

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Beaufort County

Honorable J. Derham Cole, Circuit Court Judge

ISAIAH GADSON, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001382

APPENDIX

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STATE RESTS/MOTIONS

1 being the only piece of evidence, should,
2 should, even taken in the light most favorable
3 to the State, no man should then sit in
4 judgment by a jury on mere, and here's where we
5 get, on mere suspicion.

6 So, I think that's where we are with the
7 testimony being it's possible, that suspicion,
8 and the, the law does not allow a case based
9 solely on mere suspicion to be handed to a
10 jury. And, on those bases, I would move for a
11 directed verdict at this stage.

12 THE COURT: All right. Thank you.

13 MS. CAMPBELL: Thank you, Judge.

14 THE COURT: Thank you, Ms. Campbell.
15 Solicitor.

16 MS. SWANSON: Thank you, Your Honor. I
17 believe that there's ample evidence in the
18 record to send this case to the jury, taken in
19 the light most favorable to the State. We have
20 the eye witness, the victim's testimony about
21 everything that occurred, which does meet the
22 elements of murder, armed robbery, kidnapping,
23 and criminal sexual conduct in the first
24 degree. Her testimony is corroborated by an ID
25 that is based on admissible scientific

STATE RESTS/MOTIONS

1 evidence, and what Ms. Campbell is arguing goes
2 to the weight of the evidence, which is to be
3 determined by the jury. So, it should be
4 denied.

5 THE COURT: The Court agrees with the
6 argument, and the position taken by the
7 solicitor, and, therefore, is compelled to deny
8 the Defense motion for directed verdict.

9 Anything else?

10 Any other motions?

11 MS. CAMPBELL: No other motions at this
12 time, Your Honor.

13 THE COURT: Well, would this not be a good
14 time for me to discuss with your client his
15 right to testify?

16 MS. CAMPBELL: It would be, Your Honor. I
17 think too -- for the Court to advise him on the
18 record, and, in, in my experience, some, some
19 Courts have allowed him to have a moment or two
20 to then discuss one final time with me and
21 family members who are here. I, I have -- the
22 last case we tried, the family was able to,
23 under supervision of the, the law enforcement,
24 to sit here close enough so that Mr. Gadson
25 could discuss with those who are closest to

STATE RESTS/MOTIONS

1 him, what we all agree is, is in his best
2 interest or not in terms of testifying. And if
3 Your Honor would permit that, we certainly
4 would be appreciative.

5 We actually, what we did was, at the time,
6 Officer Stankowski supervised to some extent,
7 and we utilized that corner for privacy. The
8 family could not come past the bar, and, and
9 the jail personnel were monitoring my client
10 seated there. Correct? Thank you.

11 Thereupon,

12 ISAIAH GADSON

13 was called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 RIGHTS GIVEN TO THE DEFENDANT

16 THE COURT: All right. And you are
17 Mr. Isaiah Gadson, Junior?

18 THE DEFENDANT: Yes, sir.

19 MS. CAMPBELL: Would you like us to stand
20 or---

21 THE COURT: It's up to him.

22 MS. CAMPBELL: Can you stand?

23 THE COURT: Now, Mr. Gadson, at this time,
24 I'm going to explain to you certain of your
25 rights, and if you don't understand anything

RIGHTS GIVEN TO THE DEFENDANT

1 that I say, please let me know. And if you
2 wish for me to explain things in more detail,
3 please let me know.

4 Do you understand what I'm saying?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: We have now reached the stage
7 of the trial where you have the right to
8 present your defense. You have the right to
9 claim the protections given to you by the Fifth
10 Amendment to the Constitution of the United
11 States of America, and this amendment states in
12 part as follows:

13 No person shall be compelled, in any
14 criminal case, to be a witness against himself.
15 This means that you cannot be required to
16 testify. You have the right to testify on your
17 own behalf. However, no one can make you
18 testify, and this is a personal right that you
19 have, and no one can waive this right except
20 you.

21 If you decide to testify you will be
22 subject to the same rules that govern other
23 witnesses, and you may be examined or
24 cross-examined on any relevant issue in this
25 case. In addition, if you have any convictions

RIGHTS GIVEN TO THE DEFENDANT

1 involving dishonesty or for false statement or
2 for crimes punishable by imprisonment for more
3 than one year, and the Court determines that
4 the probative value of admitting this evidence
5 outweighs its prejudicial effect to you, the
6 solicitor would be able to introduce your
7 record to attack your credibility.

8 If you decide to testify, this decision,
9 on your part, must be made freely and
10 voluntarily with the knowledge of the
11 protections given to you by the Fifth
12 Amendment, and the consequences of your
13 decision to testify. If you decide not to
14 testify, I'll instruct the jurors that they
15 cannot give that fact, the fact that you didn't
16 testify, any consideration whatsoever, and then
17 there's to be absolutely no prejudice to you
18 because you did not testify.

19 You may talk with your attorneys, family,
20 friends, or anyone else. But the final
21 decision will be left entirely up to you.

22 Do you understand what I've explained to
23 you so far?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you have any questions

RIGHTS GIVEN TO THE DEFENDANT

1 about anything I've said?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you discussed with your
4 attorneys your right to testify or not?

5 THE DEFENDANT: Not yet.

6 THE COURT: I'm sorry?

7 THE DEFENDANT: No, sir, not yet.

8 THE COURT: You have not discussed it with
9 them.

10 Would you like to discuss this with your
11 attorneys?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. We will give you
14 that opportunity to do that, and we'll be at
15 ease.

16 MS. CAMPBELL: Thank you, Judge. May we
17 utilize the friends and family portion of that
18 in, in the corner here?

19 THE COURT: Any problem with that? Can
20 that be arranged?

21 Okay.

22 (Pause)

23 THE COURT: Now, Ms. Campbell, have you
24 had a sufficient opportunity to discuss this
25 matter with your client?

RIGHTS GIVEN TO THE DEFENDANT

1 MS. CAMPBELL: Yes, I have, Your Honor.
2 Both Mr. Tripp, cocounsel, and I spent some
3 time with Mr. Gadson, and members of his
4 family, and spoke sufficiently with him, and
5 the family members enough, I believe,
6 confidently for him to make a decision as to
7 what he intends to do in reference to
8 testifying or asserting his Fifth Amendment
9 right to remain silent.

10 THE COURT: All right. Mr. Gadson, have
11 you, in fact, made a decision?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And your decision is to do
14 what?

15 THE DEFENDANT: Plead the Fifth. Not, not
16 testify.

17 THE COURT: Not testify?

18 THE DEFENDANT: Right.

19 THE COURT: Okay. All right. Thank you.
20 And where are we, Ms. Campbell?

21 MS. CAMPBELL: Well, Your Honor, with that
22 matter resolved, the, the defense would rest,
23 and I believe I would need to do that in the
24 presence of the jury.

25 THE COURT: Sure.

COLLOQUY

1 MS. CAMPBELL: And then I would have
2 additional motions to make at -- subsequent to
3 that, and then renew all of our objections to
4 the pretrial motions as well at that time at
5 the close of the entire case. So, that would
6 be what I think would be the next stages for
7 us, and we do have some -- two specific jury
8 charges that we will be submitting to the Court
9 along with the, the standard charges.

10 THE COURT: All right. It sounds like to
11 me that you -- your schedule calls for us to
12 come back in the morning?

13 MS. CAMPBELL: I think that's correct.

14 THE COURT: Solicitor.

15 MS. SWANSON: Well, it sounds like we have
16 another about 30 minutes for stuff on the --
17 for, for matters on the record. I'm not sure
18 if Ms. Campbell has made arrangements for her
19 child or not. I mean whatever the Court wishes
20 to do as far as scheduling is fine with me.

21 MS. CAMPBELL: Well, my calculations,
22 generally speaking, would be 30 minutes for the
23 State's closing, 30 minutes for the Defendant's
24 closing, 30 minutes for the instruction,
25 somewhere in there, in my experience, about an

COLLOQUY

1 hour and a half. So, even if we were to
2 conclude everything with this jury, and be able
3 to begin that process, after having taken a
4 break before that, I don't see that this jury
5 could get this case until after the close of
6 the business day for the courthouse, which is,
7 which is five o'clock. So --.

8 THE COURT: Well, I, I agree with that
9 analysis. I think we'll just do it -- explain
10 to, to the jury that I don't want to impose on
11 their time or make them feel under any pressure
12 to make a decision if they don't get the case
13 until after five o'clock. So, I think we'll
14 bring the, bring the jury in, and have you
15 rest.

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: And then recess for the day,
18 and try to remind them one more time not to
19 look at the Island Packet or other such
20 publications.

21 Let's bring the jury out.

22 THE BAILIFF: The jury is entering the
23 courtroom, Your Honor.

24 (The jury enters the courtroom at 3:07
25 p.m.)

COLLOQUY

1 THE BAILIFF: The jury is seated, Your
2 Honor.

3 THE COURT: Welcome back, ladies and
4 gentlemen. As you recall, the, the State had
5 rested or presented all of the State's evidence
6 to you before our break. The defense now has
7 the opportunity to present evidence should the
8 Defendant decide to do so. Although, the
9 Defendant is not required to present any
10 evidence.

11 MS. CAMPBELL: May it please the Court,
12 Your Honor. At this time, the defense rests.

13 THE COURT: Ladies and gentlemen, you have
14 now heard all of the -- heard and seen and
15 received all of the evidence that you're going
16 to see, hear, and receive in this case. I have
17 about 30 more minutes of work that I have to do
18 with the attorneys before we could begin the
19 next step in the process. The next step in the
20 process is the attorneys will make their
21 closing arguments to you, after which I will
22 then tell you about the law. All of that is
23 gonna push us, the best we can calculate it, to
24 roughly five o'clock before you begin
25 deliberating. I've decided that that would not

DEFENSE RESTS/JURY EXCUSED FOR THE DAY

1 be the appropriate thing to do under these
2 circumstances. If we finished an hour or so
3 earlier, maybe, but we're gonna recess until
4 9:30 in the morning.

5 I'm gonna remind you, I guess what I've
6 been reminding you or saying to you all week,
7 don't let anybody talk to you about this case.
8 You don't talk to anybody about this case.
9 Don't read anything about this case. Don't do
10 any research on anything about this case, and
11 one other thing I need to do, and that is that
12 I need to ask Juror Number 43, Mr. Brasington,
13 if you'll do me a favor. Would you be willing
14 to sever as foreperson of the jury?

15 JUROR: What does that---

16 THE COURT: Will you serve as foreperson
17 of the jury?

18 JUROR: What does that mean?

19 THE COURT: That means do what the jury
20 tells you to do.

21 JUROR: Sure.

22 THE COURT: But one thing, and I'll
23 explain this to you further tomorrow, is that
24 if the jury -- when, when the jury reaches a
25 verdict, then you'll be asked to, on behalf of

DEFENSE RESTS/JURY EXCUSED FOR THE DAY

1 the jury, to complete the verdict form that
2 we'll give to you. So, you'll sign it. And if
3 anything needs to be brought to the attention
4 of the Court, you would be the one to do it
5 instead of all 12 or 14 of you sending separate
6 notes out. Is anybody gonna -- oh, and, I'm
7 sorry, Mr. Brasington, so, when you come back
8 in in the morning, I'm gonna ask you if you
9 would take the seat being currently occupied by
10 this lady, I'm pointing at her right there,
11 with the long dark hair.

12 JUROR: Right here?

13 THE COURT: That will be your chair.

14 Does anybody have any questions about what
15 we're gonna do?

16 Tomorrow we're gonna finish it up.

17 Anybody having a problem being here?

18 Anybody would have any problem following
19 my instructions about not doing any research or
20 talking to people about this case?

21 Ladies and gentlemen, thank you so much.

22 You're excused until 9:30 tomorrow morning.

23 (The jury exits the courtroom.)

24 THE BAILIFF: The jury's clear, Your
25 Honor.

DEFENSE RESTS/JURY EXCUSED FOR THE DAY

1 THE COURT: Do you want to take a
2 five-minute recess then?

3 MS. CAMPBELL: That's up to you, Your
4 Honor.

5 THE COURT: Oh, I thought you indicated
6 you wanted to take a recess.

7 MR. CAMPBELL: No, no. I just -- whatever
8 you'd like to do at this point.

9 THE COURT: I'm fine with whatever y'all
10 want to do.

11 All right.

12 MS. CAMPBELL: We can continue.

13 THE COURT: All right. Go ahead and tell
14 me about any proposed charges, again, with the
15 State.

16 MS. CAMPBELL: Well, I just need to renew
17 my motions---

18 THE COURT: Oh, you want to do that first.

19 MR. CAMPBELL: ---for, for, for the record
20 before we get into the charge conference.

21 THE COURT: Okay.

22 MS. CAMPBELL: So, on behalf of
23 Mr. Gadson, I would renew all of our pretrial
24 objections, and I'll let Mr. Tripp address
25 those. And rather than coming back to me, I

MOTIONS BY THE DEFENSE

1 will just, on the record, renew the motions for
2 mistrial, and the Defendant's motion for
3 directed verdict. Thank you.

4 THE COURT: Okay.

5 MR. TRIP: Thank you, Your Honor. May it
6 please the Court. At this point, we'll renew
7 the motion for -- to dismiss the charges
8 against Mr. Gadson for violation of due
9 process, and, again, that was a two-prong
10 argument.

11 The first was under the Federal
12 Constitution, and Youngblood, the Supreme Court
13 case, which called for proof of bad faith. The
14 second was under the South Carolina
15 Constitution, and South Carolina law based on
16 the significance and extent of evidence that
17 was lost in this case.

18 I'm not -- at this point, of course,
19 certainly more information has come out about
20 what evidence has been lost or not lost, and
21 how it was lost, or how it was not lost. So,
22 the, the analysis would change. My
23 recollection is Your Honor didn't rule
24 previously not concluding that bad faith caused
25 the loss of evidence. So, I'll just read from

MOTIONS BY THE DEFENSE

1 my motion to address that.

2 The Beaufort County Sheriff's Office lost
3 and destruction of evidence in the 1980s
4 resulting from bad faith, bad faith abandonment
5 of the investigation of the case.

6 MINOR's account was riddled with
7 inconsistencies and contradictions,
8 contradictions that seemed like explanations.
9 Johnny Weed, at the scene and out of control,
10 with anger, waving a shotgun, had motive,
11 opportunity, and means making him an obvious
12 primary suspect. However, the sheriff was
13 close to Johnny Weed. Officers understood his
14 outrage over the relationship between his
15 15-year old daughter and 18-year old, David
16 Krulewicz.

17 Irresponsibly and wrongfully deterring the
18 principle of small town street justice,
19 investigators made minimal efforts to follow up
20 on leads fed to them by members of the
21 community.

22 No record exists showing anyone so much as
23 questioned Johnny Weed. When Johnny Weed died
24 in 1983, investigators felt comfortable ending
25 all efforts, and effectively closing the case

MOTIONS BY THE DEFENSE

1 because, as Jim Palmer fully told David's mom,
2 everyone knew Johnny Weed did it, and no
3 further justice need, need be imparted on a
4 dead man.

5 MS. CAMPBELL: As a direct result of
6 abandoning the investigation of the case,
7 evidence was lost that should of been preserved
8 indefinitely on the Sheriff's own forever
9 shelf. No explanation whatsoever exists for
10 the disappearance of the photos of the crime
11 scene of MINOR and David. Items sent to SLED
12 were either left in Columbia, without any
13 apparent interest in having them returned, or
14 tossed out when they were sent back to Beaufort
15 requiring effort to re-shelf them. In both
16 cases, the Sheriff's Office's disinterest in
17 keeping the evidence was so great that no one
18 can say with any certainty when, where, or how
19 the evidence was lost.

20 Such a gross abandonment of the officers'
21 primary duty cannot be described as anything
22 but conscious, deliberate, and in bad faith.
23 In essence, a prior generation of the Beaufort
24 County Sheriff's Office deliberately discarded
25 Davis case leaving the evidence to rot, and for

MOTIONS BY THE DEFENSE

1 a new generation to now reverse course, course
2 to prosecute Isaiah Gadson based on the few
3 remaining breadcrumbs can, in no way, be
4 considered providing an opportunity for a fair
5 trial in accordance with due process. And I'll
6 rest on that for this particular renewal, Your
7 Honor.

8 THE COURT: Okay. Well, go ahead with any
9 others then.

10 MR. TRIP: We will renew the 404(b) motion
11 to exclude evidence based on the 1983 case.
12 Although Ms. Campbell might have mentioned that
13 in her opening, that was not a waiver of that
14 issue. It was necessary, in our evaluation, to
15 mitigate the prejudice caused by the ruling,
16 but was not a waiver of the issue. Thank you,
17 Your Honor.

18 THE COURT: And Solicitor.

19 MS. SWANSON: I believe Mr. Tripp has
20 already made his conspiracy theory part of the
21 record in the form of his motion. So, I'm not
22 sure that we need to respond to it.

23 Additionally, it is solely based on third
24 party guilt, which we have discussed. And I
25 will be objecting to any pointing of the finger

MOTIONS BY THE DEFENSE

1 at Johnny Weed or anyone else as a third party
2 being the shooter when there's nothing but a
3 mere suspicion or a mention of his name as far
4 as a rumor went throughout the whole trial, and
5 that's just not enough to go on third party
6 guilt. So, I just want to make that clear.

7 The defense has the burden in the
8 spoliation argument. They did not show bad
9 faith, and they did not show that that evidence
10 was exculpatory. So, it either has to be bad
11 faith or exculpatory. We argued this ad
12 nauseam on Monday afternoon, and I stand by my
13 argument that I made Monday afternoon. And I
14 would ask that the Court maintain its ruling.

15 THE COURT: The Court agrees with its
16 prior ruling, and the position of the State
17 that was just argued by the solicitor.

18 Let me ask, Ms. Campbell, on the -- the
19 State is now asking for the Court to issue an
20 instruction about closing arguments, and the
21 mention of third party specifically---

22 MS. CAMPBELL: I don't---

23 THE COURT: ---as to one specific
24 individual.

25 MS. CAMPBELL: I don't intend to argue,

MOTIONS BY THE DEFENSE

1 Your Honor, that Johnny Weed killed David, but
2 I will reiterate the testimony, the sworn
3 testimony, that witnesses gave about facts and
4 evidence in the case. I'm not drawing any
5 conclusion, and I'm certainly not pointing any
6 fingers, but I think it's proper, and it's
7 right to allow me, just for instance, to say in
8 my closing, when you heard this witness
9 testify, this is what they said. Now, I'm
10 not -- you know, for instance, when MINOR
11 admitted that, in her conversations with Bob
12 Bromage, she had questioned her mother as to
13 whether, you know, she thought daddy was
14 involved.

15 That's a fact in evidence, but I'm not
16 gonna say to this jury, oh, no, Johnny Weed did
17 this. That's not gonna happen. That's not
18 appropriate. I'm not going to do that, but I
19 am allowed to argue the facts and the evidence,
20 not getting into pointing fingers. Thank you,
21 Your Honor.

22 THE COURT: I agree. I think the
23 Solicitor agrees or does not strenuously
24 object.

25 All right. Jury charges.

MOTIONS BY THE DEFENSE

1 MS. SWANSON: Your Honor I -- as far as --
2 from the State's perspective, it's pretty
3 straightforward. Elements of murder, armed
4 robbery, kidnapping, and criminal sexual
5 conduct in the first degree, expert testimony.
6 Eye witness testimony I suppose would apply.
7 I -- I'm, I'm certainly not asking for anything
8 out of the ordinary. I can't think of anything
9 that would apply as far as the State's
10 concerned.

11 THE COURT: Failure of the Defendant to
12 testify?

13 MS. SWANSON: Yes, sir. Your normal.
14 Obviously reasonable doubt.

15 MS. CAMPBELL: May it please the Court.
16 Specifically, I would ask the Court to charge
17 reasonable doubt, the portion that we are
18 familiar with, which is the hesitation to act,
19 in addition to the longer version, which, of
20 course, is appropriate.

21 THE COURT: Okay.

22 MS. CAMPBELL: But I, I would ask that you
23 charge that portion as well. The credibility
24 of the witnesses, obviously, and presumption of
25 innocence. The State mentioned expert

MOTIONS BY THE DEFENSE

1 witnesses, and I'm sure -- I'm confident Your
2 Honor does not use the phrase or the word
3 failure to testify when addressing the jury.
4 If that word is in the charge, I would ask that
5 it be removed as it has a connotation that, you
6 know, he's not done something, you know, that
7 maybe he should of done.

8 THE COURT: It's not in there.

9 MS. CAMPBELL: All right. Okay. And then
10 I would need to see a charge that you would
11 propose on, on the eye witness testimony, what,
12 what that would entail. I can't -- I haven't
13 had the opportunity to, to have that charged to
14 a jury in, in a long time. So, I would need to
15 see what you intended to charge to know whether
16 or not I had an objection.

17 MS. SWANSON: And I don't really have an
18 objection if you don't charge eye witness
19 testimony. I mean **MINOR** wasn't able to
20 identify him. I, I was just trying to throw
21 everything out there that could apply.

22 MS. CAMPBELL: Well, and that was my
23 hesitation. I feel like it's not appropriate.

24 MS. SWANSON: That is fine.

25 MS. CAMPBELL: So that's why I said I

MOTIONS BY THE DEFENSE

1 might need to read it.

2 THE COURT: And I don't---

3 MS. CAMPBELL: I'm not sure it's
4 appropriate.

5 THE COURT: I don't think so either.

6 MS. CAMPBELL: Okay. Thank you.

7 THE COURT: What about a charge on---

8 MS. CAMPBELL: Mr.---

9 THE COURT: ---prior inconsistent
10 statement? There were some.

11 MS. CAMPBELL: Yes, that's correct. And
12 Mr. Tripp will be addressing and handing in our
13 suggested charges on the spoliation, and the,
14 the 1983 case, and how the jury can use that
15 information in determining this, this case.
16 So, those would be our proposed instructions,
17 and, obviously, Mr. Tripp is gonna discuss that
18 with the Court and with the State.

19 THE COURT: Solicitor, had a chance to
20 review what's been submitted?

21 MS. SWANSON: Yes, sir, I don't have a
22 problem with the 404 charge. I believe that it
23 is appropriate that the jury be charged that it
24 is not to be used to, to show or to determine
25 that the Defendant acted in conformity

MOTIONS BY THE DEFENSE

1 therewith. However, I'm not in agreement with
2 the first requested charge regarding
3 spoliation. I don't think it's proper to
4 charge the jury that they can draw an inference
5 that the evidence would of been unfavorable to
6 the party's claims that, you know, the
7 inference, that there was some conspiracy that
8 destroyed the evidence that didn't point to
9 Isaiah Gadson.

10 There has been no showing by the defense
11 that the evidence was exculpatory or went
12 missing in bad faith or was destroyed in bad
13 faith.

14 THE COURT: Be glad to hear from you.

15 MR. TRIP: Thank you, Your Honor. As to
16 the first request to charge, the issue is
17 actually one that hasn't really been addressed
18 directly. So, there are no rules about what's
19 specifically required or what's not. Of
20 course, the jury charge is always at the
21 discretion of the trial judge, but is, but is
22 required when facts of the case dictate -- the
23 facts and the law of the case dictate that
24 charge. Under the Youngblood case, and, again,
25 that's the Federal case, the Court, Supreme

MOTIONS BY THE DEFENSE

1 Court, noted in that case that this charge was
2 given, but didn't address the propriety of the
3 charge because it wasn't raised.

4 In South Carolina, again, the State v.
5 Reeves case from 2015, the South Carolina
6 Supreme Court noted that this charge was given
7 in Youngblood. It was also given in the actual
8 case at issue, in State v. Reeves, but the
9 Court deferred addressing the propriety of it
10 because that issue wasn't before the Court.

11 So, our position is, based on what the
12 State Supreme Court noted in Reeves, which was
13 that this charge was regularly given and
14 appropriate in civil cases, therefore, it must
15 be appropriate and necessary in a criminal case
16 because, of course, the Defendant's rights are
17 much greater in a criminal case than they are
18 in a civil case. So, based on that, the Court
19 is required to give that charge to the jury.

20 And, for the record, Your Honor, the
21 defense is not waiving spoliation motions. By,
22 by making this request, the defense has
23 concluded that the request is necessary to
24 mitigate the prejudice resulting from the
25 denial of spoliation motion. And, again, it's

MOTIONS BY THE DEFENSE

1 not waiving that, waiving that motion by making
2 this request.

3 THE COURT: I understand. Let me, let me
4 take that under advisement, and I'll let you
5 know.

6 Let me ask you this next question. One
7 way that I have submitted these matters to the
8 jury is by submitting the indictments to the
9 jury, which, of course, is the way it was done
10 forever and ever until recent years, and have
11 them, on the back of the indictment, sign it
12 and put guilty or not guilty. I haven't heard
13 any argument that there should be any lesser
14 included charges.

15 Does anybody have an objection to the
16 indictments being submitted?

17 MS. SWANSON: The State does not. I do
18 not believe any lesser includeds fit. So, it
19 would be simple enough for them to mark guilty
20 or not guilty.

21 MS. CAMPBELL: I -- it's my preference
22 that the indictments not to go back. I think
23 it tends to be confusing many times for the
24 jury, and they, and they get caught up in, in
25 the indictments themselves sometimes, which has

MOTIONS BY THE DEFENSE

1 caused problems in the past. I would prefer a
2 verdict form. And, and so that's what I would
3 request on behalf of Mr. Gadson.

4 THE COURT: Madam Clerk, do, do you have
5 those indictments there?

6 THE CLERK: Yes, sir.

7 THE COURT: Sometimes an indictment
8 contains allegations that are not actually
9 appropriate. I'll just look and see if they
10 have anything unusual in them.

11 MS. CAMPBELL: Well, the problem I also,
12 again, have seen in the past, is the jury has
13 got caught up on it. And One of my objections,
14 objections would be the part where it says true
15 bill under Grand Jury. It's as if, you know,
16 well, what, what does our verdict mean, you
17 know. So, it's as if there's been this
18 first -- this entity that comes before, and I
19 know Your Honor will talk about that, but,
20 again, like I said, it was a problem in another
21 case some time ago when the indictments usually
22 went back, and it raised an issue. I've just
23 found it to be less problematic to do a verdict
24 form.

25 THE COURT: I agree, and I'll, I'll tell

MOTIONS BY THE DEFENSE

1 you why. Looking at the indictment for armed
2 robbery, it talks about more than just the
3 armed robbery. It talks about murder and
4 sexual assault, and we're gonna instruct them
5 that they have to consider each one of these
6 separately. And the other three don't do that,
7 but this one does. The other -- the one on
8 robbery contains all of the charges all in one
9 indictment. So, when will you have that ready?

10 MS. CAMPBELL: I would be happy to have
11 that ready for you. I, I can email it to you
12 this evening, and copy Ms. Swanson on that
13 tonight.

14 THE COURT: All right. If you would.

15 MS. CAMPBELL: Thank you, Your Honor.

16 THE COURT: Anything else we need to take
17 care of other than me making a decision on the
18 spoliation?

19 MS. SWANSON: Nothing from the State.

20 MS. CAMPBELL: Nothing from the defense.

21 THE COURT: Thirty minutes each?

22 All right. We'll be adjourned until 9:30
23 tomorrow morning.

24 MS. SWANSON: Thank you, Your Honor.

25 (Adjourned for the day.)

MOTIONS BY THE DEFENSE

1 5-24-2018 PROCEEDING

2 THE COURT: Did I understand we have an
3 agreement on the verdict form?

4 MS. SWANSON: That's correct.

5 THE COURT: Have, have they -- did anybody
6 think to print it?

7 MS. CAMPBELL: Your Honor, I put it on
8 your bench for you.

9 THE COURT: You mean the one that says
10 verdict form?

11 MS. CAMPBELL: Yes, sir.

12 THE COURT: Other than me making a ruling
13 on that matter the Court took under advisement
14 yesterday, other than that, are we, are we
15 ready to proceed to jury?

16 Is the State ready?

17 MS. SWANSON: Yes, sir.

18 MS. CAMPBELL: And we're ready.

19 THE COURT: As to the Defendant's request
20 to Charge Number 1, the Court denies that
21 request finding that there is no evidence that,
22 that evidence was destroyed in bad faith, and
23 there is no evidence that the missing evidence
24 possessed any exculpatory value. The --
25 pursuant to State versus Cheesborough, and as

5-24-2018 PROCEEDINGS

1 stated State v Breeze, B-R-E-E-Z-E, I find that
2 the State does not have an absolute duty to
3 safeguard potentially useful evidence that
4 might vindicate a Defendant. For all of those
5 reasons, the Court denies the motion.

6 And so, having said all that, let's bring
7 the jury in.

8 MS. CAMPBELL: May it please the Court,
9 Your Honor? Defendant's Request to Charge 2,
10 which you granted --

11 THE COURT: Right.

12 MS. CAMPBELL: -- it's on the same
13 document, but I'll just -- I've signed this,
14 and I'll just make it a Court's Exhibit at this
15 time.

16 THE COURT: I see. Court's exhibit.

17 MS. CAMPBELL: Thank you, Your Honor.

18 THE COURT: Thank you.

19 *(Whereupon, Court's Exhibit No(s). 7*
20 *marked for identification and received in*
21 *evidence.)*

22 THE BAILIFF: The jury is entering the
23 courtroom, Your Honor.

24 THE BAILIFF: The jury is seated, Your
25 Honor.

5-24-2018 PROCEEDINGS

1 THE COURT: Good morning, and welcome
2 back, ladies and gentlemen. I believe we are
3 ready now to proceed with closing arguments of
4 the attorneys.

5 MS. SWANSON: Thank you, Your Honor. May
6 it please the Court?

7 CLOSING BY THE STATE

8 MS. SWANSON: For 36 years a murderer and
9 rapist walked the streets of Beaufort County.
10 For 36 years, Isaiah Gadson thought he got away
11 with it. And, for 38 years, MINOR and David's
12 family have been waiting for justice. Well,
13 the time is now, and you hold the power to
14 administer that justice, and I have confidence
15 in you and confidence in this case.

16 On the one hand, I would like to just say
17 "DNA" and sit down. But I want to make sure
18 that you understand the evidence. And I do
19 feel the need to address some of the arguments
20 that the defense is gonna make when she talks
21 to you last. I'm not gonna get a chance to
22 respond. And it's gonna be hard for me to sit
23 there because Ms. Campbell and I could,
24 frankly, go back and forth all day long. But I
25 do want to remind you that your decision, and

CLOSING BY THE STATE

1 when you find the facts of this case, it has to
2 be based on the evidence that you heard in this
3 courtroom.

4 I'm not going to be asking you to take
5 incredible leaps of logic in reaching your
6 decision, but I don't know that Ms. Campbell
7 won't. I don't know whether she's going to try
8 and tell you that we didn't land on the moon.
9 I don't know if she's gonna try and make you
10 wonder if Johnny Weed had something to do with
11 this. Whatever it is, it's her trying to do
12 her job when the deck is stacked against her
13 client. And when that happens and when the
14 evidence is strong, defense attorneys get
15 creative. I'm gonna ask you to be logical in
16 your approach, and use your common sense.

17 I do want to address what Ms. Campbell's
18 likely gonna bring up some sort of conspiracy.
19 There is simply no evidence of any sort of
20 conspiracy here. There is no police
21 conspiracy, and to believe that there has been
22 some sort of police conspiracy, it would of had
23 to have spanned the course of about 40 years.
24 Different sheriffs. You know, it just doesn't
25 make any sense. It would also have to involve

CLOSING BY THE STATE

1 obtaining Isaiah Gadson's sperm, and who's
2 gonna sign up for that job?

3 Nobody planted evidence. There's simply
4 no evidence of that. There's nothing in the
5 record to support such an argument. Nobody
6 covered anything up, and, in fact, most people
7 thought this case would go unsolved, and it
8 could have sat in a closet. That could of
9 happened.

10 Everyone involved in this case, with the
11 exception of Gerry Wagner, who you heard from
12 on the stand, he's the chief deputy at the
13 time, is now dead, and recreating a case from
14 1980, like I told you before in opening, has
15 not been without its challenges.

16 Do we all wish that crime scene photos
17 still existed, that those vials that were taken
18 by Dr. Fontana from MINOR's rape exam still
19 existed?

20 Of course we do. Captain Bromage and I
21 would love to have that evidence, and he tried
22 to obtain it. He was diligent in trying to
23 obtain an answer from SLED as to where those
24 items may be. He was diligent in trying to
25 obtain pictures from different sources that he

CLOSING BY THE STATE

1 knew had access to the crime scene pictures at
2 one time. But evidence retention in the 1980s
3 was different, and it was without the
4 safeguards that we have now. And it's a shame
5 that we don't have these items, but it
6 certainly wasn't any sort of coverup.

7 Isaiah Gadson was not framed. His DNA was
8 established through the head of his sperm. You
9 heard that from the experts. It didn't just
10 appear in 15-year old MINOR's underwear at some
11 point in time. MINOR told you how it got
12 there. The point is is that, if a false arrest
13 was gonna be made or, you know, some sort of
14 conspiracy theory was going to happen, it would
15 have happened back in the '80s, back when the
16 community was completely freaked out that there
17 was a murderer and rapist on the loose, raping
18 15-year old girls, and murdering 18-year old
19 boys.

20 There was a lot of pressure on the
21 Sheriff's Office at that time. You heard Gerry
22 Wagner say I had everyone involved working on
23 this case. They presented MINOR with hundreds
24 of pictures. They wanted the guy. There just
25 simply wasn't enough, and, to their credit,

CLOSING BY THE STATE

1 they did not rush to judgment.

2 So, let's talk about what really happened
3 in those woods that night in 1980. In graphic
4 detail, MINOR told you about the rape that dark
5 night 38 years ago when a man shot through the
6 window of her boyfriend's car, hitting him in
7 the head, in the neck, and in the upper arm.

8 Sonny Bessinger, a neighbor from down the
9 road, doesn't really know MINOR, familiar with
10 the Weeds because they kind of live in the same
11 area, but, you know, he and MINOR are ten years
12 apart, he notices that there is a van when he's
13 coming home at midnight because everything's
14 shutting down then. He knew what time it was,
15 and he also sees another car, a larger car than
16 what he's driving. He's driving a compact car,
17 a Toyota. A larger car than he's driving,
18 older model he said, located not far from where
19 the van was backed in a cut.

20 Now, I'm not gonna tell you that anyone
21 can identify that car, but it certainly is
22 consistent with the type of car that Isaiah
23 Gadson's own cousin told you that he was
24 driving, and it corroborates MINOR's own
25 testimony. Remember, Clifford said Isaiah was

CLOSING BY THE STATE

1 driving a late 1960s Chevy Impala. You know,
2 larger kind of sedan.

3 Okay. He also told you that he and Isaiah
4 smoked Kools, which is something that MINOR
5 remembered, and something that was located at
6 the scene of the crime. Again, corroboration
7 of MINOR's testimony.

8 She told you how he ordered her out of the
9 car at gunpoint, took the \$50 that she had,
10 told her to get on her knees. She was forced
11 to perform oral sex. That's aggravated rape.
12 That's at gunpoint. He then led her further
13 into the woods making her walk in front of him
14 as he held the gun to her back. That's
15 kidnapping. He told her to lay down and,
16 again, forced oral sex on her, performed oral
17 sex on her before continuing to rape her. More
18 aggravated rape.

19 She was 15-years old at the time. You can
20 see her and David, in 1980, about
21 Christmastime, shortly before this happened.
22 Just a couple weeks. Not even a couple weeks.
23 A week and a half. And, as a child at the
24 time, she was traumatized, and probably
25 embarrassed to go have a sexual exam done, but

CLOSING BY THE STATE

1 she did. She reported everything right away
2 and, that night, she submitted to a sexual
3 exam, and committed to cooperating with law
4 enforcement in this investigation, and she has
5 stuck with it, and stuck it through for 38
6 years.

7 She tried to give law enforcement every
8 detail she could remember and she remained
9 consistent. She participated in line-ups. A
10 lot of line-ups. She pointed out, you know,
11 certain features of certain people. Maybe he
12 looks most like the assailant, but she never
13 definitively picked anybody out. And you know
14 why?

15 Because he was never in those line-ups.
16 Isaiah Gadson was not a suspect until 2016 when
17 there was a hit from a DNA database, and then
18 his profile was confirmed. MINOR was
19 compelling, appropriately emotional, and did
20 not dodge questions no matter how pointed they
21 were from Ms. Campbell.

22 Why would she subject herself to this
23 process after 38 years if she was lying? It
24 just doesn't make any sense. And you get to
25 consider those factors in judging credibility.

CLOSING BY THE STATE

1 Now, let's talk about the forensics
2 because the forensics are the biggie, and they
3 also corroborate MINOR's testimony. We talked
4 a little bit about the trajectory of the
5 bullets. She said they came in through the
6 passenger side window. That makes sense
7 because she also says David was seated in the
8 front seat of the car.

9 She said that the assailant had a small
10 pistol. Well, when Dr. Trefny, the
11 pathologist, pulled three bullets out of David,
12 the victim, he determined that those were from
13 a handgun. He measured .32 caliber.

14 When asked about, oh, well, have you ever
15 examined gunshot wounds from a shotgun or a
16 rifle?

17 He was able to tell you the difference,
18 okay, the different sorts of wounds, and he was
19 also able to say that the wounds on David did
20 not have any soot or stippling, and why that's
21 important is it corresponds to the distance
22 between the shooter and the victim. This was
23 not a close contact or close range shot. It
24 didn't come from the passenger's seat of the
25 van. It makes sense that it came from outside

CLOSING BY THE STATE

1 of the van just as MINOR told you.

2 Dr. Fontana testified too and told you
3 that he saw sperm as well as abrasions at the
4 entrance of MINOR's vagina. All consistent
5 with rape. Motile sperm, nonmotile sperm, it
6 doesn't matter because those sperm were exposed
7 to air. Most of the sperm ended up located in
8 the crotch area of MINOR's underwear and her
9 pants. Of course, those were -- and, and that
10 sperm and semen was there back in 1980, you
11 heard, and it was still there when it was
12 further tested in 1999 and 2002 at the request
13 of Captain Bromage who was convinced, with the
14 new technology that had arrived on scene, that
15 we could finally identify the killer, and the
16 rapist. And his hunch was right when that
17 profile was established in 2003, but it still
18 took 13 years to get a match.

19 We're talking about DNA, and the defense
20 can try and muddy the waters on DNA, all right,
21 but what you need to know about DNA is that it
22 identifies individuals, and it identified
23 Isaiah Gadson. Ms. Campbell may bring up blood
24 typing. You heard from John Barron though that
25 that's an antiquated test. SLED doesn't even

CLOSING BY THE STATE

1 do it any more, and you know why?

2 Because it's not unique. It does not
3 identify individuals. It's simply not relevant
4 with the technology that we have today. The
5 blood type factor H, O, it means they're an O,
6 O type blood, and, and I know Ms. Campbell made
7 sure she got out of the pathologist that David
8 had O type blood.

9 Well, guess what?

10 With the better technology, David's DNA
11 profile was eliminated from the sperm that was
12 found on MINOR's clothing. It doesn't matter.
13 DNA can degrade, but the makeup never changes.
14 Isaiah Gadson's DNA profile was established
15 from his sperm. That is definitive. But it's
16 there in 1980, and it was still there when
17 David McClure tested it and came up with the
18 profile.

19 And, of course, let's not forget, the way
20 he was able to come up with the profile is that
21 he had to separate MINOR's from the male DNA.
22 It was a mixture. It wasn't just Isaiah's DNA.
23 It was a mixture because he had raped her. It
24 had her bodily fluid in there as well as his
25 sperm.

CLOSING BY THE STATE

1 This is no random coincidence. That is
2 impossible. You heard the statistics. Gadson
3 had no identical twin. That was confirmed. We
4 have records of that. You heard John Barron
5 say it can't be a brother. That's impossible.
6 People have unique DNA profiles. Three
7 different DNA experts worked on this case
8 through the years. They are not all wrong.

9 I'll tell you another thing about
10 scientists. What do they care what profile
11 they come up with? They care about the
12 science. They're not investigators. They're
13 not trying to solve cases. And you heard David
14 McClure, who is the same person to come up with
15 the profile on Isaiah Gadson with the same
16 technology, say that he was able to eliminate
17 O'Neal Banks in 19, 19 -- no, I'm sorry, 2003,
18 when they were able to establish the profile.
19 The guy that Captain Bromage thought, you know,
20 had a damn good chance of being the guy, well,
21 he wasn't. He was eliminated because we rely
22 on this technology.

23 The murder weapon was never found. All
24 right. It's not unusual. That happens.

25 Would it be unusual for Isaiah Gadson to

CLOSING BY THE STATE

1 toss a gun that he had killed an 18-year old
2 boy with in any of the water that was nearby?

3 No. Plenty of water in Beaufort County to
4 pitch it in. Plenty of water in Creek's Edge
5 that used to be his family's land.

6 There's no dispute that David was shot,
7 and it just so happens that Isaiah Gadson tends
8 to like .32 caliber handguns, which is what
9 David was shot with. It's not the same weapon,
10 but would it surprise you if somebody maybe
11 gets used to a particular type of weapon and
12 keeps going back to it? He even told his
13 cousin that he had popped one, and he'd pop
14 another if he had to. He was not scared to use
15 a gun, and, in fact, he had more than one gun.

16 Creek's Edge, very close to where **MINOR**
17 was raped, and David was killed. That was just
18 a little bit further down the way. Less than
19 2 miles from where Isaiah Gadson grew up in
20 Burton. He was intimately familiar with this
21 location. Used to be owned by his family. He
22 told his cousin, who didn't want to admit that
23 this was the case, but we cleared that up with
24 Captain Bromage, you know, he and his cousin
25 had gone down there. A lot of people went down

CLOSING BY THE STATE

1 there. But he and his cousin had gone down
2 there with girls, all right, and he knew how
3 dark it was. He knew how isolated it was, and
4 he knew that that was a place that he could
5 prey on people.

6 While MINOR's physical description of
7 Isaiah Gadson was not terribly unique, you
8 know, bear in mind she's in the dark on her
9 knees, and on her back being raped. The
10 composite sketch that was released to the
11 press, there were a number of differences that
12 MINOR actually pointed out to police. This is
13 the one that generated all those phone calls.
14 But while people may look like other people,
15 their DNA certainly doesn't.

16 So, how lucky are we now to have this
17 technology so that people don't get wrongly
18 convicted of heinous crimes? It's relied on by
19 law enforcement. It's relied on by
20 prosecutors, and it's relied on by the Courts
21 that overturn wrongful convictions as this
22 technology has improved through the years. And
23 I am relying on it, in conjunction with all of
24 the other evidence, to say we got the right
25 guy.

CLOSING BY THE STATE

1 Let's not forget about the sexual assault
2 of Lori Krug, now Lori Lawless. It happened
3 back in '83. Isaiah indicted for criminal
4 sexual conduct in the first degree, pled
5 guilty -- I mean pled no contest, I'm sorry, on
6 the day of trial, to assault and battery of a
7 high and aggravated nature. We don't know why.
8 We don't know what went into that decision
9 making.

10 Maybe there was a problem with the chain
11 of custody on the forensics. Maybe there was a
12 problem with a witness being there. You know,
13 the nurse that did the sexual exam kit. Maybe
14 even John Barron, the chemist. We simply don't
15 know. Maybe it was just to move the docket,
16 but it certainly wasn't justice, and I'm not
17 asking that you convict this man based on that.
18 I'm asking you to convict him on the evidence.

19 And the M.O., motive or common scheme or
20 plan, is the same in these sexual assaults, and
21 that goes to identity. We are talking about
22 the same rapist, the same perpetrator. Let's
23 look at the similarities in these two cases.

24 In both instant -- instances, Isaiah
25 isolated these women. Lori was already

CLOSING BY THE STATE

1 isolated. He preyed on her after a night of
2 drinking. He came across her on Highway 21,
3 took her to a remote isolated location. He
4 isolated MINOR by shooting David, and he told
5 her that. He said that was the only way I
6 could get to you. He preyed on women who were
7 strangers, slim, white women. The rapes
8 occurred within a few years of each other in
9 the same location, Burton, rural area, dark
10 dirt road, in the hours of darkness.

11 He was familiar with both those areas. We
12 showed that in the testimony. He worked right
13 off Highway 21, and he was up and down Highway
14 21 that day that he raped Lori. He threatened
15 both women with a gun. MINOR told you how he
16 held it to her head. Lori told you he
17 threatened to blow her brains out, and then
18 began reaching under the seat when she wasn't
19 taking her clothes off immediately. Now, he
20 never brandished it, but, lo' and behold, there
21 in his car was the .32 caliber.

22 The physical description that the women
23 gave, while not identical, is consistent. The
24 way he sexually assaulted them is consistent
25 with each other. He began with oral sex.

CLOSING BY THE STATE

1 Moved on to vaginal rape. No condom was used.
2 Ejaculated quickly. Asked if they liked it,
3 and then apologized.

4 Lori's testimony was just as compelling
5 and consistent, and consistent as MINOR all
6 these years later. You heard her emotion as
7 well as Isaiah's denial when Captain Bromage
8 was reviewing his interview from 1983, and that
9 didn't make any sense. He says he came across
10 her, offered her a ride, and then just asked if
11 she wanted to make some love. When he -- when
12 questioned more and when pressed, he admitted
13 to placing his hand on her crotch area over her
14 clothing. But then you heard from John Barron,
15 the chemist in 1983, that there was semen all
16 over the place. So, that certainly wasn't the
17 case. All right. He's a liar.

18 There was a rapist on the loose in the
19 1980s, and he sits in this courtroom today
20 under indictment. These victims, MINOR and
21 Lori, had to do a lot of soul searching to
22 dredge this up, to take that monster out of the
23 box, to subject themselves to this, and they
24 did. I don't have to tell you how important
25 this case is to everyone, but that's not why

CLOSING BY THE STATE

1 I'm asking you to convict the man that sits in
2 this courtroom. I'm asking you to convict him
3 based on the solid evidence that we have
4 presented to you. It should not leave any
5 reasonable, reasonable doubts in your mind.

6 As I told you in my opening, justice may
7 have been a long time coming, but it's now, and
8 it's here, and I'm asking you to find Isaiah
9 Gadson guilty on all counts.

10 CLOSING ARGUMENT BY THE DEFENSE

11 MS. CAMPBELL: May it please the Court?

12 THE COURT: Counsel.

13 MS. CAMPBELL: Good morning.

14 You know, there's no creativity, there's
15 no creative defense as an attorney. As the
16 solicitor wants to say, I'm gonna be creative.
17 If I'm holding up the pillars of this
18 courthouse, keeping it steady for every person
19 that walks through that door by requiring the
20 State, the government, to prove guilt beyond a
21 reasonable doubt, that's not creativity.
22 That's actually following the law and it's my
23 duty. It's my ethical duty to participate and
24 be a part of the foundation of this courthouse,
25 and of our entire justice system.

CLOSING ARGUMENT BY THE DEFENSE

1 You know, there's a quote about families
2 and secrets, and it's something like this. You
3 could ask all you wanted, you can dig as deep
4 as you can to try and uncover some family
5 secrets, but it's like pulling a thread on a
6 sweater. And pull and pull and pull, and what
7 you wind up with is a tangled, mangled web of
8 yarn on the floor. The presentation of
9 evidence by the State of South Carolina is a
10 tangled, mangled mess.

11 There is, in early January, no doubt in
12 the evidence, that the last people, other than
13 MINOR, to see David alive were the people at
14 the party at the trailer out on Lady's Island,
15 the Jagys.

16 Where are they?

17 Why are they not here?

18 And even if they're not here, why does the
19 State of South Carolina not bring to you what
20 they said then about what happened at the
21 trailer?

22 Ask yourselves that question.

23 The State of South Carolina is clearly
24 asking you to find that Isaiah Gadson murdered
25 David and sexually assaulted MINOR, and they

CLOSING ARGUMENT BY THE DEFENSE

1 want you to make those findings based on the
2 evidence that they have presented you. And
3 here's what doesn't make sense. The Solicitor
4 talks about that. I'm gonna talk about that
5 too.

6 Number one. It makes absolutely no sense,
7 if you have been sexually assaulted, if you've
8 just -- if, if you're telling us you've seen
9 your, your boyfriend shot to death, tell the
10 police a black man did this to you and your
11 boyfriend, then what possible frame of mind,
12 what possible state of mind or scenario would
13 you then report to law enforcement yet again,
14 giving your rendition of what occurred, when
15 you're questioned by the officers in 1999, why
16 would you say that you had questioned your
17 mother about whether or not she thought your
18 father had been involved in killing David?

19 It, it absolutely makes no sense to go
20 there. I'm not sure the sequence of questions
21 that Officer Bromage and Officer Sankowski were
22 putting to her at that point, but that
23 testimony is in the record. And you are
24 allowed to consider that, that slip or that
25 insight. That question, alone, is reasonable

CLOSING ARGUMENT BY THE DEFENSE

1 doubt. Absolutely. And armed with only that,
2 you can return a verdict of not guilty on every
3 indictment firmly convinced that the State of
4 South Carolina failed to meet their burden of
5 proof.

6 So, if you will allow me, I will string
7 together just a few highlights from the
8 testimony that you may wish, as jurors, to
9 discuss with your fellow jurors when you begin
10 your deliberations on matters that affect a
11 man's life and liberty. This area where the
12 van is found is remote in 1980, but you have
13 testimony that it's frequented quite regularly
14 by folks. It's called Lover's Lane. Folks are
15 pulling in there. They're parking. They're
16 finding a place to be intimate. I mean, we can
17 all acknowledge that. This is what goes on
18 there, and cars are coming, and cars are going.

19 It's not a desolate place. This is a
20 place that's well known in the community to go
21 when you want to be intimate. And, if you are
22 going to plot and carry out a murder and, and
23 a, and a, and a sexual assault, you're not
24 going to do it in a place where people are
25 always coming and going. But, if something

CLOSING ARGUMENT BY THE DEFENSE

1 happens, if something's discovered or
2 something, in a, in a heat of passion moment,
3 that can happen in a highly frequented traffic
4 area.

5 Now, you've received testimony in this
6 case from MINOR that she cannot recall ever
7 being in the area before that night. It's half
8 a mile from her home. She has testified to you
9 that she ran home, reported this to her mother
10 and to her father, and then her father jumped
11 in his truck with his shotgun, drove back to
12 the area. Some minutes later, she and her
13 mother, the two women, got in the mother's car,
14 and they drove back to this area, which is
15 extremely dark. Can't see your hand in front
16 of your face kind of location. Again, it's
17 where intimacy, and people go for privacy.

18 And, and, and who, I, I keep saying to
19 myself, who -- what mother takes their daughter
20 back to the woods where she's just been told
21 there is an armed black man running around,
22 killing people, and assaulting them?

23 That, in and of itself, also makes no
24 sense. That, that is -- who would do that?

25 Did that happen, you may ask yourselves,

CLOSING ARGUMENT BY THE DEFENSE

1 and there's no testimony, you heard from the
2 old fellow, Wagner, from back in the day, that
3 there was no truck at the scene. There --
4 yeah, there was a blue car at the scene, but
5 there's no daddy's truck up there when law
6 enforcement gets on the scene.

7 And another thing about the pitch dark
8 road that makes no sense. This, this tale
9 about the key that you're going to run for your
10 life down this extremely dark, again, can't see
11 hand in front of your face situation, and
12 happen to find a set of keys in that half mile
13 run from the van to, to the, to the house.

14 You've heard testimony that **MINOR** gave to
15 the police. You have it in the jury room, a,
16 a -- what I would characterize as probably the
17 most generic description of a black man that's
18 possible, but then a year or so later, it's
19 changing significantly to the eyes are too big,
20 the nostrils too small, the nostrils need to be
21 larger. I don't remember exactly what it was,
22 but, but here's the thing.

23 What's never changed is that the person
24 that she says has done this was shorter than
25 she was. And through the testimony, you have

CLOSING ARGUMENT BY THE DEFENSE

1 evidence, and the, and the photograph, you'll
2 have that in evidence as well. It's clear she
3 is several inches shorter than David, who's
4 been established to be standing 6-feet tall.
5 In order to be shorter than her, you know,
6 that's gonna be 5'5" to 5'7" at the maximum.
7 And you heard testimony that, in 1973, Isaiah
8 Gadson was standing 5'11", nearly topping the
9 scales at 6-feet tall. Considerably taller
10 than 5'5" to 5'7".

11 Now, what about the bizarre conversation
12 that actually occurs back in 1990 when MINOR
13 says she's getting out of school at Beaufort
14 Academy, and David's sister is there, and she
15 says, look, we all know who did this. And so,
16 you know, okay, so MINOR writes a statement
17 about that. You saw her look at that
18 statement. And where, where is the follow-up
19 on that?

20 Who is this mystery person that's being
21 reported as generally known to have committed
22 this crime?

23 Nothing.

24 You heard Officer Bromage testify, on
25 questioning from the solicitor, well, Johnny

CLOSING ARGUMENT BY THE DEFENSE

1 Weed was a suspect. Yeah, I had to clear him.
2 But not a single record, if he was a suspect as
3 testified to, of any questioning in 1980. You
4 know, when your folks are in trouble, the
5 wagons will circle.

6 There is no statement either taken from
7 MINOR's mother that night at all. And why are
8 you going to lie and say repeatedly, on
9 questioning both cross and direct examination.
10 That you weren't drinking that night? You
11 weren't doing -- smoking marijuana with David.

12 Did you not remember that you told the
13 doctor that you had been drinking?

14 You know, the truth stays the same every
15 time no matter how many times you tell it. The
16 manner in which Dr. Fontana testified clearly
17 indicated, should indicate to you his bias in
18 favor of MINOR, her family. Clearly indicated
19 he considered her, and she was a lifelong
20 patient of his, and it felt like a friend.

21 But, finally, when pressed on matters that were
22 critical to his evaluation, you know, his, his
23 prejudice and, and bias became even
24 increasingly evident, but ultimately he did
25 have to admit that his findings were consistent

CLOSING ARGUMENT BY THE DEFENSE

1 not with recent sexual intercourse, but with
2 sexual intercourse a day or two beforehand.

3 The autopsy examiner, Dr. Trefny, his
4 testimony provided the information for you,
5 again, about David's height. I'll come back to
6 him in a minute, but let's talk a little bit
7 about Bob Bromage reopening the case in '99.

8 As I said before, there was every
9 indication through Bob Bromage's testimony that
10 that decision rested at, at the feet of the
11 family. The manner in which Chris Sankowski
12 and Bob Bromage, those officers conducted that
13 interview, was clear that they had sort of a, a
14 tag team thing going on. I'm gonna ask the
15 questions. You're gonna record her behaviors
16 and her responses. And so that's what they
17 did, and the behaviors were reported, the
18 anxiousness, and the other indications to them
19 that they needed to try to figure out whether
20 or not they were getting the truth.

21 Now, come flash forward to 2016 through
22 one of these databases, all of a sudden you've
23 got this scenario where you now, as the
24 solicitor said clearly, you're being asked to
25 find that Isaiah Gadson is a murderer and a

CLOSING ARGUMENT BY THE DEFENSE

1 rapist on -- and here's the thing, on
2 scientific evidence only, that, as you could
3 see clearly through my questioning of the
4 individuals in this field, has the possibility
5 of not being correct. David McClure said
6 statistically, yeah, well, it is, it is
7 possible that, that this is not right.
8 Probable, no. But yes, it's possible this
9 could be wrong.

10 Now, I'm sure you don't want anything in
11 my life or the lives of my children or my loved
12 ones to depend on well, it's not probable, but
13 it is possible you -- you're wrong. You can't
14 allow that to happen on your watch over the
15 foundations of this courtroom. It won't be
16 there, if you need it, if you dilute the
17 standard. It will degrade. Based on the
18 principles that a man is presumed innocent, and
19 shall not be removed from life and liberty
20 unless the State, the government, proves guilt
21 beyond a reasonable doubt. And so you'll say
22 to yourself, well, what is reasonable doubt?

23 His Honor will tell you reasonable doubt
24 is the kind of doubt that will cause you to
25 have that hesitation to act. So, I liken it to

CLOSING ARGUMENT BY THE DEFENSE

1 an individual, you know, and, again, judging
2 the credibility of the witnesses, and the
3 credibility of the evidence, if that individual
4 or that person or that entity built you a, a
5 wooden bridge between two mountaintops, and you
6 stepped out on to that, and you felt confident
7 walking across that bridge, and you never once
8 hesitated to put your foot on it, if you're
9 hesitating to put your foot on it, that's
10 reasonable doubt. And, again, like I said, for
11 our loved ones, would you put your child on
12 that bridge they built? If there's a
13 hesitation, it's reasonable doubt.

14 And, interestingly, if the State of South
15 Carolina brought you an eye witness who's gonna
16 sit, sit on the witness stand and testify,
17 well, it's possible that I'm wrong, that's
18 reasonable doubt. The State of South Carolina
19 puts DNA Expert David McClure on the witness
20 stand, and he's testified it's possible,
21 possible the science can be wrong. It's
22 interesting that the two SLED agents who've
23 retired were willing to, upon questioning,
24 admit that the data and the research in this
25 field is changing, and may not be exactly

CLOSING ARGUMENT BY THE DEFENSE

1 solid. But, when, when you have the testimony
2 of the last witness, Barron, who is frankly --
3 I mean he's still under the thumb of the
4 government, and even putting this most
5 straightforward simple questions to him, he's
6 giving lengthy, well rehearsed, stamped of
7 approval answers that the government would like
8 him to give.

9 And I will come back again and again to my
10 original statement, reasonable doubt. Remember
11 this. The pieces of evidence have traveled
12 many miles. The pieces of evidence are bizarre
13 in that, in 1999, David McClure says I'm
14 analyzing these items. I can't find any semen
15 anywhere on them. I'm using good tests, and
16 nothing's there. And, all of a sudden, in
17 2002, I'm finding something. That's a problem.
18 He said he really didn't have a good answer for
19 how that might happen.

20 Now, I didn't go through all the
21 possibilities of how the evidence can change or
22 be altered. You are certainly able to do that
23 should you choose to do that. The fact that,
24 from 1980 to 1999, but primarily to 1983,
25 critical pieces of evidence in this case,

CLOSING ARGUMENT BY THE DEFENSE

1 through, I don't know, through negligence or
2 through purposeful conduct, I, I can't, I can't
3 answer that for you, they went missing so that
4 you and I don't have them. You heard testimony
5 from Dr. Trefny, coming back to him, the
6 autopsy examiner, but the photographs from the
7 autopsy are missing, and that they would be
8 very important in determining many factors
9 about the ballistics in this case, about
10 exactly what kind of weapon was used, about
11 exactly how it was shot, about exactly the
12 angle with which David had been hit by the
13 shots.

14 And we went through the, the revolver
15 testimony, and we went through the shotgun
16 testimony, and we went through the buckshot
17 testimony. And, and he confirmed that the
18 buckshot would scatter and have the larger
19 pellets hitting in a, in a confined area.

20 It's the duty of our law enforcement, I
21 don't care if it's 1980 or 2018, the duty is
22 still the same. Do your job. Preserve the
23 evidence. Failure to preserve the evidence is
24 a factor that you can say is reasonable doubt
25 alone because, let me remind you of this, the

CLOSING ARGUMENT BY THE DEFENSE

1 testimony you heard was that the shot came
2 through the passenger window, shattering it
3 completely, shattering the driver's window
4 completely, and MINOR's testimony was, was
5 sitting in the passenger's seat right next to
6 the shattering glass, and you heard the
7 testimony, suffered not a single scratch,
8 abrasion, anything on her face.

9 The testimony from Dr. Trefny, David,
10 several feet away, he's got abrasions and
11 scratches on his feet. It's an impossibility
12 to be sitting closer to the, to the shattering
13 glass, and have nothing hit you.

14 I'd like to have an, an expert to examine
15 those photos, but I can't. We don't have them.
16 I'd like to know more about the shattering of
17 those windows and how it happened. We don't
18 have that. I'd like to know about where that
19 van was all night, but we don't have that. We
20 don't have a timeline.

21 If there's one aspect of this case that
22 causes you to hesitate, that causes you
23 concern, then every other single part of the
24 case should cause you concern. Those
25 suspicions that you have, those hesitations,

CLOSING ARGUMENT BY THE DEFENSE

1 that's reasonable doubt.

2 Bob Bromage, this is an officer who you
3 heard testimony from, has been disciplined
4 before for the mismanagement and the
5 mishandling of a murder investigation and the
6 evidence in that case. You heard testimony,
7 you know, I'm, I'm having to keep the Island
8 Packet reporter who's following him around out
9 of the evidence room. Wants to bring her in
10 there with us. That's not proper.

11 This is an officer who was featured on
12 national television, television with the tales
13 of success and the paper route story -- Exposé.
14 Ecker and Frazier being the suspect in that
15 case. Bob Bromage is participating with the
16 corrections officers in searching that cell,
17 and, according to him, he wasn't involved in
18 it, but there's a piece of cardboard paper
19 under the, the suspect's bed that has the name
20 of the victim, the date that it happened, and
21 the location that it happened. Well, that's,
22 that's extremely convenient and extremely
23 bizarre and unrealistic.

24 Now, it seemed impossible, the testimony,
25 about having no way to go back in, in the

CLOSING ARGUMENT BY THE DEFENSE

1 records and look up cases, but that's what he
2 told you.

3 Now, then you have the State of South
4 Carolina trying to shore up what they realize
5 is a problem with their 1980 case by dragging
6 Lori Krug in here from the 1983 case and, and
7 having her testify. And I would say to you,
8 there's no timeline on that case either.

9 There's no statements from that ride that
10 was at the country store waiting for her when
11 she got back there. There's no statements from
12 her husband about whether she even made it home
13 that night. We know there's testimony that
14 she'd been out drinking the night before, and
15 that she was hitchhiking, she says, to work,
16 and that something about passing up another car
17 before she chose Mr. Gadson to get in the car
18 with. And there was some testimony about going
19 to get some marijuana.

20 But, in any event, she testified
21 inconsistently. You saw that I had to get the
22 testimony from Monday, you know, go through
23 that with her to get her back on track. You
24 know, you were sworn to tell the truth on
25 Monday. What's going on now saying you don't

CLOSING ARGUMENT BY THE DEFENSE

1 remember? You can't recall.

2 Well, you remembered on Monday, very
3 clearly, that, when you got back to the general
4 store with Mr. Gadson, your ride was there.
5 And I would say it's clear. You can say, by
6 the fact that Mr. Gadson pled no contest to an
7 assault and battery aggravated case, instead of
8 spending 30 years in prison, he says okay, it's
9 1983. I'm being accused of raping this woman.
10 I think I'll take this plea and go on with my
11 life. I'll take my probation, and I won't be,
12 you know, in prison for the next 30 some years,
13 which he didn't, his family, and his children,
14 and his grandchildren.

15 And, remember this, the rape kit analysis
16 from Lori Krug says African-American pubic
17 hairs found. The rape kit from MINOR said
18 no African-American pubic hairs found.

19 What does that tell you?

20 Lori Krug had sex with an African-American
21 man in 1983. MINOR did not have sex with
22 an African-American man in 1980.

23 You know, a few years before John Adams
24 became our second president in the early years
25 of our democracy, we had a little bit of an

CLOSING ARGUMENT BY THE DEFENSE

1 incident in Boston, and the British soldiers
2 were accused of a massacre of the Bostonians at
3 the time. And I'm gonna tell you there was
4 demand for blood in the street of those
5 soldiers. And a knock came at the door of John
6 Adams. He was just a -- he was a lawyer, was a
7 father, a husband. We need you to take up the
8 case of these British soldiers and he did. And
9 the jury, in that case, set the soldiers free.
10 They made the right decision despite the pleas
11 from the community.

12 I have taken up the case of Isaiah Gadson,
13 and you have taken up the case of his jury.
14 And I'm confident that it was not easy to be
15 the lawyer for those British lawyers. I'm
16 confident it was not easy to be the jury for
17 those British soldiers. But our law knows no
18 anger, knows no passion, or bias, and seeks
19 only that each man perform his duty, fairly,
20 and without concern for the popularity of their
21 decision.

22 There's a true and old axiom in our law,
23 in our lives, and it states better ten guilty
24 men are set free than one innocent man be
25 imprisoned.

CLOSING ARGUMENT BY THE DEFENSE

1 Now, and the last piece of evidence that I
2 will speak with you about is the logic of the
3 shot. **MINOR** has testified that there was this
4 exchange about, oh, I had to get, get rid of
5 him to get to you. If that is your logic, if
6 that is your objective, then you are going to
7 shoot through which window?

8 You are going to shoot through the
9 driver's window. Burden of proof in a criminal
10 case never rests on the Defendant. This is not
11 the way that our criminal justice system is
12 founded. Not in the late 1700s, and not in
13 2018.

14 Now, His Honor is going to tell you, in
15 just a minute, about the law, and what you have
16 to apply to what you deem to be the facts in
17 this case. And he will explain to you that a
18 criminal defendant, no matter who he is or she
19 is, never has to testify or make any statements
20 or provide any evidence. And the reasons for
21 that are longstanding. And he will tell you
22 that the fact that Mr. Gadson chose not to
23 testify or to make any statements cannot enter
24 your mind. Not only can it not enter your
25 mind, it cannot be discussed in your jury

CLOSING ARGUMENT BY THE DEFENSE

1 deliberations at all. And if you were to do
2 that, he would tell you that would be violating
3 your oath as jurors.

4 I thank you for your attention, and your
5 close concern with the testimony in this case.
6 Each individual one of you was selected for a
7 reason. You bring something to this case that
8 only you can bring. That individuality is
9 important.

10 During your deliberations, remember, as an
11 individual, what your strongly held convictions
12 are. Remember when I say to you that, at the
13 time your foreman says to take a vote, and you
14 tear off your piece of paper on your notepad,
15 and you write down your decisions, and you fold
16 that piece of paper up, and you hand that to
17 your foreman, I'm confident each one of those
18 individual pieces of paper will say the State
19 has failed to meet its burden of proof, and
20 that Isaiah Gadson then is not guilty.

21 Thank you.

22 THE COURT: Thank you, Ms. Campbell.

23 MS. CAMPBELL: Thank you, Judge.

24 JURY CHARGE

25 THE COURT: Anybody need to stand up and

JURY CHARGE

1 stretch for just a minute?

2 If you do, let's, let's stretch.

3 This will take me -- this will probably
4 take 15 to 20 minutes for me to tell you about
5 the law that applies.

6 Ladies and gentlemen, I'll remind you that
7 the fact that the Defendant in this case was
8 arrested, was charged, and was indicted is not
9 evidence, and cannot be considered by you as
10 evidence in this case. Nor does it create any
11 presumption or inference of guilt.

12 As I told you earlier, these indictments
13 are simply the formal, written instruments that
14 bring the case into the courtroom. The
15 Defendant has pled not guilty to these
16 indictments, and the plea puts the burden upon
17 the State to prove the Defendant guilty.

18 I'll tell you that a person charged with
19 committing a criminal offense in South Carolina
20 is never required to prove himself innocent.
21 And I charge you that, as an important rule of
22 law, that the Defendant, in a criminal trial,
23 no matter what the seriousness of the charge
24 may be, will always be presumed to be innocent
25 for the crime for which an indictment was

JURY CHARGE

1 issued unless guilt has been proven by evidence
2 that satisfies you of that guilt beyond a
3 reasonable doubt.

4 The presumption of innocence does not end
5 when you begin your deliberation, but it
6 accompanies the Defendant throughout the trial
7 until you reach a, reach a verdict of guilt
8 based on evidence that satisfies you of that
9 guilt beyond a reasonable doubt.

10 The, the presumption of innocence is like
11 a robe of righteousness placed about the
12 shoulders of a Defendant, which remains with
13 the Defendant until it has been stripped from
14 the Defendant by evidence that satisfies you of
15 the Defendant's guilt beyond a reasonable
16 doubt. The presumption of innocence is not
17 mere legal theory. It is not just a legal
18 phrase. It is a substantial right to which
19 every Defendant's entitled unless, you, the
20 jury, are satisfied, from the evidence, of the
21 Defendant's guilt beyond a reasonable doubt.

22 A reasonable doubt is the kind of doubt
23 that would cause a reasonable person to
24 hesitate to act. Some of you may have served
25 on juries in civil cases where you were told it

JURY CHARGE

1 was only necessary to prove that a fact is more
2 likely true than not such as by the greater
3 weight or the preponderance of the evidence.
4 But, in criminal cases, the State's proof must
5 be more powerful than that. It must be beyond
6 a reasonable doubt.

7 Proof beyond a reasonable doubt is proof
8 that leaves you firmly convinced of a
9 Defendant's guilt. There are very few things
10 in this world that we know of with absolute
11 certainty, and, in criminal cases, the law does
12 not require proof that, that overcomes every
13 possible doubt. If, based on your
14 consideration of the evidence, you are firmly
15 convinced that the Defendant is guilty of a
16 crime charged, you must find the Defendant
17 guilty. If, on the other hand, you think
18 there's a real possibility that the Defendant
19 is not guilty, you must give the benefit of the
20 doubt to the Defendant and find the Defendant
21 not guilty.

22 As I told you earlier, during this trial,
23 you and I have had different responsibilities
24 and obligations. It's been my responsibility
25 to preside over the trial, and to rule on the

JURY CHARGE

1 admissibility of evidence. But I also have the
2 additional duty to charge you about the law
3 that applies in this case.

4 As the presiding judge, I am the sole
5 judge of the law in this case, and it's your
6 duty, as jurors, to accept the law as I now
7 state it to you. And if you have any idea that
8 the law is different than I tell you or should
9 be different, you must put that out of your
10 mind because, under your oath, you must accept
11 the law and apply the law exactly as I state it
12 to you.

13 As I told you earlier, in every case tried
14 before a jury, the jury becomes the sole and
15 exclusive judges of the facts in this case, and
16 a trial judge, such as myself, cannot intimate,
17 state, comment on, or make any statement to a
18 trial jury about the facts of the case. Since
19 you, the jury, are the sole judges of the facts
20 of this case, you're not to infer, from what I
21 have said during the progress of this trial, in
22 ruling on the admissibility of evidence, or
23 otherwise, or anything that I say now during
24 the course of these instructions, that I have
25 an opinion about the facts of a case. The law

JURY CHARGE

1 does not permit me to have an opinion about the
2 facts in this case. This is a matter solely
3 for you to determine. As jurors, it is your
4 duty to determine the effect, the weight, and
5 the value, or the truth of the evidence
6 presented during this trial.

7 During the presentation of evidence during
8 a trial, there are typically two types of
9 evidence submitted. Either direct or
10 circumstantial evidence. And direct evidence,
11 of course, is testimony of a person who claims
12 to have actual knowledge of a fact such as an
13 eye witness. It's evidence which immediately
14 establishes the main fact to be proven.

15 Circumstantial evidence is proof of a
16 chain of facts and circumstances indicating the
17 existence of a fact. It is evidence which
18 immediately establishes collateral facts from
19 which the main fact may be inferred.
20 Circumstantial evidence is based on inference,
21 and not on personal knowledge or, or
22 observation, but the law makes no distinction
23 between the weight or the value to be given to
24 either direct or circumstantial evidence nor is
25 a greater degree of proof required for

JURY CHARGE

1 circumstantial evidence than of direct
2 evidence. You should weigh all of the evidence
3 in this case.

4 Necessarily, ladies and gentlemen, you
5 must determine the credibility of the witness
6 who has -- witnesses who have testified, and
7 this simply means the believability. It
8 becomes your duty, as jurors, to analyze and to
9 evaluate the evidence and determine which
10 evidence convinces you of its truth.

11 In determining the believability of
12 witnesses who have testified, you may believe
13 one witness over several or several witnesses
14 over one. You may believe a part of the
15 testimony of a witness and reject the remaining
16 testimony, testimony of the very same witness.
17 You may believe the testimony of a witness in
18 its entirety or reject the testimony of a
19 witness in its entirety, and you may consider,
20 of course, whether the witness has exhibited to
21 you any interest, any bias, prejudice, or
22 motive in the case. And you may also consider
23 the appearance and the manner of a witness
24 while on the witness stand.

25 The State has presented evidence of acts

JURY CHARGE

1 of the Defendant that occurred outside of and
2 separate from the time and the circumstances of
3 the Defendant's acts that the State alleges in
4 this case. You are not to consider this
5 evidence to conclude that the Defendant has a
6 propensity to behave in a particular way or
7 commit certain acts. In other words, you may
8 not consider the separate acts as proof of his
9 character to conclude that he must have acted
10 similarly in this case. The State had offered
11 this evidence of other acts as proof of
12 identity. Accordingly, you may consider the
13 similarities or the differences between the
14 separate acts and the acts alleged in this case
15 as either identifying the Defendant or
16 distinguishing him from the person who
17 committed the acts alleged in this case.

18 During this trial, some of you have taken
19 notes. I tell that you notes are only to be
20 used to aid the memory of individual jurors,
21 and are not to be considered superior to the
22 independent, independent recollection of other
23 jurors.

24 There's also been evidence presented that
25 a -- that one or more witnesses may have made

JURY CHARGE

1 prior statements which were not consistent with
2 the witnesses present testimony. You may be
3 used -- use this evidence to decide whether to
4 believe this witness. You may also use this
5 evidence of early contradictory statements to
6 determine the truth of those statements. It is
7 up to you to decide whether to believe an
8 earlier statement or the testimony given in a
9 trial.

10 If the witness is shown to have knowingly
11 testified untruthfully concerning any material
12 matter, you may consider this in determining
13 whether to trust, to trust the witnesses'
14 testimony as to other matters. You may reject
15 all testimony of that witness or give it all or
16 part of that testimony the weight, weight you
17 think it deserves.

18 The Rules of Evidence normally do not
19 permit witnesses to testify to opinions or
20 conclusions. An exception to that exists for
21 witnesses that are called expert witnesses. A
22 witness who by some education, experience, has
23 become an expert in an art, science,
24 profession, or some calling may state an
25 opinion as to the relevant and material matter

JURY CHARGE

1 in which the witness claims to be an expert,
2 and may give you the reasons for that opinion.

3 You could -- you should consider the
4 expert opinion received in this evidence -- as
5 evidence in this case, and, like other
6 evidence, you give it the weight that you think
7 it deserves. If you decide that the opinion of
8 an expert witness is not based on sufficient
9 education and experience or conclude, conclude
10 that the reasons given in support of the
11 opinion are not sound or that the opinion is
12 outweighed by other evidence, you may disregard
13 the opinion entirely.

14 An expert witness' testimony is to be
15 given no greater weight than any other witness
16 simply because the witness is an expert.
17 Further, you are not required to accept an
18 expert's opinion even though it may not be
19 contradicted. I instruct you and emphasize
20 that the fact that the Defendant did not
21 testify in this case is not a factor to be
22 considered by you in any way in your
23 deliberation, and your consideration on the
24 question of the guilt or innocence of the
25 Defendant. It must not be considered by you in

JURY CHARGE

1 any manner whatsoever.

2 A Defendant has a constitutional right to
3 remain silent, and the assertion of this right
4 must not be considered by you in your
5 deliberations. I repeat, under your oath,
6 you're to draw no conclusion whatsoever from
7 the fact that the Defendant in this case did
8 not testify. The fact that the Defendant did
9 not testify should not even be discussed in the
10 jury room. The burden of proof, as I have
11 already told you, is upon the State. The
12 Defendant is not required to prove his
13 innocence. The burden of proof remains upon
14 the State to prove guilt beyond a reasonable
15 doubt.

16 The Defendant is charged with murder. The
17 State must prove, beyond a reasonable doubt,
18 that the Defendant killed another person with
19 malice aforethought. Malice is hatred, ill
20 will, or hostility towards another person. It
21 is the intentional doing of a wrongful act
22 without just cause or excuse, and with an
23 intent to inflict an injury or under
24 circumstances that the law will infer an evil
25 intent.

JURY CHARGE

1 Malice aforethought does not require that
2 malice exists for any particular time before
3 the act is committed, but malice must act --
4 exists in the act of the Defendant just before
5 and at the time that the act is committed.
6 Therefore, there must be a combination of the
7 evil intent and the act.

8 Malice aforethought may be expressed or
9 inferred. These terms do not mean different
10 kinds, but merely the manner in which malice
11 may be shown to exist. That is either by
12 direct evidence or by inference from the facts
13 and circumstances which are proven. Express
14 malice is shown when a person speaks words
15 which express hatred or ill will towards
16 another or when that person prepared beforehand
17 to do an act which was later accomplished.

18 Malice may be inferred from conduct
19 showing a total disregard for human life. The
20 law says that one intentionally kills another
21 with a deadly weapon, the implication of malice
22 may arise. If facts are proven beyond a
23 reasonable doubt are sufficient to raise an
24 inference of malice to your satisfaction simply
25 -- this inference would simply be an

JURY CHARGE

1 evidentiary fact to be taken into consideration
2 by you, along with other evidence in this case,
3 and you give it the weight that you determine
4 it should receive.

5 The Defendant is also charged with
6 criminal sexual conduct in the first degree.
7 The first element the State must prove, beyond
8 a reasonable doubt, is the Defendant engaged in
9 a sexual battery with the victim.

10 Sexual battery is sexual intercourse,
11 cunnilingus, fellatio, anal intercourse, or any
12 intrusion of, however slight, of any part of a
13 person's body, or of any object in the genital
14 or anal openings of another person's body
15 except when this intrusion is accompanied,
16 accompanied for medical purposes --
17 accomplished for medical purposes or treatment
18 or diagnostic purposes.

19 If you find that the State has not shown,
20 beyond a reasonable doubt, that sexual battery
21 occurred, you can stop your deliberating
22 because your verdict would have to be not
23 guilty. If you find that a sexual battery did
24 occur, then you must decide whether the State
25 has proven, beyond a reasonable doubt, that the

JURY CHARGE

1 Defendant used aggravating force to accomplish
2 the sexual battery.

3 Aggravated force means the use of physical
4 force, physical violence of a high and
5 aggravated nature to overcome the victim, and
6 this includes the threat of using a deadly
7 weapon.

8 The Defendant is also charged with
9 kidnapping. The State must prove, beyond a
10 reasonable doubt, the Defendant knowingly and
11 unlawfully seized, confined, inveigled,
12 decoyed, kidnapped, abducted, or carried away
13 another person without authority of law. To do
14 a thing unlawfully is to do it willfully
15 against the law, and knowingly means with
16 knowledge, conscientiously, but not
17 accidentally. Seize means to take hold of
18 suddenly or forcefully. And confine means to
19 limit, restrict, or enclose, shut in, or keep
20 in. Kidnap is to remove a person against his
21 will by unlawful force or by fraud. And abduct
22 means to carry off, secretly or by force, for
23 an illegal purpose. Carry away means to
24 remove.

25 The State does not have to prove that the

JURY CHARGE

1 Defendant did all of these things. Instead, if
2 you find, beyond a reasonable doubt, that the
3 Defendant did any of these things, you may find
4 the Defendant guilty of kidnapping. The
5 kidnapping does not have to be for any personal
6 or monetary gain or for, for any illegal
7 purposes, but it can be for any reason
8 whatsoever.

9 The Defendant is also charged with armed
10 robbery. To prove this offense, the first
11 must -- the State must first prove, beyond a
12 reasonable doubt, that the Defendant took
13 personal property from the person or presence
14 of another person. The State must also prove,
15 beyond a reasonable doubt, that the Defendant
16 carried the property away intended to --
17 intending to permanently deprive the owner of
18 the property, and keep the property for the
19 Defendant's own use. The taking and carrying
20 away of the property must have been done with
21 violence or by putting the owner of the
22 property in fear of violence. The State must
23 prove, also prove, beyond a reasonable doubt,
24 that the Defendant was armed with a deadly
25 weapon during the robbery. I tell you a deadly

JURY CHARGE

1 weapon is any article, instrument, or substance
2 likely to cause death or great bodily harm.

3 There -- as you heard, there are several
4 indictments in this case, ladies and gentlemen.
5 Each indictment charges a separate and distinct
6 offense. You must decide each indictment
7 separately on the evidence and the law that
8 applies to it uninfluenced by your decision as
9 to any other indictment. The Defendant may be
10 convicted or acquitted on any or all of the
11 offenses charged. You will be required, of
12 course, to write a separate verdict of guilty
13 or not guilty for each indictment.

14 For there to be a verdict, ladies and
15 gentlemen, the verdict must be unanimous
16 meaning all of you must agree.

17 Now, I'm going to ask our foreperson, on
18 behalf of the jury, that, once the jury reaches
19 a verdict, to complete the verdict form, and
20 indicate, as you'll see, the verdict form
21 addresses each of these indictments, and you
22 will then decide guilty or not guilty as to
23 each indictment. Once the, once the jury
24 reaches a unanimous verdict, you either knock
25 on the door, let the bailiff know, and we will

JURY CHARGE

1 receive you back in the courtroom.

2 Ladies and gentlemen, I'm gonna now ask
3 you, if you would, the twelve of you, along
4 with our two alternates, retire to the jury
5 room, but don't yet begin deliberations until I
6 send to the jury room the verdict form, and the
7 exhibits. And I, I believe I failed to mention
8 that I would ask our foreperson to sign the
9 verdict form on behalf of the, the entire jury.

10 So, if you'll please retire to the jury
11 room, ladies and gentlemen. I hope, hope to be
12 in touch with you shortly.

13 THE BAILIFF: May they take their
14 notebooks now, Your Honor?

15 THE COURT: Yes.

16 THE BAILIFF: You can bring your notebook.

17 THE BAILIFF: The jury's clear, Your
18 Honor.

19 THE COURT: All right. Exceptions from
20 the State?

21 MS. SWANSON: None from the State.

22 THE COURT: Defense.

23 MS. CAMPBELL: None from the Defendant.

24 THE COURT: Other than already noted --

25 MR. CAMPBELL: Well---

JURY CHARGE

1 THE COURT: -- for the -- already noted.

2 Okay. Do you want to look at the exhibits
3 to make sure we have them all?

4 MS. SWANSON: Yes, sir.

5 (Evidence goes back at 11:08 a.m.)

6 THE COURT: And would you please ask the
7 alternate jurors to come back in the courtroom
8 if they would?

9 THE BAILIFF: Yes, sir.

10 THE COURT: All right. We'll be in recess
11 for ten minutes and at ease waiting on word
12 from the jury.

13 (Alternate jurors dismissed by the Judge.)

14 *(Whereupon, Court's Exhibit No(s) 8-9*

15 *marked for identification and received in*

16 *evidence.)*

17 THE COURT: All right. A note from the
18 jury. I'll be glad to let you look at it. But
19 it says, Can we have the map of the area with
20 the van and car parked.

21 MS. SWANSON: It was a Court's exhibit for
22 demonstrative purposes, never entered into
23 evidence so I don't think that it can go back.

24 THE COURT: I can't let them have it until
25 both of you --

QUESTIONS OF THE JURY

1 MS. CAMPBELL: Do you intend to write your
2 response on that?

3 THE COURT: I was going to ask you, what
4 is your preference solicitor?

5 MS. SWANSON: Writing it is fine. I mean,
6 if you just want to say it is not in evidence.

7 THE COURT: All right. What I have
8 written on here: I cannot grant this request.
9 The map was not introduced into evidence. Suit
10 the State? Suit the defense?

11 MS. SWANSON: Yes, sir.

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: Give this back and don't let
14 them destroy it.

15 THE BAILIFF: Yes, sir.

16 MS. CAMPBELL: We will mark that as a
17 Court's exhibit?

18 THE COURT: Yes, it has already been
19 marked.

20 MS. CAMPBELL: Thank you.

21 THE COURT: Another question. The jury
22 would like -- well, let me tell you what it
23 says. We would like to hear MINOR's testimony
24 again, please.

25 Any objection from the State?

QUESTIONS OF THE JURY

1 MS. SWANSON: No objection.

2 MS. CAMPBELL: No objection.

3 (The jury enters the courtroom at
4 12:00 p.m.)

5 THE BAILLIFF: The jury is seated, Your
6 Honor.

7 THE COURT: Welcome back, ladies and
8 gentlemen. I have two notes from the jury.
9 One requesting a map that was used for
10 demonstrative purposes by the attorneys. I
11 regret that I cannot grant that request. The
12 map was technically not introduced into
13 evidence, and therefore it is not evidence.

14 The second one indicates that the jury
15 would like to hear MINOR s testimony again.
16 And the court reporter has arranged for that to
17 be done.

18 (Audio of witness' testimony played to the
19 jury.)

20 THE COURT: As best I can tell, that
21 concludes the testimony of the witness. I
22 would ask you to retire to your jury room and
23 resume your deliberations, if you would.

24 (The jury exits the courtroom at
25 1:22 p.m.)

QUESTIONS OF THE JURY

1 THE COURT: All right. We will be at ease
2 and in recess.

3 (Jury deliberations continue.)

4 *(Whereupon, Court's Exhibit No(s). 10*

5 *marked for identification and received in*

6 *evidence.)*

7 THE COURT: We have another note from the
8 jury. Okay. Question from the jury: The jury
9 would like to know what technically defines
10 armed robbery.

11 MS. SWANSON: It sounds like they would
12 like to be recharged on armed robbery. And the
13 State would have no objection to that.

14 MS. CAMPBELL: That is what they are
15 asking to have done is the law. I would ask
16 that Your Honor recharge reasonable doubt as
17 well.

18 THE COURT: I agree. And presumption of
19 innocence. I think that I need both of those.

20 MS. CAMPBELL: Yes, sir.

21 THE COURT: All right. Let's bring the
22 jury in.

23 (The jury enters the courtroom at 2:05.)

24 THE COURT: It is my understanding the
25 jury would like to know the law on armed

JURY DELIBERATING
JURY QUESTIONS

1 robbery. And to do that I have to repeat a few
2 things that I told you earlier. As you recall,
3 the defendant pled not guilty to the armed
4 robbery indictment and other indictments, and
5 that puts the burden on the State to prove the
6 defendant guilty.

7 I'll tell you that a person charged with
8 committing a criminal offense in South Carolina
9 is never required to prove himself innocent.
10 And I charge you that, as an important rule of
11 law, that the Defendant, in a criminal trial,
12 no matter what the seriousness of the charge
13 may be, will always be presumed to be innocent
14 for the crime for which an indictment was
15 issued unless guilt has been proven by evidence
16 that satisfies you of that guilt beyond a
17 reasonable doubt.

18 As I told you earlier, the presumption of
19 innocence doesn't end when you begin your
20 deliberation, but it accompanies the Defendant
21 throughout the trial until you reach a, reach a
22 verdict of guilt based on evidence that
23 satisfies you of that guilt beyond a reasonable
24 doubt.

25 The presumption of innocence is like a

JURY DELIBERATING
JURY QUESTIONS

1 robe of righteousness placed about the
2 shoulders of a Defendant, which remains with
3 the Defendant until it has been stripped from
4 the Defendant by evidence that satisfies you of
5 the Defendant's guilt beyond a reasonable
6 doubt.

7 The presumption of innocence is not mere
8 legal theory. It is not just a legal phrase.
9 It is a substantial right to which every
10 Defendant is entitled unless you the jury are
11 satisfied, from the evidence, of the
12 Defendant's guilt beyond a reasonable doubt.

13 A reasonable doubt is the kind of doubt
14 that would cause a reasonable person to
15 hesitate to act. Some of you may have served
16 on juries in civil cases where you were told it
17 was only necessary to prove that a fact is more
18 likely true than not, such as by the greater
19 weight or the preponderance of the evidence.
20 But, in criminal cases, the State's proof must
21 be more powerful than that. It must be beyond
22 a reasonable doubt.

23 Proof beyond a reasonable doubt is proof
24 that leaves you firmly convinced of a
25 Defendant's guilt. There are very few things

JURY DELIBERATING
JURY QUESTIONS

1 in this world that we know of with absolute
2 certainty, and in criminal cases the law does
3 not require proof that overcomes every possible
4 doubt.

5 If, based on your consideration of the
6 evidence, you are firmly convinced that the
7 Defendant is guilty of a crime charged, you
8 must find the Defendant guilty. If, on the
9 other hand, you think there's a real
10 possibility that the Defendant is not guilty,
11 you must give the benefit of the doubt to the
12 Defendant and find the Defendant not guilty.

13 As to armed robbery. In order to prove
14 this offense, the State must first prove beyond
15 a reasonable doubt that the Defendant took
16 personal property from the person or presence
17 of another person. The State must also prove,
18 beyond a reasonable doubt, that the Defendant
19 carried the property away intending to
20 permanently deprive the owner of the property
21 and keep the property for the Defendant's own
22 use. The taking and carrying away of the
23 property must have been done with violence or
24 by putting the owner of the property in fear of
25 violence.

JURY DELIBERATING
JURY QUESTIONS

1 The State must prove, also prove, beyond a
2 reasonable doubt, that the Defendant was armed
3 with a deadly weapon during the robbery. I
4 tell you a deadly weapon is any article,
5 instrument, or substance likely to cause death
6 or great bodily harm.

7 Ladies and gentlemen, I hope that that
8 satisfies your request. If it does not, send
9 another note and we will see what we can do.

10 (The jury exits the courtroom at
11 2:08 p.m.)

12 THE COURT: We are once again at ease.

13 (Jury deliberations continue.)

14 THE COURT: The bailiff indicates that the
15 jury has reached a verdict in this case. Is
16 the State ready?

17 MS. SWANSON: Yes, sir.

18 MS. CAMPBELL: Yes, sir.

19 THE COURT: Let me make a brief statement
20 to the spectators in the courtroom, and that is
21 that I have no idea what this verdict is going
22 be, but I assume that someone is going to be
23 upset about the verdict of the jury. I tell
24 you that you have to control your emotions,
25 even if you are very upset with the outcome of

VERDICT AND SENTENCING

1 the jury's verdict. If you don't we will have
2 to clear -- you will have to be removed from
3 the courtroom. So, everybody control your
4 emotions and let's bring the jury in.

5 (The jury enters the courtroom at
6 2:33 p.m.)

7 THE BAILIFF: The jury is entering the
8 courtroom, Your Honor.

9 THE COURT: Welcome back, ladies and
10 gentlemen. Mr. Brasington, let me ask you a
11 question as the foreman of the jury. The
12 bailiff indicates that you have reached a
13 verdict in this case; is that true?

14 THE FOREMAN: Yes, Your Honor.

15 THE COURT: Unanimous verdict?

16 THE FOREMAN: Yes.

17 THE COURT: Did you complete it on each
18 and every one of the charges?

19 THE FOREMAN: Yes.

20 THE COURT: Did you complete the verdict
21 form on behalf of the jury?

22 THE FOREMAN: Yes.

23 THE COURT: Would you pass it forward?

24 THE COURT: And madam clerk, would you
25 please publish the verdict?

VERDICT AND SENTENCING

1 THE CLERK: State of South Carolina,
2 County of Beaufort versus Isaiah Gadson,
3 Junior, as for indictment criminal sexual
4 conduct, 16GS0701548, we the jury unanimously
5 find the defendant, Isaiah Gadson, Junior
6 guilty.

7 As to indictment for murder,
8 2016GS0701549, we the jury unanimously find the
9 defendant, Isaiah Gadson, Junior, guilty.

10 As to the indictment for kidnapping,
11 2016GS070150, we the jury unanimously find the
12 defendant, Isaiah Gadson, Junior guilty.

13 As to indictment for armed robbery,
14 2016GS0701551, we the jury unanimously find the
15 defendant, Isaiah Gadson, Junior, guilty.

16 Signed by the foreperson, May 24th, 2018.

17 THE COURT: Thank you, madam clerk.
18 Before the jury is discharged, anything from
19 the State?

20 MS. SWANSON: Nothing.

21 THE COURT: From the defense?

22 MS. SWANSON: Defense would ask that the
23 jury be polled.

24 THE COURT: Madam clerk, would you poll.
25 If you are going to do an individual poll,

VERDICT AND SENTENCING

1 would you do it by number?

2 THE COURT: Yes, sir.

3 Juror 374, is this your verdict?

4 THE JUROR: Yes.

5 THE COURT: Is it still your verdict?

6 THE JUROR: Yes.

7 THE COURT: Juror 11, is this your

8 verdict?

9 THE JUROR: Yes.

10 THE CLERK: Is it still your verdict?

11 THE JUROR: Yes.

12 THE COURT: Juror 181, is this your

13 verdict?

14 THE JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 THE JUROR: Yes.

17 THE COURT: Juror 198, is this your

18 verdict?

19 THE JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 THE JUROR: Yes.

22 THE COURT: Juror 91, is this your

23 verdict?

24 THE JUROR: Yes.

25 THE CLERK: Is it still your verdict?

VERDICT AND SENTENCING

1 THE JUROR: Yes.

2 THE COURT: Juror 177, is this your
3 verdict?

4 THE JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 THE JUROR: Yes.

7 THE COURT: Juror 123, is this your
8 verdict?

9 THE JUROR: Yes.

10 THE CLERK: Is it still your verdict?

11 THE JUROR: Yes.

12

13 THE COURT: Juror 381, is this your
14 verdict?

15 THE JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes.

18 THE COURT: Juror 347, is this your
19 verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE COURT: Juror 103, is this your
24 verdict?

25 THE JUROR: Yes.

VERDICT AND SENTENCING

1 THE CLERK: Is it still your verdict?

2 THE JUROR: Yes.

3 THE COURT: Juror 318, is this your
4 verdict?

5 THE JUROR: Yes.

6 THE CLERK: Is it still your verdict?

7 THE JUROR: Yes.

8 THE COURT: Juror 43, is this your
9 verdict?

10 THE JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 THE JUROR: Yes.

13 THE COURT: Thank you, madam clerk. Now,
14 anything else before the jury is discharged?

15 MS. CAMPBELL: No, Your Honor.

16 THE COURT: Ladies and gentlemen, I want
17 to thank you for your service. I'll tell you a
18 couple of things before we let you go.

19 Previously we told you that you could not talk
20 about this case. You are now free to talk
21 about the case to anyone, including what
22 happened in the jury room, should you want.

23 You also have the same right not to talk
24 to anybody about it. I don't have any reason
25 to think that anybody is going to bother you

VERDICT AND SENTENCING

1 about your verdict, but if someone approaches
2 you and asks you questions about the trial or
3 what happened in the jury room and you don't
4 want to talk about it you tell them that you
5 don't want to talk about it. If they persist,
6 tell them that you know the Judge told you you
7 don't have to talk. If they further persist,
8 report them to the office of the clerk. But I
9 don't believe that that is going to happen. We
10 tell every jury the same thing.

11 I suspect shortly the Court will be
12 required to impose sentencing in this case. If
13 you wish, you may stay. I'm not going to make
14 you stay there, if you don't want to. But you
15 can come back in the courtroom and watch the
16 proceedings. If you don't want to, you are
17 free to leave. Some jurors want to stay and
18 see what happens, some jurors want to leave the
19 building.

20 What I'll do is let you go out this way
21 and if you want to the bailiff will lead you
22 around and you can come in the back of the
23 courtroom and watch if you wish to do that. It
24 is totally up to you. If you don't want to,
25 you can keep going.

VERDICT AND SENTENCING

1 Anyone have any problems or anything that
2 we can do to take care of anything? Jurors,
3 thank you for your service. You are excused.

4 (The jury exits exits the courtroom at
5 2:38 p.m.)

6 THE COURT: Any reason the Court should
7 not impose sentencing at this time?

8 MS. SWANSON: No none from the State.

9 MS. CAMPBELL: No, Your Honor.

10 MS. CAMPBELL: I believe we are waiting on
11 the State for sentencing.

12 MS. SWANSON: We need to prepare
13 sentencing sheets.

14 THE COURT: I thought so.

15 MS. SWANSON: But if Your Honor would like
16 I can go through criminal history at this time.

17 THE COURT: All right.

18 MS. SWANSON: Or if Your Honor would like
19 to wait, it doesn't matter.

20 THE COURT: No, that is fine.

21 MS. SWANSON: Okay. And I would like to
22 inquire, actually, if the victims would like to
23 address the Court, as far as sentencing goes?
24 None.

25 Your Honor, Mr. Gadson's record includes,

VERDICT AND SENTENCING

1 as you are aware, from 1983, the criminal
2 sexual conduct first that was pled down to
3 assault and battery high and aggravated nature,
4 for which he received three years suspended to
5 one year and two years probation.

6 Then in 1990 he has a CDV conviction that
7 he received time served for. In 1991 he has a
8 breach of trust with fraudulent intent
9 receiving ten years suspended to two years
10 probation. Disorderly conduct. Resisting
11 arrest. Malicious injury to personal property.
12 Receiving stolen goods, which included a stolen
13 .32 caliber gun. Driving under suspension.

14 In 1996, possession of a sawed-off shotgun
15 for which he received three years suspended to
16 six months and 18 months probation. Driving
17 under suspension. Resisting arrest. 1998,
18 simple possession of marijuana. 1999,
19 possession of crack. One year suspended to
20 one-year probation. 2002, driving under
21 suspension. 2006, trespassing.

22 And then, the CODIS hit that we got in
23 2016 was the result of an attempted murder
24 charge that is still pending. It was a
25 shooting in downtown Beaufort here. And as of

VERDICT AND SENTENCING

1 this morning we had a victim come in who
2 disclosed that she had been raped by the
3 defendant back in this time period. And so
4 there may be another charge forthcoming
5 depending on the result today.

6 But as far as the sentencing
7 recommendation from the State goes, I think
8 that it's very clear that I made my position
9 very clear in stating that Mr. Gadson is a
10 serial rapist, and he's one that has gotten
11 away with it for a very, very long time. And I
12 do think that this is an appropriate time to
13 sentence him to life in prison.

14 THE COURT: All right. Thank you,
15 Ms. Swanson. Glad to hear from you.

16 MS. CAMPBELL: Thank you. As we were
17 awaiting the jury's verdict I spoke with
18 Mr. Gadson's family who has -- Your Honor has
19 seen this week -- has been here every day in
20 support of their father, cousins, grandfather.
21 And certainly have shown to you and to others
22 what he means to them and to their lives,
23 despite the conviction, despite his criminal
24 record.

25 I did tell him they could certainly speak

VERDICT AND SENTENCING

1 to the Court on his behalf. As Your Honor is
2 aware, after sentencing I will be making our
3 motion for new trial and then filing
4 Mr. Gadson's appeal. I have advised him not to
5 make any statements at this time. So, if the
6 family would like to speak to Your Honor, I
7 would turn it over to their representative at
8 this time for any words that they would like to
9 give in support of, as I said, the father,
10 grandfather, brother, to Your Honor.

11 THE COURT: Sure, I'll be glad to hear
12 from anyone who would wish to speak.

13 MS. CAMPBELL: You can stand right here.
14 State your name for the Judge. Tell the Judge
15 your name.

16 MS. GADSON: Beatrice Gadson, the second
17 oldest of Isaiah Gadson and Gladys Gadson. I
18 stand here today asking you all to have mercy
19 on my brother. He may have done it, I don't
20 know if he did or not, but he is human. As I
21 know him growing up, he has always taken
22 care -- my daughters spent the night with him.
23 I had four daughters. All of my kids love him
24 to death. Even my grandchildren today. I
25 don't know whether he did it, but I'm asking

VERDICT AND SENTENCING

1 for mercy. I know him on a personal level.

2 And that is all that I really have to say.

3 THE COURT: All right. Thank you, ma'am.

4 MS. CAMPBELL: Thank you. Is there anyone
5 else? Tell the Judge your name.

6 MS. RILEY: Yolanda Evette Young Riley. I
7 am an educator in the Jasper County school
8 district and I am 42 years old. I come before
9 you because I know my uncle. As in life, we
10 have matriculated through hard times and when
11 there are adversities in life we tend to get
12 off track, but I know the roots that my
13 grandfather, Deacon Isaiah Gadson, brought us
14 up on.

15 We were a singing family and the very
16 first thing that I remembered is that our
17 grandfather instilled in us a love for singing,
18 gospel singing. And I reminisce over that with
19 my uncle and his wife Dorothy Gadson.

20 So, today I stand before you as a part of
21 what has been delivered to me through DNA
22 through them is when I look around the
23 courtroom I'm not privy to being from a wealthy
24 family, but I did what -- they worked hard, so
25 very hard for me and that is how I have

VERDICT AND SENTENCING

1 basically become a doctor of education at 42 in
2 Jasper County that I have become. And I know
3 of the hardships and the battles that we now
4 fight, still being a teacher in Jasper County
5 school district, having been teaching in
6 Beaufort County over the last few years.

7 I don't know what happened, but I stand
8 before you 42 years old and like my mother
9 said, I actually spent nights with my uncle and
10 his wife, my sister who is now in Newport News,
11 Virginia and she is now a lab specialists, she
12 tests DNA and I am an educator. What he didn't
13 have the opportunity to do, I see those things
14 that are being manifested in our daughter who
15 is now an early college graduate from the Whale
16 Branch Early College High School, Beaufort
17 County school system at the age of 18 not
18 having graduated from high school yet. So, I
19 believe in positive things that have come from
20 my uncle. And I know that I wasn't there.

21 I have a 13 year old and I also have my
22 daughter that have been picked up and have
23 ridden around Beaufort. Any time that they met
24 with him it was him giving them fruits or
25 grapes or whatever else and they have never in

VERDICT AND SENTENCING

1 the course of my time or my sister's time or my
2 46 year old sister's time ever substantiated
3 any evidence of him groping, touching or being
4 a serial rapist with them.

5 The guilty verdict has been handed down,
6 but I am a product of Beaufort County. The
7 school system of graduating 1993 from the
8 Beaufort County system, school system, within
9 Battery Creek High School. From that time on,
10 from this time having gone, matriculated
11 through the University of South Carolina
12 Beaufort and basically pushing myself with
13 their support to go through Walden University
14 to obtain my bachelors, master's, educational,
15 specialist, and my EDD, I'm sitting at looking
16 at what I am, evidence based teacher/educator.
17 Who looks at the evidence if I wanted to, I
18 could map the evidence but I choose not to
19 because I stand on the premise of what happened
20 over 200/300 years ago and that is the premise
21 of us bringing together 13 colonies into 13
22 original states that give each man the right to
23 stand before you and be innocent before proven
24 guilty. And I just ask that in his retrial
25 because people -- I know Beaufort County and I

VERDICT AND SENTENCING

1 know that people can speak on even my life.
2 People can speak on my grandfather's or
3 brother's or sister's life.

4 But what I stand before you, I speak for
5 myself in the things that I do yet today. We
6 all have a path and a future. I give you hope
7 for the future and I hope that in everything
8 that you encounter you are a minister and you
9 have lived through a lot of adversities and I
10 ask that there be some grace and mercy that is
11 given to him in this regard. I am not a
12 political person who is a down-right educator.
13 I have a love for people and love for fairness
14 and justice and I want to make sure that in his
15 case and this family's case that mercy and
16 justice have been served in both cases. I
17 thank you.

18 THE COURT: Thank you, ma'am.

19 MS. CAMPBELL: Your Honor, would you like
20 us to stay here or come forward?

21 THE COURT: Your choice.

22 MS. CAMPBELL: I think, due to his health,
23 we will stay here if that's okay with Your
24 Honor.

25 MS. SWANSON: Your Honor, before we get --

VERDICT AND SENTENCING

1 the sentencing sheets have been prepared, but I
2 have been informed that MINOR would like to
3 address the Court briefly.

4 MINOR: I'm MINOR, now, and I
5 would like to say for the last 38 years me and
6 David's family, who most of them are here, we
7 have worried and been scared for 38 years that
8 he would come back and try to hurt us. And he
9 took David's life away. He was only 18 and
10 he's never been able to live a life. And for
11 my 38 years it's been living in fear for all of
12 these years.

13 I'm glad -- I think that justice has been
14 done and I thank everyone who has helped in
15 that.

16 THE COURT: Okay. Thank you, ma'am.

17 MS. SWANSON: I have passed the sentencing
18 sheets to the defense, so they will be passed
19 up to Your Honor momentarily.

20 MS. CAMPBELL: Judge, do you want to put
21 out the sentence and then move into a new trial
22 motion?

23 THE COURT: You can go to the motion
24 first.

25 MS. CAMPBELL: I know that Your Honor is

VERDICT AND SENTENCING

1 about to put out the sentence on Mr. Gadson at
2 this time. On behalf of Mr. Gadson, I make a
3 motion for a new trial and renew all of our
4 pre-trial objections. I don't intend to
5 reargue them. They have been argued on the
6 record previously. Your Honor is aware of the
7 bases of our objections.

8 During the trial there were two mistrial
9 motions that we had on behalf of Mr. Gadson. I
10 renew those as well. And Defendant's motion
11 for directed verdict, that would be renewed as
12 well.

13 And the last thing that I would say, Your
14 Honor, is that there were -- there were two
15 jury charges that were requested. One was
16 granted. The one that Your Honor would not
17 charge to the jury is a part of the record and
18 we would include that continuing objection
19 feeling that it was improper for the Court not
20 to charge on spoliation for the loss of
21 evidence.

22 THE COURT: I understand.

23 MS. CAMPBELL: Thank you, Your Honor.
24 Your Honor, I'll pass the sentencing sheets
25 back to Ms. Swanson. I have signed them and

VERDICT AND SENTENCING

1 Mr. Gadson has signed them as well. And that
2 would be the extent of our motion for a new
3 trial.

4 THE COURT: I understand the grounds as
5 you said previously, having said we previously
6 argued those, all of those motions, I
7 understand them and deny those motions.

8 MS. CAMPBELL: Thank you, Your Honor.

9 THE COURT: Anything else in mitigation
10 then?

11 MS. CAMPBELL: No, Your Honor. With your
12 permission I'll have Mr. Gadson remain seated.

13 THE COURT: That is fine.

14 MS. CAMPBELL: Thank you.

15 THE COURT: Ms. Campbell, I'm not sure
16 that I remember exactly, your client is how
17 old?

18 MS. CAMPBELL: Sixty-five. Sixty-six now.

19 THE COURT: All right. Mr. Gadson, on the
20 charge of criminal sexual conduct first degree,
21 I sentence you to the Department of Corrections
22 for a period of 30 years, concurrent, credit
23 for time served.

24 On the charge of armed robbery, I sentence
25 you to 30 years, concurrent, credit for time

VERDICT AND SENTENCING

1 served.

2 On the charge of kidnapping, sentence you
3 to 30 years, concurrent with the others, credit
4 for time served.

5 On the charge of murder, I sentence you to
6 the Department of Corrections for a period of
7 50 years, concurrent, with credit for time
8 served.

9 The Court will be in recess for ten
10 minutes.

11 MS. CAMPBELL: Thank you, Your Honor.

12 MS. SWANSON: Thank you, Your Honor.

13 (Trial concluded.)

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VERDICT AND SENTENCING

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2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 10th day of January, 2019.

9

10

11

Mona L. Manley /s/
12 MONA L. MANLEY
13 Official South Carolina Court Reporter
14 Circuit Reporter for the 14th Circuit
(850) 893-6662
mmanley@sccourts.org

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ISAIAH GADSON, JR.

APPELLANT

APPELLATE CASE NO 2018-001041

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in admitting evidence of a 1983 sexual ABHAN as a subsequent bad act where that crime involved an alleged sexual assault on a twenty-one year old woman Marine, who was “catching a ride” to work, since it was not admissible to prove a common scheme or plan or to prove identity in a 1980 rape of a fifteen year old girl immediately after the murder of her boyfriend on “lover’s lane” case, since this evidence was not admissible under Rule 404 (b), SCRE, and its probative value was substantially outweighed by its undue prejudice?

STATEMENT OF THE CASE

Appellant was indicted at the October 2017 term of the Beaufort County Grand Jury for the offenses of murder, criminal sexual conduct in the first degree, kidnapping, and armed robbery. R. 517. His case was called to trial on May 21, 2018, before the Honorable Brooks P. Goldsmith. Hunter Swanson and Kimberly Smith were the assistant solicitors. Trasi Campbell and Benjamin Tripp represented appellant. R. 1 – 2.

On May 24, 2018, the jury found appellant guilty on all four counts. R. 484, ll. 7-16. Judge Goldsmith sentenced appellant to fifty years' imprisonment for murder, thirty years' imprisonment for criminal sexual conduct in the first degree, thirty years' imprisonment for kidnapping, and thirty years' imprisonment for armed robbery. R. 485, l. 19 – 486, l. 8.

This appeal follows.

STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Whitner, 399 S.C. at 557, 732 S.E.2d at 866. In order to admit evidence of bad acts not resulting in conviction, the trial court must, “[a]s a threshold matter, ... determine whether the proffered evidence is relevant.” Clasby, 385 S.C. at 154, 682 S.E.2d at 895; see State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009). “If the trial judge finds the evidence to be relevant, the judge must then determine whether the bad act evidence [is admissible under the terms] of Rule 404(b)” to show, *inter alia*, the existence of a common scheme or plan. Clasby, 385 S.C. at 154, 682 S.E.2d at 895.

If the testimony is relevant and proffered for a permissible purpose, the trial court must next conduct a balancing test, pursuant to Rule 403; where the testimony's probative value is substantially outweighed by the danger of unfair prejudice, the trial court may exclude it. See State v. Gillian, 373 S.C. 601, 611, 646 S.E.2d 872, 877 (2007); see also Rule 403, SCRE (“[E]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice ...”).

ARGUMENT

The court erred in admitting evidence of a 1983 ABHAN as a subsequent bad where that crime involved an alleged sexual assault on a twenty-one year old woman Marine, who was “catching a ride” to work, since it was not admissible to prove a common scheme or plan or to prove identity in a 1980 rape of a fifteen year old girl immediately after the murder of her boyfriend on “lover’s lane” case, since this evidence was not admissible under Rule 404 (b), SCRE, and its probative value was substantially outweighed by its unduly prejudicial effect.

Relevant facts

This was a “cold case” from January 5, 1980. It was the murder of twenty-one-year-old David Krulewicz and the rape of his fifteen-year-old girlfriend, MINOR, as they sat parked in David’s van on “Lover’s Lane” in rural Beaufort County. R. 517 – 520.

The state filed a motion and memorandum in support of the introduction of appellant’s Alford¹ plea to ABHAN for a February 24, 1983, subsequent incident involving Lori Ann K. Lori Ann K. was a twenty-one-year-old married Marine stationed at Parris Island in Beaufort at the time of the 1983 incident. R. 509; Supp. R. 1-3. The indictment for the 1983 ABHAN stated appellant committed “an assault and battery upon one Lori Ann K. constituting an unlawful act of violent injury to the person of the said Lori Ann K. accompanied by circumstances of aggravation, to-wit: a difference in the sexes, indecent liberties or familiarities with a female.” R. 509; Supp. R. 1-3.

The state alleged the 1983 incident was admissible to show a “common scheme or plan under Rule 404(b), SCRE, and State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009). R. 512 –

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

513. The solicitor would maintain at the time of trial that the 1983 incident involving Lori K. was also admissible to prove identity under Rule 404(b), SCRE.

The solicitor argued that in the 1980 incident and in the 1983 incident: “Both were young women. Physically they were tall, slender, young women. Their race was white. The relationship between the victim and the perpetrator, they were strangers. They were either isolated or he made sure that they became isolated. The location where the assault occurred. Both assaults were on dark, dirt roads in the northern Beaufort County in the Burton area. The use of coercion or threats. He used the threat of a gun in both cases.” R. 21, ll. 10-22.

The 1980 incident involved fifteen-year-old **MINOR** and her boyfriend. Her boyfriend was shot in the head and killed while they sat in his van on “Lover’s Lane” in rural Beaufort County at just before midnight. **MINOR** said appellant had her perform oral sex on him and then raped her right after her boyfriend was shot. R. 21, l. 21 – 23, l. 10.

The solicitor said while Lori in the 1983 “hitching a ride” incident did not see a gun, the solicitor alleged appellant threatened to “blow her brains out if she does not succumb to the rape and take her clothes off.” The state alleged appellant raped Lori in 1983 although he pled guilty to only ABHAN. The solicitor alleged appellant apologized to both women after raping them and also asked if they “enjoyed it.” R. 21, l. 21 – 23, l. 10.

Proffer of 1983 evidence

The state then proffered the evidence of Lori Ann K. about the admissibility of the 1983 crime. Lori K. was a twenty-one-year-old married Marine on February 24, 1983. She was stationed at Parris Island. She remembered that morning that she was walking to a country store to “catch a ride” to work. She always met her ride to work at this corner store on Highway 280. R. 23, l. 17 – 25, l. 12.

Lori K. denied she was not hitchhiking that morning. However, she offered that one man stopped and asked “if I wanted a ride and I turned him down. And then Mr. Gadson stopped and asked if I wanted a ride. And at that point I accepted because, like I said, I was running late and afraid that I would miss my ride. I got in the car and told him where I was going. I was on my way to the corner store on 280 is where I met my ride. And he said he would take me there, but he didn’t.” R. 25, ll. 3-12.

She said appellant turned on a secondary road, which she thought was Highway 73. He told her he was going to “buy some marijuana from a friend. And I explained that I was going to be late and possibly miss my ride, but it didn’t matter he kept driving. He asked me if I smoked and I told him, No. And then at that point he started questioning me as to whether or not I had ever had sex with a black man and I told him, No, that I was married, I had only had sex with my husband and we had been married for five years.” R. 25, ll. 13-24.

Lori K. said appellant continued driving down a dirt road for about a mile and then he went past a trailer, stopped the car, and went inside “a structure of some sort. I assumed that he was going inside to purchase the marijuana. When he got back in the car he locked the doors and started to force himself on me. And at that point I began to struggle. He told me if I didn’t stop he was going to blow my brains out. And I believed him, so I stopped fighting him.” Appellant told her to take her clothes off and he performed oral sex on her, and then he raped her. R. 26, l. 9 – 27, l. 2.

Lori K. said she asked appellant if she could get dressed and he told her yes. “He then told me he was sorry, he didn’t know why he did that and he offered to pay me. I think it was \$50. I told him that I didn’t want his money, that I wasn’t a prostitute.” She promised not to call the police or tell her husband. “He began driving back secondary 73 towards where I wanted to

go. . . . [H]e dropped me off on the secondary road at a welding shop or somewhere near that area. . . . So I got his license plate and ran to the corner market on 280.” R. 27, ll. 14-24.

Lori K. gave a description of the rapist as a “black male in his mid 20s, maybe 25, 26. He was about 150 pounds, kind of short afro, long sideburns, moustache, he had scraggily facial hair. He was probably 5’9”, 5’10”. He was wearing a gold ring on his right hand.” R. 28, ll. 9-15.

She identified appellant’s photograph from a photo lineup and said she was prepared to go to trial when appellant pled guilty to ABHAN. R. 29, ll. 4-18.

On cross-examination, Lori K. denied she was hitchhiking that morning and said she was walking facing traffic when both cars stopped and offered her a ride. R. 31, ll. 2-18. She acknowledged she did not ever see a gun during the incident. R. 32, ll. 13-23. She agreed that appellant had stopped his car and gone inside some building -- where she thought he was going to purchase marijuana -- before he returned and she was raped. She said the thought of getting out of the car and running or hiding crossed her mind when appellant was gone, but “there wasn’t time.” R. 33, ll. 2-23.

The state also called Captain Bob Bromage during the *in camera* hearing on the admissibility of this 1983 incident. Bromage testified that after “Sheriff Tanner’s 1998 election campaign he had promised that we would start looking into the cold cases . . .” R. 35, ll. 19-24. One of these involved “the 1980 case involving the sexual assault against MINOR at the time, and then the murder of David Krulewicz.” R. 36, ll. 7-10.

Bromage recalled that on August 3, 2016, he was notified of “a match in the national DNA system called CODIS.” The match was appellant. Bromage began a background investigation on appellant. R. 36, ll. 11-20.

Bromage testified that in 1983, appellant was living, as was most of his family, in Burton, South Carolina on Glens Drive. Appellant told the police he was working at Browns Manufacturing Mobile Homes, “which was off of Highway 21 in Beaufort.” R. 38, ll. 4-21. Appellant explained, “[I] saw a lady on the side of the road walking, I stopped and asked her if she wanted a ride. She said, yeah. And I asked her where she was going and she said -- and the detective interrupted. Somewhere behind Pizza Hut -- Joy Land or Pizza Hut, somewhere in that area.” R. 39, ll. 7-12. Appellant described Lori K. as “white, slender, you know, I didn’t pay no attention to the way that she looked.” R. 39, ll. 13-17.

Appellant also told the police in 1983 that he did not carry a weapon on his person. He admitted he had an old .32 caliber revolver. R. 39, l. 22 – 40, l. 14.

As to having sex with Lori K., appellant told the police, “I asked her if she wanted to make some money you know. I put my hand [on] . . . leg, between her legs.” Appellant never admitted to having the victim take her clothes off, or to having sex with her. R. 40, l. 20 – 41, l. 4.

Bromage continued that police believed a .32 caliber gun may have been involved in the January 5, 1980 murder of David Krulewicz. R. 41, ll. 10-23. However, the actual murder weapon from the 1980 murder was never recovered. R. 41, ll. 20-23.

Over a defense objection that any science claiming the pubic hair of a “African-American man” could be deemed a match or consistent with that found on a white rape victim was junk science, Bromage testified the “[p]ubic hair that was consistent with Isaiah Gadson’s [was found] from the combing of her rape kit.” Bromage also said semen was found on the victim’s clothing and on appellant’s front seat. R. 42, l. 10 – 46, l. 23.

Bromage testified the similarities between the 1980 murder and rape and the 1983 incident were that “in both cases, the subject was identified as an African-American male. Both cases occurred in the Burton area. Within a couple of years of each other. The African-American male performed oral sex on both MINOR in 1980 and Lori K. in 1983. The subject did not wear a condom, ejaculated in both victims. And was apologetic afterwards, offers them an apology. And the fact that they found in his glove compartment back in '83 was a .32 caliber revolver that we expected to be used in the 1980 case. But it was eliminated in the analysis by SLED, but in any case it is a similar type gun.” R. 47, ll. 2-18.

Bromage also said both females were assaulted on a dirt road in a rural area. The 1980 incident was around midnight and the 1983 incident was at 5:30 or 6 a.m. Appellant asked Lori K. after the sexual assault whether she liked it, and MINOR indicated she later got a phone call in May of 1980, “and she was asked if she liked it.” R. 48, ll. 10-19. Bromage added that both victims promised not to tell the police about the rape. R. 48, l. 23 – 49, l. 7.

On cross-examination, Bromage said the first time he looked at Lori K.’s case from 1983 was in 2016. R. 50, ll. 4-7. Bromage admitted that the SLED report stated that the gun taken from appellant in 1983 did not match, and it was specifically excluded, from being the weapon used in the 1980 murder of David Krulewicz. R. 51, l. 11 – 53, l. 10. Appellant was not a suspect in the David Krulewicz murder until 2016 apparently. R. 52, l. 15 – 53, l. 25.

Bromage admitted in the 1983 incident, appellant was listed as 5’11”, 150 pounds. He was almost six feet tall, and he was thirty-one years old in 1983. R. 54, ll. 1-23. The defense noted that the suspect in the 1980 murder was much smaller. The defense had Bromage admit that the suspect in the murder and rape in 1980 was described as 5’5” to 5’7”. R. 59, ll. 16-20.

Bromage testified that appellant was ultimately arrested for the 1980 murder of David Krulewicz and the rape of MINOR because of a DNA match discovered in 2016. R. 56, l. 15 – 57, l. 9.

Arguments of counsel

The solicitor argued that she thought given the similarities in the case that the evidence was admissible pursuant to Rule 404(b), SCRE. The solicitor also argued the evidence was “more probative than prejudicial.” R. 67, ll. 2-15.

Defense counsel Campbell said she could not agree that the allegations in the state’s memorandum were accurate. As to the 1980 murder-rape, Campbell said, “This is what MINOR reported occurred on or about January 5th, 1980. This what she reported to law enforcement, yes.” R. 69, ll. 6-9.

Defense counsel Campbell argued the burden was on the state to prove that the 1983 subsequent incident was admissible as a common scheme or plan and Campbell noted the state was now arguing it was admissible for identity. R. 69, l. 18 – 70, l. 6. Assistant solicitor Swanson maintained she was analyzing the incidents as both a common scheme or plan and for identity. “Identity really goes a little bit more toward my more probative than prejudicial analysis.” R. 70, ll. 8-25.

Defense counsel Campbell said if the court was using the State v. Wallace factors as “guidance,” the victim in the 1980 case was only fifteen years old. The victim in the 1983 case was twenty-one years old. “To be quite honest, the way I see these cases is that they are traditionally not really like an identity kind of situation. . . . So, there’s really no relationship [to] coordinate between the parties in this case.”

Campbell also noted that Lori K. got into appellant's car in 1983 voluntarily. She was a "21-year-old woman who is walking down the highway, as she has testified to get to her ride to work, agrees to get into the car with Mr. Gadson." Conversely, "MINOR and David [in 1980] were parked at Lover's Lane" Lover's Lane was frequented by many people and [Lori K.] said in 1983 she was taken to a desolated area. The gun was pointed at MINOR in 1980, whereas in 1983, appellant pled guilty to ABHAN, there was no evidence of sexual trauma on [Lori K.], and it was only [her] claim that the sex in 1983, if any, was not consensual. R. 73, l. 3 – 74, l. 13.

Defense counsel told the judge that admitting the 1983 incident would be using it for "propensity evidence" and as to the probative value versus prejudicial effect analysis, "the prejudicial effect of this to Mr. Gadson is irreparable." R. 76, ll. 7-14. Campbell also noted that the murderer and rapist in the 1983 case was much smaller than the 5'10" to six-foot attacker described by [Lori K.] in 1983. R. 75, l. 11 – 76, l. 6.

The court rules

The judge ruled that he was granting the state's motion to admit the 1983 subsequent incident pursuant to Rule 404(b), SCRE. The judge noted that the female victim in one case was fifteen and the female victim in the 1983 incident was twenty-one. They were both white females and strangers to the assailant. The judge said that oral sex was performed before vaginal penetration and that apologies were made to both victims. The judge ruled that the probative value of the evidence did outweigh its prejudicial effect and that it was admissible. R. 80, l. 22 – 81, l. 22.

Missing evidence

Prior to trial, the defense filed a motion to dismiss appellant's case alleging the investigation in this case had been abandoned and evidence destroyed in bad faith. R. 492 – 496. The motion alleged that the victim's father, Johnny Weed, had been a suspect in the murder of his daughter's boyfriend and that when Johnny Weed died in 1983, the matter was seen as concluded. R. 487 – 497.

Defense counsel Tripp argued that half of the evidence in this case was missing or destroyed in bad faith and that appellant could not get a fair trial. Defense counsel noted, for example, that the crime scene photographs were missing. He said this was a complicated case involving a number of motives, including the difference in age “between MINOR and Mr. Krulewicz, the involvement of her dad at the scene at the time the police arrived. Her possession of a very large sum of money at that time for a 15-year-old, and all of the inconsistencies in her accounts to the police. You can't have a reliable understanding of what happened that night.” R. 7, l. 11 – 8, l. 8.

The solicitor argued that the burden was on the defense to show bad faith in the evidence not being available and she maintained that the evidence would not have exculpated appellant. The solicitor said that Johnny Weed, the father of the fifteen-year-old girl, ran to the crime scene with a shotgun “because he had just heard that someone shot his daughter's boyfriend.” The solicitor argued that Johnny Weed was “a little out of his mind when he learned that his 15-year-old daughter had been raped. . . . There's absolutely no evidence that anything was destroyed in bad faith.”

The solicitor ridiculed the defense motion to dismiss because evidence was missing. It was the “ramblings of a conspiracy theorist. I mean, I think if you ask Mr. Tripp who shot JFK, I have no idea what he would say, or if we landed on the moon. . . .” R. 9, ll. 7-23.

Defense counsel Campbell countered that “the only evidence that was retained by SLED in 1980 was that rape kit.” However, the other evidence was lost or destroyed, including the victim’s clothing and other items that may have had DNA evidence on them. Defense counsel also noted that unfortunately, “after 36 years DNA can degenerate. And that is likely what happened. We didn’t get any touch DNA off of those items.” “[H]ere we have a victim’s testimony, although she cannot identify the victim [defendant].” The solicitor said appellant “[c]ertainly matched the description at the time and his identity is through the DNA hit, through his semen . . . so I don’t think that dismissal is appropriate . . .”² R. 13, ll. 7-20.

The judge ruled that the failure of the state to investigate did not prove bad faith on the part of law enforcement and he found no evidence that any of the missing evidence would have exculpated appellant, he denied the motion to dismiss. R. 18, l. 25 – 19, l. 11.

Trial evidence

Sonny Bessinger was twenty-five years old in 1980. He was living at 41 Old Salem Road in Beaufort County. It was an all dirt road back then where only a few neighbors lived “and the rest was farmland.” R. 97, l. 19 – 98, l. 22.

Sonny confirmed that some people rode their motorcycles back in this area and went camping and there was a “Lover’s Lane” back there. “It was all kinds of things went on back there, drinking, partying.” Sonny did not know MINOR although he knew of her family.

² Although the transcript has part of this argument as being from Defense Counsel Campbell, the part of it attributed to the state above in this quotation was obviously from Solicitor Swanson.

Sonny was ten years older than MINOR, since she was only fifteen at the time of the murder and rape. R. 99, ll. 8-22.

Sonny remembered on January 5, 1980, around midnight, he was heading home from a bar “because at that time everything closed at 12:00. They had the blue law in effect, everything closed and everyone heads home.” R. 100, l. 3 – 101, l. 23. “I saw a van parked in the woods, and just a little ways up it looked like a car. To me it looked like it was backed up in there. I went home and never thought anything about it.” However, the next morning “the DNR guy stopped by and was asking questions if we heard anything or seen anything. And that is why I mentioned I had seen a van and a car parked up in the woods.” R. 102, ll. 7-17. Other than this, Sonny knew nothing about the murder and rape which involved the van and apparently the car that he saw around midnight the night before.

Gerry Wagner worked for the Beaufort County Sheriff’s Department in 1980. He remembered supervising the investigation of the murder of David Krulewicz and the rape of MINOR R. 112, ll. 4-21. The murderer and rapist was described as a black male, 5’7” to 5’9”, approximately 170 pounds. R. 119, ll. 1-9.

Wagner did not recall appellant ever being a suspect in the murder and rape at the time. R. 120, ll. 12-17. However, Wagner did recall a man named “Manning Tredway or Tredway Manning” being a suspect since MINOR picked him out of a line-up in 1981. However, Tredway was 6 feet 1 inches tall, and the height of the assailant was said to be “5 feet 5 inches tall to 5 feet 7 inches tall.” Therefore, Tredway was ruled out as a suspect. R. 122, l. 15 – 124, l. 3.

When asked if Wagner was aware of any evidence being destroyed or hidden in this case, he proclaimed, “No, ma’am, not on my watch.” Wagner added his opinion that there was no

conspiracy to frame anyone or cover up for someone else in this case. R. 121, ll. 2-9. Wagner did admit on cross-examination that the victim's father, Johnny Weed, was arrested and charged with disorderly conduct on the night of the murder because he was armed with a shotgun at the scene of the crime. R. 129, l. 2 – 130, l. 9.

Wagner admitted there were a lot of rumors about this case but that he never considered Johnny Weed a suspect. R. 135, l. 2 – 136, l. 14. Wagner also said investigators never believed a shotgun was involved in the murder. R. 140, l. 20 – 141, l. 18.

MINOR was grown and married at the time of appellant's trial thirty-eight years later. She testified she was going to Beaufort Academy and that she was a cheerleader in 1980. R. 142, l. 12 – 143, l. 10. MINOR was only fifteen years old at the time she was dating David Krulewicz. R. 142, l. 12 – 143, l. 1. MINOR's parents owned a moving van company and her boyfriend was working at "Rutlands Heating and Air, I believe," at the time. R. 144, ll. 7-15.

On January 5, 1980, her boyfriend picked her up at about 7:15. They went to the bowling alley and played some foosball machines and then went to a party. Her boyfriend, David, got sick from drinking too much or otherwise being ill. R. 144, l. 7 – 146, l. 7.

MINOR remembered that they then went in David's van to a Burger King to get something to eat. However, David got sick again and MINOR said she was upset with David "because he had been puking two or three times recently . . . even that week and he wouldn't go to the doctor being stubborn or whatnot and I was kind of upset about it." R. 148, ll. 5-18.

MINOR had a 12 o'clock midnight curfew but the Lover's Lane was very near her house. David pulled into that area and "he turned the van off and we were just sitting up in the front seat with the dome light on. We probably -- he smoked a cigarette I'm sure and then he -- we went to the back of the van to sit down because he was still feeling nauseous, and we were sitting back

there for a little while. And I noticed a car going by in the back windows because in the van he had back windows, had some kind of picture or something over them so I could look out and see out, no one could see in.” R. 151, l. 17 – 152, l. 3.

It was pitch dark, so MINOR noticed the headlights behind the van. It was about 11:45 and MINOR said she knew she had to be home by midnight, but they were only a couple of minutes from the house. MINOR was sitting in the passenger seat and David was in the driver’s seat when she heard glass shattering from the passenger side window and David, her boyfriend, “was hunched over . . . I didn’t hear him say anything.” MINOR began screaming and begging for the shooter “not to shoot me.” R. 153, l. 4 – 154, l. 18.

MINOR heard a man say: “Okay, open the door,” and MINOR opened the sliding door and she “kept asking him to please not shoot me.” R. 155, ll. 6-14. MINOR gave the man \$50 that she had with her then “he asked me to get out of the van and then take my pants off and get on my knees and then he asked me to perform oral sex on him, which I did.” R. 155, l. 20 – 156, l. 7. MINOR remembered the man then laid his jacket on the ground and raped her. R. 156, l. 3 – 157, l. 17.

MINOR described how she was extremely nice to the man out of fear. She smoked a cigarette with him, and they walked back to the van. She denied to him that David was her boyfriend. MINOR said: “No, he’s not my boyfriend, don’t worry about it. And he said, Well, I only had to kill him to get to you.” The man told her to stay in the van until he left, and MINOR remembered after she thought the murder-rapist was gone, that she ran back to her house and told her father and mother what had happened. R. 157, l. 18 – 161, l. 21.

MINOR gave a description of the attacker as a “black male, you know, short afro, and that was about it.” She said he was in his mid-20s and smoking Kool cigarettes. R. 161, l. 22 – 163, l. 16.

MINOR related that in May of 1980, about four months later, she answered the telephone and she claimed she recognized the voice of the murderer-rapist. She said after asking her other questions, the man asked her if she had “enjoyed it.” MINOR heard other people talking on the other end of the phone also. R. 165, l. 17 – 167, l. 1.

MINOR viewed several lineups but never identified her attacker or her boyfriend’s murderer. MINOR recalled that David’s brother and sister at one point had a “suspected shooter in mind” and MINOR told them, “Great, let’s tell the police. So we told the police and that is the last I heard of it.” R. 193, ll. 13-17.

MINOR also admitted that in 1999, she asked the police to “ask my mother if dad could have done this.” MINOR said she had heard these rumors about her father and she now considered them “ridiculous.” R. 197, l. 19 – 198, l. 10.

Dr. John Fontana testified that he saw MINOR at the Beaufort Memorial Hospital emergency room in the early morning hours of January 6, 1980. R. 220, ll. 12-25. MINOR described an African-American male in his twenties who was “a few inches shorter than she was. Didn’t appear to be a Marine.” “I think I noted that she was amazingly in control of her emotions, although she was extremely distraught. She was a child.” R. 221, ll. 11-25.

David McClure was a retired SLED DNA expert. McClure remembered testing evidence in this case in 1999, nineteen years after the crime. “I received a cutting from a pair of pink panties, a cutting from a pair of blue pants, and a cutting from a yellow shirt.” R. 249, l. 20 – 252, l. 22. “In 1999 we were using what is called RFLP . . . It uses a large fragment of DNA

to do the analysis.” R. 253, l. 24 – 254, l. 3. McClure said these items were sent back and forth between Beaufort County to SLED in 2002. R. 254, ll. 12-14; r. 260, l. 22 – 261, l. 7.

McClure also offered that in 2003, MINOR's DNA profile was compared to that of her victim boyfriend's profile. “The DNA developed from the semen on items 1.1 and 2.1 did not match the profile from item 3.1, which was the standard submitted for David Krulewicz.” R. 257, l. 11 – 258, l. 13. McClure said he was not aware that the pink panties had been subject to some analysis by SLED in 1980. R. 258, l. 23 – 259, l. 15.

Under continuing challenges to the DNA evidence, the State offered the DNA expert opinion of SLED agent Laura Hash that the DNA profile from the victim's panties and pants matched the DNA “profile of Isaiah Gadson, Jr.” Hash said the DNA match was one in 2.1 trillion. R. 276, l. 4 – 278, l. 9.

Lori K. had a different last name by the time of appellant's trial in 2018. She testified before the jury about the February 4, 1983, incident. She repeated her in-camera testimony in large part. Lori said that she was in the Marine Corps at the time, she was twenty-one, just before her twenty-second birthday, and that she was married. On February 4, 1983, she was walking to meet her ride to work between 5:30 and 5:45 in the morning. She again stated, “I was not hitchhiking. And the first ride I turned down. And -- but as I said, I was running late so when Mr. Gadson stopped I knew that I wasn't going to meet my ride if I didn't accept a ride, so I -- he offered me a ride and I took it. And I told him where I was going and he said that he would take me there.” R. 296, l. 14 – 299, l. 19. She elaborated:

“So, I got in the car. And when he got to where the corner store was, he turned to secondary, down secondary 73. He asked me -- I asked him where he was taking me, that the corner store was right there and he could just let me out. And he said that he was going to buy some marijuana from a friend. And he asked me if I smoked, and I told him no. He asked me if I had ever had sex

with a black man and I told him no and I explained that I was married.

And, again, I was telling him that I'm going to be late, just let me out and he refused. He went about a mile down the road, it seemed like a mile, it was dark. And he turned left on a dirt road, on a wide dirt road and went past a white trailer and then made a right-hand turn down another dirt road towards an open field and parked the car.

At that point, he got out of the car. It's been a long time. But I seem to remember there was a structure that he went in, but only for a moment. I had just --"

R. 299, l. 19 – 300, l. 15.

Lori said she did not think she had time to escape. "It entered my mind for just a moment, I should run, but he came back. And he got in the car and he locked the doors. And he started putting his weight against me and I began to struggle. And he threatened me. He said to stop struggling or he was going to blow my brains out." R. 300, ll. 16-22. She claimed appellant told her to take her clothes off "or die. And at that point he removed his trousers. And I took my pants off. And that is when he performed oral sex on me. After that he -- that only lasted like two to three minutes and he asked me if it felt good and if I liked it, did I enjoy it. And then he climbed on top of me and he raped me." She maintained that she thought appellant had a gun somewhere. R. 300, l. 16 – 302, l. 3.

Appellant offered her \$50 and she told him she was not a prostitute "and I didn't want his money." "He starts driving back towards the direction that I wanted to go, back towards 280 and [he] dropped me off on 73, secondary 73, near a welding shop." R. 302, ll. 2-22.

She got appellant's license tag number. She described him at the hospital as "a black male in his mid 20s, 25, 26 years old, approximately 5'9", 5'10", 150 pounds, short afro, moustache, sideburns, just as far as facial hair." R. 303, ll. 13-17.

Bob Bromage admitted he had been disciplined in the past for not properly his division. R. 315, l. 21 – 316, l. 6. In this case, Bromage testified that MINOR's "pants, shirt, underwear, and a bra" were taken by Dr. Fontana at the hospital after the rape. Bromage admitted that items went missing after that. R. 319, l. 11 – 320, l. 22. Bromage noted this was "before DNA and everything else." R. 321, ll. 2-8.

Bromage offered, "Obviously, since that time evidence handling procedure has dramatically changed as you are aware, pre-DNA, late '80s." R. 321, l. 13 – 322, l. 5. The crime scene photographs were also missing but Bromage maintained none of the evidence was deliberately destroyed. R. 322, ll. 19-21.

As to the 1983 incident involving appellant and Lori K., Bromage remembered appellant telling the police that he "Saw a lady on the side of the road walking. I stopped to ask her if she wanted a ride. She said yeah. I asked her where she was going and she said . . . Joy Land or Pizza Hut, somewhere in the area." R. 345, ll. 10-19. Bromage said appellant told him Lori K. was "white, slender, you know, I didn't pay no attention to the way she looked." R. 345, l. 23 – 346, l. 2.

Appellant also told Bromage he kept a gun in his car but he did not carry it on his person. Appellant asked "her [Lori K.] if she wanted to make some love, you know. I put my hand on her, you know." R. 346, ll. 3-21. Appellant denied that he had sex with her or that forced her to have sex with him. R. 346, l. 25 – 347, l. 16. Bromage identified the indictment for criminal sexual conduct in the first degree indictment where appellant pled guilty to ABHAN from that 1983 incident. R. 348, ll. 3-10.

On cross-examination, Bromage admitted he was aware of a report wherein law enforcement had been advised by a "witness that there was a rumor that Johnny Weed killed her

son and also stated that someone overheard Weed saying that he was going to kill Krulewicz [her boyfriend] because he was a worthless being and public scum.” R. 350, l. 10 – 351, l. 14. Bromage said he learned this after the case was reopened in 1999. R. 350, l. 10 – 351, l. 14.

Bromage finally acknowledged that appellant’s .32 caliber gun taken from his car in 1983 was not the murder weapon in the 1980 murder-rape case, and that the murder weapon was never recovered. R. 380, l. 10 – 381, l. 17.

Finally, SLED DNA analyst John Barron testified that nine vaginal swabs were taken from MINOR in 1980 and that those swabs had been lost or destroyed. Barron could only say, “I didn’t throw it away,” when asked about the missing swabs. R. 407, l. 20 – 408, l. 13.

Discussion

South Carolina law precludes the admission of evidence of a defendant’s prior crimes or “other bad acts” to establish guilt of the crime charged, except for the limited purposes allowed under State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), and Rule 404(b), SCRE. Rule 404(b), SCRE, provides the only purposes for which *prior* crimes, wrongs, or acts may be offered is to show: (1) motive, (2) identity, (3) existence of a common scheme or plan, (4) the absence of mistake or accident, or (5) intent.

Prior to trial, and in the state’s memorandum, the solicitor argued that the facts of the 1983 ABHAN crime were admissible to show a common scheme or plan in the 1980 murder-rape case. As stated, at trial, the solicitor also argued the 1983 case was admissible as to the “intent” exception.

The judge here erroneously ruled the 1983 crime involving the twenty-one-year-old female Marine was admissible under Rule 404(b), SCRE and under Rule 403, SCRE. Specifically, the judge ruled with the solicitor and against defense counsel that the probative

value of the evidence of the 1983 ABHAN crime was not outweighed by its danger of unfair prejudice to the defendant. See State v. King, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999).

The state also couched its motion and argument to admit evidence of the 1983 crime in the “similarities” test of State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009). In State v. Perez, 423 S.C. 491, 501, 816 S.E.2d 550, 556 (2018), Justice Hearn and Chief Justice Beatty concurred, but wrote separately that the court should overturn State v. Wallace because it had so expanded the admissibility of prior sex acts in sexual offense cases “that the exception has swallowed the rule.”

While appellant submits the judge in this case erroneously admitted the evidence of the 1983 crime under Rule 404(b), SCRE, and pursuant to State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009), this case does exhibit how the exception has swallowed the rule.

The victims in the 1980 murder–rape case for which appellant was on trial was a fifteen-year-old girl parked on Lover’s Lane with her twenty-one-year-old boyfriend. The boyfriend was shot several times, once in the head, and killed. The fifteen-year-old girl begged for her life and she let the assailant into the van. She gave him \$50.00. The assailant then removed the young girl from the van, had her perform oral sex on him, and then he raped her on top of his jacket on the ground.

In the 1983 crime, the twenty-one-year-old woman Marine was walking to a country store on Highway 280 to meet her ride to work when she was offered a ride by two different men. She refused the first ride, but she accepted a ride from the man she later identified as appellant. The testimony of the twenty-one-year-old married Marine was that instead of taking her to the country store, appellant drove to a trailer or other structure where he apparently was going to purchase marijuana. He asked the Marine woman if she smoked marijuana and whether

she had ever had sex with a black man. Appellant left the Marine alone in the car while he went inside the structure seemingly to purchase marijuana. He returned to the car, began leaning on the Marine, had oral sex and raped her, apparently with both sex acts happening inside of the car. Appellant then dropped the Marine woman off somewhere in the vicinity of the country store on Highway 280.

The proffer and arguments in on this issue where extensive. Appellant understands the solicitor argued that the perpetrator in the 1980 and in the 1983 crime apologized for his actions, allegedly asked the victim if she “enjoyed it” and offered money. However, even these seeming similarities had dissimilarities.

In the 1980 crime for which appellant was on trial, the fifteen-year-old girl *gave* appellant \$50 seemingly in the hopes that appellant would not shoot her. In the 1983 crime, it was alleged that appellant *offered* the Marine woman \$50 which she refused, stating she was not a prostitute.

In the 1980 crime allegedly the perpetrator apologized *for murdering the boyfriend*, stating that was the only way he could have had sex with the fifteen-year-old girl. In the 1983 crime, appellant was said to have apologized *for forcing himself* on the Marine, and *he offered her* \$50 as if she was a prostitute, which she was not.

Finally, the victim in the 1980 crime, the fifteen-year-old girl, maintained a man, who she thought had the same voice as the perpetrator, telephoned her months later and included in that telephone call a question whether “enjoyed it.” In the 1983 crime, the perpetrator asked the Marine immediately after the forced sex whether she “enjoyed it.”

In showing a common scheme or plan, the evidence of the other crime does not apply where the plan common to the other crime is not an essential ingredient of the crime charged. “In this connection there must be “the establishment of such a visible connection between the

extraneous crimes and the crime charged as will make evidence of one logically tend to prove the other as charge.” State v. Lyle, 118 S.E. at 811.

It is worth noting that the 1983 crime admitted pursuant to Rule 404(b), SCRE, in this case was not a prior bad act but a subsequent crime. Regardless, there was no viable connection between the extraneous 1983 ABHAN crime to which appellant pled, and the 1980 murder-rape for which appellant was on trial since evidence of one crime did not logically tend to prove the crime charged under State v. Lyle or Rule 404 (b), SCRE.

Appellant fully understands that the state intended to prove more of the 1983 crime than appellant admitted to by pleading guilty to ABHAN. Appellant admitted to “indecent liberties” with the 21-year-old marine, while she testified that he raped her after seemingly giving her a ride to the country store.

Again, appellant understands the state’s reliance on the similarities test of State v. Wallace, which was rapidly falling into disfavor at the time of this briefing. A common scheme or plan is classically and correctly applied in cases such as State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996), where the robbers are smoking crack cocaine, robbed to get more money for crack cocaine, and robbed again to continue their crack addiction. Similarly, in State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986), theft of the getaway car and other crimes was admissible because the car theft was an integral part of the common scheme or plan.

“If the court does not clearly perceive the connection between extraneous criminal transaction and the crime charged, that is, its logical relevancy, the accused should be given the benefit of the doubt, and the evidence should be rejected.” State v. Carter, 323 S.C. 465, 469, 476 S.E.2d 916, 919 (Ct. App. 1996).

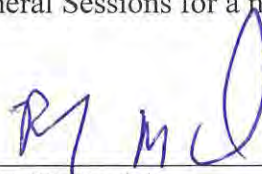
Further, as to “identity,” under Rule 404(b), SCRE, and State v. Lyle, appellant submits the crime to meet the exception should be a signature crime just as it was in Lyle. The 1983 rape of the twenty-one-year-old female Marine who was “catching a ride” when she was raped was hardly the signature crime to make it admissible in the 1980 murder of the twenty-one-year-old boyfriend and the rape of his fifteen-year-old girlfriend while they parked on Lover’s Lane trial. This did not prove a common scheme or plan or identity under Rule 404(b), SCRE or under the applicable case law above. As defense counsel correctly argued, the 1983 evidence would be interpreted by the jury as propensity evidence that appellant was a rapist, and therefore probably guilty of this crime. That was impermissible.

For these same reasons, the judge erred in finding that the probative value of the 1983 rape of the twenty-one-year-old female Marine was not substantially outweighed by its undue prejudice to appellant. As defense counsel correctly argued, the prejudice to appellant was “irreparable” in this case.

Appellant understands the state’s defensiveness on having lost a volume of the evidence from this 1980 murder–rape case over the years. However, the state was not entitled to impermissibly bolster that weakness in its case by having evidence of the 1983 ABHAN crime admitted during this murder–rape case. The error was very prejudicial, it irreparably harmed appellant, and it was not harmless. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed, and this case remanded to the Beaufort County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

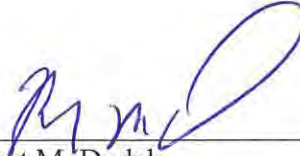
ATTORNEY FOR APPELLANT

This 24th day of February, 2020.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

February 24, 2020.



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

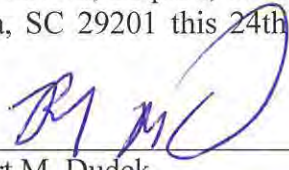
V.

ISAIAH GADSON, JR.

APPELLANT

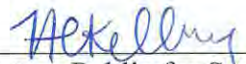
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 24th day of February, 2020.



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of February, 2020.



(L.S)
Notary Public for South Carolina
My Commission Expires: July 26, 2028

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Beaufort County
The Honorable Brooks P. Goldsmith, Circuit Court Judge
Appellate Case No. 2018-001041

THE STATE,

Respondent,

vs.

ISAIAH GADSON, JR.,

Appellant.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUE ON APPEAL

Whether the court erred in admitting evidence of a 1983 sexual ABHAN as a subsequent bad act where the crime involved an alleged sexual assault on a twenty-one year old woman Marine, who was "catching a ride" to work, since it was not admissible to prove a common scheme or plan or to prove identity in a 1980 rape of a fifteen year old girl immediately after the murder of her boyfriend on "lover's lane" case, since this evidence was not admissible under Rule 404(b), SCRE, and its probative value was substantially outweighed by its undue prejudice?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE ON APPEAL

Did the trial court abuse its discretion in admitting the evidence of Appellant's 1983 rape of Lori L., a crime for which Appellant accepted a negotiated plea for ABHAN, as more probative than prejudicial evidence that tended to show common scheme or plan and identity of Appellant under 404(b), when both crimes involved: (1) young, Caucasian, tall, slender women, (2) in secluded dirt road areas of Burton, South Carolina, (3) during the cover of dark, (4) who did not know Appellant, (5) were committed with the use or threat of a gun, (6) involved the Appellant first performing oral sex on his victims prior to (6) vaginal rape, (7) where both crimes involved Appellant ejaculating during vaginal rape, (8) both crimes saw the Appellant apologize to the victim for his actions, and (9) both crimes saw the Appellant ask the victim if she enjoyed it?

STATEMENT OF THE CASE

Appellant was indicted for criminal sexual conduct (2016-GS-07-1548), murder (2016-GS-07-1549), kidnapping (2016-GS-07-1550), and armed robbery (2016-GS-07-1551). (R. p. 3). Appellant proceeded to trial on these charges on May 21-24, 2018, before the Honorable Brooks P. Goldsmith, and a jury. (R. p. 1). Assistant Solicitors Hunter Swanson and Kimberly Smith represented the State. Assistant Public Defenders Trasi Campbell and Benjamin Tripp represented Appellant at trial. (R. p. 2). On May 24, 2018, the jury found Appellant guilty of all charges. (R. p. 484, lines 1-16). Appellant was sentenced to 50 years imprisonment for murder, and 30 years imprisonment for each of Appellant's CSC, kidnapping, and armed robbery charges, all of which were order to be served concurrently. (R. p. 485-486).

This appeal follows.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." *State v. Cartwright*, 425 S.C. 81, 89, 819 S.E.2d 756, 760 (2018) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006)). "The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence." *State v. Wood*, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct.App.2004). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166-67 (2007)(citing *Clark v. Cantrell*, 339 S.C.

369, 389, 529 S.E.2d 528, 539 (2000)). An appellate court “reviews 403 rulings pursuant to the abuse of discretion standard, and gives great deference to the trial judge's decision.” *State v. Myers*, 359 S.C. 40, 48, 596 S.E.2d 488, 492 (2004). “Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” SCRE 404(b); see *State v. Lyle*, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923) (finding such 404(b) evidence admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent).

STATEMENT OF FACTS

The matter at hand is the 1980 cold case murder of David Krulewicz (hereinafter “David”) and subsequent rape of his girlfriend, MINOR (hereinafter “Victim”). The facts and evidence presented at trial are as follows:

The 1980 murder and rape

Victim testified that on January 5, 1980, she and her boyfriend David had recently left a party and were “parking” together in his gray van in an area known as “Lover’s Lane”, located in Burton, South Carolina. (R. p. 135; p. 144, line 16 through p. 150, line 19; p. 186, lines 2-6). It’s a heavily wooded area where kids could park. (R. p. 151, lines 1-5). At around 11:45pm, without warning or confrontation, Victim heard gunshots, and felt the glass of the passenger window shatter onto her. (R. p. 152, line 14 through p. 154, line 11). The coroner’s testimony demonstrated that those gunshots, measured to be .32 caliber rounds, struck David in the head neck, and arm, ultimately causing his death. (R. p. 210, line 20 through p. 211, line 1; p. 208-209). Victim testified that Appellant robbed her of the fifty dollars she had for shopping money

and then demanded that she perform oral sex on him outside the van. She testified that Appellant held the gun to her head as she complied with his demands and she begged him not to kill her. (R. p. 154, line 14 through p. 156, line 15). Appellant next performed oral sex on Victim. (R. p. 156, line 16 through p. 157, line 2). He then proceeded to vaginally rape Victim and concluded by ejaculating inside of Victim's vagina. Appellant then got up and pulled his pants back up; seeing Appellant was getting dressed, Victim did the same. (R. p. 157, lines 3-5). Victim testified that it was pitch black dark outside that night and that she did not get a good look at Appellant's features during the crime. However, her best opportunity to view Appellant came when Appellant used a lighter in front of his face to light his cigarette. (R. p. 152, line 18-20; p. 157, line 25 through p. 158, line 10). Victim testified that she was scared for her life and certain that Appellant would kill her too if she did not speak nicely to him and put him at ease that she would not report his actions to law enforcement. Her efforts to appease Appellant included smoking a Kools cigarette with him afterwards. (R. p. 157, line 10 through p. 157, line 25; p. 162, lines 11-18). After the rape concluded, Appellant apologized to Victim for killing her friend David, explaining that he had to in order to get to her. (R. p. 159, lines 5-10). She testified that Appellant then instructed her to get inside the van and throw him the keys; he instructed her to stay in the van until he left. (R. p. 159, lines 2-4).

Victim tried to check David for a pulse after Appellant left, but could not tell at the time. She then exited the van and checked to make sure Appellant was gone. (R. p. 159, lines 11-23). After confirming that Appellant had left she went to the driver's side door to try and get David out of the seat so that she could drive to safety and report the crime. She was not strong enough to move David from the seat, so she proceeded to run back toward her home which was less than a mile from where the van was parked. (R. p. 159, line 23 through p. 160, line 5). Still afraid that

Appellant might be in the area, Victim had to jump into the roadside ditch when she saw headlights approaching. (R. p. 160, lines 5-11). Once arriving home, Victim ran inside and broke down screaming and crying as to what had happened. (R. p. 160, lines 12-17).

Victim's father grabbed his shotgun and immediately headed to the scene of the crime. (R. p. 161, lines 6-11; p. 129, line 5 through p. 130, line 3). Victim testified that she believes her mother called the police. (R. p. 161, lines 11-13). Though scared, Victim and her mother soon came to the scene. She provided a brief description of Appellant, noting him to be a black male, in his early 20s with a short afro; law enforcement then instructed her to go to the hospital. (R. p. 161, line 13 through p. 162, line 10). Her later statements to police provided additional information that she believed the assailant to be shorter than her, possibly 5'5"-5'7", and 150 pounds. Victim testified that she did her best to judge the height of Appellant during the crime, but her positioning in the car and on the ground made it difficult to do so. (R. p. 199, line 8 through p. 200, line 1).

A sexual assault examination was performed on Victim and all of her clothes were taken as evidence. (R. p. 163, line 19 through p. 164, line 6; p. 220, lines 12-18). Dr. Fontana, who performed the examination, testified he found "abrasions over the posterior portion of the vagina" that would be consistent with forced intercourse. He was also able to take specimens from both the vagina and the opening of the cervix and found "non-motile" sperm in both locations. (R. p. 222, line 3 through p. 223, line 7). In the investigation efforts that followed, a composite drawing was produced. (R. p. 113; p. 168). Victim was also shown numerous photo lineups, and one in-person lineup. (R. p. 167, lines 9-22). Victim never selected any individual as an identification of the individual who raped her. However, she did bring to the officer's attention when someone in the lineup had characteristics similar to her assailant. She did this in

an effort to further assist her descriptions of Appellant. (R. p. 167, line 23 through p. 168, line 14). Detective Gerry Wagner testified that the rape kit and various other forensic efforts were taken, but DNA testing was not available at that time. (R. p. 117-118).

In May of 1980, five months after the crime, Victim received a phone call from a man who did not identify himself. During the course of the phone call the individual asked if she was the girl who had been raped. When Victim responded that she was, the man asked if she enjoyed it. Victim then promptly hung up the phone. (R. p. 165, line 17 through p. 166, line 15). Victim testified that she did not immediately recognize his voice and noted that there was noise in the background of his phone call, but she believes that it was the rapist who had called her. (R. p. 166, line 13 through p. 167, line 1). While unsubstantiated rumors in the town were frequent, law enforcement was not able to develop any strong leads in her case and the crime went unsolved for the next 36 years. (R. pp. 135; 198; 330; 351; 378-379).

Reinvestigation 1999

Victim learned from Detective Bob Bromage in 1999 that her case would be reopened as part of the newly created cold case task force instigated by the Beaufort County Sheriff. (R. p. 170, lines 15-24). Detective Bromage testified that this particular case indicated that semen had been found during the initial SLED analysis so he submitted the clothing materials from Victim's case and sent them to SLED for testing in 1999. (R. p. 317, lines 5-18). Patti Ruff, processed the evidence pursuant to a bodily fluids inspection, specifically a presumptive test for semen. She then performed cuttings of the clothing to provide for DNA testing. (R. p. 238-242). At that time, DNA testing was available, but still limited to the "Restriction Fragment Length Polymorphism" (RFLP) process. (R. p. 253-254). SLED Forensic DNA analyst, David McClure, testified that they performed testing on the clothing that provided a presumptive positive result

for sperm. (R. p. 254). However, the RFLP method of testing required more DNA material than was present and a DNA profile could not be established at that time. (R. p. 251, line 14 through p. 254, line 11).

2002 DNA Testing

SLED analyst McClure testified that DNA technology advanced considerably between 1999 and 2002. Particularly, the testing was able to move beyond using only RFLP and could use “short tandem repeats” (STRs). This method could successfully discover a DNA profile with small fragments of DNA. STRs are more resistant to DNA deterioration which allows for more effective testing. (R. p. 255, lines 3-14). Victim’s clothing was sent for retesting in 2002, new cuttings were taken, and new DNA testing was performed. SLED analyst McClure testified that in 2002 he was able to successfully develop a DNA profile from the sperm on Victim’s clothing using the STR method. (R. p. 254, line 12 through p. 255, line 22). He then requested a DNA standard from Victim and David in order to eliminate them from the discovered profile. (R. p. 257, lines 3-10).

Although a DNA profile had been successfully discovered from the sperm on Victim’s clothing, the DNA database did not have an existing match for the profile in 2002. As a result, the DNA testing did not identify a new suspect for the crime until thirteen years later. (R. p. 330, lines 10-25).

2016 Identification of Appellant

On August 3, 2016, thirteen years after the DNA profile was established from the semen on Victim’s clothing, Detective Bromage received a call from SLED informing him that they had a hit in the DNA database that matched Appellant Isaiah Gadson to the crime. (R. p. 330, lines 10-25). To confirm the results, Officer Selena Nelson took buccal swabs of Appellant (R. p.

271) and SLED DNA technical leader, Laura Nash, established a DNA profile from those swabs. (R. p. 276). Agent Nash was then asked to compare Appellant's DNA profile from the profile developed by David McClure in 2002 from Victim's clothing. Agent Nash testified that the two profiles matched, and then provided the statistical match odds for the tests. (R. p. 276, lines 1-15). She testified that for the test on the cutting from Victim's panties, it was a match to Appellant's profile of 1 in 2.1 trillion, meaning the odds of being a match to the DNA profile would be 1 person out of 2.1 trillion people. (R. p. 276, line 16 through p. 277, line 17). For the test on the cutting from Victim's pants, the statistical match was 1 in 3.7 quadrillion. (R. p. 277, lines 18-25).

Detective Bromage explained the process involved with reopening Victim's case in 1999. He testified that upon reviewing the case he noted that semen had been found by SLED in their 1980 analysis, but that DNA had not existed at the time. With that circumstance in mind Detective Bromage resubmitted the clothing for retesting. (R. p. 316, line 17 through p. 317, line 18; p. 318, line 24 through p. 320, line 8). Detective Bromage was questioned about the fact that some of the collected evidence, including the semen samples from Victim's rape kit, were now missing. Detective Bromage testified that he looked into that issue when reopening the case. He learned by email from SLED that in the process of transitioning the file to microfilm some of the evidence had been destroyed. Detective Bromage testified that email also noted the substantial changes to procedures for handling and retention of evidence changed drastically between the 80's and 90's.¹ (R. p. 320, line 15 through p. 322, line 5). SLED DNA analyst John Barron

¹ This issue was taken up by defense counsel's motion and the court found that there was nothing to demonstrate any bad faith or that exculpatory evidence had been destroyed. (R. p. 19; 421-422)

supported this testimony. (R. p. 386, line 25 through p. 388, line 16; p. 395, line 6 through p. 397, line 10; p. 407, line 20 through p. 408, line 7).

The State also offered the testimony of Clifford Brown, Appellant's cousin. (R. p. 284, lines 11-12). Mr. Brown testified that in the 1980's Appellant's family lived on Glaze Drive, in Burton, South Carolina, and Appellant lived right across the street from them. (R. p. 285, line 18 through p. 286, line 3). Detective Bromage's investigation of Appellant after being informed of the DNA match revealed that Appellant in fact lived on Glaze Drive, approximately two miles from where the 1980 murder and rape occurred. (R. p. 334). Mr. Brown added that their family during that time were the owners of the area known as Lover's Lane. (R. p. 288, line 13-23). When questioned on whether he ever accompanied Appellant to that area, Mr. Brown denied ever taking Appellant there in the past. (R. p. 292, lines 4-14). Detective Bromage was called as a rebuttal witness and testified that he interviewed Clifford Brown on August 15, 2016, wherein Mr. Brown informed him that he and Appellant had driven out to the Lover's Lane location one night in the 70s. (R. p. 293, line 16 through p. 294, line 4). During that trip Mr. Brown told Detective Bromage that he had informed Appellant that the area was a frequented spot for couples who wanted to park together. (R. p. 294, lines 4-15).

Mr. Brown further testified that Appellant worked at the Brown's Mobile Home located on Highway 21. (R. p. 286, lines 4-11). He confirmed that Appellant owned a couple of firearms, but not being able to tell the difference, he could only speculate as to whether Appellant had owned a 357, a .38, or a .32 caliber firearm. (R. p. 286, line 25 through p. 287, line 13).

ISSUE AS IT WAS PRESENTED AT TRIAL

This matter was taken up during the pretrial motion of the State to introduce Lori L.'s testimony pursuant to the *Lyle* factors, but specifically as evidence tending to prove common scheme or plan and identity of Appellant under Rule 404(b). (R. p. 9; p. 21-22; p. 67; p. 69-70). Defense counsel contested the motion. In support of the motion the State presented both memorandum in support which relied upon *State v. Wallace*, oral arguments, as well as a full proffer of her expected testimony. (R. p. 19-41).

1983 Rape of Lori L.

Lori's testimony during the proffer was substantively equivalent to the testimony offered at trial in the presence of the jury. (R. p. 296-312). She testified as follows:

Lori testified that in 1983 she was living on Green Pond Park off of Boundary Street in Beaufort, South Carolina. (R. p. 23, lines 19-25). Boundary Street is also a part of Highway 21. (R. p. 38, lines 20-23). She testified that she was 21 years old at the time, and was a Marine stationed at nearby Parris Island. (R. p. 24, lines 16-21; p. 32, lines 7-9). She explained that in the mornings before work she would walk to the corner store on Highway 21 to meet her ride to work. (R. p. 24, line 22 through p. 25, line 10). She testified that she needed to be at the corner store between 5:30am and 5:45am to meet her ride. (R. p. 30, lines 20-22). On the morning of February 24, 1983, she had woken up late and was concerned that she might miss her ride. (R. p. 24, line 24 through p. 25, line 1). She was walking down Boundary Street (Highway 21) when a car stopped and asked if she wanted a ride. She turned this driver down. (R. p. 25, line 2-5). Soon after, Appellant stopped and asked if she wanted a ride. She chose to accept this ride, concerned that she would miss her ride if she did not. (R. p. 25, lines 5-8).

She got into the car with Appellant and told him where she was going. Appellant agreed to take her to the corner store, but as they drew near to the store he deviated from the route to the

store and turned onto Secondary 73 claiming he needed to buy some marijuana from a friend. (R. p 25, lines 8-16). Lori protested insisting she would miss her ride, but Appellant continued to drive on into nearby Burton, South Carolina. (R. p. 25, lines 13-18; p. 311-312). Appellant questioned Lori if she had ever had sex with a black man. She responded that she had not and informed Appellant that she was married and had only had sex with her husband. (R. p. 25, lines 18-24). Lori explained that it was dark out, and that Appellant drove down the secondary road for about a mile and then turned onto a "wired dirt road" until they reached a field with some sort of nearby structure. Lori testified that Appellant went inside, presuming he was buying marijuana. When he returned he locked the doors to the car and started to force himself on her. (R. p. 25, line 25 through p. 26, line 10).

She began to struggle. In response, Appellant threatened that if she did not stop he would blow her brains out. Lori testified that she believed him and stopped fighting back. (R. p. 26, lines 11-13). Lori testified that during that exchange he started to reach underneath his front driver's seat of the car; she believed the threat and concluded that there was probably a weapon there. (R. p. 26, lines 11-17). Appellant removed his pants and told Lori to take her pants off or die. (R. p. 26, lines 18-21). Appellant then began to perform oral sex on Lori and did so for a couple of minutes. When finished he asked her if she enjoyed it. He then got on top of Lori and vaginally raped her until he ejaculated inside her. (R. p. 26, line 24 through p. 27, line 2).

Lori testified that at that point she was too terrified to move and had to ask if she could get dressed. Appellant told her she could. Lori testified that Appellant then apologized to her, claiming he did not know why he did that and offered to pay her \$50. She turned the money down noting she was not a prostitute. Appellant then asked if he was going to call the police or tell her husband. Out of fear for her life, Lori told him she would not tell anyone. He then began

to drive back to the secondary 73 toward where she had wanted to go. (R. p. 27, lines 3-13). Lori noted that by this point it was starting to get light outside and she started to pay as much attention to the car as she could. Appellant dropped her off at a welding shop in the area near the corner store. As he drove away, she made sure to view and memorize his license plate. She then ran the rest of the way to the corner store and called the police. (R. p. 27, lines 14-24).

Lori provided the license plate to the police and a description of the Appellant as: "black male in his mid 20s, maybe 25, 26. He was about 150 pounds, kind of short afro, long sideburns, moustache, he had scraggily facial hair. He was probably 5'9", 5'10". . ." (R. p. 28, lines 3-8). She went to the hospital where a rape kit was performed and the police brought her a photo line-up to consider. She identified Appellant from the line-up and he was later arrested. (R. p. 28, line 20 through p. 29, line 13). Lori testified that they were prepared for trial and were in the process of jury selection when Appellant chose to enter a guilty plea. (R. p. 29, line 14-18). Appellant pled *Nolle Contendre* to Assault and Battery of a High and Aggravated Nature. (R. p. 20).

Additional testimony indicated that Appellant admitted to picking her up, but claimed that he had simply come on to her and suggested they have sex. However, he denied having sexual intercourse with her. (R. p. 40-41; p. 345-347). He also admitted to owning a .32 caliber pistol. While it was a similar make and model firearm, Appellant's pistol from 1983 did not match the ballistics for the 1980 murder. (R. p. 39, line 22 through p. 41, line 23).

In support of the 404(b) motion the Solicitor argued that the various facts from the 1983 rape were of such strong similarity to the rape and murder committed in 1980, that under *State v. Wallace*, they constituted evidence tending to show a common plan or scheme as well as evidence of identity and therefore were properly admissible. Specifically, the Solicitor noted that that the physical characteristics of both victims were strikingly similar. Both were young, tall,

slender, white women. (R. p. 21, lines 10-13). Second, the Solicitor demonstrated that in both crimes the victim was a stranger to Appellant, and that they were either isolated or he made sure to make them isolated prior to the rape. (R. p. 21, lines 13-17). Next, the Solicitor established that both crimes were committed during dark hours on dirt roads in the Burton, South Carolina area. (R. p. 21, lines 17-20). The Solicitor argued that in both crimes Appellant used the threat of a firearm to gain his victim's compliance to the rape. (R. p. 21, line 21 through p. 22, line 3). The solicitor continued his arguments for the motion by pointing out two very unusual similarities. First, that Appellant apologized to the victim for his actions (R. p. 22, lines 5-7) and that he ultimately asks both victims whether they enjoyed it. (R. p. 22, lines 7-14). Lastly, the Solicitor identified that in both rapes Appellant began by performing oral sex on each victim and then proceeded to vaginally rape each victim. (R. p. 22, line 16-18). The facts demonstrate that Appellant ejaculated during the vaginal rape of both victims. Additionally, the Solicitor argued that the evidence was more probative than prejudicial. (R. p. 67; p. 70).

Defense counsel argued against the motion, asserting that the differences in the crimes and contrasting the facts of this case from normal 404(b) scenarios such as child molestation cases where the defendant goes to the same place and commits the same crime in the same way. (R. p. 761, line 3 through p. 73, line 3). Defense counsel *attempts* to argue that the Lori L. ABHAN did not involve any aspect of violence, and that Lori's agreement to ride with Appellant was voluntary. (R. p. 72, lines 4-9; p. 73, line 3-7). Defense counsel argued that admitting the testimony in question would be far more prejudicial than probative. (R. p. 76, lines 7-14).

Following the arguments of counsel, Judge Goldsmith ruled that he would grant the State's motion to introduce the evidence. The trial court made specific findings regarding the similarities presented, agreeing that the young age and race of the female victims was in favor of

the State. The trial court likewise found that the secluded dirt roads in the Burton area, the coercion by threat of firearm, the oral sex followed by vaginal penetration, the apologies made after both crimes, and that both victims were asked if they enjoyed the assault all weighed in favor of the State. The court noted that while both victims were strangers to the Appellant, he did not find that fact as favorable support to the State. In conclusion, Judge Goldsmith stated that “All of those, balancing the similarities with the dissimilarities, I find that the similarities far outweigh the dissimilarities. And I realize that it’s prejudicial, but I find that the probative value does in fact outweigh its prejudicial effects.” (R. p. 81, lines 17-22).

ARGUMENT

I. The trial court did not abuse its discretion in granting the State’s 404(b) motion to introduce evidence of Appellant’s prior ABHAN of Lori L.

The trial court did not abuse its discretion in admitting the evidence of Appellant’s rape/ABHAN of Lori L. on the basis of common scheme or plan and identity, as argued by the State. The evidence presented to the court was vastly sufficient to rule the evidence admissible under *Lyle* and *Wallace*, and in the absence of abuse of discretion there can be no basis for error.

Generally, evidence of a person’s character is not admissible for the purpose of proving action in conformity with said character. However, evidence of other crimes, wrongs, or acts can be admissible for the purpose of establishing motive, identity, the existence of common scheme or plan, the absence of mistake or accident, or intent. SCRE 404(b). Such evidence must then be found to be more probative than prejudicial under Rule 403. *State v. Carter*, 323 S.C. 465, 467, 476 S.E.2d 916, 918 (Ct. App. 1996). *State v. Lyle* serves as the seminal case for the discussion and application of these exceptions to the inadmissibility of prior bad acts evidence. *State v. Lyle*, 125 S.C. 406, 118 S.E. 803, 807 (1923). *State v. Wallace* has since provided an outline of how

evidence of prior bad acts specific to sexual assault should be considered and weighed by the court in conducting a Rule 404(b) analysis. Therein, the South Carolina Supreme Court held that:

When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity. *State v. Parker*, 315 S.C. 230, 433 S.E.2d 831 (1993). When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b).

Although not a complete list, in this type of case, the trial court should consider the following factors when determining whether there is a close degree of similarity between the bad act and the crime charged: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery.

State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277–78 (2009.) “To be admissible against a defendant in a criminal proceeding as evidence of identity, ‘the bad act must logically relate to the crime with which the defendant has been charged.’” *State v. Cope*, 385 S.C. 274, 284, 684 S.E.2d 177, 182 (Ct. App. 2009), *aff’d*, 405 S.C. 317, 748 S.E.2d 194 (2013) (quoting *State v. Pagan*, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006)). “In contrast, to admit evidence about other bad acts against an accused to show the existence of a common scheme or plan, ‘[a] close degree of similarity establishes the required connection between the two acts and no further ‘connection’ must be shown for admissibility.’” *Id.* (quoting *State v. Wallace*, 384 S.C. 428, 683 S.E.2d 275 (S.C. 2009)).

The trial court carried out this evaluation with exceptional thoroughness. (R. p. 80). The court’s notations of the numerous and striking similarities likewise rendered the evidence more probative than prejudicial, such that the evidence should be admissible under Rule 403. (R. p. 80).

The record demonstrates that the similarities in the method and behaviors of Appellant far exceed the concern for “general similarity” but are instead “a close degree of similarity or a connection between the prior bad acts and the crime.” *State v. Carter*, 323 S.C. 465, 467, 476 S.E.2d 916, 918 (Ct. App. 1996) (citing *State v. Raffaldt*, 318 S.C. 110, 113, 456 S.E.2d 390, 392 (1995)). Here the similarities are striking, such that there are at least ten commonalities between the crimes; some of which are of such a unique and “bizarre” nature that the evidence is not merely a demonstration of propensity, but that of method and identity. As the court in *Carter* noted, the evidence of a prior scheme or plan cannot be used to demonstrate that since a defendant was committing a crime on one given day, he must also have been committing the same type of crime another day. *State v. Carter*, 323 S.C. 465, 468, 476 S.E.2d 916, 918 (Ct. App. 1996).

This case is different. The testimony offered does not simply suggest to the jury that since Appellant was the rapist in 1983, he must therefore have been the rapist in 1980 – it informed the jury precisely how Appellant went about carrying out his rapes, his behavior immediately following the rapes, and his apparent desire for praise or enjoyment from his victim. The jury can know for certain that Appellant displayed those unique approaches and behaviors in the 1983 sexual assault and their distinct presence in the 1980 sexual assault lends itself to evidence of identity.

Appellant attempts to draw disfavor upon the *Wallace* decision by citing the concurring opinion in *State v. Perez*. *Wallace* is the authority for the evaluation of common plan or scheme evidence and the weighing of similarity under Rule 404(b). However, it should be noted that the concurring opinion merely references concern for the desire to establish a common scheme or plan in isolation of any other purpose for the evidence. *State v. Perez*, 423 S.C. 491, 502-03, 816

S.E.2d 550, 556-57 (2018), reh'g denied (Aug. 2, 2018). Even *Lyle* makes known that the evidence demonstrating common scheme or plan can often, as it does in the case at hand, carry over into proof of identity. The substantial degree of similarity, the uniqueness of the behaviors in question, and their utility in establishing identity elevate the case at hand above any concerns expressed in the *Perez* concurrence.

The 404(b) analysis and ruling of admissibility of the 1983 rape/ABHAN of Lori L. was well within the discretion of the trial court. Pursuant to *Wallace*, the trial court properly evaluated the similarities and dissimilarities of the crimes and found them to be substantially in favor of the State. The trial court likewise conducted a Rule 403 balancing of the probative value and prejudice, and concluded that while such evidence was prejudicial to defendant it was more so probative for the state in demonstrating common scheme and identity of Appellant and therefore admissible at trial. In the absence of any legal error, and with the record fully supporting the accuracy of the court's factual analysis, there can be no abuse of discretion in this matter.

To the extent that any error might exist in the court's exercise of discretion in weighing the evidence and testimony presented, or in the balance of interests of the parties therein, such error would be harmless. It is without question that the headlining evidence of this thirty-six year old case is the conclusive DNA match linking Appellant to the sperm found in Victim's panties and pants to the multi-trillionth or greater probability. This is especially so given the chain of custody of evidence and the fact that despite a DNA profile being discovered in 2002, it took an additional 13 years before Appellant's DNA entered the FBI database so as to provide a

match.² The degree of accuracy provided the jury an incontrovertible basis for concluding that Appellant was responsible for the rape of Victim and therefore also the perpetrator of preceding crimes of murder, kidnapping, and armed robbery.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

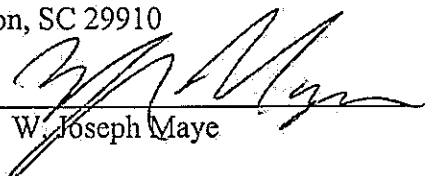
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February 24, 2020

² Even in 1980 the forensics performed on the pants and panties revealed the presence of semen at the outset of the investigation. Technology 1980 simply did not exist sufficient to draw a basis for identity from that semen. (R. p. 393, line 10 through p. 394, line 4).

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Brooks P. Goldsmith, Circuit Court Judge
Appellate Case No. 2018-001041

THE STATE,

Respondent,

vs.

ISAIAH GADSON, JR.,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 24th day of February, 2020.



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Assistant Attorney General

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
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Appeal from Beaufort County
The Honorable Brooks P. Goldsmith, Circuit Court Judge
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Appellant.

CERTIFICATE OF SERVICE

I, **W. Joseph Maye**, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Dudek, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. 401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 24th day of February, 2020.



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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Isaiah Gadson, Jr., Appellant.

Appellate Case No. 2018-001041

Appeal From Beaufort County
Brooks P. Goldsmith, Circuit Court Judge

Opinion No. 5979
Heard November 10, 2021 – Filed April 19, 2023

AFFIRMED

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Attorney General W. Jeffrey Young, Deputy Attorney
General Donald J. Zelenka, Senior Assistant Deputy
Attorney General Melody Jane Brown, Assistant
Attorney General Mark Reynolds Farthing, and Assistant
Attorney General William Joseph Maye, all of Columbia,
and Solicitor Isaac McDuffie Stone, III, of Bluffton, all
for Respondent.

MCDONALD, J.: Isaiah Gadson, Jr. appeals his 2018 convictions for murder, first degree criminal sexual conduct (CSC), kidnapping, and armed robbery arising

from a 1980 incident, arguing the circuit court erred in admitting evidence of his 1983 rape of a different victim (Victim 2). We affirm the convictions.

Gadson's 2018 convictions arose from a cold case investigation of the 1980 rape of Victim and the murder of her boyfriend. In 1999, the Beaufort County Sheriff's Office (BCSO) reopened the investigation as part of a newly created cold case task force. Captain Bob Bromage conducted the investigation; he reviewed the evidence, re-interviewed witnesses, and returned items to the South Carolina Law Enforcement Division (SLED) for retesting. SLED was unable to establish a DNA profile in 1999 due to the limited DNA technology available at the time.

In 2002, Captain Bromage sent the evidence back to SLED for additional testing. Due to improvements in technology, a SLED examiner was able to develop a DNA profile from semen found on Victim's underwear. As a result of the DNA profile, Captain Bromage eliminated a person of interest who was not a match. It was further determined that Victim's deceased boyfriend was not a match.

In 2016, SLED notified Captain Bromage that it had received notification of a match to the DNA profile in Victim's case from CODIS, the national DNA indexing system. The BCSO then returned the evidence to SLED for testing along with buccal swabs taken from Gadson. DNA technical leader Laura Hash examined Gadson's buccal swabs and compared them to the DNA profile from the semen previously found on Victim's underwear and pants. Gadson was a match to the DNA profile of the semen.

Prior to Gadson's 2018 trial, the State filed a motion under Rule 404(b), SCRE, seeking to introduce evidence of a 1983 sexual assault Gadson committed against Victim 2. The State argued Gadson's conduct in the 1983 attack satisfied Rule 404(b)'s exception permitting introduction of "other crimes, wrongs, or acts" when such evidence is offered to "show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent."¹ During pretrial proceedings, the circuit court heard arguments on the State's 404(b) motion, and the State proffered testimony from both Victim 2 and Captain Bromage. The circuit court found evidence of the 1983 assault was admissible because the similarities of the sexual assaults and Gadson's behavior toward each victim

¹ Gadson was indicted for first degree CSC following the 1983 attack on Victim 2 and pled nolo contendere to assault and battery of a high and aggravated nature (ABHAN). The State sought only to introduce the underlying conduct from the 1983 assault that gave rise to Gadson's plea.

outweighed the dissimilarities and the probative value of the evidence outweighed its prejudicial effect.

At trial, Gadson did not contemporaneously object to Victim 2's testimony about the 1983 assault, and the testimony did not occur immediately following the circuit court's ruling on the pretrial motion. Therefore, we find the question of whether evidence of the 1983 assault of Victim 2 was properly admitted in the current case is not preserved for our review. *See State v. Atieh*, 397 S.C. 641, 646, 725 S.E.2d 730, 733 (Ct. App. 2012) ("A ruling in limine is not final; unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review."); *State v. Smith*, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999) ("A pretrial ruling on the admissibility of evidence is preliminary and is subject to change based on developments at trial."); *id.* (holding the issue of the admissibility of the defendant's prior conviction was not preserved when the circuit court ruled it was admissible during pretrial proceedings and the defendant failed to object to the State's questions about the conviction at trial).

However, if this question were preserved, we would find the circuit court acted within its discretion in admitting evidence of the 1983 sexual assault under Rule 404(b), SCRE because Victim 2's testimony was relevant to establish Gadson's identity as the perpetrator of Victim's attack as well as his modus operandi. *See State v. Clasby*, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009) ("The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion."). Both victims were young, white, tall, and slender females. Both victims were sexually assaulted on dark dirt roads in the same Lowcountry community. In both sexual assaults, Gadson performed oral sex on the victims before vaginally raping them. Victim was raped at gunpoint after her boyfriend was shot, and in perpetrating Victim 2's sexual assault, Gadson twice threatened to "blow her brains out."

Other—more unique—characteristics of the separate sexual assaults support admissibility: (1) Gadson apologized to Victim 2 after he raped her; Victim testified her assailant also apologized to her and (2) after raping Victim 2, Gadson asked her if she enjoyed it; similarly, someone, whom Victim believed to be Gadson, called Victim a few months after her sexual assault and asked her if she was the girl who was raped and whether she enjoyed it. Finally, in his statement to law enforcement in the 1983 case, Gadson told officers he grew up on Glaze Drive in the Burton area of northern Beaufort County; Glaze Drive is less than two miles from the isolated location of Victim's 1980 attack.

We find these facts establish the necessary "logical connection" between the two sexual assaults for admissibility purposes. *See e.g., State v. Perry*, 430 S.C. 24, 41, 842 S.E.2d 654, 663 (2020) (holding that to meet the "logical connection" standard for admission of other crimes under Rule 404(b), "[t]here must be something in the defendant's criminal process that logically connects the 'other crimes' to the crime charged"); *see also State v. Cotton*, 430 S.C. 112, 113, 844 S.E.2d 56, 57 (2020) (reconfirming "the continued viability of the common scheme or plan exception"); *Perry*, 430 S.C. at 72, 842 S.E.2d at 679–80 (2020) (Kittredge, J., dissenting) (noting "the hallmark of the common scheme or plan exception is that the charged and uncharged crimes are connected in the mind of the actor by some common purpose or motive" and recognizing that with the *modus operandi* exception, "identity is interwoven with common scheme or plan").

Additionally, we find the circuit court acted within its discretion in balancing the probative value of the evidence of the 1983 attack with its prejudicial effect for Rule 403 purposes. *See State v. Brooks*, 428 S.C. 618, 635, 837 S.E.2d 236, 245 (Ct. App. 2019) (reiterating that an "appellate court reviews the circuit court's Rule 403 ruling 'pursuant to the abuse of discretion standard'" and a "decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances" (quoting *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014))).

Accordingly, Gadson's convictions are

AFFIRMED.

WILLIAMS, C.J., and LOCKEMY, A.J., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 08, 2023

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: The State v. Isaiah Gadson, Jr.
Lower Court Case No. 2016GS0701548, 2016GS0701549,
2016GS0701550, 2016GS0701551
Appellate Case No. 2018-001041

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Harrison, deputy".

CLERK

Enclosure

cc: Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire

William Joseph Maye, Esquire
Donald J. Zelenka, Esquire
Isaac McDuffie Stone, III, Esquire
W. Jeffrey Young, Esquire
Mark Reynolds Farthing, Esquire
Taylor Davis Gilliam, Esquire

STATE OF SOUTH CAROLINA)

County of Beaufort)Isaiah G. Jr # 235912)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina A.G.O.)

IN THE COURT OF COMMON PLEAS

2023 CP0701369

APPLICATION FOR

POST-CONVICTION RELIEF

2023 JUL 11 AM 11:14
 JERRI ANN ROSEHEAU
 BEAUFORT COUNTY, S.C.
 CLERK COURT

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 Ridgeland Correctional P.O. Box 2039
Ridgeland, S.C. 29936
2. Name and location of Court which imposed sentence Beaufort County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) No
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-0701548
 - (b) 2016-GS-0701551

5. The date upon which sentence was imposed and the terms of the sentence:

(a) May 21-24, 2018

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty YES

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. In the Court of Appeals S.C.

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. April 19, 2023

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Opinion No. 5979

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) see Attachment Memorandum of Law
- (b) Support Post-Conviction Relief
- (c) Application
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) same as (10)
- (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? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? _____
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. NA
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NA
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NA
- 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

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. NO
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NO
- 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) NO

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

NO

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. Traci Campbell, ASS-PD

Benjamin Tripp, ASS-PD

ii. Robert M. Dudek Chief Appellate

Defender.

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial

Trial

ii. Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

Vacate Conviction And Sentence

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Ridgeland)

VERIFICATION

I, Isaiah Gadson JA#285912, 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.

Isaiah Gadson Jr.

SWORN to and subscribed before me this 10th
day of July, 2023.

Virginia Roberson (L.S.)
Notary Public

My Commission Expires: April 21, 2031

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Isaiah Gadson Jr. #235912, 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.

Isaiah Gadson Jr.
Applicant

SWORN or affirmed to and subscribed before me this

10 day of July, 2023.

Virginia Robinson
Notary Public

My Commission Expires: April 21, 2031

State of South Carolina) In The Court of
County of Beaufort) Common Pleas

Isaiah G. Jr #235912) CA/

Applicant

Summons

VS

State of South Carolina

Respondent's

TO: Respondent's:

YOU ARE Hereby Summoned and required to answer the PCR herein, a copy of which is herewith served upon you and to serve a copy of your answer to this Post-Conviction Relief Application upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the PCR Judgment by default will be rendered against you for the relief demanded in the PCR.

S.C.

Dated 7-10 2023

Isaiah G. Jr.

Isaiah G. Jr
235912

P.O. Box 2039

Ridgeland, S.C. 29986

2023 JUL 11 AM 11:15
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA | In The Court of Common
 County of Beaufort | Pleas Judicial Circuit
 Isaiah G. Jr #235912 | C/A _____
 Applicant |

VS

State of South Carolina,
 (Respondent's)

~~AFFIDAVIT OF SERVICE~~

2023 JUL 11 PM 11:15
 JERRI ANN ROSENEAU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

To: Respondent's

I Isaiah G. Jr, #235912 Hereby
 served A true copy of Post-
 conviction Relief Application
 by Placing A true copy in the
 united states mail addressed
 below:

Clerk of Court Beaufort County
 Jerri Ann Roseneau,
 102 Ribaut Rd,
 Beaufort S.C, 29902

Date 7-10 2023
 S.C.

S/ Isaiah G. Jr
 Isaiah G. Jr #235912
 P.O. Box 2039
 Ridgeland, S.C. 29936

State of South Carolina
County of Beaufort
ISAIAH G JR #235912

Applicant

Vs

State of South Carolina
Respondent

In The Court of Common
Pleas Judicial Circuit
C/A

Memorandum of Law
In Support of Post
Conviction Relief
Application

To: Respondent's:

Now comes the applicant's move
before this Honorable Court of
common Pleas pursuant to S.C.
Code of Law Ann § 17-27-10 & 17-
27-45 Post-Conviction Relief
Application.

2023 JUL 11 AM 11:17
JERRI ANN ROSEBAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATE OF THE CASE

Applicant was indicted at the October
2017 term of the Beaufort County Grand
jury for the offense of murder, criminal
sexual conduct in the first degree, kidnapp-
ing, and armed Robbery. The applicant case
went trial before Honorable Judge Brooks
P. Goldsmith. Hunter Swanson and Kimberly

Smith were the assistant solicitors. Traci Campbell and Benjamin Tripp represented appellant.

On May 24, 2018, the jury found appellant guilty on all four counts. Judge Goldsmith sentenced appellant to fifty years' imprisonment for murder, thirty years' imprisonment for criminal sexual conduct in the first degree, thirty years' imprisonment for kidnapping, and thirty years imprisonment for armed robbery.

On November 10, 2021 April 19, 2023 opinion No. 5979 was ~~aff~~ ~~irmed~~ Appellate Case No. 2018-001041 The State of South Carolina v. Appellant ~~Isaiah~~ Gadson, Jr.

Argument 4

Counsel provide ineffective assistance of counsel by failure to investigate the applicants mental health background which the applicant did suffered with a stroke and a lack of memory loss before applicant went to trial.

In the applicant case, before the applicant went to trial, Family member had advised trial counsel that there father had A Stroke and lack of memory loss, and had loss his Eye sight and the applicant does has a mental health background records with Beaufort County mental health. Also there is medical records with the Beaufort County Hospital to support that the applicant did suffered with a stroke.

During the applicant Jury trial counsel had advised his client to do not take the stand because of the applicant was incompetent when he gave a statement to the Police Department of Beaufort County.

Incompetence in fact

Due process prohibits the conviction of a person who is mentally incompetent. *Bishop v United*, 350 U.S. 961 76 S.Ct. 440, 100 L.Ed. 835 (1965). This right cannot be waived by a guilty plea. *xx 596 Pate v Robinson*, 383 U.S. 375 86 S.Ct. 836, 15 L.Ed.2d 815 (1966). The test of competency to enter a guilty plea is the same as required to stand trial. *State v Lambert*, 266 S.C. 594, 225 S.E.2d 340 (1976). The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceeding against him. *Carnes v State*, 275 S.C. 353, 271 S.E.2d 121 (1980). In a PCR action the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was competent at the time of his plea. SCRPC Rule 71.1 (e) formerly Sup. Ct Rule 50 (4) Any evidence of probative value to support the post conviction judge's factual findings is sufficient to uphold those findings on appeal. *Webb v State*, 281 S.C. 237, 314 S.E.2d 839 (1984). We find the lower courts determination that

the petitioner did not meet his burden of proof's support by the evidence. The excerpts from the medical records are of little probative value. The opinion given in the applicant case that family member the applicant daughter did advised counsel that her father had a stroke and memory lost, and there is medical records on file with the Beaufort County Hospital.

Ineffective Assistance of Counsel Claims.

Ineffective Assistance of Counsel where- by the applicant argues his counsel did provide ineffective of assistance of counsel by failing to request a mental examination which may have formed the basis of an insanity defense or a determination that he was not competent to stand trial.

under Strickland v Washington, 466 U.S. 668 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) (Applicable to guilty pleas under Hill v Lockhart, 474 U.S. 52, 106 S. Ct. 3668 88 L. Ed. 2d 203 (1985)), a petitioner must show both deficient performance and prejudice to prevail on an ineffective assistance of counsel claim.

Argument(2)

counsel provide ineffective assistance of counsel by failing to object to the trial Judge admitting testimony about a 1983 Assault Committed by the applicant was prejudice because issue was Not preserved for Appellate review.

The court went on to opine in dicta -- or in an alternative holding -- that if counsel had preserved the issue by properly objecting that this testimony was nonetheless admissible under Rule 404(b) SCRE because the two sexual assault were sufficient similar. see at trial transcript pg 123-L-17-(22).

The applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result," Strickland v Washington, 466 U.S. 1068 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984);

Butler v State 286 S.C. 441, 334 S.E2d 813 (1985).

First, the applicant must prove that Counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117-18, 386 S.E2d at 625 citing Strickland. Second, Counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E2d at 625. However, courts presume that Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, *id.* The Applicant must overcome this presumption to receive relief, Cherry v State, 300 S.C. 115, 386 S.E2d 624 (1989).

Conclusion

Wherefore the Applicant should be Entitled to A New Trial, and Set aside his Conviction and Sentence.

Respectfully Submitted

S/Isaiah Harrison Jr
Isaiah G. Jr, #235912
P.O. Box 2039
Ridgeland, S.C. 29936

CC: I:G:Jr

Dated 7-10 2023

686

Isaiah G. Jr, #235912
G-B-4 RCI
P.O. Box 2039
Ridgeland, S.C. 29936

Date 7-10 2023

2023 JUL 11 AM 11:14
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Re; PCR CASE No#

Dear Honorable Jerri Ann Roseneau,

Enclosed Please find for filing
within your office of the Clerk
of Court Beaufort County. Also
find the original copy of the
Applicant Post-Conviction Relief
Application Support by memorandum
of Law Support PCR.

Please find my Request for a
clocked-Dated Stamped Copy.

Respectfully Submitted
Isaiah G. Jr

C: C: I: G: Jr
C: C: H:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR
COUNTY OF BEAUFORT	)	THE FOURTEENTH JUDICIAL CIRCUIT
	)	
Isaiah Gadson, Jr., #235912,	)	Case No.: 2023-CP-07-01369
	)	
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL MOTION
	)	FOR SUMMARY JUDGMENT
	)	(Counsel already appointed)
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

2023 DEC 11 PM 1:01
 CLERK OF COURT
 BEAUFORT COUNTY, S.C.

In response to the application for post-conviction relief (PCR) filed by Isaiah Gadson, Jr. (Applicant) on July 11, 2023, Respondent makes the following return and partial motion for summary judgment:¹

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate fifty-year sentence. In October 2017, the Beaufort County Grand Jury indicted Applicant for criminal sexual conduct (2016-GS-07-01548); murder (2016-GS-07-01549); kidnapping (2016-GS-07-01550); and armed robbery (2016-GS-07-01551). These charges arose from the fatal shooting of Daniel Krulewicz and the sexual assault of MINOR on July 5, 1980. Krulewicz was shot multiple times through the passenger side window of his van, and MINOR was sexually assaulted by an unknown assailant. MINOR subsequently escaped. Police investigated the crimes but did not arrest any suspects. In 1983, the investigation ended, and the case was closed.

¹ Respondent's return was due within 90 days of receipt. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return and in light of no demonstrable prejudice to Applicant, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the statutory timeframes are not mandatory, and the trial court may extend the time for filing).

On August 3, 2016, a CODIS hit notified police that the DNA in the semen found on MINOR's clothing in 1980 matched Applicant's DNA. Applicant was arrested approximately one week later.

From May 21 to 24, 2018, Applicant proceeded to a jury trial before the Honorable Brooks P. Goldsmith. Assistant Public Defenders Trasi Campbell and Benjamin Tripp represented Applicant. Assistant Solicitors Hunter Swanson and Kimberly Smith prosecuted the case. The jury found Applicant guilty as indicted. Judge Goldsmith sentenced Applicant concurrently to fifty years for murder, thirty years for criminal sexual conduct, and thirty years for armed robbery.

Applicant filed a timely notice of appeal, which was perfected by Chief Appellate Defender Robert M. Dudek. On appeal, Applicant alleged the court erred in admitting evidence of Applicant's 1983 sexual assault against a different female victim. State v. Gadson, 439 S.C. 278, 279, 886 S.E.2d 719, 720 (Ct. App. 2023). The Court of Appeals found the issue not preserved because counsel did not contemporaneously object. Id. at 281, 886 S.E.2d at 720. On the merits, the Court found the court did not abuse its discretion in admitting the evidence under Rule 404(b) because the other victim's testimony "was relevant to establish [Applicant]'s identity as the perpetrator of Victim's attack as well as his modus operandi," and that the evidence established "the necessary 'logical connection' between the two sexual assaults." Id. at 281-82, 886 S.E.2d at 721. Likewise, the Court found the court did not abuse its discretion in admitting the evidence under Rule 403, SCRE. The remittitur was sent May 8, 2023.

CURRENT PCR APPLICATION

On July 11, 2023, Applicant timely filed this PCR application alleging the following:

Ineffective assistance of counsel

1. Counsel failed to investigate Applicant's mental health and request a mental examination, which could have formed the basis of an insanity defense or a determination that he was not competent to stand trial.

2. Counsel failed to object to the trial court admitting testimony about a 1983 assault committed by Applicant.

As for relief, Applicant requests vacation of his conviction and sentence. Attached to this return and incorporated by reference are the Beaufort County Clerk of Court records of Applicant's convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's trial transcript, and Applicant's appellate records.² Respondent reserves the right to amend this return upon receipt of any additional relevant materials.

INEFFECTIVE ASSISTANCE OF COUNSEL

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance

² Respondent is not including the first 486 pages of the record on appeal because it is duplicative of the trial transcript, which is being provided separately in its entirety.

and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Investigate Mental Health

Applicant contends counsel was ineffective for failing to investigate his mental health background. "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691.

To prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46. Furthermore, an applicant must present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Harris, 377 S.C. at 75-76, 659 S.E.2d at 145-46. Mere

speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496,498,458 S.E.2d 538, 540 (1995)).

Reviewing courts should not lose sight of the reasonableness standard regarding counsel's duty to investigate. Ard, 372 S.C. at 331,642 S.E.2d at 597 (noting that "this duty is limited to a reasonable investigation"). Reviewing courts "should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, 466 U.S. at 690. Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259,265,763 S.E.2d 630, 633-34 (Ct. App. 2014).

This allegation of ineffective assistance of counsel raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

"Due process prohibits the conviction of a person who is mentally incompetent." Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992). A defendant must be mentally competent "to understand the nature and proceedings against him" and to assist in his own defense at trial. Drope v. Missouri, 420 U.S. 162, 171 (1975). Relevant factors to determine if a defendant is competent include "evidence of a defendant's irrational behavior, his demeanor at trial and any prior medical opinion on competence to stand trial." State v. Blair, 275 S.C. 529, 533, 273 S.E.2d 536, 538 (1981). Counsel may rely on his own perceptions to determine if the defendant is

incompetent to stand trial. See Jeter, 308 S.C. at 233, 417 S.E.2d at 596. To sustain a claim that counsel was ineffective for failing to request a competency hearing, a defendant must show a reasonable probability he would have been found incompetent. Id.

This allegation likely raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue.

PARTIAL MOTION FOR SUMMARY JUDGMENT

Respondent moves for summary judgment on Applicant's claim that counsel failed to object to the trial judge's admission of 404(b) evidence at trial, leaving this issue unpreserved. Respondent submits the record conclusively shows counsel was not ineffective in this regard.

Leaving an issue unpreserved does not automatically constitute ineffective assistance of counsel. See Millidge v. State, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); see also id. at 380, 811 S.E.2d at 804 (“[T]he proper inquiry for determining prejudice...is whether there is evidence in the record to support the trial court’s finding.... If so, an appellate court would necessarily have affirmed the trial court’s [ruling]....”).

Similarly, “[a]n ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence.” Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). “If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally ‘unreasonable’ action, nor can it prejudice the defendant against whom the evidence was admitted.” Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d

1166, 1170 (7th Cir. 1987) (finding there is no prejudice from failure to object unless there is a legally supportable argument for exclusion of the evidence).

Here, Respondent submits that although counsel did not contemporaneously object to testimony from the other victim, Applicant cannot prove prejudice. Notably, the trial court *did* consider the admissibility of the evidence under Rule 404(b) and Rule 403. Thus, Respondent submits it is not reasonably likely the outcome would have been different had counsel made a contemporaneous objection. Further, although the Court of Appeals found this issue unpreserved, the Court went on to find the trial court did not abuse its discretion in admitting the evidence under both Rule 403 and 404. Thus, it is not reasonably likely the outcome would have been different on appeal had counsel preserved this issue. Respondent thus submits this allegation is without merit and requests summary judgment on this issue.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Respondent requests Applicant specify any claims he intends to raise at the evidentiary hearing in advance of the hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF.

Pursuant to section 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

ALL OTHER ALLEGATIONS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

CONCLUSION

WHEREFORE, the State respectfully requests this Court convene an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel.

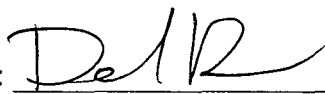
Respectfully submitted,

ALAN WILSON
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By: 
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December 6, 2023

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

2023-CP-07-01369

ISAIAH GADSON, JR., #235912)

APPLICANT,)

vs)

CERTIFICATE OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

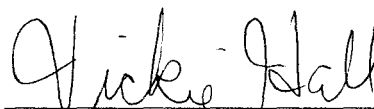
RESPONDENT,)

2023 DEC 11 PM 1:02
 JERRI ANN ROSEBUSH
 BEAUFORT COUNTY, SC
 CLERK OF COURT

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Partial Motion for Summary Judgment in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Chelsey Faith Marto, Esquire
The Law Office of Chelsey F. Marto
Post Office Box 8795
Columbia, SC 29201

DATED this 6th day of December, 2023.



Vickie Hall, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
	)	
Isaiah Gadson, #235912,	)	Case No.: 2023-CP-07-01369
Applicant,	)	
v.	)	APPLICANT'S AMENDED APPLICATION
State of South Carolina,	)	
Respondent.	)	
	)	

NOW COMES Applicant, Isaiah Gadson, amending his application filed July 11, 2023.

In addition to the allegations raised in his initial application, Mr. Gadson, through PCR Counsel, submits the following:

1. Ineffective Assistance of Counsel for failing to prepare Applicant to testify at trial.
2. Ineffective Assistance of Counsel for failing to contemporaneously object to Lori Lawless' testimony. (Tr. 366).
3. Ineffective Assistance of Counsel for failing to request a curative instruction after the denial of the Defense's mistrial motion. (Tr. 416-17).
4. Ineffective Assistance of Trial Counsel for failing to request the Court give a *Logan* charge. (Tr. 570-71).
5. Ineffective Assistance of Trial Counsel for failing to object to the Court charging the jury that malice can be inferred from use of a deadly weapon. (Tr. 576).
6. Ineffective Assistance of Trial Counsel for failing to effectively cross-examine and impeach George Brown and the investigator better.

Conclusion

Based upon the above, Mr. Gadson requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.



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For Applicant Isaiah Gadson

May 2, 2024

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)
)

Isaiah Gadson, #235912,
Applicant,

) Case No.: 2023-CP-07-01369
)

v.
State of South Carolina,
Respondent.

) Affidavit of Service by Mail
)
)
)

1. I am the attorney for Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Application on the above-captioned matter on the following person by depositing the same in the United States mail with the proper postage affixed thereto:

**Office of the Attorney General
Attn: Danielle Dixon, Esquire
PCR Division
P.O. Box 11549
Columbia, SC, 29211**



Attorney for Applicant

May 2, 2024

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2023-CP-07-1369

Isaiah Gadson, Jr.

Plaintiff,

vs.

State of South Carolina,

Defendant.

)
)
)
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)
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)

TRANSCRIPT OF HEARING

May 7, 2024
Walterboro, South Carolina

B E F O R E:

The Honorable J.D. Cole, Judge Presiding

A P P E A R A N C E S:

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No exhibits were introduced in this proceeding.

1 P R O C E E D I N G S

2 * * * * *

3 MS. DIXON: This is Isaiah Gadson v. State,
4 docket number 2023-CP-07-1369. Mr. Gadson is
5 currently serving a 50-year sentence. He was
6 indicted in October of 2017 by the Beaufort Grand
7 Jury for murder, armed robbery, and criminal sexual
8 conduct. Those are indictment numbers 2016-GS-7-
9 1549, 1548 and 1551. Your Honor, these charges
10 arose from the fatal shooting of David Krulewicz and
11 the sexual assault of MINOR [REDACTED] [REDACTED] which occurred
12 on July 5, 1980. This was a cold case. In, I
13 believe, 2010 or 2012, they were able to create a
14 DNA profile from clothing belonging to the victim at
15 the time. And then in 2016, they ran a CODIS search
16 and got a match to Mr. Gadson. He proceeded to a
17 jury trial on May 21st through 24th, 2018, before
18 the Honorable Brooks Goldsmith. He was represented
19 by Ms. Trasi Campbell and Solicitor Hunter Swanson,
20 and Kimberly Smith prosecuted the case. He was
21 convicted as indicted and sentenced to concurrent
22 sentences of 50 years for murder, 30 years for CSC
23 and 30 years for armed robbery. He filed a direct
24 appeal which was perfected by Appellate Defender
25 Taylor Gilliam, who argued that the trial court

1 erred in allowing 404(b) evidence. And, Your Honor,
2 this is relevant to this case, because they did find
3 -- because they're raising a contemporaneous
4 objection not being made as an issue. And the Court
5 of Appeals found that it was not preserved, but went
6 on to find there was no abusive -- the Court did not
7 abuse its discretion in admitting the evidence and
8 also found that based on 403 it was properly
9 admitted. The remittitur was sent May 8, 2023. He
10 filed this application for PCR July 11, 2023,
11 asserting counsel was ineffective for not
12 investigating his mental health and also for not
13 objecting to testimony about a 1983 assault. He has
14 filed an amended application raising six grounds.
15 And it's my understanding that's what they're going
16 forward on today.

17 MS. MARTO: Yeah, Judge, that's correct.
18 We'd of course call Mr. Gadson, and it's my
19 understanding that he's already been sworn.

20 THE COURT: Not yet.

21 MS. MARTO: What was that?

22 THE COURT: He hasn't been yet.

23 MS. MARTO: Oh, he hasn't been sworn? My
24 apologies, Judge.

25 THE COURT: Well, you're going to ask him

1 his name.

2 CLERK: Could you please state your name
3 and spell it for the record, please?

4 MR. GADSON: My name's Isaiah Gadson, Jr.
5 I-S-A-I-A-H G-A-D-S-O-N.

6 ISAIAH GADSON,
7 having been duly sworn,
8 testifies as follows:

9 * * * * *

10 DIRECT EXAMINATION

11 BY MS. MARTO:

12 Q. Good afternoon, sir. How are you doing today?

13 A. I'm all right.

14 Q. Yeah. So, what were the charges you went to
15 trial on in this case?

16 A. I can't remember.

17 Q. And you were charged with murder, right?

18 A. Yeah.

19 Q. And you were found guilty of murder at trial?

20 A. Yeah, so they say. Yeah.

21 Q. And same with -- you were charged with rape,
22 right?

23 A. Yeah, that's what they said.

24 Q. Okay. And you were represented by Ms. Campbell,
25 correct?

1 A. Yes, ma'am.

2 Q. Okay. And that for the record was first degree
3 criminal sexual conduct, armed robbery, kidnapping
4 and murder you went to trial on, correct?

5 A. Yes, ma'am.

6 Q. Okay. How do you feel like your working
7 relationship with Ms. Campbell was?

8 A. Well, she felt I was guilty from the -- 'cause
9 when she come to visit me, she would always say
10 under her breath, you guilty, guilty, you guilty.
11 You know, she would never ask me and I keep trying
12 to tell her, you know, it's hard to talk to a person
13 when they already got something built up in their
14 mind, 'cause to be honest, I didn't rape no one, you
15 know. I'm here before the Judge and you all are the
16 jury, you know, today. And I'm ready to tell it
17 exactly like it is, you know. First time I ever
18 have open up, and y'all made it whoever she is,
19 she's sitting there today and she know to herself
20 before man and God that I didn't rape her. She
21 offer herself to me. I didn't rape her and that's
22 the God honest truth if I never move again. That's
23 exactly what happened, you know.

24 Q. So ---

25 A. I probably shouldn't have said it, but that's

1 the God's truth.

2 Q. So, you wanted to testify at trial that you
3 didn't commit this crime?

4 A. I didn't rape no one.

5 Q. Okay. Why didn't you tell the jury that at
6 trial?

7 A. 'Cause, I wasn't informed I had to testify.

8 Q. Did you have that conversation with ---

9 A. And I never -- I'm not a talker, you know. I
10 don't speak too well, you know, and I don't know
11 what to say and when to say, so I hold my peace, you
12 know. I wanted to Ms. Campbell, but she won't
13 listen.

14 MS. DIXON: I'm going to object to
15 continuous references to people out here. He should
16 be directing to answers to you and not referencing
17 people out here in the courtroom, including the
18 victim.

19 MS. MARTO: I mean, Judge, I do think he's
20 essentially telling us his version of what happened.
21 If the Judge wants to correct him on ---

22 THE COURT: Well, as I understand it, we're
23 here because he claims his lawyer did something
24 wrong. So, can we address that?

25 MS. MARTO: Yes, sir.

1 THE COURT: All right.

2 MS. MARTO: Okay.

3 Q. So, why didn't you testify at trial?

4 A. She didn't tell me I needed to testify.

5 Q. So, did you have that conversation at all?

6 A. No.

7 Q. Now, you and I talked about developing this
8 amended application, correct?

9 A. Yeah.

10 Q. Okay. And one of the main issues you had in
11 your original one that was also brought up here was
12 counsel didn't, you know, timely object to Lori
13 Lawless's testimony. Is that correct?

14 A. I couldn't hear you.

15 Q. Okay. So, counsel didn't timely object to Lori
16 Lawless's testimony, correct?

17 A. Right.

18 Q. Okay, and who was Lori Lawless?

19 A. I don't know.

20 Q. Was she somebody who testified about another
21 incident?

22 A. No, yeah.

23 Q. Okay. And what did she say roughly? You don't
24 need to give me specifics, but generally what was
25 her testimony?

1 A. Saying somebody raped her too.

2 Q. Did she blame you for that?

3 A. Yeah.

4 Q. Okay, and counsel did a pre-trial motion on
5 that, correct?

6 A. Right.

7 Q. But counsel didn't object right before she took
8 the stand, is that correct?

9 A. Correct.

10 Q. And the Court of Appeals found that that issue
11 wasn't preserved on appeal, is that correct?

12 A. Right.

13 Q. Okay. Now, we also talked about the jury
14 instructions in this case, correct?

15 A. Correct.

16 Q. Okay, and one of the things we talked about is
17 they didn't give the proper circumstantial evidence
18 charge, right?

19 A. Correct.

20 Q. And do you think that that hurt your case at
21 trial?

22 A. Right.

23 Q. We also talked about how the court charged that
24 malice can be inferred from use of a deadly weapon,
25 is that correct?

1 A. Correct.

2 Q. Okay. Now, you mentioned that you thought
3 counsel should have more effectively cross-examined
4 George Brown and the investigator, is that correct?

5 A. You're right.

6 Q. Yes.

7 A. Correct.

8 Q. What did you want her to ask them or bring out
9 in cross that she didn't?

10 A. Talk more about the gun, the gun right, 'cause
11 George Brown stole, you know, guns, so, you know,
12 so, you know, if she had dugged down in it, she
13 would of known exactly what time it was, you know,
14 but ---

15 Q. And what did you want her to cross-examine the
16 investigator on?

17 A. The examiner, I really can't remember.

18 Q. Okay. Now, counsel also moved for a mistrial in
19 the middle of your trial, correct?

20 A. I can't remember.

21 Q. You can't remember?

22 A. No.

23 Q. But would you agree that the transcript for the
24 most part covers what happened at your trial pretty
25 well?

1 A. Yes, somewhat.

2 Q. Okay. Now, counsel moved for a mistrial, but
3 she didn't request a curative instruction after that
4 was denied. Do you recall any of that?

5 A. (Shakes head.)

6 Q. No?

7 A. I can't remember.

8 Q. It's okay. Would you have wanted her to give a
9 curative instruction to the jury?

10 A. Yes, ma'am, and yes, ma'am, I sure would have.

11 Q. Okay.

12 A. And I realize, I can't remember hardly from one
13 day to the next day, you know. I gotta sometime sit
14 down and I'll go to get something and I can't even
15 remember what I went for, you know.

16 Q. Right.

17 A. You know, the next morning, I went for my
18 eyeglasses and clean forget them, had to go back for
19 them.

20 Q. Yeah.

21 A. And I just can't remember no more, you know.

22 Q. Yeah.

23 A. On anything I've done to anybody, I'm too old to
24 forgive me, you know. I mean, may not sound that
25 way, may not believe it, but they, you know, they

1 come -- when you get a certain age, I'm over 70, so.

2 Q. Yeah. No further questions, Your Honor.

3 MS. DIXON: Nothing from the State.

4 THE COURT: You may step down.

5 MS. MARTA: Judge, we call Ms. Trasi

6 Campbell to the stand.

7 **TRASI CAMPBELL,**

8 **having been duly sworn,**

9 **testifies as follows:**

10 *** * * * ***

11 CLERK: Can you please state your name and
12 spell it for the record?

13 MS. CAMPBELL: I can. It's Trasi, that's
14 T-R-A-S-I, Campbell, C-A-M-P-B-E-L-L.

15 **DIRECT EXAMINATION**

16 BY MS. MARTO:

17 Q. How are you doing today, ma'am?

18 A. Fine, thank you.

19 Q. So you represented Mr. Gadson at trial, right?

20 A. I did.

21 Q. Okay. How long did you have his case before
22 trial?

23 A. Over a year.

24 Q. Now, did you -- how many times roughly did you
25 meet with Mr. Gadson?

1 A. I had a practice at that time. For the murders
2 that I handled in the circuit, I would always see
3 them ever Friday, working my way around the circuit,
4 so at least once a month.

5 Q. And did you discuss with him the right to
6 testify?

7 A. Absolutely.

8 Q. Do you recall what those conversations consisted
9 of?

10 A. I would discuss it with him before Judge
11 Goldsmith advised him on the record. I would have
12 discussed it with him after he had been advised of
13 his rights, and those conversations consisted of his
14 opinion, his thoughts about where we were at that
15 point in the trial, whether or not he thought it
16 would benefit him or hurt him, and what he wanted to
17 do.

18 Q. Do you recall what his responses to that was?

19 A. Mr. Gadson did not want to testify.

20 Q. Do you recall why?

21 A. Independently, no.

22 Q. Okay. Now, you recall Lori Lawless and her
23 testimony at the trial, correct?

24 A. I do.

25 Q. Okay. And roughly what was she going to testify

1 to, or what did she testify to?

2 A. Lori had a case with Mr. Gadson some years
3 before where it was a sexual assault case that had
4 been pled out, and they -- the State was using
5 Lori's testimony 404.

6 Q. Now, did you think that that testimony should
7 have been admitted at trial?

8 A. So, right, I objected to it. We argued it fully
9 out. Judge Goldsmith did the analysis and
10 determined that it would admitted, and it was.

11 Q. But you didn't contemporaneously object?

12 A. I did not.

13 Q. Okay. And is there a specific reason why?

14 A. Well, her -- ultimately what I discovered during
15 the proffer, if you will, and review of the State's
16 case was -- and particularly after Judge Goldsmith
17 ruled it admissible, there's going to be a -- what I
18 considered to be an essential divergence in her case
19 and the case that was on trial. Because in her
20 case, they had located African American pubic hair
21 in the sexual assault kit. In the case that we had
22 at trial, clearly Mr. Gadson is an African American
23 man and that evidence was not present in the sexual
24 assault kit that we had in our case. And I did
25 highlight that for the jury in my closing.

1 Q. Now, you moved for a mistrial in this case. Do
2 you recall that?

3 A. I do. I think I had that highlighted. Can you
4 direct me to the page?

5 Q. Yeah, it's 416 and 417.

6 A. Okay, thank you.

7 Q. So, you moved for a mistrial, but you didn't
8 request a curative instruction unless that was
9 denied, correct?

10 A. That is correct.

11 Q. Is there a specific reason why?

12 A. Well, normally I would have to do a balancing
13 test and whether or not I'm gonna highlight it and
14 bring the testimony back up to the jury, and I don't
15 think that in this particular case, I decided that
16 it was warranted to highlight it.

17 Q. Now, what if any requests did you make of the
18 judge during the charge conference before
19 instructions were given? Do you recall?

20 A. You know, I don't recall. I had the public
21 defender's office bring over the boxes from his
22 trial, and I don't see any notes about that in those
23 boxes, so I don't have an independent recollection
24 about a charge conference.

25 Q. Now, would you normally request a Logan charge

1 or something concerning circumstantial evidence that
2 indicates to the jury that the circumstantial
3 evidence must point conclusively towards guilt, like
4 is typically given now?

5 A. I think if we did not -- if it were a case that
6 were completely circumstantial, obviously, but we
7 had tremendous amount of direct evidence, and so I
8 did not request that.

9 Q. Okay. But you would agree that that's typically
10 the proper charge to give when it comes to
11 circumstantial evidence?

12 A. Correct, if you -- if you're dealing with a case
13 that is a circumstantial evidence case.

14 Q. So you didn't think that that charge was
15 necessary in this case?

16 A. I didn't request it, so I didn't think it was
17 necessary.

18 Q. And then, you also didn't request or object to
19 the Court charging that they can infer malice from
20 use of a deadly weapon, is that correct?

21 A. That is correct. The trial date was May 2018.
22 State v Burdette was decided in July 2019.

23 Q. Now what was your tactic cross-examining George
24 Brown in this case? What was your strategy?

25 A. Let me look just a second.

1 Q. Yeah.

2 A. Are you referring to Clifford Brown?

3 MR. GADSON: Yes.

4 BY MS. MARTO:

5 Q. Clifford Brown, yeah. My apologies.

6 A. If you let me just have a second to find
7 Clifford. I'm not really sure that Clifford Brown's
8 testimony was the kind of testimony that was really
9 damaging. I think most of what he gave during
10 direct and during cross-examination was not
11 damaging.

12 Q. Okay, so you didn't think that there was really
13 any need to follow-up in cross-examination then?

14 A. Right. I mean, particularly with a witness like
15 this, you have to be very careful because you may
16 open the door to a pandora's box, and so, making a
17 judgment call on whether to leave something alone
18 that hasn't hurt you or try to dig in there and it
19 might get worse.

20 MS. MARTO: One moment, Your Honor.

21 Nothing further, Your Honor.

22 MS. DIXON: May it please the Court?

23 **CROSS-EXAMINATION**

24 BY MS. DIXON:

25 Q. Ms. Campbell, do you remember the State's

1 evidence in this case?

2 A. I do.

3 Q. And can you kind of briefly go over what that
4 evidence was?

5 A. So Mr. Gadson had been arrested and they did a
6 buccal swab as was the procedure and so he was in
7 what they would call CODIS at this point many years
8 after the murder and the criminal sexual conduct or
9 the rape in this case. Over the years, from the
10 time of that date of the murder, different advances
11 had been made in technology and biology and science.
12 In other words, they were able to determine a DNA
13 profile from the rape kit, I'll call it. When they
14 uploaded that into the system, it hit a match with
15 Mr. Gadson and that began, I guess, the process of
16 his being brought to trial for the murder and for
17 the rape.

18 Q. And did you discuss and review the evidence with
19 him?

20 A. I did.

21 Q. And what was kind of your strategy or your
22 defense going into this?

23 A. Well, we were attacking the science, number one,
24 and -- because that is really all that was at the
25 crux of what tied him to the situation. And then,

1 the situation with the prior sexual assault, trying
2 to highlight the differences in the two.

3 Q. Okay, and then let's see moving into his
4 allegations. He's alleged that you didn't prepare
5 him to testify, and I think you testified on direct
6 about your general advice regarding whether or not
7 -- what you generally tell clients whenever advising
8 them about that. Whose decision is it, ultimately?

9 A. It's always the defendant's decision whether
10 they want to testify, and Mr. Gadson in all of my
11 meetings with him was articulate and intelligent and
12 understanding of our conversations.

13 Q. And do you recall the Court also advising him of
14 his right to testify or to remain silent?

15 A. The Court did.

16 Q. And do you recall, let's see -- moving on. Now
17 they've raised an issue about your failure to
18 contemporaneously object to Lori Lawless's
19 testimony, and I believe the Court of Appeals did
20 find that was not preserved.

21 A. Correct.

22 Q. Do you recall that opinion?

23 A. I do. I read it.

24 Q. And did they go on and address the merits of it?

25 A. They did.

1 Q. And so, what did they ultimately conclude?

2 A. It was not a basis for a reversal.

3 Q. And then, let's see, and then just going in to
4 allegation five related to the inferred malice
5 charge, and I think your response was Burdette was
6 decided in 2019. Do you recall the law at the time
7 of this trial?

8 A. I want to say Belcher.

9 Q. Belcher. Do you recall what the law ---

10 A. And that was the correct charge as given by
11 Judge Goldsmith at that time.

12 Q. Okay, and under Belcher would it be that the
13 charge is proper if there's no evidence to mitigate
14 or excuse or justify the murder?

15 A. I believe that's correct, yes.

16 Q. And did you see any evidence in this case that
17 could have excused, justified or mitigated this
18 murder?

19 A. No, ma'am.

20 Q. Okay. I think that's all. Thank you.

21 MS. MARTO: Just briefly, Your Honor.

22 **REDIRECT EXAMINATION**

23 BY MS. MARTO:

24 Q. So, the original crime allegedly happened in
25 1980, right?

1 A. I believe that's correct, yes.

2 Q. And this trial is in 2018, right?

3 A. That's correct.

4 Q. So, is it fair to say that a lot of the evidence
5 in this case no longer existed by the time this case
6 came up for trial, beyond the DNA evidence?

7 A. There was a lot that they didn't have any more.
8 People had died, I mean, and different things like
9 that had happened, but they put forth what they did
10 have and we met that at trial.

11 Q. Yeah, and so they weren't able to find a gun,
12 right?

13 A. Ma'am?

14 Q. They weren't able to find the gun at the time?

15 A. No.

16 MS. MARTO: One moment, Your Honor.

17 BY THE WITNESS:

18 A. Not that I recall.

19 MS. MARTO: Nothing further, Your Honor.

20 THE COURT: Thank you. You may step down.

21 THE WITNESS: Thank you.

22 MS. MARTO: No further witnesses, Your
23 Honor. No more witnesses, Your Honor.

24 MS. DIXON: Nothing from the State.

25 THE COURT: Any argument?

1 MS. MARTO: Yeah, just briefly, Judge.

2 **ARGUMENT BY MS. MARTO**

3 BY MS. MARTO: I guess the two issues we
4 would highlight today is the Court seemingly for
5 some reason missed out on giving a Logan charge in
6 this case as I think is to be, you know, is the
7 expected charge and was the controlling law at the
8 time and ---

9 THE COURT: If requested.

10 MS. MARTO: What was that?

11 THE COURT: If requested.

12 MS. MARTO: Well, it certainly does help
13 to, yeah, request that charge, Judge, and counsel
14 evidently didn't request the charge nor did she
15 object to the circumstantial evidence charge that
16 was given. And then we would also highlight that
17 counsel should have contemporaneously objected to
18 Lori Lawless's testimony and there's really no way
19 to get around the deficiency in that decision. And
20 we would just argue that this Court should find
21 prejudice and grant relief on that -- those two
22 allegations as well as all the other ones that have
23 been raised. Thank you.

24 MS. DIXON: Just briefly, Your Honor.

25 **ARGUMENT BY MS. DIXON**

1 BY MS. DIXON: In terms of the Lawless's
2 testimony and the failure to contemporaneously
3 object, we would just note that the Court of Appeals
4 did go on to reach the merits of that issue ---

5 THE COURT: Did they say why they did that?

6 MS. DIXON: Yes, sir.

7 THE COURT: Because usually they avoid
8 doing it.

9 MS. DIXON: They -- I don't know why they
10 did it in this case. I agree with you that usually
11 they avoid doing it, but in this particular case,
12 they did and, if you give me one moment, I will read
13 it to you.

14 THE COURT: You don't have to read it to
15 me. I'll read it, if you give me that.

16 MS. DIXON: But if this question were
17 preserved, we would find the Court acted within its
18 discretion under Rule 404(b). And then they go on
19 to -- they talk about the similarities between the
20 two crimes. And then they go on to say the Court
21 acted within its discretion in balancing the
22 probative value of the evidence under Rule 403. So,
23 the Court of Appeals kind of made the decision that
24 this would not have been an abuse of discretion had
25 it been preserved, but I agree with you. They don't

1 usually do that, they did that here. Regarding the
2 failure to testify, he was advised that that was his
3 right by the trial court. He was also advised by
4 his lawyer that that was his right. Of course as
5 his lawyer advised him, it was ultimately his
6 decision.

7 Let's see -- the curative instruction we
8 would just submit that she articulated a valid
9 reason in not wanting to draw the jury's attention
10 to what had just been -- what had just occurred.
11 The Logan charge, Your Honor, we would just submit
12 that the circumstantial evidence charge given by the
13 Court when viewed as a whole is a proper charge and
14 it was not erroneous, and that charge is on Page 570
15 of the record.

16 In terms of the failure to object to the
17 inferred malice charge, of course at the time of
18 this trial, the law was under Belcher and that was
19 that the inferred malice from the use of a deadly
20 weapon was a proper charge if no evidence was
21 submitted that could mitigate, justify or excuse the
22 murder. And in this case, we would submit that
23 there was nothing that would justify, excuse or
24 mitigate the murder, and therefore, the charge was
25 proper and there was no basis to object.

1 And then, I think counsel articulated her
2 strategy for not further cross-examining Mr. Brown
3 in that his testimony wasn't that damaging and that
4 sometimes if you start digging in you can -- may
5 become less helpful. So, we would submit they've
6 not met their burden.

7 THE COURT: All right. I'll review it and
8 issue an order.

9 MS. MARTO: Thank you, Judge.

10 MS. DIXON: Thank you, Your Honor.

11 THE COURT: Y'all give me that packet?

12 MS. DIXON: Yes, Your Honor.

13 (Whereupon, the hearing was concluded.)

14 - - -END OF TRANSCRIPT- - -

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CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the
Fourteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete Transcript of Record of
introduced in the hearing of the captioned case,
relative to appear, in the Circuit Court for
Colleton County, South Carolina, on the 7th day of
May, 2024.

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

A handwritten signature in black ink that reads "Cathy L. Young". The signature is written in a cursive, flowing style. Below the signature is a horizontal dashed line.

Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)
Isaiah Gadson, Jr., #235912,)
Applicant,)
v.) **ORDER OF DISMISSAL**
State of South Carolina,) Civil Action No. 2023-CP-07-01369
Respondent.)

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Isaiah Gadson, Jr. (Applicant) on July 11, 2023. On May 7, 2024, an evidentiary hearing convened before Circuit Judge J. Derham Cole. Applicant was present and represented by Chelsey Marto, Esq. Assistant Attorney General Danielle Dixon represented the State. At the hearing, Applicant testified on his behalf and called as a witness trial counsel Trasi Campbell, Esq. Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden of proof. The Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate fifty-year sentence. In October 2017, the Beaufort County Grand Jury indicted Applicant for Criminal Sexual Conduct (2016-GS-07-01548); Murder (2016-GS-07-01549); Kidnapping (2016-GS-07-01550); and Armed Robbery (2016-GS-07-01551). These charges arose from the fatal shooting of Daniel Krulewicz and the sexual assault of a fifteen-year-old female (Minor Victim) on July 5, 1980.

Applicant's cases were tried before a jury from May 21 to 24, 2018 and Circuit Judge

Brooks P. Goldsmith. Assistant Public Defenders Trasi Campbell and Benjamin Tripp represented Applicant. Assistant Solicitors Hunter Swanson and Kimberly Smith prosecuted the case. Applicant was convicted as indicted and sentenced to fifty years for Murder, thirty years for Criminal Sexual Conduct, and thirty years for Armed Robbery.

Applicant filed a notice of appeal, which was perfected by Chief Appellate Defender Robert M. Dudek. On appeal, Applicant argued the trial court erred in admitting victim Lori Lawless's testimony about a different sexual assault that Applicant committed in 1983. State v. Gadson, 439 S.C. 278, 279, 886 S.E.2d 719, 720 (Ct. App. 2023). Although the Court of Appeals found the issue unpreserved, the Court further found the trial court did not abuse its discretion in admitting the testimony under Rule 404(b) because the other victim's testimony "was relevant to establish [Applicant]'s identity as the perpetrator of Victim's attack as well as his modus operandi," and that the evidence established "the necessary 'logical connection' between the two sexual assaults." Id. at 281-82, 886 S.E.2d at 721. Likewise, the Court found the court did not abuse its discretion in admitting the evidence under Rule 403, SCRE. The remittitur was sent May 8, 2023.

CURRENT PCR APPLICATION

On July 11, 2023, Applicant timely filed this PCR application alleging the following:

Ineffective assistance of counsel

1. Counsel failed to investigate Applicant's mental health and request a mental examination, which could have formed the basis of an insanity defense or a determination that he was not competent to stand trial.
2. Counsel failed to object to the trial court admitting testimony about a 1983 assault committed by Applicant.

As for relief, Applicant requested reversal of his convictions and the granting of a new trial.

Prior to the hearing, Applicant filed an amended application alleging counsel was ineffective for failing to:

1. Prepare and call Applicant to testify at trial;
2. Contemporaneously object to Lori Lawless' testimony;
3. Request a curative instruction after the denial of a mistrial motion;
4. Request the circumstantial evidence charge from Logan;
5. Object to the charge that malice can be inferred from the use of a deadly weapon; and
6. Effectively impeach witness testimony including that of George Brown¹ and the investigator.

At the hearing, Applicant proceeded only on the six allegations of his amended application.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Beaufort County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; Applicant's appellate records; and the records of Applicant's PCR application. This Court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code of Law Annotated.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective

¹ George Brown appears to be a scrivener's error. The only witness from trial with the last name of Brown was Clifford Brown.

assistance of counsel, the applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 687-88. First, an applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failed to call Applicant to testify

Applicant first contends counsel was ineffective for failing to prepare him to testify and call him as a witness. This Court finds Applicant did not prove this ground.

At the PCR hearing, Applicant denied raping anyone but claimed trial counsel believed he was guilty from the beginning. He testified he was not informed he had a right to testify, and counsel did not tell him he needed to testify. Counsel testified she was appointed to represent Applicant over a year before trial and met with him at least once a month. She stated she discussed with Applicant his right to testify and provided him the pros and cons of testifying. Ultimately,

counsel stated Applicant did not want to testify.

This Court finds credible counsel's testimony that she discussed with Applicant the pros and cons of testifying, and Applicant chose not to testify. Based on this testimony, this Court finds counsel's performance was reasonable under prevailing professional norms and not deficient. This Court further notes the trial court advised Applicant of his right to testify and gave him an opportunity to discuss that with counsel prior to making his decision. (Tr. 503-07). Ultimately it was Applicant's decision not to testify, and he waived his right to testify on the record. (Tr. 507). Finally, this Court finds Applicant did not offer credible testimony at the PCR hearing that would have likely changed the outcome of trial had he testified and thus did not meet his burden of proving prejudice. Thus, this claim is denied.

Failed to contemporaneously object to Lori Lawless's testimony

Applicant next contends counsel was ineffective for not contemporaneously objecting to Lori Lawless's testimony about a situation when Applicant sexually assaulted her. This Court finds Applicant did not prove this ground.

Prior to trial, the State sought to introduce through Rule 404(b), SCRE, testimony that Applicant sexually assaulted Lawless in a manner similar to Minor Victim. Trial counsel opposed the motion, and the trial court held an in-camera hearing. (Tr. 64-126). Thereafter, the Court ruled the evidence was admissible under Rule 404(b), and the State proved it by clear and convincing evidence. (Tr. 125-26, 137). Counsel did not renew her objection prior to Lawless's testimony.

On appeal, Applicant argued the trial court erred in allowing Lawless's testimony. Although the Court of Appeals found this issue was unpreserved, it went on to find the trial court did not abuse its discretion in admitting the testimony under Rules 404(b) and 403, SCRE.

Based on the foregoing, this Court finds Applicant did not demonstrate prejudice from

counsel's failure to contemporaneously object to Lawless's testimony. Initially, this Court finds this issue was fleshed out through the testimony of Lawless and Investigator Bob Bromage prior to trial, and counsel's argument in this regard was reasonable under prevailing professional norms. Applicant did not set forth at the PCR hearing what additional argument counsel should have made in this regard other than to contemporaneously object and thus did not meet his burden of showing by a reasonable likelihood that the trial court would have changed its ruling had counsel contemporaneously objected. Finally, based on the Court of Appeals opinion, it is not reasonably likely the Court of Appeals would have reversed based on this issue had counsel properly preserved it. Applicant thus did not prove prejudice, and this claim is denied.

Failed to request a curative instruction after the denial of a mistrial motion

Applicant next contends counsel was ineffective for not requesting a curative instruction after the trial court denied his motion for a mistrial. This Court finds Applicant did not prove this ground.

During Investigator Bromage's direct testimony, the following exchange occurred:

Q. Okay. What year was it when you got a DNA database hit on Isaiah Gadson?

A. 2016, August 3rd, I received a call from the South Carolian State Law Enforcement Division regarding that.

(Tr. 405). Counsel objected and asked to approach the bench. (Tr. 405). Thereafter, she placed her mistrial motion on the record, arguing the testimony that Applicant's DNA evidence was obtained from a law enforcement database violated Rule 404, SCRE. Counsel further stated, "We can't repair it by a curative instruction and you can't take back what Officer Bromage said to the jury." (Tr. 415). The solicitor asserted Investigator Bromage did not specifically mention an offender database, and the testimony was less prejudicial in light of the fact the jury had information that

Applicant had pled no contest in the case involving Lawless. The solicitor likewise asserted the testimony about the offender database was not “even that noticeable,” and “probably a curative instruction would call more attention to it, because I certainly moved right on for there.” (Tr. 415-16). The trial court denied the mistrial motion.

At the PCR hearing, Applicant stated he did not remember the mistrial motion. Counsel testified she did not request a curative instruction because she did not want to highlight the testimony for the jury.

This Court finds credible counsel’s foregoing testimony. Based on this credible testimony—which is consistent with counsel’s statement to the trial court—this Court finds counsel articulated a valid reason for not requesting a curative instruction in that she did not want to highlight this information for the jury. Applicant thus did not prove deficiency. This Court further agrees that had counsel requested and received a curative instruction, it would have drawn more attention to the fact Applicant’s DNA was on an offender database than Investigator Bromage’s testimony on this issue. Thus, it is not reasonably likely a curative instruction would have changed the outcome of trial, and Applicant did not prove prejudice.

Failed to request the circumstantial evidence charge from Logan

Applicant next contends counsel was ineffective for not requesting the circumstantial evidence charge set forth in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). This Court finds Applicant has failed to meet his burden of proof in this regard.

“When requested, the Logan charge must be given in cases based in whole or part on circumstantial evidence.” State v. Dent, 440 S.C. 449, 453, 892 S.E.2d 294, 296 (2023). In Logan, the Court recommended the following circumstantial evidence charge:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct

evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Id. at 99, 747 S.E.2d at 452.

At trial, the Court provided the following circumstantial evidence charge:

During the presentation of the evidence during a trial, there are typically two types of evidence submitted. Either direct or circumstantial evidence. And direct evidence, of course, is testimony of a person who claims to have actual knowledge of a fact such as an eyewitness. It's evidence which immediately establishes the main fact to be proven.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference, and not on personal knowledge of, or observation, but the law makes no distinction between the weight or the value to be given to either direct or circumstantial evidence nor is a greater degree of proof required for circumstantial evidence than of direct evidence. You should weigh all of the evidence in this case.

(R. 570-71). At the PCR hearing, counsel testified she would have requested the Logan charge if this case had been completely circumstantial, but due to the direct evidence the State presented, she did not believe the Logan charge was necessary.

Initially, this Court finds the charge was substantially correct and adequately covered the

law. Further, this Court finds counsel articulated a valid reason for not requesting the Logan charge in that the State presented direct evidence of guilt. Specifically, Minor Victim testified extensively at trial about the murder, kidnapping, and rape. Although she could not identify Applicant, the DNA expert testified the DNA profile developed from semen on Victim's underwear matched Applicant, and the probability of randomly selecting an unrelated individual with a DNA profile matching the semen was one in 2.1 trillion. (Tr. 344). Likewise, the expert testified the DNA profile developed from semen on Victim's pants matched Applicant, and the probability of randomly selecting an unrelated individual with a DNA profile matching the semen was approximately one in 3.7 quadrillion. (Tr. 344). Based on the foregoing, counsel's failure to request the Logan charge was reasonable under prevailing in professional norms and not deficient.

Finally, it is not reasonably likely the outcome would be different had counsel requested and received the Logan circumstantial evidence charge. The DNA evidence here was overwhelming, and there is no logical, reasonable explanation for Applicant's DNA being on Victim's clothes other than for the conclusion the jury reached—that Applicant was guilty of the crime Victim accused him of.² Based on the foregoing, this Court finds it is not reasonably likely the outcome would have been different had counsel requested and the court charged the Logan charge, and this claim is denied.

Failed to object to inferred malice charge

Applicant next contends counsel was ineffective for not objecting when the Court charged the jury that it could infer malice from the use of a deadly weapon. (Tr. 576). Under the law that existed at the time of Applicant's trial, however, this was a proper charge. See State v. Belcher, 385

² Notably, Applicant admitted at the PCR hearing that he had intercourse with Victim, although he claimed it was consensual. This Court notes Victim's testimony about what occurred constituted direct evidence that this rape was NOT consensual.

S.C. 597, 612, 685 S.E.2d 802, 810 (2009), overruled by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019) (“The permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder (or assault and battery with intent to kill).”). Specifically, at Applicant’s trial, no evidence was presented to excuse, justify, reduce, or mitigate the homicide. Rather, this case hinged on identity. Thus, under Belcher, the charge was proper, and counsel was not deficient for not objecting.

Although the Supreme Court of South Carolina recently held such an instruction is no longer proper, that case was decided in July 2019—over a year *after* Applicant’s May 2018 trial. See State v. Burdette, 427 S.C. 490, 503, 832 S.E.2d 575, 582 (2019) (“A jury instruction that malice may be inferred from the use of a deadly weapon is an improper court-sponsored emphasis of a fact in evidence—that the deed was done with a deadly weapon—and it should no longer be permitted.”). Because the charge was proper at the time of trial, counsel was not ineffective for not objecting. See Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) (“We have never required an attorney to be clairvoyant or anticipate changes in the law” (overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999))). Thus, this claim is denied.

Failed to effectively impeach witness testimony including Clifford Brown and the investigator

Finally, Applicant contends counsel was ineffective for not effectively impeaching witness testimony, including that of his cousin Clifford Brown and the investigator. This Court finds Applicant did not prove this claim.

At the PCR hearing, Applicant did not set forth what specifically counsel should have done to further impeach Brown or any investigator. In fact, when questioned about this issue, Applicant responded, “I can’t remember.” Applicant likewise did not set forth what other witness he believed

counsel should have further cross-examined or impeached. Applicant thus did not meet his burden of proving deficiency.

Likewise, when questioned about her strategy in cross-examining Brown, counsel relayed his testimony was not really damaging, and if you aren't careful when cross-examining a witness like that, you could open Pandora's box. Counsel further explained that if testimony doesn't hurt your case, digging in could potentially make it worse. Based on counsel's foregoing testimony, this Court finds counsel articulated a valid strategy in cross-examining Brown and a valid reason for not further cross-examining him and thus was not deficient. Finally, Applicant offered no testimony or evidence at the PCR hearing as to what more counsel should have done to cross-examine Brown, the investigator, or any other witness, and thus did not prove prejudice. Thus, this claim is denied.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. The application should be and is therefore denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED!



J. Derham Cole
Presiding Judge
Fourteenth Judicial Circuit

August 7, 2024
Spartanburg, South Carolina

WITNESSES

Bromage / BCSO

DOCKET NO. 2016GS0701548

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2017

THE STATE

vs.

Isaiah Gadson

Indictment For

Criminal Sexual Conduct

SC Code: 16-3-652(1)(a)

CDR Code: 0160

737
After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2016A0710300262

True Bill

Nally S. Basuwnon

Foreperson of Grand Jury

Date: *OCT 12 2017*

VERDICT

Guilty

Angela B. Bugh

Foreperson of Petit Jury

Date: *5-24-18*

INDICT

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

INDICTMENT

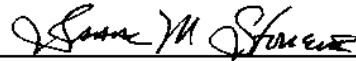
2016GS0701548

At a Court of General Sessions, convened on October 12, 2017, the Grand Jurors of Beaufort County present upon their oath:

Criminal Sexual Conduct

That in Beaufort County, South Carolina, on or about January 5, 1980, the Defendant, Isaiah Gadson, did engage in sexual battery with the use of aggravated force upon 15 year old female, to wit: the Defendant did force her to engage in sexual intercourse with the use of a deadly weapon, all in violation of Section 16-3-652(1)(a), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

True Bill

WITNESSES

Bromage / BCSO

DOCKET NO. 2016GS0701549

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2017

THE STATE

vs.

Isaiah Gadson

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

739
After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2016A0710300263

True Bill

Nally B. Bosworth

Foreperson of Grand Jury

Date: *OCT 12 2017*

VERDICT

Guilty

Angela B. ...
Foreperson of Petit Jury

Date: *5-24-18*

INDICT

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

INDICTMENT

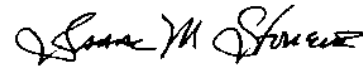
2016GS0701549

At a Court of General Sessions, convened on *October 12*, 2017, the Grand Jurors of Beaufort County present upon their oath:

Murder

That in Beaufort County, South Carolina, on or about January 5, 1980, the Defendant, Isaiah Gadson, did, with malice aforethought, kill David Krulewicz and David Krulewicz did die as a proximate result of Isaiah Gadson's actions, to wit: shoot him with a firearm, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

True Bill

WITNESSES

Bromage / BCSO

DOCKET NO. 2016GS0701550

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2017

THE STATE

vs.

Isaiah Gadson

Indictment For

Kidnapping

SC Code: 16-3-910

CDR Code: 0948

741
After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2016A0710300264

True Bill

Foreperson of Grand Jury

Date: OCT 12 2017

VERDICT

Guilty

Foreperson of Petit Jury

Date: 5-24-18

INDICT

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

INDICTMENT

2016GS0701550

At a Court of General Sessions, convened on October 12, 2017, the Grand Jurors of Beaufort County present upon their oath:

Kidnapping

That in Beaufort County, South Carolina, on or about January 5, 1980, the Defendant, Isaiah Gadson, did seize, confine, inveigle, decoy, kidnap, abduct or carry away 15 year old female victim without authority of law and Isaiah Gadson was sentenced for murder as provided in Section 16-3-20, to wit: the Defendant forced the victim out of a vehicle at gun point and took her into the woods to sexually assault her, all in violation of Section 16-3-910, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

James M. Squire

Sol

THE SUN

WITNESSES

Bromage / BCSO

ARREST WARRANT NUMBER

2016A0710300265

True Bill

Nelly B. Bosworth
Foreperson of Grand Jury

Date: *OCT 12 2017*

VERDICT

Guilty

John B. ...
Foreperson of Petit Jury

Date: *5-24-18*

INDICT

DOCKET NO. 2016GS0701551

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2017

THE STATE

vs.

Isaiah Gadson

Indictment For

**Robbery - Armed or Alleging Armed
With Deadly Weapon**

SC Code: 16-11-330(A)

CDR Code: 0139

743
After being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper
person and plead guilty to the within
indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF BEAUFORT)

2016GS0701551

At a Court of General Sessions, convened on October 12, 2017, the Grand Jurors of Beaufort County present upon their oath:

Robbery - Armed or Alleging Armed With Deadly Weapon

That in Beaufort County, South Carolina, on or about January 5, 1980, the Defendant, Isaiah Gadson, did commit robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, Defendant was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a gun, to wit: did take fifty dollars from the victim after murdering her boyfriend and during a sexual assault on the 15 year old female victim., all in violation of Section 16-11-330(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Isaiah M. Gadson

So **FILED** **OUT**

0-30 years

745

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Beaufort

STATE

Isaiah^{VS.} Gadsen

INDICTMENT/CASE#:

16-GS-07-1548

AW#:

2016 A0710300262

Date of Offense:

1/5/80

S.C. Code §:

16-3-652

CDR Code #:

0160

AKA:

Race:

AA

Sex:

M

Age:

65

DOB:

1/5/2

SS#:

Address:

City, State, Zip:

Beaufort SC

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO:

Criminal Sexual Conduct - 1st Degree

In violation of §

16-3-652

of the S.C. Code of Laws, bearing CDR Code #

0160

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST

[Signature]

72934

Isaiah Gadsen

[Signature]

15149

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections☐ County Detention Center,

for a determinate term of

30

days/months/years or

☐ under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

;

provided that upon the service of

days/months/years and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOP.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$

plus 20% fee:

\$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$

Beginning

\$ Paid to Public Defender Fund

Other:

*Fine:

Public Defender App Fee

\$

40.00

§14-1-206 (Assessments 107.5%)

\$

100.00

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$

§56-5-2995 (DUI Assessment)

\$12

\$

§56-1-286 (DUI Breath Test)

\$25

\$

Proviso (Public Def/Probation)

\$500

\$

§14-1-212 (Law Enforce. Funding)

\$25

\$

§14-1-213 (Drug Court Surcharge)

\$150

\$

§50-21-114 (BUI Breath Test Fee)

\$50

\$

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$

TOTAL

\$

168.75

Clerk of Court/Deputy Clerk

Court Reporter:

Pam Blumie
Mona Manley☐ Appointed PD or appointed other counsel;

Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date

May 24, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Beaufort

STATE

Isaiah Gaddison

AKA:

Race: B Sex: M Age: 45

DOB: 152 SS#:

Address:

City, State, Zip: Beaufort, SC 29904

DL# * SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0110

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor General 72934 Isaac Gaddison, Jr. SC Bar # Defendant Attorney for Defendant SC Bar # 15149

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 50 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOP.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

Pam Burns
Mona MunleyRandom Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2139

Sentence Date May 24, 2018

0-30 years

747

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort

STATE

INDICTMENT/CASE#: 2016-GS-07-01550

vs. Isaiah Gadson

AW#: 2016A0710300264

AKA: Race: AA Sex: M Age: 65

Date of Offense: 1/5/1980

DOB: 1/52 SS#: [REDACTED]

S.C. Code §: 16-3-910

Address: [REDACTED]

CDR Code #: 0095

City, State, Zip: Beaufort, SC 29906

SENTENCE SHEET

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

☒ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Kidnapping
In violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 72934 [Signature] 15149
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOP.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____
☐ Set by SCDPPPS Obtain GED ☐
Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine: _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso (Public Def/Probation) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§14-1-213 (Drug Court Surcharge) \$150 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.75

Other: _____
Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk Pam Bunn
Court Reporter: Mona Manley

☐ Appointed PD or appointed other counsel
Proviso requires \$500 be paid by Clerk during probation and shall be collected before any other fees.
Presiding Judge [Signature]
Judge Code: 2139
Sentence Date May 24, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Beaufort

STATE

Isaiah K. Hudson

AKA:

Race: B Sex: M Age: 45

DOB: 52 SS#:

Address:

City, State, Zip: Beaufort, SC 29904

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Armed Robbery

In violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Solicitor: [Signature] 72934 SC Bar # Defendant: [Signature] Attorney for Defendant: [Signature] SC Bar #
 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,

for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL

Clerk of Court/Deputy Clerk
Court Reporter: Mona Manley

SCCA/217 (04/2018)

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge: [Signature]

Judge Code: 2139

Sentence Date: May 24, 2018