified.

5 The clock radio is reasonable doubt; the lack of the
6 scissors is reasonable doubt. The testimony of the State's
7 own witness, the barber, is reasonable doubt. Surely his
8 credibility is not very good. "I don't recall any scissors
9 being able to be purchased from Columbia Beauty and Barber
10 Supply. I go in there frequently." The video is reasonable
11 doubt. The lack of a recording, a tape recording, or at
12 least a written statement signed by Mr. Justice confessing.
13 We don't have those. That's reasonable doubt. Some
14 fingerprints, that's reasonable doubt, too. A two hundred
15 pound man. The witness that perhaps was in Room 29. That's
16 reasonable doubt. The tennis shoes, the lack of a jacket,
17 that's reasonable doubt as to whether or not this was a vol-
18 untary confession.

19 That's a question the Judge is going to charge you is
20 for your consideration, reasonable doubt. One, two, three,
21 four, five, six, seven, eight, nine points as I check them
22 off. You remember them, however, ladies and gentlemen, the
23 way they ought to be remembered from the evidence. I wouldn't
24 dare misquote the evidence. If I have, please forgive me.
25 I've tried to summarize it. A lot has gone on in a day; a lot

1 of testimony has come from that stand. The theme - what
2 appears at first from the State's evidence until another man
3 questioned was overwhelming evidence which is turned, I sub-
4 mit to you, into overwhelming doubt.

5 If you have got a doubt, a reasonable doubt, a doubt
6 simply for which you can give a reason, you must exonerate Mr.
7 Justice and find him not guilty. The police are out there to
8 do a job and they are out there to get convictions. I want
9 them to continue to do that job. I am sure you do; but it
10 must be done properly and it must be done within the bounds
11 of the law. That's what the Constitution which Mr. Salley
12 talked to you about earlier and which we all hold dear is
13 all about.

14 I thank you very much, ladies and gentlemen, for your
15 patience because I know that you are going to deliberate
16 fairly with respect to the evidence that's been submitted and
17 do what even Mr. McMahon would have you do, return a verdict
18 -- the Latin word verdict means to speak the truth, verdicto,
19 to speak the truth. That's what we want you to do. I submit
20 to you, after you examine the evidence carefully, all of this
21 doubt that I have put before you today, you will return a
22 verdict finding Mr. Justice not guilty.

23 Thank you very much.

1 MR. MCMAHON: Madam Forelady and ladies and gentlemen
2 of the jury, I would like to begin by thanking you for the
3 attention which you have shown all the witnesses during the
4 trial of the case. Different lawyers, like different thieves
5 perhaps -- maybe some of you are thinking sometimes that's
6 the same thing -- have different styles and different methods,
7 particularly trial attorneys. Some of them are intent jury
8 watchers and they sit there and they look at your faces and
9 they try to say, "Well, is she thinking this is good testi-
10 mony? Yeh, she's on our side." Or "Is he thinking this?"
11 Or "Is he thinking that?" And you can't do it. I am not
12 much of a jury watcher, primarily because I don't know if I
13 am ever right or wrong. But when I was questioning one of
14 the witnesses I happened to notice one of the members of the
15 jury actually following to the extent that that juror was able
16 to verbalize the question that was being asked precisely.
17 And that shows the intent that you all used in watching these
18 witnesses so that, once the Judge tells you what the law is,
19 you can take the law as he tells you it is, as you must, and
20 apply it to the facts as you decide those facts are. And I
21 thank you for that.

22 We hear daily television, news, newspapers, school houses,
23 courthouses, jail houses, constitutional rights, the impor-
24 tance of constitutional rights which we all have. I have
25 them; you have them; Mr. Justice has them. And that is as it

1 should be. The State has the burden of proof beyond a rea-
2 sonable doubt, a strong substantial doubt. And Mr. Justice
3 is presumed to be innocent until such time as you, the jury,
4 have that evidence which convinces you of his guilt beyond
5 that reasonable doubt, presumption of innocence, the import-
6 ance of constitutional rights. In reaching your decision, use
7 your common sense, the most important ingredient I think that
8 jurors can take into the jury room. And answer me this ques-
9 tion - Is there a constitutional presumption that -- I am
10 going to talk about good citizens to start with and not police
11 But is there a constitutional presumption that a citizen:
12 whose business ---

13 MR. HALL: Judge, I'm going to object. He's starting to
14 ask them a question that I can be interpreted to be a legal
15 question. The law has got to come from Your Honor; and,
16 therefore, I would object.

17 THE COURT: Ladies and gentlemen, I will give you the
18 law; however, the Solicitor does have the right to argue his
19 opinion of the law. But the ultimate decision as to the law
20 will come from me.

21 Proceed, Solicitor.

22 MR. MCMAHON: Ladies and gentlemen, I am not asking you
23 a legal question. I am asking you - are we, as a society,
24 going to presume that citizen witnesses whose businesses
25 have been broken into are liars? He talked about nine points

1 of reasonable doubt. I checked off. He only called seven of
2 the witnesses liars. Ms. Tina Clark, she's sitting out here,
3 the lady in the red dress out here, the lady that worked down
4 at Credit Thrift. If you remember, Ms. Cannon had only been
5 at that office for about a month. The reason Ms. Clark tes-
6 tified was she had been there for a longer period of time,
7 was much more familiar with that radio. That's why she
8 testified. No, she didn't come in here and say, "Yes, that's
9 the radio." You know, our cat came missing one time when we
10 moved and that cat -- my daughter will be seventeen next
11 month. That was her eighth birthday present. And it was dur-
12 ing the ice storm, and we worried about that cat. That cat
13 stayed in the house; we loved it so. I even had flyers print-
14 ed up, "Muffin missing." And everywhere I'd go I'd see a
15 black and white cat, man I'd stop the car and jump out and run
16 over there thinking that might be Muffin. And, you know, it
17 would be hard to tell. There's no question about that. When
18 did Ms. Clark say, "That is the radio"? The evidence is she
19 described the radio before she was shown the radio and said,
20 "That's either the radio or a radio just like that. But they
21 would have you believe that that is not credible. This lady
22 whose business has been broken into is going to come in here
23 and testify and tell a lie? And that's reasonable doubt?

24 Gregg Sandel, you can't believe him. You can't believe
25 him because he didn't know Columbia Beauty and Barber Supply

241

1 sold tandeo shears. Well, I tell you what -- on January 3rd,
2 1989, Mr. Justice ain't thought of that lie yet because you
3 remember the officer asking, "Where did you get this stuff?"
4 "At the swap meet." When did he tell them Columbia Beauty
5 and Barber Supply? When did he tell Detective Tyndall that
6 intimidated him so Columbia Beauty and Barber Supply? Use
7 your common sense. He hadn't thought of that yet. And Mr.
8 Sandel said, "I don't know if they sell them or not." What
9 reason does he have to say that one way or the other? Are
10 those his scissors?

11 I don't know why I'm on my children today. My boy plays
12 baseball, little league. You could blindfold him and hand him
13 his glove or hand him someone else's glove. He can put it
14 on his hand. He will know that's not his glove, won't he?
15 You can take an artist who paints with a paint brush. They
16 can put it in their hand. He will know if that's his brush
17 or not, won't he? I can take my glasses off at that table --
18 that may be more of an extreme example -- put someone else's
19 on. Even if they do have bifocals, I will know. In fact, if
20 I get up in the middle of the night in the dark and put my
21 glasses on, I will know if they are my glasses or not, won't
22 I? I don't care if you call yourself a barber or a hair
23 stylist, you will know a six year old set of scissors, I
24 believe the old set, if those are your scissors or not. Won't
25 you? Yes, he had been to the swap meet, selling stolen goods

1 not buying them. Use your common sense.

2 The Judge is going to tell you there's two types of evi-
3 dence, direct and circumstantial. Direct evidence is that
4 which we perceive through our senses, our sight and our
5 hearing, our smell. Circumstantial is that evidence which
6 only meets the same test in different language, proof beyond
7 a reasonable doubt which the State can rely on when one was
8 not seen committing a crime but it stacks up against that
9 person. Three prongs to that. Circumstances must be proved
10 to a moral certainty. That's not any magic word. That is
11 no more greater proof than proof beyond a reasonable doubt.
12 The language used, moral certainty, interprets the reasonable
13 doubt. The circumstances must be consistent one with the
14 other, and they must point conclusively to the guilt of the
15 accused. Again that is beyond a reasonable doubt.

16 Convenient suspect. Theme of the case. I tell you the
17 theme of this case, I submit to you and you look at it with
18 your common sense. Good police work is the theme of this
19 case. They had a situation in the West Columbia/Cayce area,
20 a number of commercial burglaries in a particular area. They
21 even increased patrols. As part of those patrols they would
22 check individuals at night in and around those areas to get
23 identifications on them. They got an identification on John
24 Kerrin Seay on the night of the 2nd of January of '89. Detec-
25 tive Tyndall checked that the next day. He realized where

1 the Crystal Motel was. He said, "I'm going to go down there
2 and check on John Kerrin Seay. He didn't even know of William
3 Bruce Justice and his association with Room 31. He goes down
4 there and, lo and behold, there is Mr. Seay. About -- what
5 did he say -- ten or eleven o'clock of the night of the
6 3rd, the next night. Mr. Seay comes out. Now, our witnesses
7 are not telling the truth; but I don't know a one of our
8 witnesses that has got a conviction for committing a lewd act
9 and criminal sexual conduct on a minor. You take that into
10 account when you weigh the credibility of the witnesses. You
11 may take that into account. That's up to you. They inter-
12 viewed Mr. Seay and he says, I submit to you, "Go ahead and
13 search. I don't have any objections." Because he ain't got
14 nothing to hide. And they go in there. Circumstantial evi-
15 dence. Scissors, some of which have been returned, the
16 scissors. Detective Tyndall said, "Well, when I looked at Mr.
17 Seay, I had seen this video and I could tell in my opinion
18 that wasn't him. He asked him for a description of the other
19 gentleman that lived there, Mr. Justice. He gave him a de-
20 scription and he said, "I'd like to look at him." That
21 clicked, particularly after seeing that stolen merchandise in
22 that room.

23 MR. HALL: Judge, I'm going to object to that comment.
24 That's a question for the jury to decide, the return and the
25 merchandise that was stolen.

1 THE COURT: Ladies and gentlemen, I will explain to you
2 as to your duties and responsibilities at the appropriate
3 time. Disregard this last statement.

4 Proceed, Solicitor.

5 MR. MCMAHON: And then they go get Mr. Justice, return
6 him there, and that's when they see and that's when they have
7 this video. Now this video which was also in the mind of
8 Detective Tyndall, he had knowledge of that, is a guide.
9 This video -- you know what it depicts. And I submit to you
10 it depicts an individual, not like this, but this individual.
11 Maybe not from that video alone. Circumstantial evidence?
12 What happens when you get that video and the person that looks
13 like this has the scissors and has the radio? I submit to
14 you, ladies and gentlemen, that and that alone is sufficient
15 proof beyond a reasonable doubt.

16 Don't believe Detective P. K. O'Neill. Let's go a step
17 beyond -- not to proof beyond a reasonable doubt, but to
18 conclusive, absolute proof, which the State is not even put
19 to. Well, I guess Detective O'Neill has got three house-
20 breaking convictions. And I guess he's been caught for bur-
21 glary in the State of Washington. Don't believe him. He
22 frightened me.

23 The statement. You must determine what weight should be
24 given to the statement. The Judge will charge you the law,
25 the guidelines you are to use to sift and weigh in determining

244-A

1 what weight you want to give to his statement. There is
2 basically four points. Did he make the statement? If he
3 didn't, you go no further. If you determine, as a juror, he
4 didn't make a statement, you go no further. Now let me tell
5 you what the law doesn't say. The law does not say for a
6 statement to be admissible in court it must be a taped state-
7 ment, for a statement to be submitted in court it must be a
8 videoed statement. If we videoed it, they would swear it
9 wasn't him. If we taped him, it wouldn't be his voice. If
10 it was written, it wouldn't be his writing. A statement, the
11 spoken word, is how -- how many percent, 98%? -- of life's
12 transactions are accomplished. Did he make the statement?
13 Once you determine "Yes, he made the statement", go to point
14 two. Was he warned of his rights? He wasn't warned of his
15 rights. He was warned, warned, warned of his rights. Detec-
16 tive Tyndall gave him his rights that night when he arrested
17 him and didn't interrogate him. Detective O'Neill said, "The
18 next morning when I come in, went back to the jail, identified
19 myself to him, showed him my credentials, and verbally advised
20 him of his constitutional rights. He said he wanted to make
21 a statement, didn't mind talking. I brought him upstairs."
22 1/4/89, 7:45 A.M. "You have a right to remain silent."
23 One through six constitutional rights, twice verbally, once
24 in writing. It there bears his signature. Was he warned of
25 his constitutional rights? The next question is the bottom

1 half of this form. Actually, this goes back to question one,
2 did he make this statement? Because, if he wasn't going to
3 make a statement, why did he sign his rights? But after he
4 given those rights, one must waive those rights. It is not
5 that one must waive those rights. One must waive those rights
6 prior to giving any statement. One does not have to waive
7 those rights. That's why the bottom of this form, Waiver of
8 Rights of Miranda Warnings. "I am willing to make a state-
9 ment and answer questions." What did he say about that?
10 "That's not my signature." Did he sign it? Acknowledgment
11 of Warning of Rights and Waiver of Rights. And then the
12 bottom line, what has been the test for centuries - Was that
13 statement voluntary, a product of his free will, no coercion,
14 threats? Well, of course, he was frightened by Detective
15 O'Neill, intimidating figure that he is. And, of course, he
16 signed, "I understand and know what I am doing. No promises
17 or threats have been made to me, and no pressure or coercion
18 of any kind has been used against me." It's on the form.
19 You know, the extreme is physical brutality. That's the pur-
20 pose, that's the point. You don't beat confessions out of
21 people. And he goes and he says, "Yes, you got me." Signs
22 his rights, can't even remember where all he had broken into.
23 "I know where it's at, don't know the names of all of them."
24 But he was a convenient suspect. If he was a convenient sus-
25 pect, they wouldn't have gone there for John Kerrin Seay.

1 They didn't even know he was there when they went there and
2 started looking. But he was convenient.

3 Did he make the statement? Was he warned of his rights?
4 Did he waive those rights? And was that statement a product
5 of his own free will? And, really, it's all right there in
6 that form.

7 Proof beyond reasonable doubt? Sometimes some folks
8 think it requires proof beyond a shadow of a doubt. If it
9 does, thank the Lord you are on this case. Because that's
10 what there is here I submit to you. If you think he's not
11 guilty, find him not guilty. Use your common sense in weigh-
12 ing and determining each and every witness's credibility. If
13 you choose to believe him, so be it. Speak the truth.
14 A verdict that speaks the truth, nothing more, nothing less
15 is all I ask.

16 Thank you.

PERMISSION TO SEARCH

I, Jon Kerrin Seay, have been informed by
Sgt. DK Tyndall and PFC Billy Belk

who made proper identification as (an) authorized law enforcement officer(s) of the

West Columbia Police Dept.

of my CONSTITUTIONAL RIGHT not to have a search made of the premises and property
owned by me and/or under my care, custody and control, without a search warrant.

Knowing of my lawful right to refuse to consent to such a search, I willingly give my
permission to the above named officer(s) to conduct a complete search of the premises
and property, including all buildings and vehicles, both inside and outside of the property
located at 1624 Charleston Hwy West Columbia
SC 29169

The above said officer(s) further have my permission to take from my premises and
property, any letters, papers, materials or any other property or things which they
desire as evidence for criminal prosecution in the case or cases under investigation.

This written permission to search without a search warrant is given by me to the above
officer(s) voluntarily and without any threats or promises of any kind, at 11:00 P.M.
on this 3rd day of January 19 89, at West Columbia.

Signed

Jon Kerrin Seay

Witness:

DK Tyndall

Witness:

C.W. Belk Sr.

Address

[REDACTED]

W. Columbia SC

Address

[REDACTED]

W. Columbia

Phone (H)

(B)

[REDACTED]

Phone (H)

(B)

[REDACTED]



PERMISSION TO SEARCH

24841

I, Tim Kenneth Seay, have been informed by
Sgt D.K. Tyndall and PFC Billy Bell

who made proper identification as (an) authorized law enforcement officer(s) of the

West Columbia Police Dept.

of my CONSTITUTIONAL RIGHT not to have a search made of the premises and property
owned by me and/or under my care, custody and control, without a search warrant.

Knowing of my lawful right to refuse to consent to such a search, I willingly give my
permission to the above named officer(s) to conduct a complete search of the premises
and property, including all buildings and vehicles, both inside and outside of the property

located at 1624 Charleston Hwy West Columbia SC 29169

The above said officer(s) further have my permission to take from my premises and
property, any letters, papers, materials or any other property or things which they
desire as evidence for criminal prosecution in the case or cases under investigation.

This written permission to search without a search warrant is given by me to the above
officer(s) voluntarily and without any threats or promises of any kind, at 8:05 P.M.

on this 4th day of January 1989, at West Columbia

Signed

Tim Kenneth Seay

Witness:

D.K. Tyndall

Witness:

C.W. Bell

Address

3111 S. 1st St. Columbia, SC

Address

1624 Charleston Hwy West Columbia, SC

Phone (H)

794-0721 (B) 794-0721

Phone (H)

(B) 794-0721



41 80 18 13/40
242

"Pass Drug withdrawal"

Go having hard time coming off drugs
cocaine & heroin" Go about 100 - 150 - 200
last yesterday 6:30 (Baker)

No IV drug abuse, SNOW: both chemie & psych
usage - go to change - no drink

O N.A. 9

Keep clean
Hwy - S.S. 2
Hd - 50% more tender, B.S. 4.
no more fell

CBC same as before 1935 all well

gi cital 1/2 p 710 p 10:4, "clin feeling better"
doanorol tabs #15
tip page
drug detox

Abdominal cramps, h/o heroin usage

late PD custody stable
sub 1/25 p 3 (Baker) 9408

4906038	JUSTICE WILLIAM B	039 12702749	01/04/88
431 CHARLESTON HWY	W COLA	SC 29169	32 LDC 2 NO 175
WEST COLUMBIA POLICE DE		OT	PO BOX 444
SC 29169	794-0721	(EA)UNISTRU CONSTRUCTION(FUL	
CHLAND MALL, COLUMBIA	803 253-8636	COMPANY PHYSICIAN	
OFFICE SONYA	803 783-1969	RT 2 BOX 236	
SC	0199	LEXINGTON COUNTY	
ATON COUNTY		ATON COUNTY	
DEFENDANT'S EXHIBIT 3		34-322-10-32	
WILLIAM B		176-40-1140	01/04/89 1101004

du

REPORT CALLED
 10-2-80
 BY
 TIME

☐ AUTOMATED DIFF
☐ CBC MANUAL DIFF
☐ M+N
☒ STAT
☐ LAB USE ONLY
☐ LAB USE ONLY

01/04/80

TECH *JK*

OF CODES	NORMAL VALUES
WBC	4.8-10.8
NEUT	57-70
Lymph	20-40
MONO	2-10
EOS	1-5
PLT	150-400
HGB	12-16
HCT	37-47
MCV	86-106
MCH	27-32
MCHC	32-36
RDW	11.5-14.5
INR	1.0-1.3
PT	11-13
APTT	28-35
LYMPH	20-40
MONO	2-10
EOS	1-5
PLT	150-400
HGB	12-16
HCT	37-47
MCV	86-106
MCH	27-32
MCHC	32-36
RDW	11.5-14.5
INR	1.0-1.3
PT	11-13
APTT	28-35

☐ PATHOLOGIST PROTOCOL REVIEW
☐ DOCTOR WANTS PATHOLOGIST TO REVIEW
 COMMENTS:

10-2-80

3945

490661

176-401160

Justice William Bl

Out 709pm

LEXINGTON MEDICAL CENTER
 WEST COLUMBIA, S.C. 29169
 PATHOLOGISTS
 ERVIN B. SHAW, M.D.
 JOHN B. CARTER, M.D.
 KITY R. MCMASTER, M.D.
 Revised 11/86

PLACE TOP OF REPORT #2 HERE

PLACE TOP OF REPORT HERE

PLACE TOP OF REPORT HERE

Dr. J. H. H. H.

Justice, 1999 Jan 14
4906068
176-40-1140
399
227

☒ STAT ☐ TIMED ☐ ROUTINE ☐ PRE-OP

☒ CHEM 6
PROFILE
Na CO
K GGT
Cl GGT

☐ CHEM 13
PROFILE
Creat Ca
Urea TBIL
TP ALB
Chol LD
Tos QFT
Glu GGT

☐ CHEM 22
PROFILE
CHEM 6
CHEM 13
Ald Phos
B UN
GGT
CK

☐ STAT ☐ TIMED ☐ ROUTINE ☐ PRE-OP[illegible]**COMMENTS:**

DRAWN		DRAWN BY	TECH	COMPLETED	
TIME	DATE			TIME	DATE
145	1/4	HK	ap	7:20	1-4-89
CALLED TO:		TIME:	INITIALS:		REVIEWED

CHART COPY**FORM C-5**

LABORATORY REPORTS

dw

DATE: JANUARY 3, 1989

CRYSTAL MOTEL

DAY: TUESDAY 25245

[illegible]

\$1.00 OVER

DAY: WEDNESDAY 253

DEFENDANT'S
EXHIBIT
5
89-3224-325

EXCEPTIONS

1. The trial court committed error in ruling that the search of appellant's motel room was consensual. This was error because the individual who consented lacked the authority to consent to the search, thus violating appellant's rights under the Fourth and Fourteenth Amendments to the United States Constitution and Article I, §10 of the South Carolina Constitution.

2. The trial court erred in denying appellant's motion to suppress evidence seized from appellant's motel room. Appellant was entitled to such relief because the consent given to search was coerced and involuntary, thus violating appellant's rights under the Fourth and Fourteenth Amendments to the United States Constitution and Article I, §10 of the South Carolina Constitution.

3. The trial court erred in denying appellant's motion to suppress statements allegedly made by appellant. Appellant was entitled to such relief because the alleged statements were coerced by law enforcement officials thus violating appellant's right against self-incrimination under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §12 of the South Carolina Constitution.

4. The lower court committed error in finding that the alleged statements made by appellant were given freely and voluntarily. This was error because appellant's physical and mental condition at the time of the alleged statements deprived him of the capacity to voluntarily make any statements, thus appellant was deprived of his right against self-incrimination in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §12 of the South Carolina State Constitution.

5. The trial judge committed an abuse of discretion in admitting into evidence a surveillance videotape from one of the stores allegedly burglarized. This was error because no one identified the person on the videotape as being appellant, therefore the videotape was not relevant and its prejudicial effect outweighed any probative value.

6. The lower court erred in allowing the state to impeach appellant with a 1977 housebreaking conviction. This was error because the 1977 conviction was too remote in time, and there, the probative value of the conviction is substantially outweighed by its prejudicial effect.

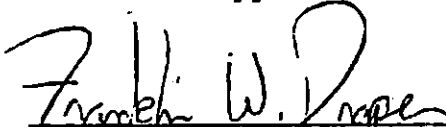
7. The trial court was in error in allowing the state to impeach appellant with a conviction for escape. This was error because escape is not a crime of moral turpitude.

8. The trial court erred in allowing the solicitor to argue, over appellant's objection, his opinion of the law. This was error because it is the trial judge's province to charge the jury with the law.

AGREEMENT AND CERTIFICATE

It is hereby agreed that the foregoing shall constitute the Transcript of Record and Exceptions upon which the appeal in said cause shall be heard in the Supreme Court and that copies of the same may be filed by way of Return in the Court of General Sessions for Lexington County and in the Supreme Court of South Carolina. Counsel certify that all irrelevant matter has been deleted and that the requirements of South Carolina Supreme Court Rule 4 have been satisfied.

FRANKLIN W. DRAPER
Assistant Appellate Defender


ATTORNEY FOR APPELLANT.

T. TRAVIS MEDLOCK
Attorney General

HAROLD M. COOMBS, JR.
Assistant Attorney General

MILLER W. SHEALY, JR.
Staff Attorney

DONALD V. MYERS, Solicitor
Eleventh Judicial Circuit

BY:


ATTORNEYS FOR RESPONDENT.

FORM 5

STATE OF SOUTH CAROLINA

County of LEXINGTON FILED IN THE COURT OF COMMON PLEASWilliam Bruce Justice 084910

Full name and prison number (if any) of Applicant

ORIGINAL

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2014CP3200698

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 McCormick Correctional Institution

2. Name and location of Court which imposed sentence Lexington County Court

3. Name(s) of co-defendant(s) (if any) N/A

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

(a) 89-65-32-00322

(b) 89-65-32-00323

c 89-65-32-00324

D 89-65-32-00325

A TRUE COPY
Lex. Co. C.C.P., G.S. § 70.

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

(a) JUNE 29, 1989 4 - 15 YEAR CONSECUTIVE SENTENCES

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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

N/A

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHED SHEETS
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED SHEETS
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
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. N/A

i.

ii.

iii.

iv.

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

i.

ii.

iii.

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

(c) if known, citation 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**

NO

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

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) Parole Violation(b) Pursuant 12-27-20 (A)(5)

(c) _____

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

(a) your arraignment and plea? N/A(b) your trial, if any? N/A(c) your sentencing? N/A(d) your appeal, if any, from the judgment of conviction or the of sentence? N/A(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. N/A

ii. _____

FILED
2014 FEB 26 A 8:32
DEPT. OF CORRECTIONS
CLERK'S OFFICE

- iii. _____
- (b) the proceeding at which each such attorney represented you: **FILED**
2014 FEB 26 A 3 31
BETHA CARR
CLERK, COURT
- i. NA
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
SEE ATTACHED SHEET (#19) 12-27-20 (A)(S)
20. Are you now under sentence from any other court that you have not challenged?
NO

Revised 3/2003

STATE OF SOUTH CAROLINA

VERIFICATION

County of

McCormick

I, William Bruce Justice 084810, 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.

William Bruce Justice

SWORN to and subscribed before me this

28 day of January, 2014
2013

J. Franklen
Notary Public

My Commission Expires: 12-16-2019

2014CP3200698

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

FILED

2014 FEB 26 A 3 31

DETHA GARR
CLERK OF COURT
LEVEL 1000

I, William Bruce Justice 084810, 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.

William Bruce Justice

SWORN to and subscribed before me this

28 day of January, 2014
2013

J. J. Franklin
Notary Public

My Commission Expires: 12-16-2019

2014CP3200698

Revised 3/2003

10. GROUNDS**FILED**

2014 FEB 25 A 8:31

BETH A. GARNER
CLERK OF COURT
JUDICIAL BRANCH

10(A) Petitioner was denied the right to confront and question witnesses testifying against him that is guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the South Carolina Constitution and the South Carolina Department of Probation, Parole and Pardon Services (see forms stock #36, #1122 and #1124, therefore, Due Process was violated.

(B) Petitioner was denied his right protected by the Fourth Amendment of the United States Constitution and corresponding provisions of the South Carolina Constitution from unlawful arrest that was based on erroneous violation allegations that have no factual support, therefore, violation Due process.

(C) Petitioner was denied his right protected by the Fourth Amendment of the United States Constitution and the corresponding provisions of the south Carolina Constitution from unlawful arrest with an invalid arrest warrant that probable cause had never been established, and his sentence had expired.

11. FACTS

11(A) August 27, 2013, Petitioner was denied his right to confront and question the adverse witnesses testifying against

him at his preliminary hearing when the hearing officer left the room and took testimony from the adverse witnesses outside the presence of the Petitioner. (Orally taped by the hearing officer and witnessed by Ms. Cook, his parole agent. (On record).

October 16, 2013, Petitioner was again denied his right to confront and question the adverse witness at his Revocation Hearing by the Parole Board itself, cutting the Petitioner off when he tried to question the witness, Ms. Cook, who was sitting right next to him. (Video Taped by the Parole Board and witnessed by Ms. Cook, his parole agent). (On record).

11(B) August 07, 2013, Petitioner was unlawfully arrested with an invalid arrest warrant that consisted of an accumulation of erroneous alleged violations that lacked factual support. (see arrest warrant W-28-13-0018 and Incident Report 2013-3696.

11(C) August 7, 2013, Petitioner was unlawfully arrested with an invalid arrest warrant that lacked probable cause, was not endorsed by a judge and was issued upon a 15-year sentence (89-GS-32-00322) which expired over 17-years ago. (Sentence 89-GS--32-00322 start date June 29, 1989). (see arrest warrant W-28-13-0018).

19. Petitioner respectfully request that the ^{Lexington} ~~Kershaw~~ County court orders the South Carolina Parole Board to reinstate the Petitioner's parole pursuant to §17-27-20 (A)(5) (2003). That his sentence has expired, and his parole was unlawfully revoked. *AND he should have not been returned to prison to serve the remainder of his sentence.*

South Carolina Department of Probation, Parole and Pardon Services
Acknowledgement of Notice Parole/EPA/YOA Conditional Release

South Carolina

-vs-

Offender

SCDC#:

SID#:

FILED

2014 FEB 26 A 8:32

BETH A. GARRITY
CLERK, SCDC

ACKNOWLEDGEMENT OF NOTICE

PAROLE/EPA

This is to state that South Carolina Probation and Parole Agent _____ has advised me that a final revocation hearing of my case will be held on _____ at _____ at _____ a.m./p.m. I have read the arrest warrant or citation in this case. I ☐ do ☐ do not wish to be present at the above mentioned hearing. I have also been advised that I will be permitted to have attorneys, at my own expense, and witnesses appear in my behalf if I so desire and have the right to question any person making an allegation against me at this hearing. If I waive appearing at this hearing, I realize the Board will decide my case without my presence and such decision will be final. I have been given a copy of this notice.

ACKNOWLEDGEMENT OF NOTICE

YOA Conditional Release

This is to state that South Carolina Probation and Parole Agent _____ has advised me that a final revocation hearing of my case will be held on _____ at _____ at _____ a.m./p.m. I have read the arrest warrant or YOA Notice of Violation in this case. I ☐ do ☐ do not wish to be present at the above mentioned hearing. I have also been advised that I will be permitted to have attorneys, at my own expense, and witnesses appear in my behalf if I so desire and have the right to question any person making an allegation against me at this hearing. If I waive appearing at this hearing, I realize the Administrative Hearing Officer will decide my case without my presence and such decision will be final. I have been given a copy of this notice.

Signed this _____ day of _____

Offender

Witness

#1122

FILED

2014 FEB 25 A 9:32

BETH A. CARRICK
CLERK OF COURT

South Carolina Department of Probation, Parole and Pardon Services

Notice of Offender Rights at Hearing and Hearing Waiver Option

(For Parole and Supervised Furloughs I & II Only)

South Carolina Department of Probation, Parole and Pardon Services
-VS-

Offender's Name (Print)

Date

SCDC#

SID#

Notice of Your Rights: [The Agent must read and explain to the offender]

You are informed that you are charged with violating conditions of your release. You have the right to remain silent. Anything you say can be used against you at a Violation Hearing. You have the right to talk to an attorney before any questioning and to have him with you during questioning. You may retain an attorney at your expense. The Department of Probation, Parole and Pardon Services is not required to provide you with counsel in this matter. If you cannot afford to hire an attorney, you may at your preliminary hearing petition for any appointed attorney. An attorney will not be appointed in furlough hearings and will not be appointed in other hearings except in the most extraordinary circumstances.

- You have a right to have a hearing on the charge of violation of release program.
- You have the right at the hearing to confront and question any person who appears as a witness against you.
- You may have witnesses appear in your behalf.
- You have a right to obtain an attorney at your expense.

This is to certify that my rights, as stated above have been explained to me, and that I understand what my rights are. I have been given a copy of this statement.

Agent's Signature

Date

Offender's Signature

Date

☐ **Hearing Waiver:**

After having my rights explained to me, I wish to voluntarily waive my right to a Hearing before a neutral Hearing Officer and admit that I violated conditions of my release, and I accept my removal from the program and return to the custody of the South Carolina Department of Corrections for completion of my sentence.

Agent's Signature

Date

Offenders's Signature

Date

#1124

FILED

South Carolina Department of Probation, Parole and Pardon Services
Notice of Administrative Hearing

STATE OF SOUTH CAROLINA VS.	HEARING INFORMATION Date: <u>24 FEB 26</u> A: <u>8:32</u> Time: <u>8:32</u> ☒ AM ☐ PM Location: <u>SC Department of Probation, Parole and Pardon Services</u>
Offender's Name: <u>[Signature]</u> SID#: <u>[Blank]</u> WARRANT/CITATION ISSUE DATE: <u>1/11/13</u>	

You are notified that an administrative hearing will be conducted by a neutral Hearing Officer on the above mentioned date, time, and location (SEE BOX TO RIGHT). This hearing is on the charges that are set forth in the warrant or citation issued on the above mentioned issue date (SEE BOX TO LEFT), which was served on you.

You may have an attorney at your expense represent you at the administrative hearing. The South Carolina Department of Probation, Parole and Pardon Services is not required to provide you with counsel in this matter. If you cannot afford to hire an attorney, you may at your hearing, petition for an appointed attorney. An attorney will not be appointed except in the most extraordinary circumstances. You may have witnesses present to testify for you. It is your responsibility to have your witnesses and attorney present. You have the right to question any person making allegations against you at the hearing.

YOU ARE REQUIRED TO BE PRESENT AT YOUR ADMINISTRATIVE HEARING AS SCHEDULED ABOVE.
IF YOU DO NOT APPEAR, THE HEARING WILL BE HELD IN YOUR ABSENCE.

I UNDERSTAND THAT I MUST BE AT MY ADMINISTRATIVE HEARING AND I HAVE RECEIVED A COPY OF THIS NOTICE.

Offender's Signature: <u>[Signature]</u>	Date: <u>2/14/13</u>
Witness's Signature: <u>[Signature]</u>	Date: <u>2/14/13</u>

☐ Waiver:	
I agree to waive 48 hour written notice of my hearing.	
Offender's Signature: <u>[Signature]</u>	Date: <u>[Blank]</u>
Agent's Signature: <u>[Signature]</u>	Date: <u>[Blank]</u>

Form 16.1 - Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-160
March 15, 1978

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Parole

ARREST WARRANT

Indictment Number 89-GS-32-00322

Warrant Number W-28-13-0018

State Identification No. (SID) L0001136

FILED

2014 FEB 26 A 9:32

BETH A. CARRIE
CLERK OF COURT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF CAMDEN, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that WILLIAM BRUCE JUSTICE, did on the 7 day of August, 2013 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Violation pursuant to section 24-21-680 in that Justice violated conditions 3, 7, 9, and 10 of cause number 1989-GS-32-322 ordered in Lexington County General Sessions Court.

Now, therefore, you are empowered and directed to arrest the said defendant and bring WILLIAM BRUCE JUSTICE 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. Done at CAMDEN, S.C. this 7 day of August, 2013.

N. M. Cook

(L.S.)

Signature of Probation and Parole Agent.

County of KERSHAW

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Niquita M. Cook, who, first being duly sworn, deposes and says that WILLIAM BRUCE JUSTICE did within this County and State on the 7 day of August, 2013, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

Violation pursuant to section 24-21-680 in that Justice violated conditions 3, 7, 9, and 10 of cause number 1989-GS-32-322 ordered in Lexington County General Sessions Court.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

Justice failed to follow the advice and instructions of his agent by failing to pay BORA by being \$15 in arrears at issuance of process and \$50 in arrears on supervision fees; failed to refrain from contacting Leigh Cotton and her family as instructed by agent on Monday, August 5, 2013; failed to refrain from drinking alcohol to excess. According to incident report 2013-3696 with the Kershaw County Sheriff's Office, Justice assault two victims of Ms. Cotton's family by striking victim #1 with a metal pipe across her stomach and victim #2 with a closed fist.

Sworn to and Subscribed before me
this 7 day of August, 2013.

Candace K. Glenn

Signature of Notary Public

8/27/21

My Commission Expires

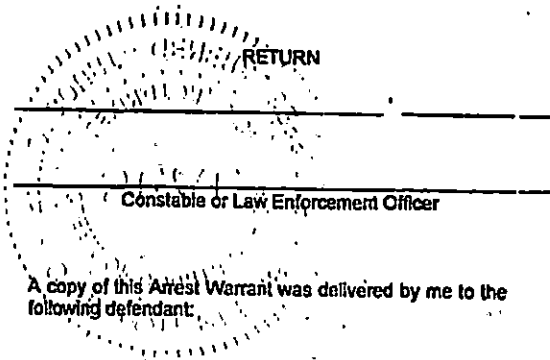
(L.S.)

N. M. Cook

Affiant

Address: P.O. BOX 896
CAMDEN, SC 29020
KERSHAW
USA

(803) 425-1510



Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

WILLIAM JUSTICE

on the 7 day of AUGUST 2013

[Signature]
Constable or Law Enforcement Officer

This Warrant is certified for service in [County of warrant Certification] County. The accused is to be arrested and brought before me to dealt with according to law.

Signature of Judge

(L.S.)

STATE OF SOUTH CAROLINA

COUNTY OF

KERSHAW

THE STATE

against

WILLIAM BRUCE JUSTICE

ARREST WARRANT

Offense: Violation of Conditions of Parole Supervision

Offense Section: 24-21-680

Date: 8/7/2013

Officer and Agency: SC Department of Probation,
Parole and Pardon Services

Niquita M. Cook

Disposition

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name WILLIAM BRUCE JUSTICE

Address 956 A SESSIONS RD.
ELGIN, SC 29045

Phone (803) 457-1022

Sex Male Race White Height 605

Weight 181 Birth date 12/1/1949

Social Security Number 176-40-1140

INFORMATION ON WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Magistrate

on

with

Attorney for the Defendant.

Decision

BAIL

Date Set

Magistrate

Amount

Surety

ORIGINAL

William Bruce Justice 084810 2-18-2014
MCCI F4A/164
386 Redemption Way
Mc Cormick, S.C. 29899

ATTN: Clerk of Court

I AM SENDING YOU MY Application for Post Conviction Relief PURSUANT South Carolina code of laws § 17-27-20 (A)(5) That my parole was UNLAWFULLY REVOKED as I was instructed to do so by the South Carolina Department of Probation, Parole and Pardon Services.

Please clock stamp and send me a copy, I don't have any money to pay for postage.

2014CP3200698

Respectfully Requested:

William Bruce Justice



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	2014-CP-32-0698.
	)	
William Bruce Justice,	)	
S.C.D.C. No. 084810,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief (PCR) application filed by William Bruce Justice (Applicant) on February 26, 2014, Respondent would show this Court:

I.

Applicant is confined at the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the at the February 1989 term of the Lexington County Grand Jury for four counts of Burglary Second Degree, two counts of grand larceny, and two county of petit larceny. He was represented by Frederick I. Hall, III, Esquire. On June 28, 1989, Applicant proceeded to trial by jury pursuant to which he was found guilty as charged. He was sentenced by the Honorable Marion H. Kinon to sixty years imprisonment on the burglary charges, twenty years on the grand larceny charges and one month on each petit larceny charge. All sentences were ordered to run consecutively.

A timely Notice of Intent to Appeal was served and filed. On February 7, 1990, Assistant Appellate Defender Franklin W. Draper filed a Brief of Appellant on Applicant's behalf. Applicant raised the following ground for relief on direct appeal:

1. Did the trial court err failing to suppress the evidence seized without a warrant or appellant's consent from appellant's motel room?
2. Did appellant's poor health due to heroin withdrawal deprive him of the ability to make a knowing and voluntary statement?
3. Was it proper to impeach appellant with a conviction that did not involve moral turpitude?
4. Did the trial court err in admitting a surveillance tape with an unidentified individual portrayed?

The state filed a Brief of Respondent on March 98, 1990 App. pp. 323-46; and Applicant filed a Reply Brief of Appellant on March 19, 1990. The South Carolina Supreme Court affirmed Applicant's convictions and sentence in an unpublished opinion filed on July 16, 1991. State v. William Bruce Justice, 91-MO-200 (S.C.S.Ct. filed July 16, 1991.).

3:89-1232-OJ

Prior to the South Carolina Supreme Court's decision affirming his convictions, Applicant filed a pro se Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina on May 15, 1989. Justice v. Bost, et al., 3:89-1232-OJ. He raised the following grounds for relief in his 1989 Petition:

1. Violation of constitutional right by illegal search and seizure.
 - a. Police using threats and coercion on "non-residence" entered the residence of the Applicant without a proper search warrant, without permission or knowledge of the Applicant, and illegally and unconstitutionally did seize personal property of the Applicant without any form of a properly executed warrant.
2. Evidence obtained pursuant to unlawful arrest.
 - a. Applicant was placed under illegal arrest following the illegal search and seizure and is still being held in illegal confinement since January 3, 1989, without ever being afforded a grand jury indictment on the charges.
3. Denied access to state court system to attack illegal and unconstitutional confinement.
 - a. Court of General Sessions refused to adhere to state statute and hear the writ of habeas corpus submitted within the time limits set forth by statute thereby denying the Applicant access to the court or right to appeal to a higher court any decision rendered.

After the Respondents had filed a Motion for Summary Judgment and a Supplemental Motion for Summary Judgment, Magistrate Judge Carr filed a Report and Recommendation on November 28, 1989, in which he recommended dismissal of the 1989 Petition without prejudice because Applicant had not exhausted available state court remedies. The Honorable Matthew J. Perry filed an Order on January 22, 1990 granting the Respondent's motion for summary judgment and dismissing the 1989 Petition without prejudice. Judgment was entered in accordance with this Order of January 24, 1990.

August 18, 1992 PCR

Applicant subsequently filed an Application for Post-Conviction Relief (PCR) on August 18, 1992. He raised the following grounds for relief in his PCR Application:

1. Ineffective assistance of counsel.
2. Applicant was denied his Fourth Amendment right because of an illegal search and seizure.
3. Abuse of discretionary powers of the trial judge.
4. Denied a fair trial.
5. Ineffective assistance of appellate counsel.
6. Unconstitutional sentence.

The State filed a Return dated October 8, 1992. The Honorable Daniel E. Martin, Sr., held a hearing into the matter on June 7, 1995 at the Lexington County Courthouse. Applicant was present at the hearing and John R. Rakowsky represented him. Assistant Attorney General Allen Bullard represented the State. Prior to the start of the hearing, Judge Martin questioned Applicant regarding whether Applicant desired to make any amendments to the PCR Application. Collateral counsel made a motion to amend the Application to include the following additional allegations of ineffective assistance of counsel:

1. Counsel failed to challenge the Applicant's oral confession to law enforcement.
2. Counsel failed to subpoena a jacket and shoes to present as evidence.
3. Counsel did not request a charge for Receiving Stolen Goods.
4. Counsel did not ask the Court to impose concurrent sentences.

5. Counsel failed to subpoena additional witnesses.
6. Counsel did not object to introduction of prior escape charge for impeachment purposes.
7. Counsel didn't move for a directed verdict on the Grand Larceny charge on Indictment 89-GS-32-325. The Applicant was charged with stealing six shears but the State only produced two at trial.

Respondent did not object to amendment of the Application, and Judge Martin granted the motion to amend. Also, prior to the commencement of the hearing, Applicant explicitly withdrew all allegations of ineffective assistance of appellate counsel Frank Draper, Esquire, and any allegation against Ms. Kathy Evatt, Esquire.

Applicant testified in his own behalf at the hearing. Testifying on behalf of the State was Frederick I. Hall, III, Esquire. On July 19, 1995, Judge Martin signed an Order of Dismissal, in which he denied relief and dismissed the Application with prejudice.

A timely Notice of Appeal was served and filed. On February 1, 1996, Assistant Appellate Defender Lesley M. Coggiola filed a Petition for Writ of Certiorari on Applicant's behalf, in the South Carolina Supreme Court. Applicant raised the following ground for relief in the certiorari petition:

Did the trial judge err in finding that Applicant received effective assistance of counsel when counsel failed to subpoena a jacket and a pair of shoes taken from his motel room by the officers who conducted a search and were different from the jacket and shoes worn by an individual who appeared on videotape the prosecution played for the jury?

The State filed a Return to Petition for Writ of Certiorari on March 11, 1996. The South Carolina Supreme Court denied certiorari on June 19, 1996 and the Remittitur was sent to the Lexington County Clerk of Court on July 8, 1996.

2:03-2281-10AJ

Applicant subsequently filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina on July 10, 2003, raising the following grounds for relief, verbatim:

"Convicted obtained by use of Evidence Obtained Pursuant to an Unconstitutional Arrest. Search and Seizure.

The Petitioner herewith and herein reasserts as his First Grounds in the petition for Writ of Habeas Corpus his Number #3 Grounds, verbatim, raised for ineffective assistance of counsel in his application for post conviction relief, which read as follows:

The applicant was denied his rights protected under the Fourth Amendment of the United States Constitution by an illegal search seizure [sic] and during the suppression hearing the applicant was denied his rights protected under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution by ineffective assistance of counsel, denial of the process of law, denial of equal protection of laws, abuse of discretionary powers by the trial court judge."

Respondent filed a motion for summary judgment on September 17, 2003. On September 25, 2003, Applicant was provided a copy of Respondent's order as well as a Roseboro order. On November 3, 2003, Applicant filed an affidavit and reply to Respondent's motion. On December 23, 2003, United States Magistrate Judge Robert S. Carr issued a Report and Recommendation, recommending Respondent's motion for summary judgment be granted. Applicant submitted objections to the Report and Recommendation. On February 4, 2004, Senior United States District Judge Matthew J. Perry, Jr., issued an Order approving the Report and Recommendation and dismissing Applicant's action.

Parole Revocation

On or about May 2, 2012, Applicant was granted parole by the South Carolina Probation, Parole, and Pardon Services.¹ He was given a Certificate of Parole which outlined eleven

¹ Parole to take effect from May 3, 2012, to March 6, 2032.

Conditions of Supervision (signed and dated by Applicant, the Director of Parole Board Support, and a witness). On August 7, 2013, a warrant was issued for Applicant's arrest, alleging that Applicant violated Conditions 3, 7, 9, and 10 of his Parole. It was alleged that Applicant failed to follow advice and instructions of his agent by failing to pay fees, failing to refrain from contacting his former employer Leigh Cotton and her family, failing to refrain from drinking alcohol to excess, and according to two Kershaw County arrest warrants Applicant struck two members of Ms. Cotton's family with a pole (charged with two counts of Assault and Battery Third Degree).

On August 20, 2013, Applicant was presented a Notice of Offender Rights at Hearing and Hearing Waiver Option from Parole Services. Applicant was notified that his parole hearing date was set for August 27, 2013. The hearing took place at the Kershaw County Detention Center on August 27, 2013. Present at the hearing was the Administrative Officer, Applicant's parole agent, Applicant, and two agent's witnesses (Leigh Cotton and Paul Cotton, III). Applicant was found to have violated conditions 3, 7, 9, and 10, set forth in the Conditions of Supervision. The Applicant's parole was revoked, and he was ordered to serve the remainder of his sentence. Applicant did not appeal his parole revocation.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and parole revocation records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Current PCR Application

Applicant subsequently filed his current and most recent Application for Post-Conviction Relief (PCR) on February 26, 2014. He raised the following grounds for relief in his PCR Application:

1. Applicant was denied the right to confront and question witnesses testifying against him that is guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the South Carolina Constitution and the South Carolina Department of Probation, Parole and Pardon Services ... therefore, Due Process was violated;
2. Applicant was denied his right protected by the Fourth Amendment of the United States Constitution and corresponding provision of the South Carolina Constitution from unlawful arrest that was based on erroneous violation of allegations that have no factual support, therefore violation Due process;
3. Applicant was denied his right protected by the Fourth Amendment of the United States Constitution and the corresponding provisions of the South Carolina Constitution from unlawful arrest with an invalid arrest warrant that probable cause had never been established, and his sentence had expired.

II.

Respondent interprets Applicant's allegations as claims that his parole was unlawfully revoked. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

A proceeding under the Uniform Post-Conviction Procedure Act may be instituted by: "Any person who has been convicted of, or sentenced for, a crime and who claims . . . [t]hat his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint." S.C. Code Ann. § 17-27-20. An inmate's non-collateral claim that his parole was unlawfully revoked falls squarely within the ambit of the PCR statute. Kerr v. State, 345 S.C. 183, 547 S.E.2d 494 (2001); Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). However, this does not give the court the authority either to conduct a de novo review of the case or to otherwise sit in an appellate capacity to

review the Parole Board's discretionary decision. To the contrary, the South Carolina Code specifically provides: "[t]he board shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed." S.C. Code Ann. § 24-21-680. The court's review of whether the Applicant's parole was unlawfully revoked is limited to an examination of whether the revocation procedure itself was lawful.

III.

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

IV.

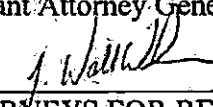
WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

May 27th, 2015

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

WILLIAM BRUCE JUSTICE,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

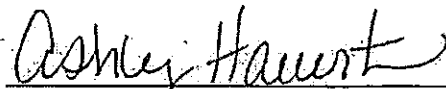
2014-CP-32-0698

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 on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

William Bruce Justice, #84810
 McCormick Correctional Institution
 386 Redemption Way
 McCormick, SC 29899

DATED this 27th day of May, 2015.


 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) COURT OF COMMON PLEAS

William Bruce Justice,)
Plaintiff,)
v.) Case No. 14-CP-32-0698
State of South Carolina,)
Defendant)

TRANSCRIPT OF HEARING

The within Hearings in the above-captioned matter were held on April 19th and April 21, 2016, before The Honorable Perry H. Gravely in the County of Common Pleas for Lexington County, South Carolina; attended by counsel as follows:

APPEARANCES:

Anna R. Good, Esq.
... Appearing for Applicant

Caitlan Hastings, Assistant Attorney General
OFFICE OF ATTORNEY GENERAL
P O Box 11549
Columbia, South Carolina 29211
... Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

William Bruce Justice v State of South Carolina**2****Case No. 17-CP-32-1718****PCR Hearings of April 19th and 21st, 2016****Before The Honorable Perry H. Gravely****INDEX**

Hearing of April 19, 2016	3
Hearing of April 21, 2016	21
Certificate of Court Reporter	23

William Bruce Justice v State of South Carolina

3

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravely

1

2

APRIL 19, 2016

2:00 P.M.

3

(APPLICANT PRESENT)

4

THE COURT: Good afternoon, Mr.

5

Justice.

6

APPLICANT: How you doing?

7

THE COURT: Do I have his packet?

8

MS. HASTINGS: Permission to

9

approach, (tendering).

10

THE COURT: (Upon review), I'll be glad
to hear from you.

11

12

MS. HASTINGS: Your Honor, this is

13

Caitlan Hastings representing the State.

14

This is William Justice versus the State
of South Carolina, Docket 2014-CP-32-0698.

15

16

Today we're here based on the Applicant's
PCR application challenging revocation of his
parole. But in order to situate this court
and the record, I would provide a brief
procedural history if that is all right, Your
Honor .

17

18

19

20

21

22

THE COURT: Yeah.

23

MS. HASTINGS: All right. The

24

Applicant is presently confined in the South
Carolina Department of Corrections pursuant

25

William Bruce Justice v State of South Carolina

4

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravely

1 to Orders of commitment of Lexington County.

2 He was indicted at the February 1989 term
3 of the Lexington County Grand Jury for four
4 counts of second degree burglary, two counts
5 of grand larceny and two counts of petit
6 larceny.

7 He was tried and found guilty as charged
8 and Judge Keesley sentenced the Applicant to
9 confinement for sixty (60) years on the
10 burglary charges, twenty years on the grand
11 larceny and one month each on the petit
12 larceny charges. The sentences are to run
13 consecutively.

14 The Applicant filed an appeal and the
15 South Carolina Supreme Court affirmed the
16 Applicant's convictions in an unpublished
17 Opinion.

18 While his appeal was pending, the
19 Applicant filed a *pro se* petition for a writ
20 of *habeas corpus* in 1989, which was dismissed
21 by the United States District Court for the
22 District of South Carolina.

23 He subsequently filed his first PCR
24 application in 1992, which was dismissed by
25 Judge Martin. He appealed this dismissal and

William Bruce Justice v State of South Carolina

5

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravely

1 the South Carolina Supreme Court denied
2 *certiorari*.

3 He subsequently filed a second writ for
4 petition of *habeas corpus* in 2003, which was
5 again dismissed by the United States District
6 Court for the District of South Carolina.

7 He then received -- he was granted parole
8 on May 2nd, 2012. The parole was to last from
9 May 3, 2012, to March 6th, 2032.

10 The Applicant was given a certificate of
11 parole which outlined eleven conditions of
12 supervision, which was signed and dated by
13 the Applicant.

14 On August 7th, 2013, a warrant was issued
15 for the Applicant's arrest, alleging that the
16 Applicant violated conditions three, seven,
17 nine and ten of his parole. More
18 specifically he violated his parole by
19 failing to pay his fees; failing to refrain
20 from contacting his former employer, Ms.
21 Cotton and her family members; failing to
22 refrain from drinking alcohol to excess; and
23 the Applicant was charged with two counts of
24 assault and battery in the third degree, in
25 which he struck two members of Ms. Cotton's

William Bruce Justice v State of South Carolina

6

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravely

1 family members, one with a pole and one with
2 his fist..

3 On August 20th, 2013, the Applicant was
4 presented with a notice of his right as an
5 offender and his option to waive his hearing.
6 He was notified of his hearing date, place
7 and time.

8 The hearing took place on August 27th,
9 2013 at Kershaw County Detention Center. The
10 Applicant appeared *pro se*. The other persons
11 present at the hearing were the administra-
12 tive officer, the Applicant's parole agent
13 and the agency's two witnesses: Lee Cotton
14 and Paul Cotton, III.

15 At this hearing the hearing officer did
16 leave the room and took the testimony of two
17 adverse witnesses outside the Applicant's
18 presence. This testimony was both orally
19 taped by the hearing officer and witnessed by
20 the Applicant's parole agent.

21 On October 16th, 2013, a revocation
22 hearing was held in front of the Parole
23 Board. The parole board found the applicant
24 in violation of his parole, revoked his
25 parole and therefore ordered the applicant to

William Bruce Justice v State of South Carolina

7

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravely

1 serve the remainder of his sentence.

2 This resulted in the Applicant's present
3 application for PCR which was filed on
4 February 26th, 2014, in which he alleged three
5 grounds on which the State is ready to
6 dismiss at this time if Your Honor is ready
7 to hear us.

8 THE COURT: All right. Let me briefly
9 hear from you, Ms. Good.

10 MS. GOOD: Thank you, Your Honor. It
11 is our understanding that the State is going
12 to move to dismiss based on the fact that Mr.
13 Justice does not have the ability to file for
14 a PCR for his parole revocation. Your Honor,
15 it is our position that he does.

16 To start off with, the stated statute,
17 South Carolina Code Section 17-27-20(a), a
18 person who has been convicted of or sentenced
19 for a crime can file a PCR, Your Honor, for
20 -- if his parole or conditional release is
21 unlawfully revoked. It is our position, Your
22 Honor, that it was unlawfully revoked in the
23 sense of a due process claim. During the
24 hearing, there was testimony taken orally
25 which -- and recorded -- which he was never

William Bruce Justice v State of South Carolina

8

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravely

1 able to hear. He was never able to cross-
2 examine any witnesses.

3 Basically, Your Honor, the revocations
4 had to do basically with his contact with
5 these former employers and new arrests. He
6 asked the parole officers for copies of the
7 incident reports for the arrest. He wanted
8 to speak with the victims to cross-examine
9 them as to what happened because actually the
10 assault and batteries were on his own
11 property, Your Honor, and he was not allowed
12 access to any of those, nor to cross-examine
13 any of these witnesses as to he-said/she-
14 said, basically as to whether he was having
15 contact with them and how that contact arose.
16 So he's asking for parole revocation PCR,
17 Your Honor, based on a due process claim.

18 THE COURT: Okay, and I guess I mixed
19 up that part. Since you are the moving
20 party, let me hear from you and then I'll
21 hear from you. Okay?

22 MS. GOOD: Okay.

23 THE COURT: All right, let me hear from
24 the State. This is a Motion to dismiss,
25 right?

William Bruce Justice v State of South Carolina

9

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravely

1 MS. HASTINGS: Yes, Your Honor. I'll
2 start with the short argument, if that is all
3 right with Your Honor.

4 THE COURT: Sure.

5 MS. HASTINGS: The Applicant raises
6 three grounds, two of which he is alleging
7 his Fourth Amendment rights were violated and
8 that his rights for unlawful arrest was due
9 to an invalid arrest warrant and lack of
10 factual support for the alleged violations of
11 parole.

12 The State's position on this are that
13 these claims are inappropriate for a PCR
14 review. Section 24-21-680 of the South
15 Carolina Code states that the Parole Board is
16 the sole judge in regards to parole
17 revocations, and that their decision cannot
18 be appealed.

19 The scope of the board is limited to the
20 parole revocation procedure itself was lawful
21 and, therefore, the court is prevented from
22 conducting any *de novo* findings. So it is
23 our position that these claims are
24 substantive rather than procedural, so the
25 State would move to dismiss those two claims

William Bruce Justice v State of South Carolina

10

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravelly

1 at this time.

2 THE COURT: I realize that it is not --
3 do you have that statute? Which one was it
4 -- the one that you -- I can pull it up right
5 here.

6 MS. HASTINGS: Yes, sir, 24-21-680.

7 THE COURT: Thank you. (Upon review),
8 I guess, looking at, -- and, again, the board
9 has the final say-so in it, but in looking at
10 17-27-20, it says the PCR can be filed if it
11 -- under section five if the sentence
12 expired, his probation or parole conditional
13 release is unlawfully revoked. I mean, isn't
14 that what he is claiming, that it was
15 unlawfully revoked?

16 MS. HASTINGS: Uh, ---

17 THE COURT: Again, assuming that we
18 would grant -- and this is just a Motions
19 hearing, but if his relief was granted,
20 wouldn't it then just go back to the parole
21 board and they would be the one that would
22 make the final decision?

23 MS. HASTINGS: Yes, but the -- the
24 State understands the statute, that his
25 claims regarding the Fourth Amendment are

William Bruce Justice v State of South Carolina

11

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravelly

1 more procedural-based as to whether the
2 Board, uh, lawfully erred -- whether there
3 was enough factual support for revoking his
4 grounds and ---

5 THE COURT: Right, and I think in a
6 Motion to dismiss hearing, don't I have to
7 consider everything in the light most
8 favorable to them?

9 Let me hear from -- I guess we've got
10 several arguments. Let's just take them one
11 at a time.

12 MS. GOOD: Your Honor, as to -- I
13 mean, it's basically what I stated before.
14 The argument is that he was unlawfully
15 revoked and that he did not have the
16 opportunity under due the process claim to
17 cross-examine or see any of the evidence
18 against him or to hear the evidence that was
19 -- the opportunity to counter that against
20 the Parole Board and in the initial
21 preliminary hearing at the Kershaw jail,
22 because I believe that they were also present
23 there, Your Honor.

24 Under the statute that she quoted it is
25 not appealable, we're not trying to appeal

William Bruce Justice v State of South Carolina
Case No. 17-CP-32-1718
PCR Hearings of April 19th and 21st, 2016
Before The Honorable Perry H. Gravelly

12

1 the decision at this point. We are just
2 trying to say that the decision needs to go
3 back so that everything can be heard in
4 conjunction with one another and everybody
5 have the same information when it comes to
6 him being able to argue his position as to
7 the charges that were brought against him and
8 the evidence that was being used against him.

9 THE COURT: Okay. Let me hear all your
10 arguments.

11 MS. HASTINGS: Your Honor, in regards
12 to the Applicant's argument of not being able
13 to confront the witnesses, the United States
14 Supreme Court case of *Morrissey v. Brewer* lays
15 out the minimal requirements of due process
16 for a parole revocation hearing and talks
17 about how parole revocation hearings and
18 administrative hearings are criminal
19 hearings. Therefore the applicant is
20 entitled to less procedural protections, in
21 that the hearings are not meant to be
22 flexible and lays out specifically what the
23 minimal requirements are.

24 Those requirements are written notes of
25 the claimed violations of parole; disclosure

William Bruce Justice v State of South Carolina

13

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravelly

1 to the parolee of evidence against him; an
2 opportunity to be heard in person, and to
3 present witnesses and documentary evidence;
4 the right to confront and examine witnesses
5 unless the hearing officer specifically finds
6 good cause for not allowing confrontation; a
7 mutual and detached hearing body, such as a
8 traditional parole board; and a written
9 statement by the fact finders as to the
10 evidence relied and the reasons for revoking
11 parole.

12 In this case, the State finds that the
13 hearing officer had more than good cause to
14 disallow the confrontation of the two adverse
15 witnesses. The applicant in this case
16 continued to send threatening communications
17 to the witnesses and their families, and to
18 commit violent acts against the witnesses'
19 families.

20 THE COURT: Did the judge make that
21 finding?

22 MS. HASTINGS: (No verbal response).

23 THE COURT: Doesn't it require the
24 judge, the actual parole officer, to make
25 that finding?

William Bruce Justice v State of South Carolina

14

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravely

1 MS. HASTINGS: (No verbal response) ..

2 THE COURT: What does it say?

3 MS. HASTINGS: Uh, ---

4 THE COURT: The part that you read
5 about that they have the right to confront
6 witnesses except ---

7 MS. HASTINGS: Unless the hearing
8 officer specifically finds good cause for not
9 allowing confrontation.

10 THE COURT: And I don't think that
11 there is an Order -- is there an Order in my
12 packet that makes -- is there an Order from
13 the Parole Board?

14 MS. HASTINGS: It's -- the Applicant
15 states in his application that the reason ---

16 THE COURT: It is attached?

17 MS. HASTINGS: To the application.
18 In your packet, under the parole hearing
19 Order, on page ---

20 MS. GOOD: (Tendering).

21 THE COURT: Okay. Is that it, right
22 there?

23 MS. HASTINGS: (Upon review) -- yes,
24 sir.

25 THE COURT: Okay.

William Bruce Justice v State of South Carolina

15

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravely

1 MS. HASTINGS: On page two -- well,
2 it says one and two, but if you flip it over
3 it talks about the Applicant's communication
4 with the victims. Is that what you're asking
5 me about, Your Honor?

6 THE COURT: Is there some portion in
7 this Order where he makes the finding as
8 required by that?

9 MS. HASTINGS: About the good cause?
10 As to why they ---

11 THE COURT: I know that's how you are
12 interpreting that but it sounds like he has
13 to make a specific finding that there is good
14 cause for him not to be able to confront.
15 That's what I'm saying. Do you ---

16 MS. HASTINGS: Not in this documents
17 do I find a finding but from the case law,
18 that is how I interpret that there was a
19 specific finding.

20 THE COURT: I guess here are the
21 findings. I'm not familiar with parole
22 documents. I can't say that I've ever seen
23 any.

24 MS. GOOD: Your Honor, I believe what
25 you're looking at is the initial warrant and

William Bruce Justice v State of South Carolina

16

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravelly

1 affidavit of the parole agent. I actually do
2 have the findings of the administrative
3 hearing summary.

4 THE COURT: I finally found it, yes.

5 MS. GOOD: And I don't believe that
6 anywhere in there that it mentions anything
7 about the confrontation of the witnesses.

8 THE COURT: All right. Is that the
9 extent of your ---

10 MS. HASTINGS: Yes, Your Honor. The
11 State's position is that the Applicant has
12 failed to assert the allegations to withstand
13 the requirements of Rule 12 or the PCR Act.

14 THE COURT: Again, I think is -- I
15 think that it would be entirely different if
16 we were here for an actual hearing, but I
17 believe that as far as -- I mean, I think in
18 looking at -- you know, as to your first
19 argument, I think that there is going to have
20 to be some information to determine whether
21 the parole was revoked unlawfully. That has
22 to be something -- some testimony taken. I
23 think 17-27, it does sound like there is a
24 little bit of conflict there but under the
25 PCR statute it definitely provides that they

William Bruce Justice v State of South Carolina

17

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravely

1 can attack a parole. If it was unlawful,
2 then you have to determine 'was this
3 revocation unlawful?'

4 I think on the second ground -- I mean,
5 you know, it sounds like they have a right to
6 confront witnesses unless -- according to
7 what you read to me -- there are specific
8 findings saying that would not be
9 appropriate.

10 In my review of that Order, the judge
11 addresses that there are issues back and
12 forth between the people but there's not a
13 specific finding that that wouldn't be
14 appropriate. So -- unless you have something
15 else, I think that this needs to proceed
16 forward and actually have -- I believe it is
17 the Court's position that your Motion should
18 be denied.

19 MS. HASTINGS: We understand, Your
20 Honor.

21 THE COURT: Okay. Anything further?

22 MS. GOOD: Yes, sir, Your Honor. I
23 have kinda spoken with them about this. I
24 sent a subpoena on August 11th, 2015, to the
25 Department of Probation, Parole & Pardon

William Bruce Justice v State of South Carolina

18

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravelly

1 services requesting a copy of the probation
2 agent's file, any incident reports and copies
3 of any hearings that were held, such as the
4 testimony. I received a letter back August
5 28th with basically just a copy of the summary
6 hearing as well as the arrest warrant. They
7 indicated that they -- that they would not be
8 able to give anything to me that is
9 privileged unless it was Ordered by the
10 Court. So I'm asking at this point for
11 discovery and allow (sic) the Court to grant
12 me access to their file.

13 THE COURT: Wasn't there a case just
14 recently about that issue, whether they -- I
15 remember something about somebody was trying
16 to get parole information and there was a big
17 issue about whether it was privileged or not.
18 Are y'all aware of any ---

19 MS. HASTINGS: I am not aware of that
20 but I did indicate to Ms. Good when she told
21 me she was going to make this -- we think
22 that this is an issue between her and the
23 Parole Board, so -- you know, while we take
24 no position, we would think that the Parole
25 Board would need to be heard. I know that

William Bruce Justice v State of South Carolina

19

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravelly

1 Ms. Good has said that she got the letter and
2 that they have basically indicated that they
3 will hand it over to her as long as you were
4 to Order them to do so.

5 THE COURT: Well, I guess what I need
6 to determine is that an appropriate Order.

7 MS. GOOD: Right. It's up to Your
8 Honor. We can have another hearing if ---

9 THE COURT: Let me look into that. Let
10 me take that under advisement. Does the
11 Parole Board or their attorney need to be --
12 I mean, medical records, that the same kind
13 of response you'd get when you request
14 medical records and it may just be that they
15 want to protect themselves. Or is there a
16 serious legitimate issue that they have on
17 that?

18 MS. GOOD: Yes, sir.

19 THE COURT: So let me look into -- let
20 me take that under advisement, that portion,
21 and I will let you know something.

22 MS. GOOD: Okay. Thank you, Your
23 Honor.

24 MS. HASTINGS: Ms. Good is coming
25 back on Thursday. So tomorrow I will reach

William Bruce Justice v State of South Carolina
Case No. 17-CP-32-1718
PCR Hearings of April 19th and 21st, 2016
Before The Honorable Perry H. Gravely

20

1 out to PPB and see if I can ---

2 THE COURT: That's good.

3 MS. GOOD: Thank you.

4 THE COURT: Ms. Good, are you going to
5 draft the Order since you're the winning
6 party here?

7 MS. GOOD: Sure, Your Honor.

8 (HEARING CONCLUDED)

9 (HEARING RESUMED APRIL 21, 2016)

10 (TRANSCRIPT CONTINUED NEXT PAGE)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

William Bruce Justice v State of South Carolina

21

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravely

1 APRIL 21, 2016

10:30 a.m.

2
3 MS. HASTINGS: Your Honor, on the
4 William Bruce Justice case, 2014-CP-32-0698,
5 Your Honor, Ms. Good had brought up that --
6 just as a reminder, this is one where the
7 State's position is that we thought that it
8 shouldn't go to a factual hearing challenging
9 his parole revocation. Ms. Good, Applicant's
10 counsel, brought up that she had served a
11 subpoena on BBP and that they had responded
12 with a letter saying that they needed a Court
13 Order.

14 I notified the Court that I could not
15 tell you what BBP's position was at the time.
16 I was able to call on Matt Buchanan, who is
17 the General Counsel. He is going to be here
18 later today as a witness but his indication
19 to me over the phone was that he would want
20 an evidentiary hearing and that it would be
21 because there are things included in an
22 inmate's file that he does not think are
23 appropriate to give an inmate, especially one
24 who is still in custody, such as
25 psychological reports or needs and

William Bruce Justice v State of South Carolina

22

Case No. 17-CP-32-1718

PCR Hearings of April 19th and 21st, 2016

Before The Honorable Perry H. Gravely

1 assessments that he has found that inmates
2 can sometimes use to game the system. So he
3 would want to make sure that he has an
4 opportunity to be heard on the matter first.

5 MS. GOOD: That is certainly fine,
6 Your Honor. We can get with Judge Keesley's
7 office about scheduling a hearing for that.

8 THE COURT: All right. Thank you.

9 (HEARING CONCLUDED)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 State of South Carolina) In the Court
2 County of Lexington) Of Common Pleas
3 William Bruce Justice,) Indictment No.: 2014-CP-32-00698
4 Petitioner,)
5 vs.) Transcript of Record
6 State of South Carolina,)
7 Respondent.)
8

8

9

February 1, 2017

10

Lexington, South Carolina

11

12 BEFORE:

13

The Honorable Eugene C. Griffith, Junior, Judge

14

15 APPEARANCES:

16

17

Anna Good, Esquire
Attorney for the Petitioner

18

19

Valenzuela, Assistant Attorney General
Attorney for the Respondent

20

21

22

23

24

25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1	INDEX			
2				PAGE
3	PCR HEARING--			
4	WILLIAM BRUCE JUSTICE			
5	Direct Examination by Ms. Good			4
6	Cross Examination by Ms. Valenzuela			12
7	Redirect Examination by Ms. Good			18
8	NIKITA COOK			
9	Direct examination by Ms. Valenzuela			21
10	Cross Examination by Ms. Good			32
11	Redirect Examination by Ms. Valenzuela			39
12				
13	Certificate of Reporter			49
14				
15	EXHIBITS			
16	APPLICANT'S			
17	NO. DESCRIPTION	ID	EVDS.	
18	1 Violation Report	18	19	
19	RESPONDENT'S			
20	NO. DESCRIPTION	ID	EVDS.	
21	1 Script	27	27	
22				
23				
24				
25				

1 Thereupon, the following proceedings were had,

2 MS. VALENZUELA: Your Honor, I'm going to lay some
3 brief background on this case for the record. This is
4 William Bruce Justice versus the State of South Carolina.
5 Mr. Justice is represented by Ms. Anna Good and Ms. Good
6 is present in the courtroom as is the applicant and the
7 applicant is confined. There's a long procedural history
8 that's in the return that's part of the Judge's packet,
9 Your Honor. It boils down to we are here because
10 Mr. Justice was out. He was released on parole and then
11 his parole agent indicated that there had been several
12 violations made of his parole. He went before the
13 administrative - had an admin hearing and then the parole
14 board revoked his parole and that's how he actually ended
15 up back in prison. So he's back in prison under a parole
16 revocation and his original charges stem from 1989 and
17 those charges were burglary second, grand larceny and
18 petty larceny with the counts being four burg seconds,
19 two grand larcenies and two petty larcenies. At this
20 time I'll turn it over to the applicant's counsel.

21 THE COURT: All right. Ms. Good.

22 MS. GOOD: Thank you, Your Honor. We call
23 Mr. Justice to the stand.

24 Thereupon,

25 WILLIAM BRUCE JUSTICE

WILLIAM BRUCE JUSTICE - DIRECT BY MS. GOOD

4

1 after having been first duly sworn, testified as follows,

2 THE CLERK: State you name for the Court after
3 you're seated.

4 THE WITNESS: William Justice.

5 DIRECT EXAMINATION

6 BY MS. GOOD:

7 Q. All right. Mr. Justice, you heard the Attorney
8 General state the reason why you're back in prison due to a
9 parole revocation; is that correct?

10 A. Yes, ma'am.

11 Q. Can you tell the Court when you were arrested for
12 your parole violation?

13 A. It was in August of 2013.

14 Q. And you made parole in August of 2012, correct?

15 A. No, ma'am. I made parole 5/3/2012.

16 Q. May 2012. Then in August 2013 you were arrested for
17 a parole violation?

18 A. Yes, ma'am.

19 Q. And what were the reasons that you were arrested for
20 a parole violation, the allegations?

21 A. The allegations were that I got in contact with my
22 boss lady when I wasn't supposed to.

23 Q. And she was the victim from what you were on parole
24 for?

25 A. No, ma'am.

1 Q. Okay. How was there a condition of parole as to --

2 A. She made an allegation against me, you know, that
3 from my understanding that I was drinking and I got mad at her
4 because she wouldn't let me drive her truck so I jumped on her
5 son for that reason..

6 Q. Well, why is she a part of the parole violation?
7 Was --

8 A. She's the one --

9 Q. -- there's a condition to not have contact with her?

10 A. Yeah. I was told not to have contact with her.

11 Q. Why was there a condition for no contact order?

12 A. Uh, I don't understand what the reason was. Ms.
13 Cotton went to my parole officer and asked that I have no
14 contact with her or her family.

15 Q. But she wasn't related to the underlying issues,
16 correct --

17 A. No, ma'am.

18 Q. -- that you were in prison for?

19 A. No, ma'am.

20 Q. And then the other violation was a payment arrearage
21 and drinking to excess?

22 A. Yes, ma'am.

23 Q. So you were arrested in August of 2013 on the parole
24 violation warrant. When is the first hearing that you had?

25 A. It was in August. It was a preliminary hearing.

WILLIAM BRUCE JUSTICE - DIRECT BY MS. GOOD

6

1 Q. Where were you housed at that time?

2 A. I was in the jail.

3 Q. Which jail?

4 A. Kershaw County Jail.

5 Q. Kershaw County Jail. And was it done through the
6 phone, through video, in person? How was this hearing held?

7 A. At first it was tried to be done through the phone
8 but the phones wouldn't work right and so they set it up and
9 came back again.

10 Q. So you started the hearing but it wouldn't work so
11 you had a second preliminary?

12 A. Yes, ma'am.

13 Q. And the second preliminary, where was that one?

14 A. It was in a conference room there in the Kershaw
15 County Jail.

16 Q. This one you were in person with who? Who was in
17 the room with you?

18 A. Mr. Rivers, the parole examiner and my PO.

19 Q. Who is your PO?

20 A. Ms. Cook.

21 Q. And at this preliminary hearing what happened
22 at that point?

23 A. She read a bunch of allegations off a piece of paper
24 and she even stated when she was reading them off that she had
25 - she didn't know who said what, she didn't have no dates or

1 what phones or nothing it was coming from.

2 Q. As a result of that preliminary hearing -- Was
3 anybody else present at that hearing?

4 A. Yes, ma'am. Ms. Cotton and her husband were outside
5 but they wouldn't let the come in. He denied confrontation.
6 He said I couldn't confront them.

7 Q. So you have no idea what Ms. Cotton said to the
8 parole examiner?

9 A. Not at all.

10 Q. Did they tell you what she said?

11 A. No, ma'am.

12 Q. So were you able to respond to any allegations she
13 would have made?

14 A. None whatsoever.

15 Q. At any point did you ask for an attorney during this
16 preliminary hearing?

17 A. Yes, ma'am. I did. At the first revocation hearing
18 and it didn't work. I asked for an attorney then and at the
19 second one I asked Mr. Rivers for one.

20 Q. So this one that we were just talking about that was
21 in the multi purpose room you asked for an attorney at that
22 one?

23 A. Yes, ma'am.

24 Q. What were you told about having an attorney?

25 A. The parole office doesn't, they don't give lawyers

WILLIAM BRUCE JUSTICE - DIRECT BY MS. GOOD.

8

1 out. They don't appoint lawyers.

2 Q. So that preliminary one was bound over and at that
3 point did you ask for anything from the parole officer?

4 A. I wanted to confront Ms. Cotton and them because
5 they made a bunch of false allegations against me. They got
6 -- All she read was what was on their phones and on both of
7 them peoples' phones they got apps on them phones that are
8 identified as caller or fake or ID and text, fake or ID. Both
9 of them had it for purpose of Ms. Cotton's business.

10 Q. So there were some alleged text messages?

11 A. Yes, ma'am.

12 Q. Were you ever given a copy of those text messages?

13 A. None. No, ma'am.

14 Q. And was there any incident reports or any other
15 paperwork that you asked for that you were not allowed to have
16 access to?

17 A. Uhm, not that I -- I just didn't know what all the
18 allegations were against me. I didn't know.

19 Q. So ultimately you then had a full hearing,
20 correct?

21 A. Yeah. We went to the one down in Lee County.

22 Q. When was that?

23 A. In October of 2013.

24 Q. You said that was at Lee Correctional?

25 A. Yes, ma'am.

1 Q. Tell the Judge the set up for that one.

2 A. Well, it was me and Ms. Cook in the room. There was
3 two guys on the screen and they allowed Ms. Cook to give her
4 definition of everything that happened, her statement and all.
5 When I went to speak to them, they asked me, they said, "Did
6 you hit somebody with a pipe?" I said no. I sure didn't.
7 And they said, well, that's all we need to know and they cut
8 the camera off.

9 Q. So were you able to respond to any of the
10 allegations against you at that point?

11 A. None whatsoever. I couldn't even confront Ms. Cook
12 about her allegations and she was sitting right beside me.

13 Q. Are you aware of whether Ms. Cotton was there or
14 not?

15 A. Yes, ma'am. I found that out at a later date when
16 you sent me that paperwork that Ms. Cotton and her
17 daughter-in-law were at the hearing.

18 Q. Do you know if they said anything to the parole
19 board or not?

20 A. No, ma'am. I sure don't.

21 Q. If they had, would you have asked to be able to hear
22 what they said --

23 A. Yes.

24 Q. -- and be able to ask them questions about it?

25 A. Absolutely.

WILLIAM BRUCE JUSTICE - DIRECT BY MS. GOOD

10

1 Q. But you did not have that opportunity on the day of
2 the hearing, correct?

3 A. No, ma'am. I did not.

4 Q. Okay. And before this hearing you said you had
5 already asked for an attorney twice. Did you ask for an
6 attorney again at this hearing?

7 A. Uhm, yeah. I asked a gentleman that was sitting out
8 there with us that rode down with us, I don't know his name,
9 he was with me and Ms. Cook. I said, "How do I go about
10 getting a lawyer so I can prove some of this stuff is false?"
11 He said it's too late for that.

12 Q. Okay. So you're asking the Judge today to overturn
13 the parole revocation and allow you to have a full revocation
14 hearing where you can basically respond to the allegations and
15 confront any witnesses that were able to speak to the parole
16 board?

17 A. Yes, ma'am.

18 Q. Okay. Is there anything else that you think is
19 important for the Judge to know that you are asking him for
20 today?

21 A. Yeah. I did up -- When Ms. Good sent me the
22 paperwork from the parole board and all, I maxed out my third
23 sentence and started my last sentence on 5/3/2012 the same day
24 that I made parole but yet my parole papers read they were
25 gonna keep me on parole for 20 years. So when I was violated

1 and sent back, all my max out dates on every consecutive
2 sentence because they're all kept active for some reason and
3 no one can explain that to me why, but all my max out dates
4 have changed and instead of bringing 15 years back when I came
5 back, I brought 18 years and seven months back and I only had
6 a 15 year sentence. I don't understand that. All my
7 sentences have maxed out. I was supposed to have maxed out
8 in, let's see, it was December in 2015 and I'm still in
9 prison.

10 Q. One thing I forgot to ask you about. One of the
11 violations was drinking in excess. Do you have any medical
12 conditions?

13 A. Yes, ma'am. I have hepatitis C. I can't drink.

14 Q. Why can't you drink if you have hepatitis C?

15 A. Because it activates -- It does something with your
16 liver and it causes the hepatitis C to kick in.

17 Q. And how long have you had hepatitis C?

18 A. Since the early '80's.

19 Q. So it's something you have dealt with for a while?

20 A. Yes, ma'am.

21 Q. It wasn't something that arose after 2012?

22 A. No, ma'am.

23 Q. Is there anything else?

24 A. None. Except that my time is over with. I'm asking
25 the Judge to correct that for me, if he can.

WILLIAM BRUCE JUSTICE - CROSS BY MS. VALENZUELA

12

1 MS. GOOD: No further questions from me, Your Honor.

2 Answer any questions Ms. Valenzuela has for you.

3 CROSS EXAMINATION

4 BY MS. VALENZUELA:

5 Q. Mr. Justice, one of the first things I want to just
6 get straight is how many different hearings you had. I think
7 you testified to a preliminary hearing and then a second
8 hearing and then one that happened in October; is that
9 correct?

10 A. Yes, ma'am. When they first came to the jail, they
11 tried to do it on the telephones and the telephones wouldn't
12 work so they postponed it for a week and then came back. We
13 had it in the multi purpose room, the preliminary.

14 Q. And that's when you had the preliminary hearing?

15 A. Yes, ma'am.

16 Q. That was the second one. And then the one that you
17 mentioned in October, that was the full parole board that you
18 went in front of?

19 A. No, ma'am. It wasn't but two members there. But
20 yeah. It was supposed to be the full board.

21 Q. Okay. So that was what was considered your parole
22 board hearing?

23 A. Yes, ma'am.

24 Q. But you're saying that there were two people who
25 were on the screen for that one?

1 A. Yes, ma'am. There should have been five.

2 Q. Okay. So I just wanted to make sure we had the --
3 You said that you were arrested on your parole violation in
4 August of 2013, right?

5 A. Yes, ma'am.

6 Q. Were you served with an arrest warrant at that
7 time?

8 A. Yes, ma'am.

9 Q. Did that arrest warrant line out the different
10 reasons why you were being revoked on parole?

11 A. Yes, ma'am. It had allegations on there what I
12 did.

13 Q. Did those allegations let you know that Ms. Cotton
14 was one of the complainants?

15 A. No. All it said -- Yeah. Well, yeah. Really it
16 did because -- You want me to explain how I contacted her?
17 How I violated that? I left my truck at her house and she
18 text me and said your truck's on the way and I text her back.
19 I said okay. And that's when I violated my PO's order when I
20 acknowledged that my truck was on the way.

21 Q. So you did, in fact, contact Ms. Cotton even though
22 you had an order not to contact her?

23 A. Yes. Well, no. She -- I responded.

24 Q. So but in the arrest warrant that you were given,
25 you did know, you were aware that the allegation involved Ms.

WILLIAM BRUCE JUSTICE - CROSS BY MS. VALENZUELA

14

1 Cotton and involved you responding to her text message?

2 A. Yes, ma'am.

3 Q. And then you were aware that there was an allegation
4 that one of the reasons that you were being called up on
5 parole was that you had failed to pay the supervision fee as
6 required by the department?

7 A. Yes, ma'am. That's not true. If you will look at
8 the sheet that we got from the parole office, I made my last
9 payment on, it was in July. I didn't report until the end of
10 the month and Ms. Cook always let me make my payments when I
11 come in to report. I just hadn't been in there. I wasn't
12 behind nothing. I just owed a \$50.00 payment and another
13 \$15.00 payment for the month of August.

14 Q. But you also knew that you had failed to pay any
15 other fines, restitution or other payments in addition to the
16 supervision fee?

17 A. I didn't have nothing but the supervision fee and
18 the one I had to pay, the psychological people.

19 Q. But you were aware that that was one of the listed
20 reasons?

21 A. Yes, ma'am.

22 Q. Okay. And then also that you had failed to follow
23 the advice and instructions of your agent?

24 A. Yes, ma'am.

25 Q. And you agree that one of those instructions was

1 that you were not to have contact with Ms. Cotton?

2 A. Yes, ma'am.

3 Q. And that you did make contact with Ms. Cotton by
4 responding to her text message?

5 A. Yes, ma'am. Can we say something else here? My PO
6 came to my house and told me not to have contact with Ms.
7 Cotton I think it was on the 5th. On the 6th her son came up
8 in my yard and jumped on me but he didn't win. He left. He
9 come back with his girlfriend and her uncle and we fought
10 again. That's how everybody got hurt. I got beat up and they
11 got beat up but the people came to my house and jumped on me.
12 I'm 63 years old when they did that and one of them is 23, the
13 other is 20 and the other is in his 40's. That's the contact
14 that I had with her family. All I did was defend myself.
15 That's why they went to Ms. Cook with all these crazy
16 allegations they got.

17 Q. Where did the metal pipe come in?

18 A. There was no metal pipe. What it was was, I was
19 fighting Ms. Cotton's son Herbert. I was fighting him and
20 Amanda, Mandy jumped on my back and I reached around and I
21 grabbed her and throwed her off and I elbowed her on her
22 stomach when I fell on her so she would get off my back and
23 quit scratching my eyes out.

24 Q. Okay. So the metal pipe was something that came up
25 in a question but otherwise you --

WILLIAM BRUCE JUSTICE - CROSS BY MS. VALENZUELA

16

1 A. Yes, ma'am. But I don't know where the metal pipe
2 came from.

3 Q. Okay. Understood. Mr. Justice, you mentioned your
4 hepatitis C?

5 A. Yes, ma'am.

6 Q. Did you get arrested for driving under the --

7 A. I sure did.

8 Q. Okay. And you cut me off. So I have to finish the
9 question so the Judge knows what I was going to ask.

10 A. All right.

11 Q. Did you get arrested for driving under the
12 influence?

13 A. Yes, ma'am. I did.

14 Q. And so were you driving under the influence?

15 A. No, ma'am. I was not.

16 Q. Okay. But did you receive a conviction from that?

17 A. No, ma'am. I have not.

18 Q. Did that happen while you were on parole?

19 A. Yes, ma'am.

20 Q. So while you were released you had a separate
21 alcohol related allegation?

22 A. Yes, ma'am.

23 MS. VALENZUELA: Nothing further, Your Honor.

24 THE COURT: Can one of y'all tell me when the
25 original sentence was commenced? The comments he made

1 about getting his parole revoked and getting additional
2 months, I'm kind of curious.

3 MS. GOOD: It was, Your Honor, on, he got 15 years
4 for --

5 MS. VALENZUELA: I have 60 years imprisonment on
6 burglary charges, 20 years on the grand larceny charge
7 and one month on the petty with all sentences to run
8 consecutively.

9 MS. GOOD: I can hand up, Your Honor, the sentencing
10 sheets. They are really old. But for the burglaries he
11 got 15 a piece and they were run consecutively which made
12 it 60 and then the petty larceny and the other one after
13 that to run --

14 MS. VALENZUELA: The grand larceny for 20.

15 THE COURT: The burg seconds are violent or non
16 violent?

17 MS. VALENZUELA: I Just have burg second.

18 MS. GOOD: I have burg second. It doesn't clarify,
19 but it's from 1989.

20 THE WITNESS: 1989. They were classified as
21 violent.

22 THE COURT: All right. Under the B section.

23 MS. GOOD: The sentencing sheets don't indicate
24 violent or non violent.

25 THE COURT: The applicant has represented they were

WILLIAM BRUCE JUSTICE - REDIRECT BY MS. GOOD

18

1 violent so I don't think he would represent violent when
2 they weren't.

3 THE WITNESS: Your Honor, I got a little printout
4 that tells you what they are.

5 THE COURT: Well, they're telling me that and what
6 you're saying is consistent with what they're
7 representing to the Court.

8 MS. VALENZUELA: You asked about (B), so I have
9 16-11-312(B).

10 THE COURT: That's the violent section. (A) is the
11 non violent or it used to be in the old rules.

12 (Whereupon, Applicant's Exhibit #1 marked for
13 Identification.)

14 REDIRECT EXAMINATION

15 BY MS. GOOD:

16 Q. I'm gonna show you what's been marked as applicant's
17 exhibit 1. Do you recognize this?

18 A. Yes, ma'am.

19 Q. What is that?

20 A. That's the violation report.

21 Q. Okay. And is it an accurate reflection of the
22 violation report that you received?

23 A. Yes, ma'am.

24 MS. GOOD: Your Honor, I would like to make this
25 applicant's exhibit 1.

1 MS. VALENZUELA: No objection.

2 THE COURT: Okay.

3 BY MS. GOOD:

4 Q. As part of your violation report can you tell the
5 Judge when your last payment was on your fines?

6 A. One was 7/24/2013 and the other one was 5/22/2013.

7 Q. What were those two payments?

8 A. One was board, board ordered restitution for the
9 psychological and the \$50.00 supervision fee.

10 Q. How much did you, how much have you paid on each of
11 those?

12 A. One I paid \$135.00 on and the other \$400.00. I paid
13 more than that.

14 Q. And your arrearage was how much?

15 A. The board fee was \$50.00 and the psychological 15.

16 Q. So you only had \$65.00 of arrearages on your fees?

17 A. Yes, ma'am.

18 Q. And regarding your conditions of your parole, as
19 part of your burglary sentence and everything that you were
20 sentenced on, was there any court order telling you not to
21 have contact with Ms. Cotton?

22 A. None.

23 Q. And you stated that you were told not to have any
24 more contact with her and the parole officer was fine and the
25 next day they came to your home?

WILLIAM BRUCE JUSTICE - REDIRECT BY MS. GOOD

20

1 A. Yes, ma'am. They did.

2 Q. And it was only after that that Ms. Cook did your
3 violation?

4 A. Yes, ma'am.

5 Q. And everything that you just explained about this
6 fight and them coming to your home that you just testified to,
7 at your parole revocation hearing were you able to tell the
8 parole board about that?

9 A. This is the first time three and a half years later
10 that I have had an opportunity to tell my side of the story.

11 Q. So they didn't let you speak?

12 A. No.

13 Q. And you don't know if the Cottons were there or not
14 and spoke to the board?

15 A. All I know is what the paper said. It said
16 they were there.

17 MS. GOOD: All right. No further questions, Your
18 Honor.

19 THE COURT: Okay.

20 MS. VALENZUELA: No recross.

21 THE COURT: Step down, Mr. Justice.

22 MS. GOOD: No further witnesses, Your Honor.

23 MS. VALENZUELA: Your Honor, we call Parole Agent
24 Cook to the stand.

25 Thereupon,

NIKITA COOK - DIRECT BY MS. VALENZUELA

21

1 NIKITA COOK
2 after having been first duly sworn, testified as follows,
3 THE WITNESS: Nikita Cook, probation and parole
4 agent.

5 DIRECT EXAMINATION

6 BY MS. VALENZUELA:

7 Q. Agent Cook, I think you just said that you worked
8 for the Department of Probation, Pardon and Parole; is that
9 right?

10 A. That's correct.

11 Q. Were you the agent for the applicant Mr. Justice?

12 A. Yes. I was.

13 Q. Were you assigned to him from the beginning of the
14 time he was released on parole?

15 A. Yes.

16 MS. VALENZUELA: Before I forget, may I see
17 applicant's exhibit 1. May I approach the witness, Your
18 Honor?

19 THE COURT: Yes.

20 BY MS VALENZUELA:

21 Q. Some of these forms are new to me so I just want to
22 make sure I understood. We talked about the arrearages due
23 and the date last paid. There's also a column that says
24 balance due. I usually take arrearage to mean this is how
25 much if left to be paid but the balance due column is throwing

NIKITA COOK - DIRECT BY MS. VALENZUELA

22

1 me off a little bit. Does this mean that the applicant still
2 had \$255.00 due on his board ordered reimbursement?

3 A. Yes. It does.

4 Q. And the arrearage, is that just the monthly
5 payment?

6 A. Yes. He was ordered to pay his, uhm, his board
7 ordered reimbursement at a rate of \$15.00 a month. However,
8 the day that you get released, that's when your fees and all
9 your money begins. So that particular date, like if it's the
10 3rd, the 4th, every month when it rolls around that's when
11 another payment is due. But he is correct. I do allow them
12 whenever they report to come in and pay it.

13 THE COURT: Explain this to me. When they get
14 released on whatever day, if they're gonna be on parole
15 two years or are on probation for two years, the monthly
16 supervision fees are multiplied by the number of months
17 and that's the balance due?

18 THE WITNESS: Yes.

19 THE COURT: Each month it comes off and if they get
20 behind, then that's the arrears?

21 THE WITNESS: Correct.

22 THE COURT: Okay. Do you understand, Ms.

23 Valenzuela?

24 MS. VALENZUELA: I do. Okay. Good.

25 BY MS. VALENZUELA:

1 Q. So I just wanted to make sure. So he was behind, I
2 mean, I guess, behind for that month in '15 but to clear
3 everything out he still owed 255?

4 A. Yes.

5 Q. And then the other one was he still owed over
6 \$11,000.00 on his regular supervision?

7 A. Yes.

8 Q. But the arrearage is \$50.00 there?

9 A. Correct.

10 THE COURT: He was going to be on supervision --

11 THE WITNESS: 20 years.

12 THE COURT: 20 times 50 times 12, is that how you
13 figure it?

14 THE WITNESS: Yes, sir.

15 THE COURT: Okay. I understand. That's what I
16 thought. Okay.

17 BY MS. VALENZUELA:

18 Q. Can you talk to us about what led to issuing an
19 arrest warrant for his parole violation?

20 A. When Mr. Justice was first released on parole, he
21 was a model citizen. He was clean cut. Just how he is today.
22 He was very polite and he was on the right path. He was
23 working. And like he said, he came in every month. He paid
24 his fees. Then there became a downward spiral. I strongly
25 believe alcohol had a lot to do with it. I think at some

NIKITA COOK - DIRECT BY MS. VALENZUELA

24

1 point he became depressed about a woman he was seeing and
2 things went down hill from there and that's when I started
3 getting reports of him hanging out at bars which is, uhm, you
4 can't do that while you're on probation and parole. Then he
5 got this DUI case and then he just started going downhill from
6 that point on.

7 Q. Can you tell us what led to or was there an order
8 from you not to have contact with Ms. Cotton?

9 A. Yes. If your agent instructs, uhm, I think it might
10 be condition number 3, uhm, and it basically states that, uhm,
11 if your agent instructs you to avoid someone, then that's who
12 you avoid or otherwise it's a violation.

13 Q. What led to you -- And I think you said yes, and I
14 just want to make sure you were answering yes to me. You did
15 order him not to have contact with Ms. Cotton?

16 A. That is correct. Or her family.

17 Q. What led to you imposing that order?

18 A. Uhm, I started receiving phone calls from her and,
19 uhm, also his neighbor about the activity that he was doing
20 and at first they were just concerned at that time, uhm, but
21 as I said, things began to escalate. I think it had something
22 to do with a truck and I think it was his truck. He had
23 worked on this truck and I think it may have tore up on him at
24 some point and they just - I guess they fell out about it for
25 some reason or another. I'm not sure if they helped him get

1 the truck in the beginning or how it came about.

2 Q. And that wasn't the only parole violation that he
3 had for you, right?

4 A. No. It was not.

5 Q. Okay. What were -- And let's do it this way: Let's
6 back up and explain to the Court. In the preliminary hearing
7 that was referenced earlier, were you present at that
8 hearing?

9 A. I was. He states there was two hearings. I don't
10 recall. I won't say that he's not telling the truth about
11 that but I do not remember if there was two. However, it is
12 correct that at Kershaw County Detention Center they have the
13 offender on the phone and it is very difficult to hear them
14 over the phone. It's basically set up in the room where you
15 have your visitation so it's very difficult to hear what
16 someone is saying through the phone because it's hooked up to
17 a speaker. And also the hearings are recorded so there's
18 documentation of everything that was said in that hearing.

19 Q. And you might not have, if you do have personal
20 knowledge, please answer, but are those recordings only held
21 for a certain number of time?

22 A. I'm not sure because those are done by the hearing
23 officer.

24 Q. So you have the hearing officer and you're present
25 at that meeting and did you present witnesses to support the

NIKITA COOK - DIRECT BY MS. VALENZUELA

26

1 different violations?

2 A. I don't recall. Uhm, I think I may have had
3 statements from him and I do remember a printout as he said
4 from a cell phone.

5 Q. Would you have shown any of that information to the
6 applicant?

7 A. Uhm, probably not because usually they go out and
8 hire an attorney and you give all that information to the
9 attorney.

10 Q. Okay. In this instance he elected not to hire an
11 attorney?

12 A. Correct. Uhm, when you're actually read your rights
13 to go to a hearing, it basically states that you have the
14 right to hire an attorney. An attorney will not be appointed
15 except in the most extraordinary circumstances.

16 Q. Would you have advised him of that right?

17 A. Yes. Because he would have to sign it.

18 Q. Okay. So he doesn't have an attorney. Okay. When
19 y'all went in front of the parole board, was it as he
20 described it where it was in a room with them on a video
21 screen?

22 A. Yes. It was.

23 Q. Was there evidence presented by you at that parole
24 board hearing?

25 A. Yes. It's actually, you have a script that they

1 allow you to read.

2 Q. They being the parole board?

3 A. Yes. And this would be that script that I'm allowed
4 to read during the hearing. Based off that they will ask me
5 questions and ask him questions.

6 MS. VALENZUELA: Okay. Let me get that marked.

7 (Whereupon, Respondent's Exhibit #1 marked for
8 Identification.)

9 BY MS. VALENZUELA:

10 Q. I think you just explained that respondent's exhibit
11 1 is a script of what you're allowed to read at the parole
12 board hearing, right?

13 A. Yes, ma'am.

14 MS. VALENZUELA: Your Honor, at this point we move
15 to admit respondent's exhibit 1.

16 MS. GOOD: No objection.

17 THE COURT: No objection. It's admitted:

18 BY MS. VALENZUELA:

19 Q. What does that script tell us? What did you tell
20 the parole board about Mr. Justice?

21 A. It reads as follows. Today's date, September 19th,
22 2013. May it please the board. This is the case of William
23 Bruce Justice who received a sentence of 60 years on June
24 29th, 1989 for the offense of four counts of burglary second
25 degree. The offender was paroled on May 3rd, 2012. On August

NIKITA COOK - DIRECT BY MS. VALENZUELA

28

1 7th, 2013 legal process was issued and was subsequently served
2 on the offender on August 7th, 2013. The legal process
3 charged the following violations. Violation description.
4 Justice failed to follow the advice and instructions of his
5 agent by failing to pay BORA by being \$15.00 in arrears at the
6 issuance of process and \$50.00 in arrears on supervision fees.

7 MS. VALENZUELA: Let me just stop you. Do you know
8 what BORA means, Your Honor?

9 THE COURT: Supervision fees?

10 BY MS. VALENZUELA:

11 Q. Is that the supervision fee?

12 A. That it the board ordered -- It was for his
13 psychological evaluation.

14 Q. I just wanted to make sure that we all knew what you
15 were saying. I believe you left off at failed to refrain.
16 I'll just go through it real quick. Just let me know if I'm
17 going off of the script. In the violation description then
18 you went on to say that he failed to refrain from contacting
19 Lee Cotton and her family as instructed by you on Monday,
20 August 5th, 2013; is that right?

21 A. Correct.

22 Q. And that he failed to refrain from drinking alcohol
23 to excess?

24 A. That's correct.

25 Q. And then you list the incident report and the number

1 from the Sheriff's Office where you said that Justice, the
2 applicant assaulted two victims of Ms. Cotton's family by
3 striking victim number 1 with a metal pipe across her stomach
4 and victim number 2 with a closed fist?

5 A. That's correct.

6 Q. And so this prompts one of my questions that I asked
7 the applicant earlier. So the metal pipe reference came from
8 a police incident report?

9 A. Yes, ma'am.

10 Q. So officers had to respond out to address this
11 conflict, this contact with Ms. Cotton?

12 A. Yes, ma'am.

13 Q. And in that parole board hearing was the applicant
14 given an opportunity to address the two people or the number
15 of people who were on the screen representing the parole
16 board?

17 A. I don't remember how many people. It's usually
18 three people on the panel. Uhm, if they break the board up.
19 However, I don't recall him being able to say a whole lot.

20 Q. When you say not being able to, was it as he
21 described it, he tried to speak and he was cut off?

22 A. Right. They don't allow you to speak out of turn so
23 to speak.

24 Q. So once you had made your presentation, then was he
25 allowed to speak when it was his turn?

NIKITA COOK - DIRECT BY MS. VALENZUELA

30

1 A. Yes.

2 Q. He was?

3 A. Yes. I think -- How it is is kind of like you and I
4 are going back and - after I read this script, then you ask me
5 a question and I respond, so then they may ask him a question,
6 then he responds. But it's just not open dialogue.

7 Q. When an applicant is represented by an attorney so
8 when they hire an attorney and they go into the parole board,
9 what does the - does the attorney usually have an opportunity
10 to either read a statement or say a free form statement to the
11 parole board?

12 A. In my most recent experience, uhm, where the
13 offender actually had an attorney, the attorney was not
14 allowed to say a whole lot.

15 Q. Okay. So is it fair to say that he was treated
16 similarly to any other person whether represented or not by
17 the parole board?

18 A. Yes.

19 Q. At the parole board. When y'all went to the hearing
20 which was the earlier one, was Mr. Justice provided an
21 opportunity to address the hearing officer?

22 A. Yes.

23 Q. And how was he allowed to do that?

24 A. That was just like you and I are talking.

25 Q. Was he only allowed to address the hearing officer

1 in response to the hearing officer's questions?

2 A. No. He had the opportunity to speak and he had the
3 opportunity to remain silent if he wished to.

4 Q. Okay. Did he elect to inform the Judge of any of
5 the things that he's complaining about, these allegations
6 today?

7 A. The hearing officer. Yes.

8 Q. I said the Judge. So he raised the issues that
9 addressed Ms. Cotton and the witnesses to the hearing
10 officer?

11 A. Yes. Those would be done to the hearing officer.
12 Yes.

13 MS. VALENZUELA: There's one thing I just want to
14 clarify. I think Ms. Good will agree. This is a case
15 where we -- So she moved for discovery in this PCR case
16 and we had a hearing on it and I brought DPPP to the
17 hearing just to make sure we are all on same page and the
18 judge ruled that discovery could be ordered in this case
19 and then just had limitations on my victim information or
20 different things like that that could come in and so all
21 of us were given, we were both given a packet and there's
22 also an audio disk which should be part of your Judge's
23 packet and I think that's the only thing. I wanted to
24 make sure -- I wasn't going to play it out here but that
25 was one of the things that I just wanted to make sure the

CROSS EXAMINATION BY MS. GOOD

32

1 Court would listen to. Now, as part of our discovery
2 hearing, Matt Buchanan, the attorney for DPPP explained
3 that some audio does get destroyed on an annual basis so
4 there's a question about whether we have both the parole
5 board hearing and the administrative hearing. But I
6 would argue that that's just like a transcript and that
7 was part of the record and just wanted to make sure that
8 that was the understanding of the applicant as well.

9 MS. GOOD: Yes, Your Honor, if it's in the judge's
10 packet --

11 THE COURT: I'm looking for it.

12 MS. GOOD: -- it's part of the record.

13 MS. VALENZUELA: Nothing further, Your Honor.

14 CROSS EXAMINATION

15 BY MS. GOOD:

16 Q. Good afternoon, Ms. Cook.

17 A. Good afternoon.

18 Q. The arrearages to be fair he was only behind \$65.00,
19 correct?

20 A. Correct.

21 Q. In your experience as a parole agent you would not
22 violate for being \$65.00 behind unless there was other
23 violations to go along, correct?

24 A. Correct.

25 Q. So that really wasn't an issue for you?

1 A. Correct.

2 Q. In fact, he was probably more on top of his payments
3 than any other violation, correct?

4 A. That is correct.

5 Q. So the main allegation was essentially the drinking
6 and the Ms. Cotton thing, correct?

7 A. Correct.

8 Q. And the drinking, you stated earlier when you were
9 testifying you believe he started drinking alcohol again but
10 you didn't know, correct?

11 A. Well, when I did the home visit, he was
12 intoxicated.

13 Q. How do you know he was intoxicated?

14 A. Because I could smell the alcohol on his breath.
15 His demeanor. He was, uhm, sweating heavily and he did advise
16 me that he had, uhm, hepatitis C so I know that that would not
17 mix well with that.

18 Q. So you did actually have some first hand knowledge
19 of that?

20 A. I did.

21 Q. It wasn't just from reports that you received?

22 A. No. And there were beer cans everywhere.

23 Q. The Ms. Cotton thing, when you were just testifying
24 basically you didn't have a problem with her from the
25 beginning, correct?

1 A. Correct.

2 Q. It was just once him and Ms. Cotton had a falling
3 out? Is that what you just testified to?

4 A. Yes.

5 Q. And at that point you asked him not to have contact
6 with her, correct?

7 A. Correct.

8 Q. After the truck thing?

9 A. Correct.

10 Q. This incident report that you testified about, that
11 was from an incident at his home, correct?

12 A. I believe that was at his home.

13 Q. Okay. So in all fairness he did not go and contact
14 them. They came to his home, correct?

15 A. At that point, yes.

16 Q. So would it have been your position he's supposed to
17 leave him home and leave people there by themselves?

18 A. Leave them there -- His home is mobile.

19 Q. But I'm saying, you're saying he should have just
20 left his own home because they showed up at his home?

21 A. No. At that point he knew he was not supposed to
22 have contact with them. He should have called law
23 enforcement.

24 Q. But they came to him and there was a fight that
25 ensued; is that correct?

1 A. I don't know who started the fight or anything like
2 that but if I knew that I was supposed to avoid someone and
3 they are bringing issues to me, I'm contacting law
4 enforcement.

5 Q. But everybody agrees they came to his house?

6 A. That is correct.

7 Q. And there was an issue. It wasn't him going to seek
8 them out and contacting them, correct?

9 A. Correct.

10 Q. Essentially that's the main violation was this Ms.
11 Cotton thing?

12 A. Yes.

13 Q. The hearing at -- I guess you stated when he was
14 arrested, he would have been told about an attorney,
15 correct?

16 A. Yes.

17 Q. And that he could be appointed one if there was an
18 extraordinary circumstance, correct?

19 A. Correct.

20 Q. Did the parole examiner at this first hearing or
21 anybody ever determine whether he had an extraordinary
22 circumstance?

23 A. I haven't seen that done in my career.

24 Q. But it did not happen at that hearing? It was not
25 determined whether he had one or not?

CROSS EXAMINATION BY MS. GOOD

36

1 A. Correct.

2 Q. And at this hearing on the 27th you stated you don't
3 recall if you had any witnesses, correct?

4 A. Correct. On the 27th of?

5 Q. August. The preliminary administrative hearing.

6 A. I don't recall if I had any. I don't know if they
7 were -- I don't recall if they were in the room that day.

8 Q. But you agree that the Cottons were there as your
9 witnesses?

10 A. They may have been.

11 Q. Okay. I'm gonna show you -- Will this help refresh
12 your recollection (proffering)?

13 A. Okay.

14 Q. Okay. Do you remember now if you had witnesses
15 there or not?

16 A. According to this I did but...

17 Q. What is this?

18 A. This is the hearing officer's report.

19 Q. Okay. It indicates that you had both Lee Cotton and
20 Paul Cotton the Third there as witnesses, correct?

21 A. Yes.

22 Q. You stated you don't remember them being in the room
23 with you with Mr. Justice?

24 A. No. I don't think they were in the room with Mr.
25 Justice.

1 Q. Okay. Do you remember if they spoke to the parole
2 examiner?

3 A. The parole examiner?

4 Q. Whoever. Mr. Rivers, the administrative hearing
5 officer. I'm sorry.

6 A. If they were present, they may have.

7 Q. Mr. Justice would not have been present for that?

8 A. No.

9 Q. He would not have been able to hear what they told
10 him and respond?

11 A. No. That was the jail's rules.

12 Q. Get to the actual parole board hearing. You say you
13 have this script that you're allowed to read and you read this
14 script. It's very short just with your allegations of the
15 violations, correct?

16 A. Correct.

17 Q. So you didn't have to give any background
18 information or any proof of these things happening, correct?

19 A. They get a packet prior to the hearing.

20 Q. Okay. Did you give a packet to them?

21 A. Yes.

22 Q. Did Mr. Justice get a copy of that packet?

23 A. No.

24 Q. Why not?

25 A. Because he's not an attorney.

CROSS EXAMINATION BY MS. GOOD

38

1 Q. So if he was representing himself, would you not
2 have been able to give him the packet?

3 A. It's not standard procedure to.

4 Q. And he, in fact, asked you for a copy of the
5 paperwork, correct?

6 A. No. I don't recall that.

7 Q. You don't recall or you don't know?

8 A. I mean, I don't remember him asking me for a copy of
9 a packet.

10 Q. So he was not even allowed to see what the parole
11 board had in front of them?

12 A. No.

13 Q. Then you stated about how the parole board works.
14 You got to say your script and they may ask you a question or
15 two and then ask him a question or two, correct?

16 A. Yes.

17 Q. You testified that you recall that they didn't allow
18 him to speak necessarily or have any open dialogue with him to
19 give exactly his side, correct?

20 A. Correct.

21 Q. So he really did not get to say anything to the
22 parole board to defend himself?

23 A. Not to my knowledge. No.

24 MS. GOOD: No further questions, Your Honor.

25 MS. VALENZUELA: Your Honor, brief redirect.

1 REDIRECT EXAMINATION

2 BY MS. VALENZUELA:

3 Q. Ms. Cook, you mentioned something about it was the
4 jail's rules about why he wouldn't, why the applicant wouldn't
5 have been able to talk to the witnesses who were there. Can
6 you talk to us a little bit more about what that is, what the
7 jail's rules are?

8 A. If the hearing is held in the multi purpose room,
9 that's behind in a secured area and they do not allow people
10 off the street in that secured area.

11 Q. So how would the hearing officer hear from the
12 witnesses?

13 A. He would probably have - most of the time he left
14 the room.

15 Q. He leaves the room and he goes to the witnesses?

16 A. Yes.

17 Q. And when a person is represented, does the attorney
18 go with the hearing officer to go to the witnesses?

19 A. Yes.

20 Q. But in this instance it was just the hearing officer
21 who went and talked to the witnesses?

22 A. Yes.

23 Q. And the applicant was not able to go with him?

24 A. No.

25 Q. Do you remember if the hearing officer made a

NIKITA COOK - REDIRECT EXAMINATION BY MS. VALENZUELA

40

1 finding that he was not bringing the applicant with him
2 because of either security concerns or concerns due to the
3 victims being, the witnesses being victims?

4 A. Well, in this case there was an alleged assault that
5 took place so having them in the same quarters would not be,
6 it wouldn't be smart at that point.

7 Q. Do you remember if the hearing officer said that?
8 If he at any point said --

9 A. I can't recall if he said that directly but...

10 Q. Was that something that you raised to the hearing
11 officer?

12 A. I mean, he - after -- Yeah. There was concern about
13 them being together. Yes.

14 Q. So whenever y'all were in the room talking to the
15 hearing officer there was a concern expressed about having the
16 applicant access the witnesses because they were victims?

17 A. Right.

18 MS. VALENZUELA: Okay. Nothing further, Your
19 Honor.

20 THE COURT: Okay. Step down.. Wait. I have one
21 question of Ms. Cook. Ms. Cook, tell me this. When does
22 he come back up for a parole with you?

23 THE WITNESS: I would have to look in PICK.

24 THE COURT: Well, look if you got time. Can you do
25 it here?

1 THE WITNESS: No. I don't have my computer but I
2 can call him.

3 THE COURT: He will come back up, won't he?

4 THE WITNESS: He should. Yes. I thought he would
5 have came up by now. I can call and find out.

6 MS. GOOD: Your Honor, he indicates to me it will be
7 October or November of this year.

8 THE COURT: All right. Just curious.

9 MS. VALENZUELA: Some of the history, we moved to
10 dismiss this case basically saying that this was not
11 something that we needed to move forward. And what Judge
12 was that?

13 MS. GOOD: Gravely.

14 MS. VALENZUELA: Gravely ordered a hearing in this
15 case and so we had a motion argument and part of that is
16 our return motion to dismiss has a lot of law in there.
17 I'm not going to restate all of that in there but it's
18 part of the packet and one of the -- I mean, there's lots
19 of case law that establishes that when it comes to a
20 parole violation, there isn't the same Sixth Amendment
21 Right to have counsel so it's a limited, you have limited
22 due process rights in a parole revocation hearing as
23 opposed to a trial and one of the things that we argued
24 is because the victims were involved in this, of course,
25 he didn't have to confront the witnesses and one of the

1 things that bothered Judge Gravely was there was no
2 specific finding in the administrative hearing officer's
3 order.

4 You have heard testimony today that that was
5 something that was raised to the administrative hearing
6 officer as to one of the reasons why he wasn't allowed to
7 access the victims in terms of talking about this. And
8 then I did - the only other case that isn't a part of
9 that, and I'm picking up my phone because I have it on my
10 phone, but it's State v. Hicks 387SC378. I'll e-mail Ms.
11 Good a copy of that also. That is not dealing with a
12 parole revocation. That's dealing with a probation
13 violation but the finding there was if you challenge and
14 you successfully challenge one of your violation reasons
15 but there's multiple violation reasons and so you
16 successfully challenge one but you still have others, you
17 don't get to, your probation is still revoked
18 at that point and so we argue that that applies here so
19 that even if there's some sort of challenge with the
20 issue of him not being able to talk to Ms. Cotton, today
21 he admitted to you that he had been ordered not to
22 contact Ms. Cotton and that he did, in fact, text Ms.
23 Cotton and so we would argue that there's no prejudice
24 here. He established that he had committed this
25 violation already and all it takes is one of the

1 violations to stand for there not to be completely wiped
2 out because it's four different pieces.

3 MS. GOOD: Your Honor, it's our position that Mr.
4 Justice was not allowed to have due process in his parole
5 violation hearing. There were two separate hearings.
6 The original preliminary hearing as well as the second
7 parole hearing. You heard Ms. Cook testify that she did
8 not give - Mr. Justice did not even have the opportunity
9 to have a copy of any of the paperwork or packet because
10 he did not have an attorney. He was representing
11 himself, Your Honor. We believe he should have been
12 allowed to have a copy of the packet. In addition, there
13 was no finding in any of these records. She testified
14 that he was given the instruction when he was arrested
15 that you have to get your own attorney, however, under
16 extraordinary circumstances you could be appointed one.
17 There was no finding anywhere that that was determined
18 whether there was any extraordinary circumstances or not
19 and he testified that he did ask for an attorney.

20 Regarding the violations, Your Honor, she testified
21 that she would not have violated him on the arrears and,
22 in fact, he was ahead of arrears when it comes to
23 everybody else so essentially it came down to drinking in
24 excess, Your Honor, and Ms. Cotton.

25 THE COURT: And his DUI arrest.

1 MS. GOOD: Right. There was a DUI arrest. Yes,
2 sir. That kind of, I guess, goes with the drinking. It
3 was drinking to excess, Your Honor. There's been limited
4 testimony on that and based upon what was given to the
5 parole board that was not one of the things that she even
6 brought up when she gave the script to the parole board
7 regarding his drinking. She just said he failed to
8 refrain from drinking alcohol in excess. She had no
9 background to that or anything.

10 As to the Cotton issue, the text messages were prior
11 which was why this whole no contact with the Cotton
12 family came about and then the testimony was that they
13 then came to his home and after that incident is when she
14 did the violation of parole. He was not allowed to
15 address the parole board. She indicated he's not allowed
16 to have open dialogue. They may have asked him a couple
17 of questions, however, she remembers them cutting him off
18 and not letting him necessarily speak. So we would say,
19 Your Honor, that he was not given due process in this
20 hearing. He was not allowed to confront the witnesses.
21 They were at the original preliminary hearing and we
22 believe they were at the second hearing also, Your Honor.
23 They spoke to the parole board. So we would ask that you
24 grant the PCR and allow him to have a full parole
25 revocation hearing.

1 THE COURT: Ms. Good, do you know if he's given a
2 new parole revocation hearing, will that mess up his new
3 parole eligibility hearing coming up in October?

4 MS. GOOD: It could potentially, Your Honor.
5 Depends on how they calculate the time.

6 THE COURT: Does he really want that? Because it
7 seems like that wouldn't prejudice the parole board to
8 have the hearing again because he's been in custody for
9 three years. But is it gonna prejudice him by not being
10 able to parole again in October? Does he really want
11 that or does he want to wait and try for parole
12 eligibility whenever it comes back up in six or seven
13 months?

14 MS. GOOD: I believe he wants the original parole
15 hearing, Your Honor, because if he can have that hearing,
16 they can put everything out, they may not have revoked
17 his parole to start off with. Let me double check, Your
18 Honor.

19 THE COURT: What do you think, Ms. Cook?

20 MS. COOK: I think that's a big gamble for him
21 because of the possibility of starting everything over
22 for him.

23 MS. VALENZUELA: Your Honor, I would just note that
24 he was under oath today when he said that he knew that he
25 was under orders not to contact, not to respond to Ms.

1 Cotton so although he thinks that he's justified in just
2 sending a reply text to her, he's provided the evidence
3 today and then --

4 THE COURT: I have never done a parole hearing but
5 probation violations and they're very, very similar in
6 their procedure. I mean, it's not much procedure. It's
7 what happened and what have you got to say and whether
8 it's mitigation or not. It's kind of a quick decision.
9 Anyway. I don't know. Ms. Good, you look and do some
10 research and find out if a new parole hearing or
11 violation if it's given to him like a de novo hearing, is
12 that gonna prohibit him from being parole eligible for a
13 new parole eligible hearing for the next few months.
14 Make certain of that before I rule.

15 MS. GOOD: Yes, sir, Your Honor.

16 THE COURT: There's not -- And I want to read these
17 cases you have got. There's not much procedural
18 direction given in these things. There's really not.
19 Y'all let me know of that via e-mail before I rule and
20 I'll make a decision. I want to read these cases that
21 have been presented also. Anything else I need to
22 consider?

23 MS. GOOD: Your Honor, he's indicated to me he would
24 also like you to consider his issue regarding his time
25 and whether it's being calculated correctly that he

1 testified to.

2 THE COURT: I don't know that that issue is before
3 me. Is that part of his application?

4 MS. GOOD: It's at the end of his application, Your
5 Honor. Yes. That he's being incorrectly --

6 MS. VALENZUELA: Where was it?

7 THE COURT: He's got 15 years times four
8 consecutive. I was thinking 15 concurrent and certainly
9 he would well have exceeded that in actual time, but it's
10 15 times four consecutive.

11 MS. VALENZUELA: And then he also had a 20 because
12 he had the burglaries were all 15 years consecutive and
13 then the grand larceny.

14 THE COURT: There's two grand larcenies ten each.

15 Grand larceny carries ten a piece.. He has two
16 consecutive. That's 20. And the petty larceny was 30
17 days. That's probably the last 30 he does. I think
18 that's from his -- I'll consider the issue but I don't
19 know that I have the authority to correct that. That may
20 have to come from the Department of Corrections and not a
21 PCR to the Probation, Pardon and Parole board.

22 MS. VALENZUELA: We do have the Al-Shabazz case and
23 the return motion to dismiss. I know I keep referring to
24 that but Ms. Good has a copy of the return with the case
25 law.

1 THE COURT: Okay.

2 MS. VALENZUELA: Okay. Thank you, Your Honor.

3 MS. GOOD: Thank you, Your Honor.

4 MS. VALENZUELA: The remaining cases on the roster
5 have all had consent orders that have been submitted and
6 we actually sent those to Judge Keesley already. It was
7 just in this last week that they have come in so that's
8 why they're still no longer on there but we are not
9 having a hearing on them.

10 WHEREUPON, THE HEARING WAS CONCLUDED.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 (STATE OF SOUTH CAROLINA)

2 (COUNTY OF LEXINGTON)

3

4 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
5 and Official Circuit Court Reporter for the Eleventh Judicial
6 Circuit in and for the State of South Carolina, do hereby
7 certify that I reported the proceedings in the before
8 captioned case in the Court of Common Pleas in and for the
9 State of South Carolina on the 2nd day of February, 2017.

10 I FURTHER CERTIFY that the forgoing 48 pages
11 constitute a true and accurate record of said proceedings.

12 I FURTHER CERTIFY that I am neither related, counsel
13 to, nor of interest to any party hereto.

14 IN WITNESS WHEREOF, I have hereunto set my hand at
15 Lexington County, this 14th day of November, 2017.

16

17

18

19

20

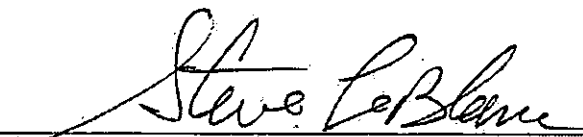
21

22

23

24

25


Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

RECEIVED

DEC 11 2017

APPELLATE DEFENSE

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

South Carolina Department of Probation, Parole and Pardon Services

Violation Report

Offender's Name: **WILLIAM BRUCE JUSTICE**
 State of South Carolina, County of: **KERSHAW**
 SID#: **L0001136**

Warrant#: **W-28-13-0018**
 Date of Birth: [REDACTED]
 SCDC#:

Indictment Numbers:
89-GS-32-00322

Offense and Offense Code:
86 - Burglary (Violent) (After June 20, 1985) - Second degree

Supervision Program: **Parole**
 Supervision Level: **High Supervision**

Begin Date: **5/3/2012** End Date: **3/6/2032**

Sentencing Judge:
 Sentencing Date: **5/3/2012**
 Location (Bold Response): **Jail**

Sentencing County: **KERSHAW**



Sentence:

Parole for 20 years

Special Conditions:

Other1 - INTENSIVE SUPERVISION NTE 6 MOS; Other2 - MUST ATTEND & SUCCESSFULLY COMPLETE ADDICTIONS TREATMENT UNIT PROGRAM & ATTEND AFTERCARE; Other3 - MUST REIMBURSE SCODPPS \$390. FOR THE COST OF PSYCHOLOGICAL EVALUATION

Current Address and Summary of Residence:

[REDACTED], ELGIN, SC 29045, KERSHAW, USA,

Reporting:

Reports on a monthly basis as scheduled.

Employment Records While Under Supervision:

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
WHITLEY SCRAP METAL	5/3/2012 - 5/22/2013		
PREMIER SOLUTIONS	5/22/2013 - 8/5/2013		

Justice is no longer employed since this incident. His employer allowed him to borrow her car, when she learned he was drinking, she advised him he could not drive it. He began harassing her and other members of her family.

Financial Conditions:

	Total Amount ordered	Pay Period	Total Paid	Date Last Paid	Arrearage	Balance Due
Fees						
Board Ord. Other Reimburse	\$390.00	\$10.00/M	\$135.00	5/22/2013	\$15.00	\$255.00
Regular Supervision	\$11,650.00	\$50.00/M	\$400.00	7/24/2013	\$50.00	\$11,250.00

Justice is in arrears on BORA \$15 and \$50 on supervision fees.

Prior Violation Dates	Prior Violations	Prior Violation Disposition

Details of the Present Violation:

Violation pursuant to section 24-21-680 in that Justice violated conditions 3, 7, 9, and 10 of cause number 1989-GS-32-322 ordered in Lexington County General Sessions Court. - Justice failed to follow the advice and instructions of his agent by failing to pay BORA by being \$15 in arrears at issuance of process and \$50 in arrears on supervision fees; failed to refrain from contacting Leigh Cotton and

348
South Carolina Department of Probation, Parole and Pardon Services
Violation Report

Offender's Name: **WILLIAM BRUCE JUSTICE**

her family as instructed by agent on Monday, August 5, 2013; failed to refrain from drinking alcohol to excess. According to incident report 2013-3696 with the Kershaw County Sheriff's Office, Justice assaulted two members of Ms. Cotton's family by striking victim #1 with a metal pipe across her stomach and victim #2 with a closed fist.

Agent's Recommendation:

Revocation

Agent's Justification:

Justice was instructed by his agent on August 5, 2013, to refrain from having contact with Leigh Cotton, his former employer, or anyone in her family. He stated that he understood and would not contact them. At the time this home visit was conducted by his agent, Justice had an odor of alcohol on his breath and appeared to be inebriated. There were beer cans all over his yard and when asked about the cans he stated that they were donated to him to be recycled. Justice made contact with Mrs. Cotton shortly after he was instructed not to do so. This later resulted into an altercation with Mrs. Cotton's son and daughter-in law. He also has a pending DUI case in Richland County.

Niquita Cook *N. M. Cook* Agent

Date: 8/15/2013

Supervisor's Signature

James E. Mullins

Date: 08-19-13

Civil Judgement for BORA 1/2 Fees

**South Carolina Department of Probation, Parole and Pardon Services
Scripting of the Presentation of a Violation Case to the Parole Board**

Today's Date: September 19, 2013

May it please the Board, this is the case of William Bruce Justice, who received a sentence of 60 years on June 29, 1989 for the offense of four counts of Burglary 2nd Degree. The offender was paroled on May 3, 2012. On, August 7, 2013 legal process was issued and was subsequently served on the offender on August 7, 2013. The legal process charged the following violation(s):

Violation Description: Justice failed to follow the advice and instructions of his agent by failing to pay BORA by being \$15 in arrears at issuance of process and \$50 in arrears on supervision fees; failed to refrain from contacting Leigh Cotton and her family as instructed by agent on Monday, August 5, 2013; failed to refrain from drinking alcohol to excess. According to incident report 2013-3696 with the Kershaw County Sheriff's Office, Justice assault two victims of Ms. Cotton's family by striking victim #1 with a metal pipe across her stomach and victim #2 with a closed fist.

Such actions constitute a violation of the following conditions: Violation pursuant to section 24-21-680 in that Justice violated conditions 3, 7, 9, and 10 of cause number 1989-GS-32-322 ordered in Lexington County General Sessions Court.

An Administrative hearing was conducted on August 27, 2013 and the case was referred to the Board with the recommendation of revocation.

Unsatisfied time on the sentence is 18 years and 7 months.

NOTE: Unsatisfied time on a sentence is calculated by counting from the issuance date of the warrant or citation to the supervision expiration date.

**DEFENDANT'S
EXHIBIT**

#1 2-1-17
2014CP32-0688

ORIGINAL

FILED

STATE OF SOUTH CAROLINA 2017 AUG -2 AM 11:14 IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON LISA M. COMER FOR THE ELEVENTH JUDICIAL CIRCUIT
CLERK OF COURT
LEXINGTON SC
William Bruce Justice,) C.A. No. 2014-CP-32-0698
S.C.D.C. No. 084810,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 26, 2014. Respondent made its return on May 29, 2015. Respondent moved to dismiss the application, and a hearing on that motion was heard on April 21, 2016, before the Honorable Perry Gravely. After hearing arguments from both Applicant and Respondent, Judge Gravely denied the motion to dismiss. Applicant then moved for discovery of the Department of Probation, Parole, and Pardon (DPPP) records, and after hearing argument from both Applicant, Respondent, and General Counsel of DPPP, Judge Miller issued an order on September 7, 2016, granting Applicant's motion for discovery in part.

After the records were produced to the parties, an evidentiary hearing was held on February 1, 2017, at the Lexington County Courthouse. Applicant was present and represented by Anna (Good) Browder, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant and Agent Niquita M. Cook, Applicant's parole office, testified at the hearing. The Court had before it Applicant's parole records; the Lexington County Clerk of Court

records; the South Carolina Department of Probation, Parole, and Pardon records; the PCR application; the amended application; and the Return.

PROCEDURAL HISTORY

Applicant is confined at the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the at the February 1989 term of the Lexington County Grand Jury for four counts of Burglary Second Degree, two counts of grand larceny, and two county of petit larceny. He was represented by Frederick I. Hall, III, Esquire. On June 28, 1989, Applicant proceeded to trial by jury pursuant to which he was found guilty as charged. He was sentenced by the Honorable Marion H. Kinon to sixty years imprisonment on the burglary charges, twenty years on the grand larceny charges and one month on each petit larceny charge. All sentences were ordered to run consecutively.

A timely Notice of Intent to Appeal was served and filed. On February 7, 1990, Assistant Appellate Defender Franklin W. Draper filed a Brief of Appellant on Applicant's behalf. Applicant raised the following ground for relief on

direct appeal:

1. Did the trial court err failing to suppress the evidence seized without a warrant or appellant's consent from appellant's motel room?
2. Did appellant's poor health due to heroin withdrawal deprive him of the ability to make a knowing and voluntary statement?
3. Was it proper to impeach appellant with a conviction that did not involve moral turpitude?
4. Did the trial court err in admitting a surveillance tape with an unidentified individual portrayed?

The state filed a Brief of Respondent on March 98, 1990 App. pp. 323-46; and Applicant filed a Reply Brief of Appellant on March 19, 1990. The South Carolina Supreme Court affirmed

2
301

Applicant's convictions and sentence in an unpublished opinion filed on July 16, 1991, State v. William Bruce Justice, 91-MO-200 (S.C.S.Ct, filed July 16, 1991.)

3:89-1232-OJ

Prior to the South Carolina Supreme Court's decision affirming his convictions, Applicant filed a pro se Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina on May 15, 1989, Justice v. Bost, et al., 3:89-1232-OJ. He raised the following grounds for relief in his 1989 Petition:

1. Violation of constitutional right by illegal search and seizure.
Police using threats and coercion on "non-residence" entered the residence of the Applicant without a proper search warrant, without permission or knowledge of the Applicant, and illegally and unconstitutionally did seize personal property of the Applicant without any form of a properly executed warrant.
2. Evidence obtained pursuant to unlawful arrest.
Applicant was placed under illegal arrest following the illegal search and seizure and is still being held in illegal confinement since January 3, 1989, without ever being afforded a grand jury indictment on the charges.
3. Denied access to state court system to attack illegal and unconstitutional confinement.
Court of General Sessions refused to adhere to state statute and hear the writ of habeas corpus submitted within the time limits set forth by statute thereby denying the Applicant access to the court or right to appeal to a higher court any decision rendered.

After Respondents had filed a Motion for Summary Judgment and a Supplemental Motion for Summary Judgment, Magistrate Judge Carr filed a Report and Recommendation on November 28, 1989, in which he recommended dismissal of the 1989 Petition without prejudice because Applicant had not exhausted available state court remedies. The Honorable Matthew J. Perry filed an Order on January 22, 1990 granting the Respondent's motion for summary

judgment and dismissing the 1989 Petition without prejudice. Judgment was entered in accordance with this Order of January 24, 1990.

August 18, 1992 PCR

Applicant subsequently filed an Application for Post-Conviction Relief (PCR) on August 18, 1992. He raised the following grounds for relief in his PCR Application:

1. Ineffective assistance of counsel.
2. Applicant was denied his Fourth Amendment right because of an illegal search and seizure.
3. Abuse of discretionary powers of the trial judge.
4. Denied a fair trial.
5. Ineffective assistance of appellate counsel.
6. Unconstitutional sentence.

The State filed a Return dated October 8, 1992. The Honorable Daniel E. Martin, Sr., held a hearing into the matter on June 7, 1995 at the Lexington County Courthouse. Applicant was present at the hearing and John R. Rakowsky represented him. Assistant Attorney General Allen Bullard represented the State. Prior to the start of the hearing, Judge Martin questioned Applicant regarding whether Applicant desired to make any amendments to the PCR Application. Collateral counsel made a motion to amend the Application to include the following additional allegations of ineffective assistance of counsel:

1. Counsel failed to challenge the Applicant's oral confession to law enforcement.
2. Counsel failed to subpoena a jacket and shoes to present as evidence.
3. Counsel did not request a charge for Receiving Stolen Goods.
4. Counsel did not ask the Court to impose concurrent sentences.
5. Counsel failed to subpoena additional witnesses.
6. Counsel did not object to introduction of prior escape charge for impeachment purposes.
7. Counsel didn't move for a directed verdict on the Grand Larceny charge on Indictment 89-GS-32-325. The Applicant was charged with stealing six shears but the State only produced two at trial.

Respondent did not object to amendment of the Application, and Judge Martin granted the motion to amend. Also, prior to the commencement of the hearing, Applicant explicitly withdrew all allegations of ineffective assistance of appellate counsel Frank Draper, Esquire, and any allegation against Ms. Kathy Evatt, Esquire.

Applicant testified in his own behalf at the hearing. Testifying on behalf of the State was Frederick I. Hall, III, Esquire. On July 19, 1995, Judge Martin signed an Order of Dismissal, in which he denied relief and dismissed the Application with prejudice.

A timely Notice of Appeal was served and filed. On February 1, 1996, Assistant Appellate Defender Lesley M. Coggiola filed a Petition for Writ of Certiorari on Applicant's behalf, in the South Carolina Supreme Court. Applicant raised the following ground for relief in the certiorari petition:

Did the trial judge err in finding that Applicant received effective assistance of counsel when counsel failed to subpoena a jacket and a pair of shoes taken from his motel room by the officers who conducted a search and were different from the jacket and shoes worn by an individual who appeared on videotape the prosecution played for the jury?

The State filed a Return to Petition for Writ of Certiorari on March 11, 1996. The South Carolina Supreme Court denied certiorari on June 19, 1996 and the Remittitur was sent to the Lexington County Clerk of Court on July 8, 1996.

2:03-2281-10AJ

Applicant subsequently filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina on July 10, 2003, raising the following grounds for relief, verbatim:

Convicted obtained by use of Evidence Obtained Pursuant to an
Unconstitutional Arrest Search and Seizure.

5
JEM

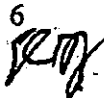
The Petitioner herewith and herein reasserts as his First Grounds in the petition for Writ of Habeas Corpus his Number #3 Grounds, verbatim, raised for ineffective assistance of counsel in his application for post conviction relief, which read as follows:

The applicant was denied his rights protected under the Fourth Amendment of the United States Constitution by an illegal search seizure [sic] and during the suppression hearing the applicant was denied his rights protected under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution by ineffective assistance of counsel, denial of the process of law, denial of equal protection of laws, abuse of discretionary powers by the trial court judge.

Respondent filed a motion for summary judgment on September 17, 2003. On September 25, 2003, Applicant was provided a copy of Respondent's order as well as a Roseboro order. On November 3, 2003, Applicant filed an affidavit and reply to Respondent's motion. On December 23, 2003, United States Magistrate Judge Robert S. Carr issued a Report and Recommendation, recommending Respondent's motion for summary judgment be granted. Applicant submitted objections to the Report and Recommendation. On February 4, 2004, Senior United States District Judge Matthew J. Perry, Jr., issued an Order approving the Report and Recommendation and dismissing Applicant's action.

Parole Revocation

On or about May 2, 2012, Applicant was granted parole by the South Carolina Probation, Parole, and Pardon Services. He was given a Certificate of Parole which outlined eleven Conditions of Supervision (signed and dated by Applicant, the Director of Parole Board Support, and a witness). On August 7, 2013, a warrant was issued for Applicant's arrest, alleging that Applicant violated Conditions 3, 7, 9, and 10 of his Parole. It was alleged that Applicant failed to follow advice and instructions of his agent by failing to pay fees, failing to refrain from

6


contacting his former employer Leigh Cotton and her family, failing to refrain from drinking alcohol to excess, and according to two Kershaw County arrest warrants Applicant struck two members of Ms. Cotton's family with a pole (charged with two counts of Assault and Battery Third Degree).

On August 20, 2013, Applicant was presented a Notice of Offender Rights at Hearing and Hearing Waiver Option from Parole Services. Applicant was notified his parole hearing date was set for August 27, 2013. The hearing took place at the Kershaw County Detention Center on August 27, 2013. Present at the hearing was the Administrative Officer, Applicant's parole agent, Applicant, and two agent's witnesses (Leigh Cotton and Paul Cotton, III). Applicant was found to have violated conditions 3, 7, 9, and 10, set forth in the Conditions of Supervision. Applicant's parole was revoked, and he was ordered to serve the remainder of his sentence. Applicant did not appeal his parole revocation.

Current PCR Application

Applicant subsequently filed his current and most recent Application for Post-Conviction Relief (PCR) on February 26, 2014. He raised the following grounds for relief in his PCR Application:

1. Applicant was denied the right to confront and question witnesses testifying against him that is guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the South Carolina Constitution and the South Carolina Department of Probation, Parole and Pardon Services . . . therefore, Due Process was violated;
2. Applicant was denied his right protected by the Fourth Amendment of the United States Constitution and corresponding provision of the South Carolina Constitution from unlawful arrest that was based on erroneous violation of allegations that have no factual support, therefore violation Due process;

7
RDH

3. Applicant was denied his right protected by the Fourth Amendment of the United States Constitution and the corresponding provisions of the South Carolina Constitution from unlawful arrest with an invalid arrest warrant that probable cause had never been established, and his sentence had expired.

SUMMARY OF THE TESTIMONY

Applicant testified he did not believe he was given due process during his parole hearing. He testified he was not allowed in the same room with the witnesses who addressed the parole board, and he was not given an attorney when he wanted one. Applicant also testified he was not allowed to address the parole board because they asked him direct questions and did not allow him to speak aside from those answers. Applicant claimed he had not violated any parole conditions. He stated he paid his fees when he was told he needed to pay them and was not behind in payment. However, Applicant did admit his parole officer expressly ordered him to have no contact, even by phone, with the victims of his alleged assault, and Applicant agreed that even after this direct order he still sent responsive text messages to the victims. Applicant agreed he had been arrested for assault charges against these victims, but Applicant noted the alleged assault occurred on his property after they came on to his property. Applicant also agreed he had been arrested for driving under the influence. Applicant claimed he had not been drinking, and he said he could not have alcohol because he suffered from Hepatitis C.

Applicant's parole officer, Agent Cook, confirmed Applicant was not allowed in the room with the witnesses when they addressed the parole board. The witnesses were victims of an assault by Applicant that had been documented by law enforcement. Agent Cook also agreed Applicant was not given an attorney because he was not entitled to one for a parole hearing. Agent Cook agreed Applicant was not allowed to speak freely aside from answering questions at

the hearing and confirmed this was standard practice. Agent Cook testified Applicant violated more than one parole condition. Agent Cook instructed Applicant to stay away from the victims and have no contact, to include telephone contact. Agent Cook was able to get copies of text messages sent by Applicant to the victim after the date of her order not to have contact with them. Additionally, there was an incident report alleging Applicant had physically attacked victims. Agent Cook also explained Applicant had been forbidden from drinking alcohol while on parole; however, not only did he have an arrest for driving under the influence, but Agent Cook personally witnessed Applicant to be intoxicated and surrounded by empty beer cans when she had made a visit to his home. Agent Cook agreed she told Applicant he could pay his fees at the end of the month and not be considered late.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRPC 71.1(e)).

A proceeding under the Uniform Post-Conviction Procedure Act may be instituted by: "Any person who has been convicted of, or sentenced for, a crime and who claims . . . [t]hat his

ECM

sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint." S.C. Code Ann. § 17-27-20.

In a parole context, Applicant has no Sixth Amendment right to counsel because "a parole revocation hearing . . . is an administrative rather than a criminal proceeding." Duckson v. State, 355 S.C. 596, 598, 586 S.E.2d 576, 578 (2003).

However, an inmate's non-collateral claim that his parole was unlawfully revoked falls squarely within the ambit of the PCR statute. Kerr v. State, 345 S.C. 183, 547 S.E.2d 494 (2001); Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). This does not, however, give the court the authority either to conduct a de novo review of the case or for this court to otherwise sit in an appellate capacity to review the Parole Board's discretionary decision. To the contrary, the South Carolina Code specifically provides: "[t]he board shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed." S.C. Code Ann. § 24-21-680. The court's review of whether Applicant's parole was unlawfully revoked is limited to an examination of whether the revocation procedure itself was lawful.

As outlined in Morrissey v. Brewer, 408 U.S. 471, 480 (1972), "revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations." The United Supreme Court outlined the limited "minimum requirements of due process."

They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

Morrissey v. Brewer, 408 U.S. at 488-89.

And while "the parolee may appear and speak in his own behalf [at the hearing, and] he may bring letters, documents, or individuals who can give relevant information to the hearing officer[,] . . . if the hearing officer determines that an informant would be subjected to risk of harm if his identity were disclosed, he need not be subjected to confrontation and cross-examination." Morrissey, 408 U.S. at 487.

Furthermore, where parole is revoked on more than one ground, Applicant must successfully challenge all grounds in order to vacate the revocation. See State v. Hicks, 387 S.C. 378, 379, 692 S.E.2d 919, 920 (2010) ("In this case, the Court of Appeals erred in addressing the merits of petitioner's argument regarding the revocation of probation based on a violation of Sex Offender Conditions *because the probation revocation judge revoked petitioner's probation on two additional grounds*, which petitioner did not challenge." (emphasis added)).

This Court will now address each allegation:

Allegation #1: Right to Confront Witnesses

Applicant argues his due process rights were violated when he was not allowed to confront the witnesses against him. There are no tapes or transcripts of the hearing; however, both Applicant and his parole agent agree he was not allowed to be in the same room with the victims. Parole agent does not remember if there was an express finding on the record that the informants would be at risk, but parole agent was aware the witnesses were victims of an assault allegedly perpetrated by Applicant. As outlined in Morrissey, where a hearing officer determines an "informant would be subjected to risk of harm if his identity were disclosed, he need not be subjected to confrontation and cross-examination."

11 *sep*

This Court finds that while it is unclear of whether there was a finding on the record of danger to the witnesses, there is testimony that the parole agent knew the witnesses had been allegedly subject to a physical attack by Applicant. And, more importantly, pursuant to Hicks, Applicant had his parole revoked not only for failing to follow orders and contacting these victims and the alleged assault on these victims, but also for consuming alcohol. Testimony at the hearing was that Agent Cook, who witnessed Applicant under the influence, was present at the hearing. Therefore, even if Applicant succeeded on one of his reasons for revocation, he would still be successfully revoked due to the allegations supported by Agent Cook.

Allegations #2 & 3: No Factual Support, No Probable Cause

Applicant next argues his rights were violated due to "unlawful arrest that was based on erroneous violation of allegations that have no factual support" and "unlawful arrest with an invalid arrest warrant that probable cause had never been established[.]"

Applicant is not entitled to a de novo review of the case or for this court to otherwise sit in an appellate capacity to review the Parole Board's discretionary decision. To the contrary, the South Carolina Code specifically provides: "[t]he board shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed." S.C. Code Ann. § 24-21-680. The court's review of whether the Applicant's parole was unlawfully revoked is limited to an examination of whether the revocation procedure itself was lawful.

Further, this Court had the opportunity to observe and listen to sworn testimony from both Applicant and Agent Cook. Applicant admitted on the stand that he sent a text message to the victims after being ordered by Agent Cook not to do so, and Agent Cook testified to

personally observing Applicant under the influence of alcohol and surrounded in his home by empty beer cans.

For the reasons stated above, this Court finds Applicant has failed to meet his burden of proving his parole was unlawfully revoked and, accordingly, finds these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his parole hearing. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 28th day of July, 2017.


EUGENE C. GRIFFITH, JR.
Presiding Judge
Eleventh Judicial Circuit

Narberg, South Carolina.

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

2017 AUG -2 AM 11:14

FILED

363

WITNESSES

Blackwell, Cayce P/S

ARREST WARRANT NO. C251032

C251033

ACTION OF GRAND JURY

TRUE BILL

James H. Cellars 2-23-89
Foreman of Grand Jury

VERDICT

Guilty of BURGLARY SECOND DEGREE
Guilty of GRAND LARCENY

Rathbone H. Cellars 6-28-89
Foreman of Petit Jury

Date:

DOCKET NO. 89-GS-32-325

The State of South Carolina,

County of LEXINGTON

COURT OF GENERAL SESSIONS

February TERM 1989

THE STATE

vs.

WILLIAM B. JUSTICE

CDR #080, 098

Indictment for

BURGLARY IN THE SECOND DEGREE

AND

GRAND LARCENY

Donald V. Myers, Solicitor

FILED

FEB 23 3 15 PM '89

JOHN A. BEARDEN
CLERK OF COURTS
LEXINGTON, SC

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
BURGLARY IN THE SECOND DEGREE
AND GRAND LARCENY

At a Court of General Sessions, convened on the 27th day of February, 1989,
the Grand Jurors of Lexington County present upon their oath:

COUNT ONE

That WILLIAM B. JUSTICE
did in Lexington County on or about the 22nd day of December,
1988, enter a building of another in the nighttime without consent, to wit: the
Nexus Hair Center located at 1344-D Knox Abbott Drive, Cayce, with intent to commit
a larceny or other crime therein, in violation of Section 16-11-312(B) of the 1976
South Carolina Code of Laws, as amended.

COUNT TWO

That WILLIAM B. JUSTICE
did in Lexington County on or about the 22nd day of December,
1988, feloniously take and carry away the personal goods of Greg Sandel and/or
Nexus Hair Center, of the value of more than two hundred dollars described as follows:
tools and implements for cutting hair, with intent to deprive the owner permanently
of such goods.

A TRUE COPY

Lex. Co. C.C.O.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

For M. M. M. M.
Deputy SOLICITOR