

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
LEWIS F. POWELL, JR. UNITED STATES COURTHOUSE ANNEX
1100 EAST MAIN STREET, SUITE 501
RICHMOND, VIRGINIA 23219-3517
WWW.CA4.USCOURTS.GOV

PATRICIA S. CONNOR
CLERK

TELEPHONE
(804) 916-2700

October 18, 2022

Damorius D. Gaines
Lee Correctional Institution
990 Wisacky Way
Bishopville, SC 29010

RECEIVED
NOV 03 2022
SC Court of Appeals

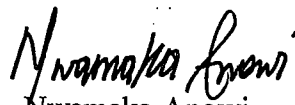
Re: Proposed Filing
State of South Carolina v. Damorius Gaines

Dear Mr. Gaines:

This acknowledges receipt of your correspondence with respect to the above matter that appears to be pending in a *state court* case. Please be advised that this court has jurisdiction over matters appealed from **federal district courts within our circuit**, original proceedings arising from federal district courts within our circuit and appeals from certain federal agencies. A search of our docket does not reveal a pending matter to which your filing might attach. Accordingly, the court is without jurisdiction to act.

Your paperwork is returned that you may properly redirect it to the proper court.

Sincerely,


Nwamaka Anowi
Chief Deputy Clerk

NA: cb
Enclosures

Damarius D. Gaines
Lee Correctional Inst.
990 Wisacky Highway
Bishopville SC. 29010

RECEIVED

NOV 03 2022

SC Court of Appeals

South Carolina Court of Appeals
1220 Senate Street
Columbia South Carolina 29201

Re: Explanation

Dear South Carolina Court of Appeals. Do to ongoing issues with legal representation. October 19th 2021 Honorable Letitia Verdin ordered me pro, se. Being incompetent, and adequately advised by prior Counsel. Appellant Counsel Luora Caudy refused to submit issues and exhibits that I requested. For the last two years a fraudulent post-conviction hearing has allegedly been pending. 2020-cp-04-01211. I also have a pending how suit against Anderson Co./State of South Carolina. Do to the conflict behind this issue, procrastination continue to hinder the post-conviction hearing. Set forth with this letter to the Court I present exhibits to prove my actual innocence. As well as illegal conduct with attorney-client-privileges. I file this motion to vacate sentence. Respectfully

Submitted.

Damarius D. Gaines

DATE: 10-27-22

STATE OF SOUTH CAROLINA
[Court of Appeals]

RECEIVED

NOV 03 2022

SC Court of Appeals

Rule 50(b) Motion for Judgment Notwithstanding
Verdict (5 NOV)
Honorable J. Cordell Maddox, Circuit Court Judge

THE STATE OF SOUTH CAROLINA

Respondant

VS.

DAMORIOUS DONTAVIS GAINES

Appellant

Rule 50(b) Motion for Judgment Notwithstanding Verdict.
Indictment NO: 2017GS04101674

Damorius Dontavis Gaines
pro, se, Appellant.

Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

Honorable Alan Wilson
Attorney General
Post Office Box 11549
Columbia, S.C. 29211

STATE OF SOUTH CAROLINA
COURT OF APPEALS

RECEIVED

NOV 03 2022

Honorable J. Cordell Maddox Jr.
Indictment NOS 2017GSO4101674

SC Court of Appeals

DAMORIOUS DONTAVIOUS GAINES

Appellant.

VS.

THE STATE OF SOUTH CAROLINA

Respondent.

Proof of Service

I Damorius Gaines hereby certify that I have served the said motion Rule 50(b) Judgment notwithstanding verdict. Based upon direct verdict motion denied by Honorable J. Cordell Maddox Jr. Sept. 6th 2018. This motion has been served to Clerk office and 1220 Senate Street Columbia South Carolina 29201, And Attorney General Alan Wilson post office box 115419 Columbia SC. 29211.

Damorius Gaines
Lee Correctional Inst
990 Wisochy Highway
Bishopville SC. 29010

STATE OF SOUTH CAROLINA) Court of Appeals
State of South Carolina)
VS.)
Damorius Dontavis Gaines) Rule 50(b) Motion for Judgment
Notwithstanding verdict (JNOV)

RECEIVED

NOV 03 2022

SC Court of Appeals

To: South Carolina of Appeals:

Now Comes the above said appellant respectfully requesting Rule 50(b) motion be granted by Court on grounds of:

1) Direct verdict motion raised during trial, by Counsel Hadden Lucas, for insufficient evidence. (274; 13-22).

All evidence presented by state during course of trial was in bad faith upon face of exhibit(s).

2) Exhibit A; Affidavit: 2017A0420700278 (Attempted armed robbery) upon face proves lack of probable cause. Detective Gardner does not make a claim of a living (victim) making a complaint of being deprived of property. Detective Gardner list victim as a building (Little General Store). February 16th 2017, A call was not made by (victim) to Anderson dispatch of a crime taken place, by (victim).

3) Exhibit B, Indictment: 2017G504101674; (Attempted armed robbery) (count ~~two~~ - P.W.D.V.C.). List victim as Jimmie Strong as being, "allegedly" violated of said crime. Being false upon face of exhibit do to exhibit B2.

- 4) Exhibit B-2 Proves Contradictions of Indictment upon its face. July 27th 2018 (1 year after Indictment) Jimmie Strong provided statement to be presented during appellants trial. Ms. Strong states that she did not call 911. Ms. Strong states that no crime never took place against her. Proving Indictment: 2017GS0401674 to be fraudulent.
- 5) Exhibit B-3. Provides proof upon face that detective Gardner did not speak with Jimmie Strong until 1 year after allegation on July 27th 2018. Inside report detective Gardner states that there was not a statement or call made reporting a crime of attempted armed robbery against Little General Store or Jimmie Strong.
- 6) Upon court record (152; - 158) Hanish Patel, a surprise witness that appellant had no personal knowledge about. Making this a Rule 5 Brady Violations. Under oath was allowed by state to give false testimony about her being present during alleged attempted armed robbery, Ms. Patel was coerced by state to give false testimony to manipulate jury for a crime of attempted armed robbery that did not take place.

Based upon the following exhibits provided to court, appeallet request that Rule 50(b) motion be granted.

Malicious prosecutions was forced upon appeallet in bad faith. All procedure's applied during the course of Mr. Gardner's investigation was unprofessional, and illegal.,

Appeallet request as followed Motion Rule 50(b) this late do to misrepresentation, failing to be adequately advised by Counsel of unalienable right to standing, do to incompetency, and living conditions inside prison, Appeallet has been improperly informed by State representative's provided to me by State of South Carolina, as well as poor performance by way of not filing motions/exhibits that I request.

This being unprofessional conducted forced upon my appeal process. In good faith I request for motion to be granted.

Appeallet has become competent to law, business, incorporated language, and religious. Do to level of comprehension Appeallet also make the demand of justice to be served.

Respectfully Submitted.

Dominic James

A. Hadden Lucas

From: Catherine Huey <Catherine.Huey@solicitor10.org>
Sent: Tuesday, June 05, 2018 3:19 PM
To: A. Hadden Lucas
Cc: Stan Overby
Subject: RE: State v. Damorius Gaines - Motion Hearing

Hadden,

I am serving the LWOP notice today, and I do understand your feelings regarding the matter. However, our argument obviously would be that he is in fact LWOP eligible, based on just one of his Burglary 1st convictions. In the alternative, we will also rely on *Bryant v. State*, 384 SC 525, wherein both Burglary convictions (even if considered 2nd degree, Violent) would still qualify him for LWOP.

Further, as to your Motion to Reveal the CI, our argument is that the subject in question is a tipster, and therefore, it is not required that we disclose his identity. There are several cases to that effect to support our position: *State v. Humphries*; *State v. Bernotas*; *State v. Batson*; and *Rovario v. US*.

Regardless, I am happy to have these motions heard in the near future. Looking ahead at our trial terms, it seems we could handle these motions in front of Judge Sprouse, July 9 week or Maddox, August 6, both of whom will be our trial judges the week of September 4. That way we could proceed to trial the week of September 4.

Just let me know what works for you.

Thanks,

Catherine

From: A. Hadden Lucas [mailto:ahlucas@andersoncountysc.org]
Sent: Thursday, May 31, 2018 5:28 PM
To: Catherine Huey <Catherine.Huey@solicitor10.org>
Cc: McIntosh, Lawton <lmcintoshj@sccourts.org>; McIntosh, Lawton Law Clerk (Clair Hollingsworth) <lmcintoshlc@sccourts.org>; Al Means <Al.Means@solicitor10.org>; Stan Overby <stan.overby@solicitor10.org>
Subject: RE: State v. Damorius Gaines - Motion Hearing

That would suit fine. I don't have any objection to that approach, so long as we have sufficient time before trial to prepare. Thanks, - HL

From: Catherine Huey [mailto:Catherine.Huey@solicitor10.org]
Sent: Thursday, May 31, 2018 5:25 PM
To: A. Hadden Lucas <ahlucas@andersoncountysc.org>
Cc: McIntosh, Lawton <lmcintoshj@sccourts.org>; McIntosh, Lawton Law Clerk (Clair Hollingsworth) <lmcintoshlc@sccourts.org>; Al Means <Al.Means@solicitor10.org>; Stan Overby <stan.overby@solicitor10.org>
Subject: Re: State v. Damorius Gaines - Motion Hearing

Hadden, again, I am happy to have all of these things heard pre-trial. My point is that the judge who hears these motions should also be the eventual trial judge. You are welcome to contact me directly, so that we can see what will suit your

either 1st Degree Burglary or Second Degree Burglary Violent. For that reason, he doesn't have any strikes for a "serious" or "most serious" offense. With that in mind, will you agree to withdraw the LWOP Notice? If not, then I intend to file a motion to quash.

Third, we corresponded regarding Sherika Harper's criminal record some time ago. You were going to provide Ms. Harper's NCIC report. We have not yet received it. Before our conversation, we filed motions seeking NCIC reports for all State's witnesses expected to testify, along with a request to "reveal the deal" for all testifying witnesses. These motions have not yet been heard; however, if we have an agreement for this information to be revealed, I don't see any reason to have a motion hearing.

Fourth, I would like to set an appointment to review the enhanced screenshots referred to by investigators in their supplementals. I received copies of these screenshots in discovery, but they are in black and white and very grainy. When you have a chance, please let me know when we can arrange a time for this.

Lastly, I suppose that we need to schedule another representation hearing for Mr. Gaines. I agree with you that it would make sense to do all this before the expected trial judge.

Please feel free to call me to discuss further. Thank you.

Hadden Lucas
Assistant Public Defender
301 Camson Road
Anderson, South Carolina 29625
864.964.6750

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A. Hadden Lucas

From: A. Hadden Lucas
Sent: Thursday, May 31, 2018 2:33 PM
To: 'McIntosh, Lawton'; McIntosh, Lawton Law Clerk (Clair Hollingsworth)
Cc: 'Al Means'; 'Catherine Huey'
Subject: State v. Damorius Gaines - Motion Hearing
Attachments: Motion to Reveal Confidential Informant.pdf; Motion for Speedy Trial.pdf; Motion to Reveal the Deal.pdf

Dear Judge McIntosh:

I am seeking to have the attached Motion to Reveal Confidential Informant (filed March 2, 2018), Motion for a Speedy Trial (filed April 11, 2018) and Motion to Reveal the Deal (sent for filing today) scheduled for a hearing at the next available date.

I have copied Al Means and Catherine Huey from the Solicitor's Office on this email.

If you have any questions or require additional information, please do not hesitate to contact me.

Respectfully,

Hadden Lucas
Assistant Public Defender
301 Camson Road
Anderson, South Carolina 29625
864.964.6750

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A. Hadden Lucas

Attachment 11 (f) Continues

From: Catherine Huey <Catherine.Huey@solicitor10.org>
Sent: Thursday, July 26, 2018 4:03 PM
To: A. Hadden Lucas
Cc: Stan Overby
Subject: RE: Damorius Gaines
Attachments: Armed Robbery_Gaines_Witness List.docx

Hadden,

Mr. Gaines will be placed on the September 4 trial term per our previous discussions. We are currently meeting with witnesses now, but I have attached our *potential* witness list thus far. Other than Sherika Harper, these witnesses do not have a criminal record. Harper's NCIC has been sent out in supplemental discovery today. Again, no deals have been made with any of these witnesses in exchange for testimony.

I again will have to disagree with your interpretation of the plea transcript as it relates to LWOP, so certainly proceed as you wish in moving to quash the LWOP notice.

I would be happy for you to view the original enhanced screen shots. I think it is best to do that at APD, and then you can also review the evidence at P&E. Let me know what your schedule is like next week and we can arrange for that.

I will put Gaines on the jail list on August 8, so that he may be heard regarding representation. This will be his second hearing if memory serves. I believe he previously sought to have Austin McLain removed as well (or at least he wanted to do so). Judge Maddox should be presiding and he is also one of the trial judges for the September 4 term.

Thanks,

Catherine

From: A. Hadden Lucas [mailto:ahlucas@andersoncountysc.org]
Sent: Wednesday, July 25, 2018 4:59 PM
To: Catherine Huey <Catherine.Huey@solicitor10.org>
Subject: Damorius Gaines

Good afternoon Catherine:

I am writing regarding State v. Damorius Gaines. When last we spoke, my understanding was that you intended to schedule Mr. Gaines' trial for August or September. Since we have no trial term in August, are you planning to schedule his trial for September? Mr. Gaines is chomping at the bit for a trial. If you don't schedule it for September/October, my intention is to seek a hearing for our speedy trial motion.

Second, I have reviewed the transcript from Mr. Gaines' plea in Georgia in 2014. Given that the prosecutor stated on the record that these burglaries took place in the evening, the record lacks sufficient evidence to prove that Mr. Gaines pled guilty to an offense containing the elements to

Attachment 11 (f) continues

either 1st Degree Burglary or Second Degree Burglary Violent. For that reason, he doesn't have any strikes for a "serious" or "most serious" offense. With that in mind, will you agree to withdraw the LWOP Notice? If not, then I intend to file a motion to quash.

Third, we corresponded regarding Sherika Harper's criminal record some time ago. You were going to provide Ms. Harper's NCIC report. We have not yet received it. Before our conversation, we filed motions seeking NCIC reports for all State's witnesses expected to testify, along with a request to "reveal the deal" for all testifying witnesses. These motions have not yet been heard; however, if we have an agreement for this information to be revealed, I don't see any reason to have a motion hearing.

Fourth, I would like to set an appointment to review the enhanced screenshots referred to by investigators in their supplementals. I received copies of these screenshots in discovery, but they are in black and white and very grainy. When you have a chance, please let me know when we can arrange a time for this.

Lastly, I suppose that we need to schedule another representation hearing for Mr. Gaines. I agree with you that it would make sense to do all this before the expected trial judge.

Please feel free to call me to discuss further. Thank you.

Hadden Lucas
Assistant Public Defender
301 Camson Road
Anderson, South Carolina 29625
864.964.6750

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A. Hadden Lucas

Attachment 11 (f) continues

From: Stan Overby <stan.overby@solicitor10.org>
Sent: Friday, August 03, 2018 1:01 PM
To: A. Hadden Lucas
Cc: Catherine Huey
Subject: State v. Gaines - Supplemental Discovery

Good Afternoon Hadden:

Supplemental Discovery is being prepared and will go out on this case today.

Please note that we have spoken with Sherika Harper. At that meeting two matters of importance to this case were discussed that are now being disclosed to you. The first is that Ms. Harper indicates that Mr. Gaines does go by the moniker "Georgia Boy." The second is that Ms. Harper now says, in her best impression of Bill Clinton, that she indicated to law enforcement that the person in the video looks like Mr. Gaines, but could not say for sure.

Please feel free to contact me with any questions or concerns.

Sincerely,

Stan

Stan Overby
Assistant Solicitor
Tenth Circuit Solicitor's Office
P.O. Box 8002
Anderson, SC 29622
Phone: (864) 260-4046

A. Hadden Lucas

Attachment 11 (f) continues

From: Stan Overby <stan.overby@solicitor10.org>
Sent: Tuesday, August 21, 2018 2:05 PM
To: A. Hadden Lucas
Cc: Catherine Huey
Subject: State v. Gaines - Brady Disclosure

Hadden:

Our office met with Ms. Harper today. Please note that, pursuant to *Brady*, we make the following disclosure: Ms. Harper indicated to us that she will state that she did not really look at the video in this case, in contrast to her prior written statement, and she will also state that she only said it was your client because she wanted him to stay in jail after he beat her.

If you have any questions or concerns please do not hesitate to contact me.

Sincerely,

Stan

Stan Overby
Assistant Solicitor
Tenth Circuit Solicitor's Office
P.O. Box 8002
Anderson, SC 29622
Phone: (864) 260-4046

A. Alleged Identification by Defendant's Mother¹

It is not at all clear that Ms. Gaines identified the Defendant as the person shown in surveillance footage. On March 9, 2017, Investigator Gardner interviewed Ms. Gaines at her home. Upon arrival, Investigator Gardner told Ms. Gaines that he was “investigating an armed robbery and a burglary that her son was involved in” specifically an incident “where he had robbed the Dollar Tree in Anderson.” Ms. Gaines told Investigator Gardner that she “did not know anything about that.” Investigator Gardner then told Ms. Gaines that he had a picture from a security camera and showed the picture to Ms. Gaines. (See Exhibit A – Photo Shown to Connie Gaines). According to the report, Ms. Gaines looked at the picture, “then shook her head and said, “I don’t know what’s got into him, but it’s those drugs.” Investigator Gardner “interpreted her comment to be a confirmation that the person in the picture was her son.” Ms. Gaines did not sign any affidavit of identification.

Ms. Gaines has been subpoenaed by the State. If called as a state witness, she is expected to testify that the person shown in the photograph is not her son and, further, that she did not tell Investigator Gardner that the photo showed her son.

B. Recanted Identification by Sherika Harper²

On March 9, 2017, Investigator Gardner visited the Anderson City Jail to speak with Ms. Sherika Harper. Ms. Harper is the ex-girlfriend of Defendant and, at that time, was serving 30 days on three separate bench warrants. At the outset of their conversation, Investigator Gardner advised Harper that he “wanted to ask her about her

¹ All facts recited concerning police contact with Ms. Gaines are from Investigator Gardner’s Incident Report Supplemental dated March 9, 2017.

² Facts recited concerning law enforcement contact with Ms. Harper are from Investigator Gardner’s Incident Report Supplemental dated March 9, 2017 and Brady disclosures made by Solicitor Stan Overby.

relationship with Damorius Gaines, and what she knew about him.” After speaking for some time, Investigator Gardner showed Harper a photograph that was a printed enlargement from the Little General. Harper stated that “it looked like Damorius Gaines, but she wasn’t sure because the picture wasn’t very clear.” Harper then watched surveillance video from the Little General Store and confirmed that the subject in the video was her ex-boyfriend, Damorius Gaines. After watching the video, Harper provided a written statement that she could identify Gaines from the video. **(See Exhibit B – Voluntary Statement of Sherika Harper.)** Ms. Harper was released from jail on that same day.

Investigators from the Solicitor’s Office subsequently met with Ms. Harper in August 2018. During these meetings, Ms. Harper stated that she “indicated to law enforcement that the person in the video looks like Mr. Gaines, but she could not say for sure.” She further advised them that, in contrast to her prior written statement, she “did not really look at the video in this case” and she “only said it was [Damorius Gaines] because she wanted him to stay in jail after he beat her.” **(See Exhibit C – Brady Disclosures from Solicitor Stan Overby).** The Defense has also spoken with Ms. Harper and expects that, if called, she will testify consistently with her recent statements to the Prosecution.

Ms. Harper’s statement that Defendant beat her dovetails with other criminal charges faced by Mr. Gaines. Specifically, he faces charges of second degree Assault and Battery for allegedly battering Ms. Harper on February 20, 2017. Ms. Harper disclosed this to police during her interview with Investigator Gardner.

i. The putative identifications of Defendant by Ms. Harper and Ms. Gaines are lay witness opinion testimony that are inadmissible under Rule 701 because they will not help the jury clearly understand a fact in issue.

The proposed testimony from Ms. Harper and Ms. Gaines is lay opinion testimony because the State is calling them to offer an opinion as to whether the person shown in the surveillance video is the Defendant. Neither Ms. Gaines nor Ms. Harper can offer anything other than opinion testimony because neither was present during the robbery nor has any direct knowledge of involvement by Defendant. Lay opinion testimony is governed by Rule 701 of the South Carolina Rules of Evidence, which states that, “if the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.”³ This rule is identical to the federal rule except for the addition of subsection (c) and minor grammatical changes.⁴ The theory behind this rule is that jurors can find facts better if witnesses report concrete information and allow the juries’ members to analyze the information.⁵ Moreover, “the rule provides that unless a witness is testifying as an expert, statements of opinion or inferences **are allowed only if they help provide a clear understanding of the testimony or a fact in issue.**”⁶

That this is the correct analytical framework concerning admissibility of this testimony is shown by *State v. Mitchell*, 399 S.C. 410 (Ct. App. 2012) and *United States*

³ *Murphy v. Jefferson Pilot Communications, Co.* 364 S.C. 453 (Ct. App. 2005).

⁴ Justin S. Kahn, *South Carolina Evidence Handbook Annotated*, 10th ed. At 90-91.

⁵ Professor Arthur Best, *Evidence: Examples and Explanations*, 9th ed. At 151.

v. Robinson, 804 F.2d 280 (4th Cir. 1986), a Fourth Circuit case that was relied upon by the Court of Appeals in *Mitchell* and *State v. Fripp*, 396 S.C. 434 (Ct. App. 2012).⁷ In *Mitchell*, the Court of Appeals held that the trial court did not err when the identity of a person shown in photographs from a deer camera was a fact in issue and the trial court allowed a police officer – who was not present at the crime – to offer opinion testimony identifying defendant from the photographs where the officer knew defendant through twenty years of living in the same town.⁸ The Court noted that the officer’s twenty years of living in the same town gave “a basis for concluding that [the police officer] was more likely to correctly identify the defendant from the photograph than the jury.”⁹

Likewise, in *United States v. Robinson*, the Fourth Circuit concluded that the defendant’s brother’s identification testimony, based on surveillance photographs, was admissible under Federal Rule 701 as it would aid the jury in determining a key fact in issue.¹⁰ In explaining why it allowed the brother’s testimony, the Court observed that: “A lay witness may give an opinion concerning the identity of a person depicted in a surveillance photograph **if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photo than is the jury.**”¹¹

Here, the proposed lay opinion testimony by Ms. Harper and Ms. Gaines should be excluded because it will not aid the jury by providing a clear understanding of the fact in issue – that is, whether the man pictured on the surveillance video is the Defendant. Indeed, their opinion testimony is only likely to muddy the waters concerning this issue.

⁶ *Id.*

⁷ *State v. Fripp* is another similar case in which the court allowed lay witness opinion testimony to determine the identity of a person depicted on surveillance video.

⁸ *State v. Mitchell*, 399 S.C. 410, 419-20 (Ct. App. 2012).

⁹ *Id.* at 419.

¹⁰ *United States v. Robinson*, 804 F.2d 280 (4th Cir. 1986).

¹¹ *Id.* at 282.

First, both witnesses are expected to testify at trial that the surveillance video **does not** show Mr. Gaines. To get the testimony it seeks, the State would have to impeach both witnesses with evidence of their prior inconsistent statements. That the State would have to impeach its own witnesses to elicit this testimony suggests that this proposed opinion testimony would not assist the jury with a “clear understanding” of the fact in issue. Moreover, this would result in the jury hearing sworn testimony from both witnesses at trial that they did not identify Mr. Gaines and – at least for Ms. Harper – then hearing, during impeachment, evidence of her giving police an unsworn written statement identifying Mr. Gaines.

Secondly, Ms. Gaines did not make any concrete prior inconsistent statement on which she could be impeached. Ms. Gaines only told the investigator, “I don’t know what’s got into him, but it’s them drugs” while shaking her head no when shown a photograph of her son. Her verbal statement is highly ambiguous and – when evaluated impartially – should not be interpreted as a concrete statement of identification. Also, this statement is not inconsistent with Ms. Gaines’ expected testimony because Ms. Gaines is shaking her head to indicate that the photograph does not show her son.

Third, Ms. Harper’s identification should be excluded because there is “no basis for concluding that the witness is more likely to correctly identify the defendant from the photo than is the jury.” In fact, as shown in the *Brady* disclosures, Ms. Harper was less likely to correctly identify the defendant because of her admitted bias. Ms. Harper was upset with the defendant because he’d beaten her about two weeks before and because their relationship had recently ended. Because of this, she told

investigators that the person on the video was Mr. Gaines because she wanted him to stay in jail.

Accordingly, the Court should exclude the testimony of Ms. Harper and Ms. Gaines because such testimony would not assist the jury in clearly understanding whether the man shown in surveillance footage is the Defendant. On the contrary, this unreliable testimony would only confuse the jury without providing any meaningful insight as to identity. Furthermore, there is no need for the Court to admit this highly questionable testimony because the jury can observe the photographs and video for themselves and draw their own conclusions as to identity.

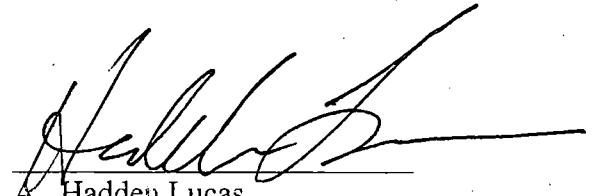
ii. The identifications should be suppressed pursuant to Rule 403 because they will confuse the issues, mislead the jury, and are cumulative.

As discussed before, it is likely that Ms. Harper and Ms. Gaines will testify that they did not identify Defendant from the surveillance footage. Based upon that testimony, the State would then seek to impeach both witnesses with alleged prior inconsistent statements.¹² As a result, the jury would then consider sworn testimony from both witnesses that they did not identify Defendant, along with impeachment testimony that the State would seek to use as substantive evidence that both witnesses did, in fact, identify the Defendant from the surveillance footage. This would both mislead and confuse the jury. However, this can be avoided because the identification testimony is unnecessary and cumulative to other evidence. To avoid this situation, the State can simply play the surveillance video for the jury and allow the jury to make their own decision concerning the identity of the perpetrator.

¹² Ms. Harper's prior written statement is undoubtedly inconsistent. Ms. Gaines' prior statement should not qualify as a prior inconsistent statement.

Based upon the arguments set forth above, the Defendant requests that the Court exclude the testimony of Ms. Harper and Ms. Gaines relating to identification of the man shown in the Little General surveillance video.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Hadden Lucas', written over a horizontal line.

A. Hadden Lucas
10th Circuit Public Defender's Office
301 Camson Road
Anderson, SC 29625
(864) 964-6750
ahlucas@andersoncountysc.org
Attorney for Defendant

Anderson, South Carolina
Dated: September 3, 2018

STATE OF SOUTH CAROLINA) TENTH JUDICIAL CIRCUIT
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF ANDERSON)
) INDICTMENT NO. 2017A0420700278;
 State of South Carolina,) 2017A0420700279; 2017A0420700280
) 2017A0420700281; 2017A0420700282;
 vs.) 2017A0420700283; 2017A0420700284;
) 2017A0420700291; 2017A0420700292;
 Damorius Dontavis Gaines,) 2017A0420700293
)
 Defendant.) MOTION TO REVEAL EXCULPATORY
) INFORMATION PURSUANT TO DISCOVERY
) MOTION
) (“ REVEAL THE DEAL ”)
)
 _____)
 ,

TO: CATHERINE HUEY, DEPUTY SOLICITOR, TENTH JUDICIAL CIRCUIT:

Now comes the Defendant in the above case, and requests the Tenth Circuit Solicitor’s Office to reveal exculpatory information based upon the following:

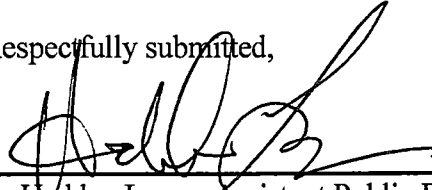
1. That Rule 5 and Brady Motions requesting Rule 5 and Brady material was served on the Tenth Circuit Solicitor’s Office on March 31, 2017.
2. That the State’s case against the Defendant would be based upon the testimony of Sherika Yvette Harper. The Defendant would therefore request disclosure of any plea bargain agreement offered to Ms. Harper in exchange for testimony by her and any and all information relative to any such offer. This request is based upon the belief that exculpatory information may be revealed which could possibly be helpful or beneficial to the Defendant in the preparation and presentation of his defense on the above indictments.
3. That the State’s case against Defendant would also be based upon the testimony of an as yet unidentified “reliable confidential informant.” The Defendant would therefore request disclosure of any plea bargain agreement offered to the “reliable confidential informant” in exchange for testimony by him/her and any and all information relative to any such offer. This request is based upon the belief that exculpatory information may be revealed which could possibly be helpful or beneficial to the Defendant in the preparation and presentation of his defense on the above indictments.

4. Defendant further requests the disclosure of any agreements for immunity, sentence concessions and/or charge reduction offered to either Ms. Harper or the “reliable confidential informant” in consideration of their testimony in this case. This request is based upon the belief that exculpatory information may be revealed which could possibly be helpful or beneficial to the Defendant in the preparation and presentation of his defense on the above indictment.
5. Defendant further requests the disclosure of any discussions held between state officials, including, but not limited to law enforcement officers or prosecutors, and any State’s witness or their representative concerning things the State “might” be willing to do in return for testimony for the State. This request is based upon the belief that exculpatory information may be revealed which could possibly be helpful or beneficial to the Defendant in the preparation and presentation of his defense on the above indictment.
6. The Defendant also requests that the criminal record, if any, of Sherika Yvette Harper be revealed to the attorney for the Defendant. This is based upon the fact that if Ms. Harper takes the witness stand such criminal record could be presented to the jury for impeachment purposes.
7. The Defendant also requests that the criminal record, if any, of the “reliable confidential informant” be revealed to the attorney for the Defendant. This is based upon the fact that if the informant takes the witness stand such criminal record could be presented to the jury for impeachment purposes.
8. The Defendant believes that depriving him of this information deprives him of Due Process rights under the 5th and 14th Amendments to the Constitution of the United States and Article I, §3 of the Constitution of South Carolina. The Defendant also argues such deprivation would violate the Defendant’s “right to present a defense,” a right enumerated via the 6th Amendment to the Constitution of the United States and recognized by the Supreme Court of the United States through Washington v. Texas, 388 U.S. 14 (1967).

Whereas, having made the arguments above, the Defendant, Damorius Dontavis Gaines, respectfully requests an Order from the Court compelling the State to provide any information concerning Sherika Harper’s criminal record, the criminal record of the “reliable confidential

informant,” as well as any plea offers, immunity, sentencing concessions, charge reductions and/or discussions of the same made in exchange for testifying at trial and/or in aid of the prosecution of this case.

Respectfully submitted,



A. Hadden Lucas, Assistant Public Defender
10th Circuit Public Defender's Office
301 Camson Road
Anderson, South Carolina 29625
Telephone: (864) 260-4048
Email: ahlucas@andersoncountysc.org

Attorney for Defendant

Anderson, South Carolina
May 31, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
State of South Carolina)
)
)
v.)
)
Damorius Dontavis Gaines,)
)
Defendant.)
)
_____)

IN THE COURT OF GENERAL SESSIONS
FOR THE TENTH JUDICIAL CIRCUIT
2017A0420700278; 2017A0420700278;
2017A0420700280; 2017A0420700281

**MOTION TO REVEAL CONFIDENTIAL
INFORMANT**

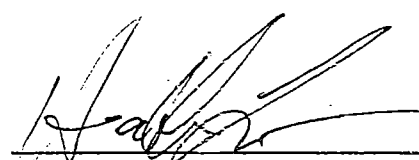
TO: DEPUTY SOLICITOR CATHERINE T. HUEY:

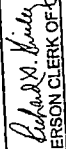
YOU WILL PLEASE TAKE NOTICE THAT the undersigned Attorney for the Defendant will move before the Presiding Judge for an Order directing that the above-named Solicitor reveal, well in advance of trial, the name, address, and any information favorable to the Defendant about the "reliable confidential informant" who contacted Investigator Vaughn on March 6, 2017 to advise that the "subject known as 'Georgia Boy' was the person who robbed the Dollar Tree and he was arrested in a traffic stop somewhere in the area of White Street and Cleveland Avenue ... [with] Marquis Glover...." This includes disclosure of any bargains or promises the State has made to obtain the assistance of the confidential informant, the "rap sheet," if any, of the confidential informant(s), the nature of any charges pending involving the confidential informant, etc., and for such other and further relief as the Court deems just and proper.

This Motion is based on State v. Diamond, 280 S.C. 296 (1984) and Roviaro v. United States, 353 U.S. 53, 77 S.Ct. 623 (1957) insofar as the Confidential Informant is a material witness whose disclosure should be compelled so that Defendant may adequately prepare his defense.

I SO MOVE:

Anderson, South Carolina
Dated: March 2, 2018


A. Hadden Lucas
Attorney for Defendant

A TRUE COPY
MAR - 2 2018

ANDERSON CLERK OF COURT

Damonius Gaines # 346524
Lee Correctional Inst. F. 2. 1133
990 WISOCKY Highway
Bishopville SC. 29010



RECEIVED

NOV 03 2022

SC Court of Appeals

South Carolina Court of Appeals
1220 Senate street
Columbia South Carolina 29201

Pro, Se
LEGAL MAIL ONLY