

VOLUME THREE OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Georgetown County

George C. James, Jr., Circuit Court Judge

NICHOLAS PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001154

APPENDIX

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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Mr. Parker - Cross Examination by Ms. Catoe

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1 that you admit that you attempted to put tape on her wrist?

2 A Right.

3 Q Is that, and you still denied putting tape
4 on her mouth?

5 A Correct.

6 Q All right, and would you agree that there
7 were duct tape remnants found on her hands and on maybe one
8 wrist or maybe both, I can't remember, but on her ---

9 A Right.

10 Q --- ankles and on her ---

11 A It never said where they were found at.

12 Q All right, but you agree the police said
13 they found remnants of duct tape on the victim?

14 A Correct.

15 Q All right, would you agree that Mr. Goude
16 mailed copies of the discovery to you several times?

17 A That's after my trial, once I was locked up
18 in the SCDC.

19 Q All right, so you say that he did not mail
20 copies of discovery to you before your trial?

21 A No, not numerous copies.

22 Q Okay, did he mail any copies?

23 A No, he had, he had brought me a few pages
24 of the SLED report but that's all I had before, before,
25 beforehand and I got those December 11th when I went for my

1 bond he had handed me a little packet. It might have been
2 thirty pages.

3 Q All right, and you mentioned you had a
4 concern about the duct tape, that one of the SLED reports
5 indicated that there was or that the duct tape was
6 consistent with some duct tape found in the garage
7 apartment and some duct tape found in the truck?

8 A Right.

9 Q Now didn't your attorney point that out to
10 the jury through his cross examinations; didn't he argue
11 that essentially?

12 A I wouldn't say argued it but he pointed it
13 out.

14 Q All right, now the fact that SLED ---

15 The Court: Is the theory that the duct tape
16 from the victim should have been analyzed on some roll of
17 duct tape?

18 Ms. Catoe: It was, Your Honor, it was analyzed
19 and the SLED agent said it was consistent with, she
20 couldn't match it for certain.

21 The Court: All right, is that what you're
22 claiming that there should have been a witness to testify
23 about that, Ms. Blanchette?

24 Ms. Blanchette: No, Your Honor, I went into
25 those reports just to show the lack of preparation

Mr. Parker - Cross Examination by Ms. Catoe

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1 investigation and review of discovery in this case.

2 The Court: All right.

3 Ms. Catoe: (Continuing)

4 Q Now, Mr. Parker, you testified on direct
5 that you didn't understand fully the SLED reports when
6 discussing, discussing your plea with Mr. Goude; is that
7 correct?

8 A Yes, ma'am.

9 Q All right, now the fact that SLED didn't
10 have any conclusive evidence against you that wouldn't make
11 you want to accept the plea offer, would it?

12 A No, not really.

13 Q All right, now would you agree that your
14 attorney did speak to your cousin Roland?

15 A Yes, he seen him when he took pictures,
16 yes.

17 Q And didn't you tell your attorney that he
18 didn't need to call your brother Josh Parker because he was
19 sleeping that day?

20 A No, ma'am, I don't believe I did.

21 Q All right, and would you agree that your
22 brother Josh's girlfriend, Debbie, would you agree that Mr.
23 Goude had her statement or affidavit, whatever it may be,
24 in his file?

25 A That's correct.

Mr. Parker - Cross Examination by Ms. Catoe

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1 Q All right, now you mentioned that your
2 attorney had a list of witnesses and there were five names,
3 Leonard Long was one of those names; is that correct?

4 A Yes, ma'am.

5 Q And that was your boss?

6 A Right.

7 Q Would you agree that your attorney
8 subpoenaed him but he did not show up?

9 A That's correct.

10 Q All right --

11 A But he didn't have his address neither so
12 how, where would the subpoena would have went to.

13 Q You, all right, but you agree he subpoenaed
14 him?

15 A I mean I guess so, yes.

16 Q All right ---

17 The Court: Ms. Blanchette, did he testify in
18 front of Judge John, Mr. Long?

19 Ms. Blanchette: He did not, Your Honor.

20 The Court: Okay.

21 Ms. Catoe: (Continuing)

22 Q All right, Mr. Parker, your uncle and your
23 cousin and your brother, none of them were present when you
24 gave your videotaped statement and you waived your Miranda
25 rights on the videotape; is that right?

Mr. Parker - Cross Examination by Ms. Catoe

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1 A That fact cause they had left.

2 Q All right --

3 Ms. Catoe: Beg the Court's indulgence one
4 moment?

5 The Court: Yes, ma'am.

6 Ms. Catoe: (Continuing)

7 Q Mr. Parker, today you testified that you
8 felt coerced to give a statement to the police?

9 A Yes, I did.

10 Q All right, but at trial you admitted, and
11 I'll just refer to page four hundred fifty, lines twenty
12 through twenty-four, and also page four hundred fifty-one,
13 lines twelve through fifteen -

14 The Court: Let him get there.

15 A I'm there.

16 The Court: You got it?

17 The Witness: (Continuing)

18 A Yes, sir.

19 Q All right, and on those pages you admitted
20 that you made your own decision notwithstanding the
21 comments by the police before the video statement was given
22 to, to give the statement and you wanted to get the truth
23 out; isn't that right?

24 A What I said I had made the decision based
25 on what Hayward had told me.

Mr. Parker - Cross Examination by Ms. Catoe

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1 Q Well here you say independent of what they
2 told you you made your own decision?

3 A Oh, oh, of what, of, that's when I was
4 talking to Glover, that's what I told Glover based on that,
5 but based on what Hayward told me that, that strayed me to
6 make the statement.

7 Q All right, and you mentioned something
8 about your brother Josh being able to talk about what
9 Debbie, who is deceased, said in her statement, you
10 mentioned that; is that correct?

11 A Yeah.

12 Q All right, now do you, do you have any idea
13 whether that would be admissible under the rules?

14 A No, ma'am, I'm not sure but he could, he
15 could at least said that, that she, she did witness
16 something.

17 Q And how would that help you?

18 A I mean I don't know, I was just trying to
19 pull out everything I had. If he had, if he had got her to
20 tell the story instead of writing the affidavit saying she
21 would testify against me instead of just saying that you
22 would come to court, if he had got her to write everything
23 out when he talked to her in the beginning then everything
24 would have been on the record then.

25 Q All right, but you don't know whether that,

Mr. Parker - Cross Examination by Ms. Catoe

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1 her, Debbie's statement would have been admissible?

2 A No, because nobody knows what she would
3 have said.

4 Q All right, let me ask you this, is it
5 reasonable for your attorney to want you to appear in the
6 best light before the jury?

7 A Yes, it is.

8 Q All right, now are you aware that your
9 attorney had no say in when the trial is called, in other
10 words it's up to the Solicitor to call the trial; are you
11 aware of that?

12 A Yeah, correct.

13 Q All right, now would you admit that the
14 amendment to the indictment, which occurs on page 1, would
15 you agree that that was a clerical error with respect to
16 the number of the statute?

17 A I mean I don't know the statute so I can't
18 say yes or no.

19 Q All right, would you agree that you had
20 full notice of both your kidnaping charge and your burglary
21 first charge?

22 A I mean I knew ---

23 Q In other words you knew that's what you
24 were ---

25 A I knew I was being charged with, yeah.

1 Q All right, earlier in your direct testimony
2 you were mentioning that your attorney stipulated to prior
3 violence between yourself and the victim, would you agree
4 that in fact your attorney never says the word stipulate,
5 he says that he has no objection because he feels that the
6 full relationship between the parties is important; would
7 you agree with that, and I'll just refer to page forty-five
8 and forty-six of the transcript?

9 A Yeah, I agree with that but I don't
10 understand how past relations has anything to do with what
11 went on that day.

12 Q All right, and, Mr. Parker, would you agree
13 that on page four hundred fifty-four you testified that the
14 reason you were testifying was because you wanted to get
15 the truth out and that's the reason that you didn't plead
16 guilty?

17 A No, the reason I wanted to get the truth
18 out was ---

19 Q I'm just asking did you say that on page
20 four hundred fifty-four?

21 A Yes, I said that.

22 Q Okay, you mentioned you thought the victim
23 might have been coached but in fact you, and I think you
24 said this earlier, but in fact you don't know what the
25 victim was looking at when you saw her flipping through

Mr. Parker - Cross Examination by Ms. Catoe

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1 something?

2 A Correct, but, yeah, you're right.

3 Q All right, your counsel was asking you
4 about your testimony and how you said at one point in your
5 testimony, in fact on page four hundred eighty, that you
6 had no intent to commit the kidnaping; do you recall that?

7 A Yes.

8 Q All right, but isn't it true that on the
9 other pages in the, in the, in your testimony, and I'll
10 reference page four hundred forty-three, three hundred
11 sixty, and three hundred ninety-nine -

12 The Court: Slow down if you want him to go to
13 these one at a time, four hundred forty-three -

14 Ms. Catoe: I was just going to kind of
15 collectively ask him a general question about and just
16 reference those pages.

17 The Court: Well if you're going to get him to,
18 he has to have a chance to look at those pages, four
19 hundred forty-three, what page?

20 Ms. Catoe: Page four hundred forty-three, page
21 three hundred sixty, and three hundred ninety-nine.

22 The Court: And the question would be what?

23 Ms. Catoe: (Continuing)

24 Q And the question is, Mr. Parker, would you
25 agree you also testified that you got mad and lost your

1 mind; would you agree with that?

2 A Yes.

3 Q Would you agree you testified you didn't
4 know you were kidnaping her at the time and that it didn't
5 dawn on you until later?

6 A I know I remember saying I didn't know I
7 was kidnaping her at the time.

8 Q Okay, and you also said, in fact those
9 were, would you agree that those statements that I just
10 referenced were consistent with what you said in your video
11 statement to the police?

12 A About what?

13 Q In other words you said you didn't realize,
14 you didn't know what you were doing at the time you did it?

15 A Right, correct.

16 Q All right --

17 A I didn't have knowledge.

18 Q All right, now you testified that you
19 wanted to get the truth out; is that right?

20 A Yes.

21 Q Cause you felt like the State's version was
22 just not accurate?

23 A All that was based on the videotape and
24 what she said on the stand beforehand.

25 Q All right, and did you feel that it was

Mr. Parker - Cross Examination by Ms. Catoe

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1 important for the, for the jury to have the totality of the
2 information, the truth, the whole truth of the information
3 that they needed to make a proper judgment in this matter?

4 A Yeah, but a lot, lot of stuff I said didn't
5 need even need to be said, it had nothing to do with the
6 case. A lot of questions I was asked should never have
7 been asked.

8 Q All right, now do you know whether or not
9 phone records or phone recordings from the jail would have
10 been available to your attorney at the time you asked him?

11 A Yes, they would have.

12 Q And how do you know that?

13 A Because they record all phone
14 conversations.

15 Q Do you know how long they store them?

16 A Yes, it says in the thing they updated the
17 system in 2006 so that's saying that ---

18 Q Do you know how long that they keep them in
19 there, under the old system do you know how long they, they
20 kept them?

21 A No.

22 Q So they would be available for to be
23 recorded over for someone else?

24 A No, but the very next day I after I talked
25 to them, after I talked to her on the phone the very next

Mr. Parker - Cross Examination by Ms. Catoe

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1 morning I called him and told him right then, so it wasn't
2 even ten hours since I talked to her. I'm pretty sure they
3 keep them a little longer than that.

4 Q All right, and your attorney and you were
5 discussing when the Solicitor was talking about you or,
6 excuse me, talking about whether or not he was standing
7 beside the victim at a bond hearing?

8 A Correct.

9 Q All right, and your testimony was that she
10 was at one bond hearing but not at the other?

11 A Right.

12 Q Is that right? All right, and ultimately
13 on page four hundred ninety-three would you agree that the
14 Solicitor, I don't know if he agreed with your version, but
15 he ultimately accepted your version and moved on?

16 A No, because we wasn't talking about the
17 same instance. I was talking about when I first got locked
18 up and they denied me bond and he was talking about the
19 last one and we kept getting crossed up and then once he
20 realized what I was talking about then he realized I was
21 right and he was wrong that's why he quit.

22 Q All right, would you agree with me that no
23 reply witnesses were called in your case?

24 A Yes...

25 Q So Officer Hayward was not called?

Mr. Parker - Cross Examination by Ms. Catoe

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1 A Right.

2 Q As a reply witness, and, therefore, what
3 your grandmother's attorney, Mr. Colvin, raised to the
4 Court is ultimately a non issue; would you agree?

5 A No, I feel that's the reason that he wasn't
6 called.

7 Q All right, now you were talking about your
8 attorney's closing argument, wouldn't you agree that it's
9 kind of stupid to tape your girlfriend's ankles?

10 A Yeah.

11 Q Is that a proper characterization?

12 A I mean, yeah, that's something people don't
13 do.

14 Q Do you think it was important for your
15 attorney to, to be genuine and real with the jury?

16 A Yeah, but not give his opinion on how I
17 should act.

18 Q All right, now at the, you mentioned an
19 alternate juror going into deliberations for about five
20 minutes; do you recall that?

21 A Yes.

22 Q All right, now at that point when that came
23 to the Court's attention the Court had not yet received the
24 verdicts; is that correct?

25 A Yes, ma'am.

Mr. Parker - Cross Examination by Ms. Catoe

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1 Q All right, so at that point there could
2 have been two not guilty verdicts?

3 A Correct.

4 Q All right, Mr. Parker, you admitted before
5 that you, you realize now that you did something wrong that
6 day?

7 A Yes, I have.

8 Q Is that correct?

9 A Yes, ma'am.

10 Q So you agree that perhaps some jail time
11 would be appropriate for you?

12 A Right.

13 Q And in fact you'd be satisfied with time
14 served?

15 A Yeah, or I would have took a ten year plea,
16 I'd have been happy with that.

17 Q All right, so your, your real complaint
18 then is you feel that the Judge gave you too much time?

19 A No, I feel that my lawyer didn't prepare me
20 the right way. If he had prepared me then my outcome, I
21 might have took the plea and we might could have argued
22 more on a ten year plea than take it to trial.

23 Ms. Catoe: All right, thank you, Mr. Parker.

24 The Court: Redirect?

25 Ms. Blanchette: Very briefly, Your Honor.

Mr. Parker - Redirect Examination by Ms. Blanchette 142

1 The Court: And you can stay seated if you'd
2 like.

3 Ms. Blanchette: That's fine.

4 Redirect Examination

5 By Ms. Blanchette:

6 Q Did you have the opportunity to review this
7 video statement the State asked you about with Mr. Goude
8 prior to trial?

9 A No, ma'am, I didn't.

10 Q So your allegation today that that tape
11 would not have been admitted if your attorney had properly
12 handled your Jackson v. Deno hearing?

13 A Right.

14 Q And specifically you testified on page
15 forty-four that before making that statement you asked for
16 an attorney and what is it your understanding should happen
17 once you ask for an attorney?

18 A They should ask me no more questions and
19 give me an attorney.

20 Q And what happened after you asked for an
21 attorney?

22 A I was asked questions.

23 Q And did you testify to that at the Jackson
24 v. Deno suppression hearing?

25 A No, ma'am, cause it wasn't, it wasn't no

Mr. Parker - Redirect Examination by Ms. Blanchette 143

1 testifying going on with that.

2 Q And is that because your attorney didn't
3 call any witnesses or make that argument?

4 A That's correct.

5 Q Now the State asked you about on page 454
6 your reason for testifying and was there more you wanted to
7 say in response to that and you said you got on the stand
8 to tell the truth but was there more today that you wanted
9 to explain about that?

10 A Yes, I was just saying that to tell the
11 truth about what was said in Court about they say this
12 happened and this happened and this happened and I would
13 just try to shed some light on what really happened. It
14 pretty much goes to the victim's statement what happened on
15 the tape cause I admitted I told a lot of stuff on the tape
16 that didn't happen. I admitted to that in there so that
17 was damaging against me.

18 Q And the State noted in cross ---

19 The Court: Wait ---

20 Ms. Blanchette: I'm sorry.

21 The Court: Did he just say he said some stuff
22 on the videotape that was not true; is that what you said?

23 A Yes, sir.

24 The Court: Okay.

25 Ms. Blanchette: (Continuing)

Mr. Parker - Redirect Examination by Ms. Blanchette 144

1 Q The State pointed out some of your
2 testimony that was a positive for you, where you were
3 explaining you didn't have knowledge of what you were
4 doing, but didn't the Court summarize as we pointed out in
5 your direct that you essentially admitted the crime?

6 A Yes, ma'am.

7 Q And did you understand what statutorily the
8 crime was when you turned down the plea and when you chose
9 to testify?

10 A No, ma'am, I didn't.

11 Q Now as the State noted there was no verdict
12 when the juror issue came up, that the extra juror had
13 discussed one charge with the jury; is that correct?

14 A Yes, ma'am.

15 Q So at that point it didn't matter which
16 charge they had discussed with him because there was not,
17 there was not a not guilty verdict?

18 A Correct.

19 Q And, Mr. Parker, are you here today merely
20 complaining about the amount of time you got or are you
21 asking for a new trial due to the ineffectiveness of your
22 counsel?

23 A I ask for a new trial due to the
24 ineffectiveness.

25 Ms. Blanchette: Your Honor, I have no further

Mr. Parker - Recross Examination by Ms. Catoe

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1 questions.

2 The Court: Recross?

3 Recross Examination

4 By Ms. Catoe:

5 Q Mr. Parker, can't you change your mind
6 about wanting to talk to police?

7 A Yes, I can.

8 Ms. Catoe: All right, nothing further, thank
9 you.

10 The Court: All right, you can step down, thank
11 you. Next witness?

12 Ms. Blanchette: Your Honor, I would ask to be
13 able to recall Kenneth Roland Ward, Sr., based upon a
14 question I received from the Court.

15 The Court: All right, come on up, Mr. Ward,
16 you're still under oath.

17 Kenneth Roland Ward, Sr.

18 All right, sir, you're still under oath, okay.
19 Okay, Ms. Blanchette.

20 Direct Examination

21 By Ms. Blanchette:

22 Q Mr. Ward, you testified earlier that you
23 were present with Mr. Parker when he turned himself into
24 law enforcement; is that correct?

25 A Yes.

Mr. Ward - Direct Examination by Ms. Blanchette

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1 Q Did you understand during that time that
2 you were present with him and law enforcement a request
3 being made for an attorney?

4 A Yes, ma'am.

5 Q And who made that request?

6 A Nicholas did.

7 Q And did he convey that request to law
8 enforcement in your presence?

9 A Yes, ma'am.

10 Q Okay, and after that point they took him
11 out of your presence and took a statement from him; is that
12 correct?

13 A Actually after he said that he, they said
14 that he could help us out and he'd help him out ---

15 Ms. Catoe: I object to any hearsay in this
16 testimony, Your Honor.

17 The Court: All right, it's already, it's
18 already come out, just go ahead. He said it the first go
19 around. He said that the officer said if you talk we'll
20 help you out.

21 The Witness: (Continuing)

22 A Help my mom out.

23 Q And that came after he had indicated he
24 wanted an attorney?*

25 A Ma'am?

Mr. Ward - Cross Examination by Ms. Catoe

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1 Q That conversation came after he said he
2 wanted an attorney?

3 A Right.

4 Q And did you see law enforcement take any
5 action to help Mr. Parker get an attorney when he made that
6 request?

7 A No, ma'am.

8 Q And did you have the resources or knowledge
9 available to get him an attorney at that point?

10 A No, ma'am.

11 Ms. Blanchette: Okay, I have no further
12 questions.

13 The Court: Questions, Ms. Catoe?

14 Ms. Catoe: Just one, Your Honor.

15 Cross Examination

16 By Ms. Catoe:

17 Q Mr. Ward, did Mr. Nicholas Parker, did he
18 say I might need an attorney?

19 A I think he said he wanted an attorney, yes,
20 ma'am.

21 Q Okay, but are you absolutely certain he
22 didn't say I might need an attorney?

23 A I don't think might was not in it, no,
24 ma'am.

25 Ms. Catoe: All right, thank you.

Mr. Ward - Cross Examination by Ms. Catoe

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1 The Court: Step down.

2 Ms. Blanchette: Nothing further, Your Honor.

3 The Court: Any other witnesses?

4 Ms. Blanchette: Your Honor, I'm actually going
5 to call trial counsel Mr. Goude. I don't know, do we need
6 a break to notify the other attorneys in the cases this
7 afternoon or would you like me to go ahead with him?

8 The Court: All right, Ms. Catoe, any input on
9 that? We have, I would assume, well the Applicant was on
10 the stand for over two hours. I would assume that Mr.
11 Goude is going to take some similar amount of time and ---

12 Ms. Catoe: Probably not quite as long.

13 The Court: Let me make it clear, when I ask
14 this question I'm not asking you to artificially shrink up
15 your time to make me feel good.

16 Ms. Catoe: I understand, Your Honor.

17 The Court: I really, really want to know in
18 your best judgment based on knowing what you think you have
19 to cover how long is this testimony going to take?

20 Ms. Catoe: I would say it is possible it could
21 take just as long as Mr., as the Applicant's testimony.

22 The Court: So if we were to start and break in
23 twenty minutes for lunch we really wouldn't be
24 accomplishing much; do you both agree with that?

25 Ms. Catoe: That's true, Your Honor.

Mr. Ward - Cross Examination by Ms. Catoe

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1 The Court: And if we start back -- do you agree
2 with that, Ms. Blanchette?

3 Ms. Blanchette: Your Honor, that's fine, I
4 could do twenty minutes worth and break. It wouldn't be a
5 problem with me, it's just this Court's discretion.

6 The Court: But in the scheme of things you
7 might have to recover that ground after lunch just to make
8 you, make me think I'm getting up to speed.

9 Ms. Blanchette: That makes perfect sense, Your
10 Honor.

11 The Court: If we were to start back at 2:00 Mr.
12 Goude would be on the stand perhaps until 4 or 4:30?

13 Ms. Catoe: It's possible, Your Honor.

14 The Court: Do you agree with that?

15 Ms. Blanchette: Your Honor, I, I would defer to
16 the State since she is the one who is prepared with it.

17 The Court: Okay, but you're going to be
18 questioning him?

19 Ms. Blanchette: I will question him briefly on
20 direct. I assume her cross might be longer than my direct.

21 The Court: Okay, all right, we're going to
22 break now for lunch and I'm going to need to talk to you
23 and I want to make sure, Ms. Blanchette, you can come back
24 there and watch us talk, we're not going to talk about this
25 case.

Mr. Ward - Cross Examination by Ms. Catoe

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1 Ms. Blanchette: I have no problem with that,
2 Your Honor.

3 The Court: We have to deal with these other
4 cases. I'm going to talk to -- I'll stay as long as you
5 want. I'll stay till 10:00 tonight to finish all these
6 applications, but I'm just a tenant in this courthouse.
7 I'm not the, I want to make sure the Clerk's office is, is
8 aware. How long will the ones this afternoon take?

9 Ms. Catoe: The one application could be two to,
10 probably around two hours I would say.

11 The Court: Well then you, you can let those
12 people know that we'll begin those at 9:30 in the morning;
13 are those lawyers from out of town?

14 Ms. Catoe: Okay, Your Honor, the only problem
15 is I have a brief due in Columbia tomorrow and I don't have
16 any extensions to get so I have to do it tomorrow and
17 that's with the Court of Appeals, so I'm not quite sure
18 what we need to do at this point.

19 The Court: Okay, but where are the, where are
20 the lawyers coming from?

21 Ms. Catoe: Tara Shirley is already in
22 Georgetown, she came last night.

23 The Court: From?

24 Ms. Catoe: From Columbia. Paul Archer is just
25 down the road in Pawleys Island.

Mr. Ward - Cross Examination by Ms. Catoe

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1 The Court: Perhaps you could get her up here,
2 if she insists on doing it into the evening then, then
3 we'll have to make arrangements to get that done. Where is
4 the Applicant?

5 Ms. Catoe: They're both here.

6 The Court: Or will be here.

7 Ms. Catoe: I think they are here.

8 The Court: And the other one is not going to be
9 long you say?

10 Ms. Catoe: The other one is not going to be
11 long.

12 The Court: Who are the lawyers on that?

13 Ms. Catoe: Paul Archer is, it's a motion. It's
14 a conditional order of dismissal case that we discussed
15 yesterday.

16 The Court: Okay, all right, and you, you can't
17 go into tomorrow because, we're off the record now.

18

19

20

21

22 The Court: On this case, you'd like to call
23 another witness?

24 Ms. Blanchette: I would, Your Honor, but I
25 believe Ms. Shirling's here on the other matters that are

Mr. Ward - Cross Examination by Ms. Catoe

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1 scheduled for this afternoon so I'd hate to start in on
2 ours first. I didn't know if she needed to address the
3 Court.

4 The Court: Okay.

5 Ms. Shirling: Your Honor, I have probably
6 twenty-five family members outside and for the record I
7 just wanted to ask what time I could reasonably ask them to
8 be back. I hate for them to sit around out there for all
9 afternoon. Would it be safe, Your Honor, if I asked them
10 to be back here at, say, 3:30?

11 The Court: Why don't you ask them to be back at
12 three?

13 Ms. Shirling: Yes, sir.

14 The Court: And, and tell them that we're doing
15 the best we can and that it might even be a situation where
16 we might not be able to get to it today.

17 Ms. Shirling: I have already explained that to
18 them, Your Honor, and additionally is my client in a
19 holding cell off to the right, is that where he would be?

20 The Deputy: Yes, ma'am.

21 Ms. Shirling: And is there any other access
22 door for me to get to go tell him what's going on other
23 than that one?

24 Deputy: No, ma'am.

25 Ms. Shirling: Okay.

Mr. Goude - Direct Examination by Ms. Blanchette 153

1 The Court: All right, would she be able to have
2 some contact with him?

3 The Deputy: Yes, sir.

4 The Court: All right.

5 Ms. Shirling: Your Honor, I'll go tell the
6 family and then I'll come in as discreetly as I can. Thank
7 you.

8 The Court: Okay, you can just come right on,
9 right on through and you can help her out, sir?

10 The Deputy: Yes, sir.

11 The Court: All right, thank you.

12 Ms. Shirling: My apologies to counsel for
13 interrupting.

14 The Court: That's all right. All right, Ms.
15 Blanchette, you can call your next witness.

16 Ms. Blanchette: Your Honor, I would call
17 attorney Reuben Goude to the stand.

18 C. Reuben Goude

19 being first duly sworn, testified as follows:

20 Madam Clerk: Please be seated and state your
21 name for the record.

22 The Witness: My name is Reuben Goude.

23 The Court: Okay.

24 Direct Examination

25 By Ms. Blanchette:

Mr. Goude - Direct Examination by Ms. Blanchette

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1 Q Thank you, Mr. Goude, and please correct me
2 if I pronounce your name cause I have that happen to me all
3 the time; are you currently licensed to practice law in the
4 state of South Carolina?

5 A Yes, ma'am.

6 Q And how long have you been licensed to do
7 so?

8 A Thirty so years.

9 Q What is the primary focus of your practice
10 of law?

11 A I do, I'm a part time public defender in
12 Georgetown County; I've been doing that since 1984. I've
13 done roughly six thousand criminal cases, I guess, and I
14 also do divorces and bankruptcies, and car wrecks and
15 things like that.

16 Q Mr. Goude, do you recall having the
17 opportunity to represent Nicholas Parker on the charges
18 we're here about today and at his trial that occurred on
19 January 29th through February 2nd, 2007?

20 A Yes.

21 Q And do you recall when you were appointed
22 or when you began representing him?

23 A Yes.

24 Q When was that?

25 A The first entry in my time sheet is out of

Mr. Goude - Direct Examination by Ms. Blanchette 155

1 the eight to ten pages of time sheets is March 18th, 2006.

2 Q And do you recall you put in for a bond for
3 him or that a bond hearing was held in this case?

4 A My time sheet says we did a bond setting
5 motion on April the 3rd, 2006.

6 Q And you are referencing your time sheet, is
7 that correct, you don't have any court documents to that
8 extent?

9 A I've probably got a copy of the motion that
10 we filed in court.

11 Q Did you have a preliminary hearing in this
12 case?

13 A No, I don't think we did.

14 Q Did you discuss that with Mr. Parker?

15 A I doubt that I would have.

16 Q Do you recall when you received the arrest
17 warrants and indictments in this case?

18 A According to, according to my time sheets
19 as to when I received discovery ---

20 The Court: I think the question is indictment
21 and warrants.

22 A The indictments and the warrants?

23 The Court: Yes, sir, it may have been the same
24 time you received discovery, though.

25 The Witness: (Continuing)

Mr. Goude - Direct Examination by Ms. Blanchette

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1 A Generally the Solicitor's office sends us
2 the discovery and in the discovery the police report, the
3 incident report, the client's rap sheet, and the warrants
4 are all in the same packet.

5 Q And that's from your general recollection,
6 not specifically in this case?

7 A Well specifically in this case, often they
8 send me a cover letter saying here is the discovery and it
9 often has a date on it --

10 Q Mr. Goude, as you look through that I could
11 ask you a question, if that's okay with the Court?

12 The Court: Yes, ma'am.

13 Q (Continuing) Do you recall going over the
14 discovery and arrest warrants and indictments with the
15 applicant prior to trial, even if you don't have the
16 specific date you got it?

17 A One of their cover letters is dated, yes,
18 we talked about the discovery.

19 Q And did you find the date there for when
20 you received it?

21 A I saw one in January of '07, but I think
22 that was one of the later ones according to, according to
23 my time sheets is when we sent the defendants copies of
24 stuff in the jailhouse. On November the 13th, '06, I've
25 got down interviewed defendant in the jail, and reviewed

Mr. Goude - Direct Examination by Ms. Blanchette

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1 the police reports from the Solicitor's file with the
2 defendant, and that's when the Solicitor as the defendant
3 testified while ago offered us the deal of dismissing the
4 burglary in the first degree and pleading guilty to
5 kidnaping for a thirteen to sixteen year negotiated
6 sentence, so I reviewed the police reports, the evidence
7 against us at that time with the defendant in the
8 jailhouse.

9 Q And the Solicitor was present during that
10 meeting?

11 A He was present when I was talking with him
12 and probably when the defendant was talking with him. He
13 would not have been present, he being the Solicitor, when I
14 would have talked with my client and went over the
15 Solicitor's file with my client in the jailhouse.

16 Q And do your notes that you're relying upon
17 indicate if you had full discovery at that point?

18 A I can look and see if I have anything down
19 where I received additional discovery. I note that on
20 December the 8th, '06, I had asked the Solicitor Modica for
21 some additional discovery, my notes just say for more, for
22 discovery at roll call. He said he had already given it to
23 me; I said, no. He said there's something about the duct
24 tape and he also told us that his plea offer expired the
25 following Monday.

Mr. Goude - Direct Examination by Ms. Blanchette

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1 Q When you discussed the plea offer and what
2 evidence you had at that point with Mr. Parker did you go
3 over the statutory language for the kidnaping charge with
4 him?

5 A What I did is I have the client, I get
6 their information in a questionnaire I've got cause I've
7 many of these PCR cases and I know that people's memories
8 and thoughts are always different after they get convicted
9 and sentenced to twenty-five years in prison than their
10 thought and wishes are before they ever go to court. So
11 what I usually do is I have a form that I fill out and give
12 one to the client and I keep one where I write down the
13 charges, and I've done this for many years where I write
14 down the charges and date it and have the client sign it
15 and on it it's got: you got a right to the trial, twelve
16 people on the jury and all this and I usually attach all
17 that about what is a serious offense, most serious offense,
18 you lose your drivers license if it's a drug record, and
19 all this other kind of stuff, so on my records there's a
20 date of November the 13th, '06, signed by my client, Mr.
21 Parker. I've listed burglary first is one charge, fifteen
22 years to life, no parole, serve eighty-five percent; and
23 the other charge is kidnaping, zero to thirty years, no
24 parole, serve eighty-five percent.

25 So the elements in the charges of the burglary

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1 and the kidnaping, the main point in the whole case, which
2 has hardly been mentioned today which is the main point, is
3 that Mr. Parker went into the girl, and this is a sad case,
4 sad for Mr. Parker and sad for to me, everybody on earth,
5 cause they had been boyfriends and girlfriends for years,
6 lived together, had sex, used drugs, drank alcohol, lived
7 with his grandma and grandpa in Summerville, lived in a
8 little trailer. It was to me sort of a ridiculous case,
9 but I've seen quite a few ridiculous cases out of six
10 thousand cases, and so he's ended up getting twenty-five
11 years in the penitentiary for this totally ridiculous type
12 stuff. Of course the girl says he came into my trailer
13 even though he had been in her trailer for three or four
14 years since they lived together, but the ignorant part of
15 the case that we could not get around no matter if we did
16 motions to suppress, preliminary hearings, ten preliminary
17 hearings, whether we talked with the client three times or
18 four hundred times, whether he liked me or not, whether he
19 was black or white, any of this bull, the point we could
20 not get around, which he knew and I knew and the jury knew,
21 that's why they found us guilty, is we went into the girl's
22 trailer, duct taped her arms, hands and feet, carried her
23 out of the trailer, put her in the truck that his grandma
24 was driving, who testified and told me her arms and hands
25 and feet was duct taped when he brought her out of the

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1 trailer carrying her, my client said that, made a statement
2 to the police. The girlfriend said that. We had to
3 testify otherwise if you don't testify and we do all this
4 brilliant stuff about motions to suppress and we don't get
5 out statement in and then the client comes up with the idea
6 that, oh, I would not have testified if my motion, if my
7 video had not went in, which he had never said that before,
8 but today if we had not testified then the only evidence
9 against us would be the girlfriend saying he came into my
10 trailer, duct taped my feet, hands, and legs, carried me
11 out of the trailer, put me in his truck, and drove me to
12 Summerville. That is kidnaping and that is burglary in the
13 first degree.

14 Q Did you advise your client of that when the
15 State offered him thirteen to sixteen years?

16 A I advised my client of that, yes.

17 Q Okay, and if you'd, please, let me finish
18 my question. Now as far as an investigation, even though
19 you've explained what you thought the problem was with the
20 case, you do have a duty to prepare and investigate; did
21 you hire a private investigator or speak to any witnesses?

22 A No, I did not hire a private investigator
23 to go to the trailer. I went to the trailer with the other
24 lawyer, Mr. Colvin, and we photographed the trailer where
25 the girl was living so we could see what happened at the

Mr. Goude - Direct Examination by Ms. Blanchette

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1 scene.

2 Q Did you as Mr. Parker testified to in
3 detail, did you obtain the jail call that would have been
4 recorded between himself and the victim?

5 A The only time I see any reference to that
6 in this file is on January the 29th of '07, when we were to
7 pick the jury to start the trial ---

8 The Court: That date again, please, sir?

9 The Witness: (Continuing)

10 A January the 29th of 2007, where I see one
11 note while we're at court that Mr. Parker said he called
12 the girlfriend. Well I was in trial then and I did not
13 know and I don't know now. it may be true, I don't know
14 everything, I did not know that the jail tape recorded
15 every word people inmate said when they talk to their
16 lawyers, which I am, I've talked to a million inmates in
17 the jail, I didn't know they tape recorded all those
18 conversations, or that they tape recorded the conversations
19 to family members. If that's the truth, that's true, but I
20 did not know that. I don't know it now that that's a fact;
21 it may be a fact, and any way I was in trial and I didn't
22 have time to prepare a subpoena and get it to the jail in
23 the case. Furthermore, my client's mama, who did testify
24 that ya'll went over her testimony this morning, she
25 testified at trial that she had talked with the girl two to

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1 three or more times each week from about January '06 when
2 my client was arrested till seem like October or November
3 or maybe she said the bond hearing, October or November or
4 December of '06, that she, the mama of my client had talked
5 with the woman, the prosecuting witness, several times a
6 week, which to me would indicate if I was on the jury that
7 if this girl is afraid that Nicholas Parker is going to
8 rape, kidnap her, murder her, and burglarize her house I
9 doubt I would go to his mama's house or talk with his mama.
10 I would hate his mama just like I hated him, so to me that
11 would help our case if we had to have a trial, which I
12 didn't want to have a trial to start with cause I knew no
13 matter what I said or what any other lawyer said I did not
14 know how to get around, and I still don't know how to get
15 around and Mr. Parker didn't know how to get around cause
16 we were in prison, the duct taping the woman's legs, and
17 arms, and feet and carrying her out of a trailer. I told
18 him that before we ever decided to go to court that I doubt
19 any of the jurors, and I have not in all my dating or
20 relationships, I have never duct taped and I doubt that any
21 of the jurors had ever duct taped a woman that they were
22 dating and took her out of her house and put her in a car
23 and drove her away, so I don't think that they're going to
24 agree and empathize with us on that point no matter what
25 else we do, that is still a fact that they all said.

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1 Q So it was useless to go trial; is that a
2 correct summary?

3 A It was useless to go to trial, that's a
4 correct summary.

5 Q So as his appointed counsel who's there to
6 protect his adversarial process why did you go to trial?

7 A Because he said go to trial, he is the
8 boss. If he'd let me be the boss he would not be in trial,
9 he would not be in jail for twenty five years, he'd be in
10 jail for thirteen to sixteen like the Solicitor offered us.

11 Q Was that the only offer or what other plea
12 negotiations did you do on his behalf?

13 A I have wrote, written down the things that
14 Mr. Parker and the dates, on November the 13th, '06, the
15 Solicitor offered us to dismiss the fifteen year to life
16 charge of burglary in the first degree, and we would plead
17 guilty to kidnaping, thirteen to sixteen years negotiated
18 sentence. Mr. Parker rejected that offer.

19 Mr. Parker on January the 18th, '07, he offered
20 to plead guilty to kidnaping straight up which was up to
21 thirty years ---

22 The Court: What date was that, sir?

23 The Witness: (Continuing)

24 A January the 18th, 2007, he offered to plead
25 guilty to kidnaping straight up, which would be up to

Mr. Goude - Direct Examination by Ms. Blanchette 164

1 thirty year sentence, dismiss the burglary. The Solicitor
2 said, no, he would not accept that straight up cause that
3 would be Solicitor not recommending any sentence. I then
4 asked the Solicitor on January the 24th if the Solicitor
5 would agree to a kidnaping ten year sentence dismissing the
6 burglary; the Solicitor said no.

7 On January the 26th, '07, Mr. Parker he agreed to
8 plead guilty to kidnaping and get the ten-year sentence
9 that I talked with the prosecutor about two days before
10 trying to get something accomplished to avoid going to
11 prison in a trial on; and then we went to trial and midway
12 through the prosecution's presentation the prosecutor
13 offered us to still dismiss the burglary first degree and
14 plead guilty to the kidnaping and get a fifteen year
15 sentence and Mr. Parker said, no, he would not do that but
16 he would agree to plead guilty to the kidnaping, dismiss
17 the burglary first degree, and take a cap of seven year
18 sentence on the kidnaping, and the Solicitor said no.

19 Q And would you agree that it is your duty to
20 make sure that Mr. Parker understands the law, the charges
21 being brought against him, the State's evidence, and the
22 benefit of taking a guilty plea?

23 A Well I think it's my duty to do what I can
24 do to help Mr. Parker when he's charged and some lawyers
25 don't believe in recommending stuff. They believe in

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1 advising the client of the options and the client making
2 the decision on the theory that the client is a grown
3 person and the client makes the decision. I generally give
4 the client my recommendation of what I would do and I would
5 have recommended that he take the deal. I would have said
6 something like this, just what I told you about the duct
7 tape awhile ago, how are we going to get around the duct
8 tape. No matter what we do we can't get around the duct
9 tape cause you said you did it, your grandma, your grandma,
10 not the prosecution witness, not a witch ---

11 The Court: Let's, the question is, do you have
12 an obligation to educate your client on the law?

13 The Witness: Correct.

14 The Court: All right, not about the facts, but
15 the law.

16 The Witness: (Continuing)

17 A What I tell the client what the penalty is
18 and what the evidence is and what the charges are and what
19 we got to do through trial and how we do a trial and how
20 you pick the jury, and all that stuff.

21 Q Okay, let me ask you some specific
22 questions. Do you recall Mr. Parker ever asking you to
23 utilize his Uncle Kenneth Ward as a witness and if you do
24 recall why did you not call him as a witness?

25 A No, I note Mr. Ward said he had never

Mr. Goude - Direct Examination by Ms. Blanchette 166

1 talked with me but my note showed that on ---

2 The Court: May I interject something, could you
3 distinguish which Mr. Ward, please?

4 Ms. Blanchette: Yes.

5 The Court: Cause I think there are two
6 Kenneth's, right?

7 Ms. Blanchette: There are, Kenneth Roland Ward,
8 Sr., that testified today.

9 The Court: All right, that will make it clear,
10 thank you.

11 The Witness: (Continuing)

12 A And my notes indicate, and I thought Mr.
13 Ward said he and I had never talked, we didn't talk long
14 but my notes indicate that on October the 25th, '06, that
15 the uncle had called me and he had, we had talked. He had
16 basically said that he had taken Mr. Parker and helped turn
17 him in and all this stuff, that's what he said to me,
18 that's what my note said.

19 Q And he testified today that he was present
20 when Mr. Parker asked for an attorney and law enforcement
21 did not cease their interrogation of Mr. Parker at that
22 point; was that information that was conveyed to you, and
23 if so, why did you decide not to utilize that in the
24 motions at trial?

25 A Well what my notes say from 10-25-06 Mr.

Mr. Goude - Direct Examination by Ms. Blanchette

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1 Ward, and I've got down what I wrote down is phone number
2 was, [REDACTED], he called and said he was the uncle of
3 Nicholas Parker. He said when the deputies wanted Nicholas
4 the uncle called the deputy and drug Nicholas to the
5 sheriff's department to turn him in. He didn't say
6 anything to me about that Mr. Parker wanted an attorney or
7 did not want an attorney or he didn't say anything else
8 that I've got down there.

9 Q At trial you made a motion to suppress the
10 statement, a Jackson v. Deno hearing; did you consider
11 utilizing Mr. Ward at that hearing or discuss that with
12 him?

13 A I didn't know that the uncle knew anything
14 about it and, therefore, I didn't consider using him and I
15 didn't write him down as a witness.

16 Q But you did have his phone number
17 information that he was present at the police station?

18 A I had the information that he took his
19 nephew down here from Summerville to the police station and
20 turn, and they turned him in, yeah, and he surrendered to
21 the police.

22 Q Regarding Kenneth Roland Ward, Jr., who
23 testified at the prior hearing, and I believe the State has
24 a transcript so you've probably had the opportunity to
25 review that, had you talked with Kenneth Roland Ward, Jr.

Mr. Goude - Direct Examination by Ms. Blanchette

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1 about being present at the police station?

2 A I've got down I talked with Kenneth Roland
3 Ward, Jr., on January the 29th of '07, that was the first
4 day of court, that's when we had the, according to my time
5 sheet that's when we had the jury venire and I've got down
6 reviewed with the client and his mom and we picked the
7 jury. On that date Mr. Ward was at the courthouse, here at
8 the courthouse and I talked with him then, and we listed
9 him as a witness, does that answer your question?

10 Q And do you know why you did not call him as
11 a witness?

12 A I am not, what Mr. Ward had told me, and to
13 answer your question, was that he was there that Sunday
14 morning when Mr. Parker and Mr. Parker's grandmother and
15 the prosecuting witness came to the house in Summerville
16 and the girl was over there that morning and she didn't beg
17 for help or any of that stuff, and that he had lived with
18 the prosecuting witness and my client Mr. Parker and they
19 stayed in a trailer nearby for a few months and that one
20 day the girl's mama drove over there, the one that they
21 talked about this morning, Debbie, I think her name was,
22 and told the daughter if she did not leave Mr. Parker,
23 Debbie, the mother, would take the kids away from the
24 prosecution witness and tell everybody that you, the
25 prosecuting witness and Nicholas Parker are on drugs. Mr.

1 Ward told me that, so --

2 Q And my question was why didn't you use him
3 at trial?

4 A I can't remember exactly. It's my belief,
5 and I can be wrong on that, but it's my belief that he was
6 absent when I, it came to us, seemed like he was there for
7 some, the first days, but when our defense was being put on
8 he was not there. That is my memory, I can be wrong, I
9 don't see a note that I wrote one way or the other. I know
10 I had taken his notes, he was there the first day and we
11 listed him down on our witness list and I don't see that he
12 was called, so that's my memory and I could be wrong. He
13 might have been there and I did not call him but it was my
14 thinking trying to think back over that five years ago and
15 hundreds of cases that he was not there on the last day
16 when it was our turn to call him as a witness. I will note
17 that what he said about being there that Sunday morning the
18 mother and the grandmother both testified, too, on our
19 behalf, on Mr. Parker's behalf that the prosecution witness
20 did go to their house, she agrees she went to their house,
21 and was able to get out from her on cross pretty much most
22 of the stuff that these other people were there at the
23 house; that there's a telephone there at the house; that
24 there's doors into the house; that she never hollered for
25 help; and would also note that they all testified,

Mr. Goude - Direct Examination by Ms. Blanchette

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1 Nicholas' grandmother and the woman that they drove from
2 Georgetown out there in the country, between here and
3 Andrews, to Summerville, fifty or so miles away, stopped at
4 a gas station or something, and the grandma and Nicholas,
5 as I remember, got out of the vehicle. The girl does not
6 get out of the vehicle and run to the gas station saying
7 help, I'm being murdered, raped, kidnaped, burglarized, and
8 then when they come [sic] back from, and the grandmama, as
9 I remember, she testified says take that tape off of that
10 girl when she's there in the back seat of the truck or I'm
11 going to take ya'll both to the police, and the girl
12 herself says, no, please don't take us to the police,. So I
13 thought the grandma was a big help if we go into trial on
14 that point because anybody would any sense at all if you're
15 being kidnaped and the grandma says I'm going to take ya'll
16 to the police station if ya'll don't take that tape off
17 your arms. What's the first thing they going to say, well,
18 please, God, do take me to the police station cause I'm
19 being kidnaped and burglarized. So the grandma was there
20 to testify to that regardless if we didn't have Roland to
21 say that she was there at the house that morning and didn't
22 holler or beg or scream to get away.

23 Q Did you have Roland under subpoena?

24 A I don't think we, I don't think we
25 subpoenaed him. I don't have a subpoena attached. Often

Mr. Goude - Direct Examination by Ms. Blanchette 171

1 when we got family members like this, brothers, cousins,
2 grandma's and all that live in the same house we don't
3 subpoena them cause they're going to come help their own
4 brother or cousin or son when they're facing life in the
5 penitentiary, you know.

6 Q Okay, and if you'd like to expand more,
7 please let me know, but I'll ask you about both Joshua
8 Parker and Mathis Parker, his brothers; is your reasoning
9 the same as to why you did not utilize them at trial? You
10 don't have to re-explain if it is, I'm just asking if you
11 reasoning was the same?

12 A Well Joshua, on Joshua my notes indicate
13 that --

14 The Court: May I ask a question, Ms.
15 Blanchette, Ms. Catoe, if you'll help me out, the
16 grandmother, did the grandmother testify?

17 Ms. Blanchette: She did, Your Honor.

18 The Court: Okay, I just wanted to make sure
19 and, and sometimes these relationships I'm a little bit
20 cloudy. Now I know who Mr. Ward, Sr., is, he's an uncle.

21 Ms. Blanchette: Yes.

22 The Court: And if I was in the family I'd know
23 but when you say uncles and cousins that kind of, I'm
24 trying to learn the family tree, but the grandmother could
25 you give me her name?

Mr. Goude - Direct Examination by Ms. Blanchette

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1 Ms. Blanchette: She is Shirley Ward.

2 The Court: Shirley, okay.

3 Ms. Blanchette: And then to not be confused his
4 mother, Sherry Ward testified also.

5 The Court: Okay, so Shirley Ward, the
6 grandmother, and Sherry Ward did testify.

7 Ms. Blanchette: They did testify along with the
8 applicant.

9 The Court: All right, thank you.

10 The Witness: (Continuing)

11 A So on Joshua, and I was looking here for
12 the specific date, Mr. Parker, my client, he told me, on
13 January the 26th, '07, Mr. Parker told me, he says, my
14 brother Josh Parker, twenty-two, was sleeping all day and
15 never saw the girl, don't subpoena him.

16 The Court: Who said that?

17 The Witness: (Continuing)

18 A My client Mr. Parker sitting right there,
19 Your Honor, and I also noted in going through all this mess
20 of stuff for this hearing that the mama, my client's
21 mother, she had told me on, being Sherry Parker ---

22 The Court: Is that one of the names you gave
23 when you said something about -

24 Ms. Blanchette: (Continuing)

25

Mr. Goude - Direct Examination by Ms. Blanchette 173

1 Q Does she go by Parker or Ward, I'm sorry?

2 A I was going to tell you, Judge, what she
3 said about Josh, she said, the reason we didn't subpoena
4 Josh, I think that answers it.

5 Q And did you have any specific recollection
6 why you did not use Mathias Parker?

7 A I had never heard of Mathias Parker's name
8 until this morning, I don't think, or in that other PCR
9 first hearing we did the other day.

10 Ms. Blanchette: Your Honor, do you mind if I
11 approach the witness?

12 The Court: No, ma'am.

13 Ms. Blanchette: (Continuing)

14 Q I'm showing you here what's previously been
15 marked as Plaintiff's Exhibit Number 6, and it's a request
16 you made for a polygraph; do you know if that was ever
17 done?

18 A It was never done.

19 Q Do you know why?

20 A The Solicitor did not want to do it.

21 Q Did you explain that to your client?

22 A I don't remember, I don't have, I don't
23 have written down in my time sheet that my client and I
24 explained it but I know that if he had of asked me, I don't
25 know if my client and I ever specifically mentioned it or

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1 not. I know I asked him would he take one, he said he
2 would and we sent a letter to the Solicitor trying to get
3 them to do the polygraph and they wouldn't do it.

4 Q I'm going to show you what's previously
5 been marked as Plaintiff's Exhibit Number 7, and it is the
6 typed statement of Deborah Vercruijse, if I'm saying that
7 correctly, and would you agree that that statement came
8 from your file?

9 A Yes, ma'am.

10 Q Okay, and is that actually your handwriting
11 on that statement up there at the top?

12 The Court: Is she the lady that passed away
13 October before the trial?

14 Ms. Blanchette: Yes, Your Honor, that's the
15 note I was going to ask him about if he identifies this.

16 The Court: Okay, I'm sorry.

17 Ms. Blanchette: No, that's fine.

18 The Court: I think the question, Mr. Goude, is
19 that your writing at the top of that statement?

20 The Witness: (Continuing)

21 A Yes, sir, November the 13th, '06, defendant
22 told me she died October 2006.

23 Q Once you found out that information did you
24 do anything to bring that to the Solicitor's attention or
25 do anything to be able to utilize that statement at trial?

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1 A No, there was nothing I knew to do; it was
2 not under any kind of, as far as I know then and now we
3 could not put the statement into evidence cause it would be
4 hearsay. There was no court proceeding where she was
5 testifying and the prosecutor would have had an opportunity
6 to cross examine her, so under my understanding, of course
7 I could be wrong, but under my understanding then and now
8 the statement would not be admissible in court.

9 Q But she was deceased and unavailable for
10 that reason; is that correct?

11 A She was deceased and unavailable for that
12 reason, yes, ma'am.

13 Q Mr. Goude, while I'm up here I'm going to
14 show you what's been marked as Plaintiff's, I'm sorry,
15 Applicant's Exhibit Number 9, and I'll give you a chance to
16 look over that?

17 A Okay, I remember seeing that.

18 Q You do recall receiving that letter from
19 Mr. Parker and in ---

20 A Yes, ma'am.

21 Q --- there just to summarize, he explains
22 some concerns with your representation; what, if anything,
23 did you do after receiving that letter?

24 A I think I sent Mr. Parker, I think I sent,
25 I notified him in some way, let me see what the time sheet

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1 says I did, I've got down January the 15th, '07, I received
2 the defendant's letter to release me. I mailed the
3 defendant a letter, it's too close to trial for the judge
4 to relieve me. The reason I did that is many times when
5 you're getting close to trial the defendants, if you're a
6 appointed case particularly, ask to relieve their lawyers
7 so they don't have to go trial next week or two weeks from
8 now, whenever it is, and normally in my experience the
9 court will not do that. They'll relieve you if the
10 defendant wants to represent himself but they won't let him
11 put off the case otherwise nobody would ever go to court
12 and nobody would ever go to prison as far as a trial so
13 that's what I told him essentially.

14 Q Would you agree, though, that that's a
15 matter in the trial court's discretion, not in your
16 discretion to continue or not continue a case?

17 A I agree if he filed a motion to continue
18 the judge can rule on that motion to continue.

19 Q And if that also contain a motion to
20 relieve that would also be within the trial court's
21 discretion?

22 A If you filed a motion to relieve you as
23 counsel the judge can consider that, yes, he can.

24 Q And in that letter Mr. Parker is making
25 very serious allegations, some of which he's raising here

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1 today; do you not think it would have been appropriate to
2 address those with the trial court before you proceeded to
3 what, and please correct me if I'm wrong, was a useless
4 trial?

5 A Well there's been many useless trials, many
6 useless trials that I've been involved in where the
7 defendant did not take my advice and ended up getting much
8 more jail time than they could have gotten if the client
9 had taken my advice.

10 Q Would it not have been prudent to bring
11 these matters to the trial court's attention, the same
12 matters that we're here litigating here today?

13 A We could have brought those matters to the
14 attention, I suppose my client could have also stood up if
15 he wanted to and said I am not going to trial with Reuben
16 Goude, I want to represent myself, he could have said that.
17 He didn't say that and we went over the case, I think that
18 was in early January, I got down January the 15th, and then
19 we drove to the jail January the 18th, I did and talked
20 with the client about an hour and a half there. Mr. Parker
21 agreed to plead guilty straight up to the kidnaping like we
22 talked before. I don't see that we mentioned anymore on
23 Mr. Parker wanting to relieve me and have another counsel
24 appointed.

25 Q And I don't want to cut you off but is

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1 that, is that your answer?

2 A And I went back again January the 26th and
3 talked with the client, I've got down an hour, and we
4 discussed the case, reviewed the case, reviewed the
5 testimony, and I don't see that I wrote down any other
6 matters regarding a request to relieve me. I've had that
7 happen many times. A lot of times the clients they feel
8 neglected, they're in the jail, nobody is going to see
9 them, they've got nothing to do but talk with other people
10 in the jail and they've got no case in the world except
11 their own so naturally they think their lawyer has no other
12 case in the world except their own to work on. I'd feel
13 the same way if I was in jail on charges.

14 Q All right, thank you, I'm sorry, were you
15 not finished?

16 A I can stop, I can stop.

17 Q Moving to the trial, you made a motion to
18 suppress the search and seizure that was conducted on his
19 grandmother's vehicle. When you made that motion, as I
20 went over with Mr. Parker, today, you told the court even
21 when he asked that you did not have any witnesses; why did
22 you make that motion if you did not have any witnesses or
23 argument for the court?

24 A Generally it's my understanding, I can be
25 wrong, that once you make the motion the prosecution has

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1 the burden of proving by a preponderance that a search or a
2 seizure is legal and proper. I had no grounds, nothing
3 that I saw that the prosecution or the police had done
4 wrong or improperly or illegally to state as a ground to
5 suppress the search. I think there was some duct tape in
6 the truck and/or at the houses in Summerville where Mr.
7 Parker lived and the girl had been. She said she had been
8 duct taped and put in the truck and she had duct tape in
9 her trailer here in Georgetown County when she was picked
10 up by Mr. Parker so they were searching to see if they
11 could find duct tape and all this other, other sort of
12 stuff. So I made the motion on that basis to see if the
13 prosecution, prosecution could prove that they did it
14 properly; if they couldn't prove it then the results of the
15 search would be inadmissible. I had no witnesses to call
16 on the point and I had no evidential factors to put into
17 evidence on that point, that's why I did not do anything
18 else. I try not to go after the judge or to the court
19 because I'm always going to come back in front of the judge
20 on another day so if I talk ignorant stuff that's got no
21 basis and fact they're going to know that the next time I
22 make a motion.

23 Q On page two hundred twenty-one to two
24 hundred twenty-one of the transcript that I referred to
25 during Mr. Parker's testimony investigator Morris testified

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1 that he asked the grandmother and grandfather for consent
2 before conducting the search issue. They said yes but they
3 wouldn't sign the form, so are you saying you did not know
4 about that at the time of your motion cause you said you
5 had no information to bring to the judge?

6 A I had no matters to present to the judge
7 that would show that it was a illegal search.

8 Q Now on page forty-five lines four through
9 nineteen, I'm sorry, fourteen through nineteen, you
10 indicate that you have no objection to putting in the prior
11 violence between the parties, as a result a number of
12 uncharged and unrelated issues come in at this trial; what
13 was your reasoning for agreeing for that to come in?

14 A My reasoning for agreeing to that to come
15 in was the thing that was there in the courtroom all of the
16 time, before we ever came in the courtroom and after we
17 left the courtroom that was always there was the taking the
18 girl out of her trailer with the duct tape. If you don't
19 bring in anything about their past history that they used
20 drugs, they were alcoholic, that she didn't work, that she
21 lived on food stamps or her mother, if you just say, well
22 Mr. Parker as a stranger appeared at her trailer one day on
23 Sunday morning and taped her legs and took her into his
24 truck. If I'm on a jury I'm going to say, well, my God,
25 you ain't got to be a genius to vote guilty of kidnaping

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1 and burglary first on that charge, so what we were trying
2 to do, what my trial strategy was if we got to go to court,
3 is to show their past rocky and not abnormal relationship
4 between them, so that in the hopes that the jury would not
5 empathize and would not sympathize and would not be on the
6 side of the prosecution witness. They would not think she
7 is a helpless female, in her trailer, and some rough and
8 tough man comes in and drags her out with duct tape and
9 hauls her off to Summerville and kidnaps her and
10 burglarizes her house. The hope of bringing in their
11 relationship, drugs, violence, arguing, breaking up,
12 leaving, going back, leaving, going back, living and eating
13 off his, Mr. Parker's grandma and granddad, the handicapped
14 granddaddy, was to try to get the jury to not care about
15 the prosecution witness.

16 Q Would you agree that at the same time,
17 though, you were allowing the State to establish a pattern
18 of bad acts and violence on the part of the applicant or
19 the defendant?

20 A Well you got to choose how you going to go
21 at it.

22 Q Again looking at pretrial motions, actually
23 I'm sorry, you made a motion to suppress the confession and
24 that was not addressed until page two hundred ninety-four;
25 do you know why that wasn't addressed pretrial?

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1 A I think we did it pretrial, and you may
2 know better than me cause you've read it and it's seven
3 hundred pages long, and that was five years ago, but just
4 glancing back over the transcript this morning or
5 yesterday, looks like I made it the same time I make most
6 of my little pretrial motions. I got a little pretrial
7 checklist that I've used for twenty-five or thirty years
8 where I write down all my little motions and check them off
9 when they're done, and looking at the transcript look like
10 we did the motion to suppress and the prosecution's witness
11 on the motion to suppress the deputy was not going to be in
12 court until like later in the week; and the prosecutor said
13 we're not going to bring out that Mr. Parker made a
14 statement or anything like that until then is it okay if we
15 wait and do the suppression motion when my deputy gets here
16 and the prosecutor said that to the Court and I had no
17 objection cause it didn't matter to me one way or the other
18 when we did it as long as we did and so that's what the
19 Judge did, so they put it off and did it later in the week.

20 Q Okay, and this, this might be a long
21 question so, please, tell me if you need some
22 clarification. You made the motion to suppress the
23 confession and Paul Glover was called to the stand, after
24 his testimony the Court specifically asked you at the
25 bottom of page three hundred one, it's your motion to

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1 suppress, do you want to tell me the grounds. On page
2 three hundred two you responded we have nothing else to
3 present on that motion, Judge. Now later on your client
4 took the stand and he testified about his uncle bringing
5 him to the police station and that he was coerced by
6 Investigator Hayward, not Glover, and that he told them
7 that he wanted an attorney.

8 My first question is why did you not utilize Mr.
9 Parker at the suppression hearing and told the Judge you
10 did not have any grounds for the motion?

11 A Did I not use, which one, the uncle?

12 Q No, Mr. Nicholas Parker, the applicant,
13 since he later testified about being coerced by Officer
14 Hayward and requesting an attorney?

15 A The only thing I see in my file on an
16 attorney is a note that I've got written here above Sgt.
17 Hayward's name, and I don't know when I wrote this cause I
18 didn't date it, whether it was written during the trial,
19 which sort of indicate it was like ya'll talked this
20 morning, that the prosecutor had talked with Sargent.
21 Hayward about calling him on reply or something like that
22 but they didn't. But anyway what I've got down is that
23 defendant says that he wants a lawyer, the uncle says if he
24 makes a statement can it help him and Hayward says if he
25 makes a statement it could help on his bond so that's ---

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1 Q I'm sorry, go ahead.

2 A --- and that's all I see that I've got in
3 my record on that matter.

4 Q So your notes indicate that Mr. Parker
5 asked for a lawyer and Mr. Parker later testified to it at
6 trial so we go back to my original question; why did you
7 not utilize Mr. Parker at the suppression hearing?

8 A I don't know at what point, I don't
9 remember at what point Mr. Parker told me that thing I just
10 wrote whether it was before trial or when the prosecutor
11 was talking with Hayward like he talked about this morning,
12 or at the time of the suppression hearing or what. I will
13 note that on my checklist where I got suppression, suppress
14 confession motion and I wrote down that the Judge denied it
15 and I put my notes so I would remember in the future when
16 we had the PCR, we always have a PCR every time you have to
17 have a trial and the client gets convicted. I put down I
18 really am glad the confession came in on the CD, and the
19 reason for that is is Mr. Parker as I recall said pretty
20 much the same on his confession statement to the police, CD
21 to the police, whatever you want to call it, and the
22 testimony at trial that he told me the whole time when we
23 were alone in jail. He was pretty much saying the same
24 thing all the time, the girl talked with me early that
25 Sunday morning on the phone. We had her clothes and junk

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1 at my house in Summerville. She wanted, she needed to come
2 and get them; she asked us to come get her. She said she
3 didn't ask them to come get her but she agrees that she
4 talked with him that Sunday morning, 5:00 or 6:00, and that
5 they came to Georgetown and got her and he duct taped her
6 and put her in the truck and they went home and they loaded
7 up her stuff and the grandma and Mr. Parker brought her
8 back to the house. So that stuff was pretty much the same
9 thing that he said to the police and when he testified in
10 court and to me, so to me getting his CD in before he ever
11 had a lawyer, before he had ever talked with me so that if
12 I'm a crooked lawyer I can get him to lie and I can make up
13 all of his story for him and tell him and then when he's on
14 the witness stand he can just recite it back to me by me
15 asking him leading question and him just saying yes, no,
16 yes, no, so this would show the jury that he said the same
17 thing he was saying the whole time from the very first day
18 he ever talked to the police which is he was not intending
19 to kidnap her. He had no knowledge he was kidnaping her,
20 he was not trying to kidnap her, he did not want to kidnap
21 her, he had no mense re to kidnap her, if he had ever heard
22 what that word is, that he was, he loved her and thought he
23 was doing right by her since she was a cocaine addict,
24 taking her out of the trailer so she wouldn't fall all over
25 the floor being high on cocaine. That's why he duct taped

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1 her, and put her in the truck, where he loved her and take
2 her to his house that they had lived in to helpfully get
3 her clothes for her as a good Samaritan and a good
4 boyfriend and then they courteously brought her back to
5 Georgetown and I think they stopped at Arby's to get
6 something to eat, I could be wrong on that, coming back
7 just like any other courteous gentlemanly person would do,
8 so that's ---

9 Q So, I'm sorry ---

10 A So that's why the confession or the tape or
11 the CD to me was helpful.

12 Q But you do make a motion to suppress it?

13 A But I did make a motion to suppress cause I
14 do that in every case pretty much because I know that if
15 you loose the case you're going to get a PCR and some
16 lawyer is going to say how stupid can you be not to file a
17 motion to suppress.

18 Q Regarding your answer to the prior
19 question, it appears that you are now saying there actually
20 was mitigating evidence regarding the duct taping that you
21 essentially said, you know, that kind of sunk the ship
22 before?

23 A I think it sunk the ship, yep.

24 Q Okay, but there was mitigating evidence as
25 you just explained in your detailed answer?

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1 A Well in my roundabout way of sighting the
2 Muslims and all this other stuff I was trying to work out
3 that the jury could use common sense and still maybe figure
4 out that even though we did duct tape her and drag her,
5 carry her out of the trailer that maybe we did not commit
6 kidnaping just like they did decide we was not guilty of
7 burglary in the first degree which carried fifteen years to
8 life which we were charged with, too, and which we were
9 found not guilty of.

10 Q Did you prepare the applicant to testify or
11 Mr. Parker to testify on his behalf?

12 A Yes, we went over the stuff and went over
13 what I was going to ask him.

14 Q Did you meet with his mother, Sherry, and
15 prepare her to testify?

16 A I always go over with the witnesses what
17 I'm going to ask them. I don't call a witness up there
18 unless I know what I'm going to ask them and sort of like
19 Mr. Parker was saying this morning it looked the
20 prosecution witness and the prosecutor was going through a
21 script, well we all go through scripts. My God you'd be an
22 idiot not to tell your witness what you're going to ask
23 them, how you're going to ask it, and what the other side
24 is going to ask them, so they'll know what's going on, so -

25 --

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1 Q Would you agree, I'm sorry ---

2 A So my notes indicated that specifically on
3 talking with the mama that on January the 29th before the
4 prosecutor has ever called any witnesses while we were in
5 court on that first day after we picked the jury that we
6 went over with Mr. Parker and his mama the case and what we
7 were going to ask and what we was going to say and all that
8 stuff.

9 Q And did you also do that with his
10 grandmother?

11 A We did it with his grandma, too.

12 Q And you said that it wouldn't be good
13 practice to not prepare a witness, but would you agree that
14 there's a difference between preparing and leading a
15 witness?

16 A I don't know if there is a difference, I
17 think you can lead them and not have prepared them. I
18 think you can prepare them and not lead them. I think you
19 can prepare them and lead them. I think you can neither
20 prepare them nor lead them.

21 Q So when the State was telling the victim to
22 just say yes and no and guiding her through her questioning
23 was there a reason you did not enter an objection?

24 A Well if, if sometimes you think what the
25 prosecutor is doing that the witness doesn't know what

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1 they're talking about and does not know what to say and the
2 prosecutor is coming out with all the ideas then on
3 something like that you would object cause the witness
4 doesn't even know what's going on or they don't know what
5 to say. If you know that the witness is saying, cause
6 we've done this a long time, thirty years, hundreds of
7 trials and thousands of cases, so after a while you learn
8 that there is a difference between what you could do on a
9 moot court if you're in the ninth grade in high school to
10 raise that little issue of, oh, that is a leading question.
11 From a practical point of view when you've got a jury
12 sitting there does it make any, does it help your case,
13 does it help your client to object to this question or not,
14 then again sometimes you have a question that a prosecutor,
15 I'm not specifically referring to this cause I don't know
16 what question you're talking about, sometimes the
17 prosecutor may ask a question before you even hear him and
18 the witness before and the witness answer it before you've
19 heard the question correctly or could object, but most of
20 the time it's that we're asking stuff that's, you know the
21 witness knows the answer and you don't object cause it
22 doesn't really matter to the case one way or the other
23 cause ---

24 Q And, Mr. Goude, to just in the interest of
25 brevity, I went over in detail with the Court about this

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1 issue that I'm calling the Colvin situation, where Attorney
2 Colvin brought to the attention of the Court that he
3 thought there had been a violation of the sequestration
4 order. The State explained that they had to talk to
5 Officer Hayward because you did not put up in the
6 suppression hearing the information about the coercion by
7 Hayward, and when you were asked by the Court if you had
8 any comment on the situation you said you did not. I just
9 would like to know your involvement in that situation why
10 you didn't make any motions to the Court?

11 A Well different people and different lawyers
12 have different personalities and different ways of doing
13 things. My way is I did not see any issue there. I didn't
14 see that the prosecutor and the policemen were doing
15 anything that was crooked or dishonest or illegal that was
16 going to adversely affect my client and my case and our
17 trial and the defendant and Mr. Parker and that was going
18 to hurt us in any way, so I saw no sense in trying to make
19 a big deal out of something that I did not think was a big
20 deal so I did not make the big deal.

21 Q And again the Solicitor's reasoning to the
22 Court on pages six hundred ten through six hundred eleven
23 was that he was forced to talk to Hayward because there was
24 an issue that should have come out in the Jackson v. Deno
25 hearing. Why did you not bring that issue out in the

1 Jackson v. Deno hearing?

2 A What issue was it?

3 The Court: And what issue is that?

4 Ms. Blanchette: (Continuing)

5 Q The issue of the coercion by Hayward, the
6 reason they had to talk to Hayward?

7 A I don't remember exactly what you're
8 talking about?

9 Q The State explained to the Court that they
10 had to talk to Officer Hayward because Mr. Parker had
11 alleged that he coerced him into giving the statement. The
12 State went on to reason that they had to talk to Officer
13 Hayward at that point in the trial because it was a matter
14 that should have been brought out during the Jackson v.
15 Deno hearing, so my question to you is why did you not
16 bring out that coercion during the Jackson v. Deno hearing?

17 A Bring it out from because Mr. Parker had
18 said that occurred?

19 Q Either through Mr. Parker or addressed it
20 with Officer Hayward?

21 A Did he testify, Hayward?

22 Ms. Blanchette: Your Honor, would you like me
23 to answer the witness' question?

24 The Court: I think it's been made clear that
25 earlier in the proceeding today Officer Hayward was never

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1 called as a reply witness anyway. I don't know the answer
2 to whether or not he ever testified.

3 Ms. Blanchette: He did not testify at the
4 Jackson v. Deno, I just wanted to make sure it's okay I
5 answer.

6 The Court: That's fine, and I forgot what the
7 question is now.

8 Ms. Blanchette: I can restate it.

9 The Court: Why didn't he bring it out, why
10 didn't he bring it out through -

11 Ms. Blanchette: (Continuing)

12 Q Why did you not either call Mr. Parker or
13 Officer Hayward to address this issue of coercion that the
14 State says should have come out at the Jackson v. Deno?

15 A I don't remember.

16 Q Okay, in making a directed verdict motion
17 you spoke for two lines and just said there was
18 insufficient evidence; is there any other reason or could
19 you explain to me why you didn't make further argument?

20 A Yes, I on my little checklist after motions
21 after the prosecution's case I've got down motion for a
22 directed verdict, so in essentially every case what I do
23 when I'm doing my little trial checklist, which I did
24 before this one like I always do, I put down not guilty
25 insufficiency, and if I've got any other specific grounds

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1 that I think is a basis for a directed verdict motion I'll
2 write that down; but I always go with the insufficiency,
3 that way I don't forget to say it and that way maybe we're
4 covered on the record and I generally try to do that and
5 I've got it down on my motion for directed verdict
6 checklist after the defendant's case also where I make the
7 same motion for a directed verdict of not guilty on the
8 insufficiency of the evidence. I had no other grounds that
9 I saw or I would have added those in that motion.

10 Q Turning to the State's closing argument on
11 page seven hundred three the State argues that the victim
12 in this case had been a victim of criminal domestic
13 violence, your client was not charged with criminal
14 domestic violence; is there any reason you did not object
15 to that argument by the Solicitor?

16 A Well if had came out during the course of
17 the case during the testimony that they had argued and
18 fussed and fought, and I don't remember if there was
19 testimony, seemed like one of them had said that, I don't
20 remember if there was testimony, that he had hit her, that
21 Mr. Parker had hit her, beat the girl before. Seemed like
22 I saw something in there, I can't remember if it was my
23 notes or in this transcript where the mama or somebody or
24 Mr. Parker, had said they had seen bruises on the girl
25 before but they had never seen Mr. Parker hit her so they

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1 don't know if the bruises came from Mr. Parker or somebody
2 else. There may be something in there where it says Mr.
3 Parker beat her, she may have said that, I don't remember,
4 but from their past turbulent history if that was in the
5 evidence that he'd hit her or if she had said he'd hit or
6 she had been bruised I would have not objected on the basis
7 generally of objecting would bring more cause he's charged
8 with kidnaping and burglary. Burglary carries life in
9 prison, thirty years, kidnaping carries thirty years in the
10 penitentiary so those are much more serious and worse than
11 whether they had argued and fussed and he had pushed her
12 before or slapped her or she had slapped him and he slapped
13 her back or something which is a criminal domestic
14 violence. So to me what we were charged with and the
15 evidence before us was much more severe and worse than the
16 CDV so I would not have objected to that and tried to make
17 a big point out of it to bring it to the jury's attention
18 as if, oh, God, here's a CDV, that must mean he's guilty,
19 cause Reuben Goude is having a heart attack trying to say
20 that the prosecutor is doing something terrible and bad by
21 mentioning it. To me if you just ignore that thing that
22 with everything else the prosecutor was saying, all the
23 evidence, and what I was arguing and trying to present, and
24 what the judge was telling them, to me it would be a minor
25 and a trivial statement.

1 Q Do you agree that you have to make
2 contemporaneous objections to preserve issues for appeal?

3 A Yes.

4 Q Okay, is there any reason why you also
5 didn't object when the State argued over pages seven
6 hundred ten through seven hundred eleven that it was for
7 the jury to end this nightmare for her, the victim had
8 waited for over a year?

9 A It was a nightmare for Mr. Parker, too. He
10 had been in jail for over a year. He was facing life in
11 the penitentiary, he had a nightmare, too, it's the truth.

12 Q Would you agree, though, it is
13 objectionable if the State is attempting to arouse the
14 passions and prejudice of the jury?

15 A It is probably objectionable if the State
16 is attempting to arouse the passions and the prejudice of
17 the jury. Of course, the State is trying to convict the
18 defendant in a legal manner just like I'm trying to have
19 the jury find him not guilty in a legal manner. I didn't
20 see that that was, if he had said something about a
21 nightmare I was not really concerned about that. What I
22 was concerned about was the prosecutor saying that we had
23 taped the girl up and hauled her out of the house and you
24 keep going back to that like it's a broken record, but that
25 is the whole case, that is the point of the case. That is

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1 what you cannot get around from the beginning to the end,
2 you being me and Mr. Parker, so all this other stuff is
3 stuff. We could not get around taping her and taking her
4 out of the trailer and putting her in the truck, that is
5 kidnaping.

6 Q And, Mr. Goude -

7 A That's what the jury convicted us of
8 kidnaping.

9 Q Mr. Goude, I appreciate your opinion on
10 that matter ---

11 A Thank you.

12 Q --- but would you also agree that as his
13 attorney it's your job, you were the only one there that
14 can make contemporaneous objections and preserve issues for
15 appeal even if you feel the State's evidence or the theory
16 of their case is not helpful to you?

17 A Ask me that one again?

18 Q I'll rephrase it. Would you agree that
19 you're the only one present at this trial that can make
20 contemporaneous objections and preserve issues for appeal
21 for Mr. Parker no matter what you think of the State's
22 theory of the case?

23 A Well I realize that I will choose whether
24 to make an objection, contemporaneous objection or not
25 based on what I think is the best interest of Mr. Parker.

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1 I agree that I do not object to everything that is
2 potentially incorrect that I think is inconsequential and
3 will mean nothing to an appellate court or that will mean
4 nothing to the jury.

5 Q And are you aware of the fact that an
6 Anders or no merit brief was actually filed on Mr. Parker's
7 appeal?

8 A I think I saw that in ya'll's stuff that
9 ya'll gave me.

10 Q Now turning to a situation that happened
11 with the jurors that came up on page seven hundred thirty-
12 one, prior to giving a verdict it was disclosed that the
13 extra juror had gone in and had some discussions pursuant
14 to the foreman with the jury ---

15 The Court: As to the burglary charge.

16 Ms. Blanchette: At that time they said, I
17 believe, it was the second charge, not the, as to the first
18 charge which they clarified to be the burglary charge?

19 The Court: All right, I just want to make sure
20 the record is clear.

21 Ms. Blanchette: (Continuing)

22 Q At that time your client had not been
23 rendered not guilty on the burglary charge. Why did you
24 not make a motion regarding the extra juror deliberating
25 with the jury in this case?

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1 A I would not make a motion for a mistrial
2 and hope that I would, I would not make a motion for a
3 mistrial. I would not hope that the judge was going to
4 grant a mistrial. I would not hope that Mr. Parker and I
5 would get to try to this case all over again and the reason
6 I would not hope all that is cause from the defense point
7 of view basically as far as I can tell pretty much the only
8 advantage that the defendant has in a trial is that the
9 prosecution does not know exactly what we're going to do.
10 They don't know exactly what witnesses we're going to call;
11 they don't know exactly what our witnesses are going to
12 say. They don't know exactly what our argument is going to
13 be. The way I was raised, raised in the law is that the
14 smart defense lawyer makes no points in trial and no points
15 with witnesses. The only point he makes is on closing
16 argument when it's too late for the prosecution to demolish
17 the points you made on cross or something. So once you've
18 gone through a trial and done all that stuff if you make a
19 mistrial, they used to think that if you got a mistrial the
20 defense lawyer was real smart and did a real good job. I
21 think most of us that I know now think if we get a mistrial
22 that's very bad because now all of our advantages as
23 defense lawyer, which is that the prosecution does not know
24 what we're going to do, they now know what we're going to
25 do. They know all our points, all our witnesses, what

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1 we're going to say, all of our brilliant theories on
2 closing arguments to try to explain how we're not guilty.
3 They know every bit of that now, so if you have a mistrial
4 that is very bad for the client, so I would not make that
5 motion at that point for that reason.

6 Ms. Blanchette: If I could beg the Court's
7 indulgence one moment?

8 The Court: Yes, ma'am.

9 Ms. Blanchette: (Continuing)

10 Q Mr. Goude, do you recall that this matter
11 was called for a PCR hearing previously?

12 A Yes, ma'am.

13 Q And it was continued so that I could obtain
14 a copy of your file?

15 A Yes, ma'am.

16 Ms. Blanchette: Your Honor, may I approach the
17 witness?

18 The Court: Yes, ma'am, has it been marked?

19 Ms. Blanchette: It can be if the State doesn't
20 have an objection.

21 The Court: It can be I.D. now, 10 for I.D.,
22 okay, it's not saying you have to offer it. I just,
23 anything you hand I want it to have a sticker on it.

24 Ms. Blanchette: Makes perfect sense.

25 (Whereupon, Applicant's Exhibit Number 10 marked

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1 for identification.)

2 Ms. Blanchette: (Continuing)

3 Q Could you identify this for the record,
4 please?

5 A This is a letter apparently from you to me.
6 asking for a copy of Mr. Parker's file.

7 Q Okay, what's the date on this letter?

8 A June 2, 2010.

9 Ms. Blanchette: Your Honor, at this time I'd
10 admit this as Applicant's Number 10.

11 The Court: Any objection?

12 Ms. Catoe: No objection, Your Honor.

13 The Court: Dated again, dated what?

14 Ms. Blanchette: June 2nd, 2010.

15 The Court: It's in.

16 (Whereupon, Applicant's Exhibit Number 10 entered
17 into evidence at this time.)

18 Ms. Blanchette: (Continuing)

19 Q Mr. Goude, you've referred to your notes a
20 lot today so I'm going to refer to mine, in my case file it
21 indicates that on June 8th, 2010, I got a call from your
22 office indicating that Mr. Parker's file had burnt in a
23 fire?

24 Ms. Catoe: Your Honor, I object to, I believe
25 we're getting testimony from, from opposing counsel and I'm

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1 going to object to that.

2 The Court: I thought you were referring to the
3 letter; are you talking about a telephone conversation now?

4 Ms. Blanchette: Well the letter was sent and
5 then I was saying that there was a telephone conversation
6 with his office.

7 The Court: Well did your, did your case file
8 burn in a fire, Mr. Goude?

9 A In September 2008 our, my law office down
10 at the old courthouse, the hurricane came through and blew
11 a power pole down and burned my office.

12 The Court: Did this file burn?

13 A This file did not burn, this file among a
14 bunch of other stuff ---

15 The Court: I'll allow the question.

16 A This file along with a bunch of other stuff
17 was taken to a storage unit out ---

18 The Court: Wait a minute, I think the question
19 was, did you tell her that the file had burned?

20 A No, I did not tell anybody that the file
21 was burned cause I don't think the file was ever burned.
22 It was never burned. Now it's possible that somebody in my
23 office, I guess you could write down the name who you talk
24 with, either Tricia or Amber worker with me, and they would
25 know that the files had not burned because it did not burn

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1 but they would know that we had a fire in the office, the
2 office burned and we stored the files in a storage unit
3 that the boxes maybe ---

4 The Court: Okay, that answers the question, go
5 ahead. I don't want to get off on that tangent unless she
6 asks a question.

7 Ms. Blanchette: (Continuing)

8 Q And just, I just wanted to put this on the
9 record so as a matter for the record you did not provide me
10 that copy of the file until it was ordered by Judge John on
11 August 24th, 2011?

12 A I generally will not mail out my file that
13 I got to somebody else, no. Now when the ---

14 Q You did comply with his request that day
15 and I made those copies at my own expense; is that correct?

16 A The last time, well somebody had to pay for
17 them, I guess. The last time we were here at the PCR
18 hearing I had my file right here ---

19 The Court: That's not the question. You did,
20 answer the question. You did comply, you did make the
21 copy, she made a copy of the file at her own expense?

22 A I had the file here and the Judge said give
23 it to them and I gave it right to them.

24 The Court: All right.

25 Ms. Blanchette: Your Honor, I just wanted to

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1 make sure that was on the record for my client and I have
2 no further questions.

3 The Court: And that date was what again, August
4 of what year?

5 Ms. Blanchette: August 24th, 2011.

6 The Court: Eleven.

7 Ms. Blanchette: After testimony Judge John
8 ordered that he give me a copy of the file.

9 The Court: Okay, is that pretty much the same
10 date as this transcript you handed me?

11 Ms. Blanchette: It is where the transcript came
12 from, yes, Your Honor.

13 The Court: All right. Questions, Ms. Catoe,
14 anybody need a break, everybody okay?

15 Ms. Catoe: I'm fine, Your Honor.

16 The Court: Brenda, you okay? All right, cross
17 examination?

18 Ms. Catoe: May it please the Court?

19 The Court: Yes, ma'am.

20 Cross Examination

21 By Ms. Catoe:

22 Q Mr. Goude, do you have a note in your file
23 as to when you were appointed?

24 A My time sheet, Ms. Catoe, says, the first
25 entry I got in my file is March 18th, '06, I wrote down

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1 appointed.

2 Q Okay, do you know when the time period for,
3 do you know whether the time period for the preliminary
4 hearing would have already passed by then?

5 A I don't know that, I will say that
6 generally I do not go to the preliminary hearings. Our
7 Solicitor in this circuit gives us all of the file and with
8 the case load that we have going to preliminary hearing
9 basically serves pretty much no purpose since we get
10 everything in the Solicitor's file. They just make it and
11 give it to us and I know what the client is going to say,
12 which the prosecutor does not know, so must of the time I
13 don't go to the preliminary hearing, and mostly what the
14 magistrate's here do is they send us a statement of facts
15 and we put on there we don't waive the preliminary hearing,
16 we waive our presence at the preliminary hearing so the
17 defendant can still have it and the magistrate can still
18 have it, I just don't go to it.

19 Q Mr. Goude, do you recall anything in your
20 file, maybe a note, regarding a motion to dismiss the case
21 because the witness, Deborah, who passed away in October of
22 2006, was unavailable; do you recall anything about maybe
23 your client asking you to do or you actually doing that,
24 making a motion to dismiss the case?

25 A I know I would not have made a motion cause

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1 I don't know of any legal basis that that would be a valid
2 motion to make. Of course you can make any motion you want
3 to. You can say I had a vision last night and I make a
4 motion that the case be dismissed. You can make any motion
5 you want to make but as far as a valid legal basis I didn't
6 know of a legal thing to do to try to dismiss the case
7 about him whether we carried the woman out of the trailer
8 with the duct tape on her when we admitted we did it, the
9 grandma said we did it, the girl said we did it, because
10 one of our witnesses or a witness or a person had died that
11 had ---

12 The Court: The question is whether or not you
13 made a motion to dismiss due to the unavailability of Ms.
14 Veracruysee?

15 A No, sir.

16 The Court: Okay.

17 Ms. Catoe: (Continuing)

18 Q Mr. Goude, opposing counsel was asking you
19 about why did you agree or say you had no objection
20 regarding prior, I guess, violence or incidents between the
21 victim and the defendant, do you recall that the judge
22 actually said that proffers would be required and that he
23 later ruled that violence would not be admissible?

24 A I remember something in the transcript
25 about ---

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1 The Court: What page, Ms. Catoe, you can go
2 ahead while she's looking for that, sir.

3 Mr. Goude: - (Continuing)

4 A I remember something in the file about
5 proffers from looking at the transcript.

6 Q All right, and I'll just refer the Court to
7 pages one hundred seventy-three and one hundred seventy-
8 four and also pages one hundred ninety-nine to two hundred
9 seven, and do you recall, Mr. Goode, Goude, at the
10 conclusion, I'm sorry, Mr. Goude, at the conclusion of
11 those proffers do you recall the Judge saying that prior
12 violence would not be admissible? If the transcript says
13 that would you dispute it?

14 A No, ma'am.

15 Q All right --

16 Madam Court Reporter: Mr. Goude, would you sit
17 up closer to the microphone?

18 The Witness: (Continuing)

19 A Yes, ma'am.

20 Q Mr. Goude, if I understood your testimony
21 on direct correctly, you indicated you had a note in your
22 file that may have come from the trial that the defendant
23 said he was coerced by Officer Hayward and, and said he
24 wanted an attorney; my question is did you have, do you
25 have anything in your file that indicates that the

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1 defendant had told you that information prior to trial?

2 A No.

3 Q All right, in the defendant's statement to
4 the police he denied taping, he admitted putting some tape
5 on the victim's feet and denied putting tape on the
6 victim's hands or mouth; do you recall that?

7 A I'm turning right here to my notes and I'll
8 answer that question. I have got seven legal page of notes
9 that I've got down from the CD statement that Mr. Parker
10 made to the police; do you want me to read all these, all
11 these notes, I'll be happy to read them if you want me to
12 read them?

13 Q No, that's okay, Mr. Goode, Goude, I'm
14 sorry, I keep mispronouncing ---

15 The Court: The question is what again, the
16 specific question?

17 Q The question was would you dispute that in
18 the, in the victim's statement to police he denied taping
19 the victim's hands and mouth?

20 The Court: The defendant's statement.

21 Ms. Catoe: (Continuing)

22 Q The defendant's statement to police?

23 A Let me look right here and I'll see what it
24 says. He said before she lived on a hill where her daddy
25 lived men would fondle her when she passed out ---

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1 Q Not to interrupt you, but just ---

2 The Court: Answer the question, did he deny in
3 his statement that he taped her hands and mouth?

4 The Witness: (Continuing)

5
6 A This point here he put, he put it on her,
7 he saw duct tape on her coffee table, he put it on her
8 feet. Now that's on page 3 and I'll keep, then he says he
9 looked at what I was doing, he took the duct tape off her
10 feet. He did not duct tape the mouth and hands at first
11 only the feet. Of course he said at first so if you want
12 me to I'll keep reading and see what else he says.

13 Q Well let me, let me rephrase my question.
14 Would you agree that there were some minor differences
15 between the trial testimony and the statement but that they
16 were generally the same?

17 A Yeah, they were generally the same and he
18 had a lot of stuff in his statement to the police out of
19 that seven pages of notes that really were helpful to him
20 and harmful to the prosecution witness.

21 Q All right, and let me, let me develop that
22 a little further. Would you agree that his statement to
23 the police allowed him to get in evidence that the victim's
24 mother essentially forced the victim to, to press these
25 charges and that the mother threatened to take the victim's

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1 children away if she did not? Would you agree that the
2 statement let in that information?

3 A Yes, on the first page of the statement it
4 said the girl and Nicholas had lost their kids before, the
5 girl stayed with the defendant two months, then the mama
6 threatened to take the kids so the girl went back to the
7 mama.

8 Q All right, Mr. Goode, would you, I'm sorry,
9 Goude, I'm so sorry I keep doing that, would you also agree
10 that the statement of the defendant to the police also let
11 in information that the jury heard explaining why the
12 defendant ran from the police and that explanation was that
13 he had been charged with something that he didn't do before
14 and he still got in trouble for it; would you agree with
15 that?

16 A Let me look, oh, right at the last bottom
17 of page eight, "I ran from the police because I said I will
18 come turn myself in but twenty minutes later the police was
19 at my door, I don't trust the police; I don't want to go to
20 jail."

21 Q All right, and that's fine, Mr. Goude,
22 would you also agree that the statement emphasized his
23 testimony at trial that he had lost his mind, went crazy,
24 and didn't know what he was doing at the time of the
25 conduct?

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1 A It said he was, Mr. Parker said he was
2 stressed out. He tried to talk to her; he has feelings for
3 her, he loved her to death and then she woke up, she said
4 she was messed up.

5 Q And that's all right, Mr. Goude, if you
6 can't find any notes on that, would you also agree that the
7 statement, and I think you just mentioned this, but the
8 statement allowed in information that the victim was
9 extremely messed up on drugs and that could explain why the
10 defendant carried her?

11 A Yes.

12 Q All right --

13 (Whereupon, State's Exhibit Number 1 marked for
14 identification.)

15 Ms. Catoe: May I approach the witness, Your
16 Honor?

17 The Court: Yes, ma'am, State's Number what?

18 Ms. Catoe: State's Number 1 for I.D.

19 Ms. Catoe: (Continuing)

20 Q Mr. Goude, I'm going to hand you this and
21 see if you can identify it for me?

22 A Oh, yes, that's my writing on the outside
23 of it which says defendant's statement.

24 Q And where did that, did that come from your
25 defense file?

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1 A It came from my file.

2 The Court: And for the record it's a DID,
3 excuse me, a CD, DID or what, audio video or ---

4 Ms. Catoe: It is a CD.

5 The Court: Video?

6 Ms. Catoe: Audio.

7 The Court: Audio, no, no video?

8 Ms. Catoe: To be honest, Your Honor, I've only
9 listened to it as audio, I'm not sure if it would play
10 audio.

11 The Court: Is it audio or video?

12 The Witness: (Continuing)

13 A My notes say it's CD when I wrote my notes
14 down, Judge.

15 The Court: Okay.

16 Ms. Catoe: And I realize the applicant may
17 object but the State would like to offer this into evidence
18 at this time?

19 The Court: Any objection?

20 Ms. Blanchette: I would object, Your Honor, on
21 several basis. First of all notice, I provided the State a
22 copy of all my exhibits, then we have done this hearing
23 essentially before and I had no notice ---

24 The Court: No, ya'll, ya'll didn't, ya'll did
25 part of it and it was started de novo today.

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1 Ms. Blanchette: Correct, but I'm just saying I
2 had no notice until today that she intended to use this CD.
3 Secondly, I would object ---

4 The Court: Let me, let me address that. Ya'll,
5 you talked about it a lot during your examination of the
6 applicant, correct?

7 Ms. Blanchette: And ---

8 The Court: And this is cross examination of a
9 witness you called.

10 Ms. Blanchette: That is correct, Your Honor,
11 because we have the burden so I thought it would be best to
12 call him, but we talked about it in regards to the Jackson
13 v. Deno and the suppression, the failure to utilize
14 witnesses during that. I did not get into any specific
15 portions of the trial where the actual statement comes in
16 except for when Your Honor asked me about it today, well
17 what was and wasn't said in the statement. Our sole
18 argument is about the suppression of this, so I would argue
19 that I did not get into in direct.

20 Furthermore, Mr. Goude did provide me with a copy
21 of his file back in August. I did make a copy of that for
22 myself and my client at my own expense. I viewed the tape
23 briefly but then immediately returned it ---

24 The Court: By the way is it a video or audio?

25 Ms. Blanchette: It's the CD, it played on my

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1 computer as just audio.

2 The Court: Okay.

3 Ms. Blanchette: So I don't know if it's a
4 computer issue or if that's what it is.

5 The Court: All right.

6 Ms. Blanchette: But I promptly returned the
7 file to the State and I think it was within a week so then
8 Mr. Goude could have it back for today. If I would have
9 known the State planned to utilize it today I would have
10 made a copy, had gone over with my client, so I do ask if
11 the Court chooses to admit it that we do play it and I have
12 a opportunity to recall my client if there's any matters he
13 may need to address because ---

14 The Court: The whole hour and a half?

15 Ms. Blanchette: Cause we did not intend to
16 introduce it or nor did I specifically reference anything
17 from that interview, just what happened before that
18 interview during our case in chief.

19 The Court: But your client testified that if
20 the tape had not come into evidence and the jury heard what
21 he said on the tape he would never have testified.

22 Ms. Blanchette: He did testify to that, Your
23 Honor.

24 The Court: Did the whole tape get played in
25 front of the jury, Mr. Goude? Did the whole tape get

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1 played?

2 A I'd have to refresh my memory, Judge.

3 Ms. Blanchette: Your Honor, that actually goes
4 to my next objection. The only thing we have in the record
5 is that, I forget what exhibit number it is, exhibit
6 whatever is marked and introduced. It doesn't say if it's
7 the entire CD, a portion of the CD, and this appears to Mr.
8 Goude's copy, not the copy that was introduced in court so
9 I would say if you're willing to introduce something today
10 it needs to be the copy that was introduced in court not a
11 copy that the State found in Mr. Goude's file. It may be
12 completely different than what was admitted in court.

13 A According to my exhibit list the CD of Mr.
14 Parker's interview was admitted into evidence.

15 The Court: Was it, okay, if it was admitted
16 into evidence I guess the jury --

17 Ms. Catoe: And, Your Honor, my understanding is
18 that there's, I think it was page three hundred nineteen,
19 but it was published before the jury in its entirety is my
20 understanding.

21 The Court: Let me take a look at that.

22 Ms. Catoe: I hope I don't have the page number
23 wrong.

24 Ms. Blanchette: Your Honor, it is three hundred
25 nineteen, line eleven

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1 The Court: Wait just a second, it was received
2 into evidence and appropriately marked. I don't see where
3 it was published. I don't know but if it was in evidence
4 obviously in the context of this case the tape is an hour
5 and a half long. The jury deliberated thirty-five minutes
6 so I assume a logical person would conclude that if the
7 jury listened to it they didn't listen to it all.

8 My question is, we talked about the tape probably
9 about and the issues surrounding the giving of the
10 statement, forty to forty-five percent of this proceeding
11 today. I'm just a little bit at a loss to under -- so you
12 don't want me to consider it but you want me to consider
13 what your client said on it, because I have to, I have to
14 look at, okay? Do I think based on my two-prong analysis
15 that there's a reasonable probability the outcome of this
16 trial had been different if that statement hadn't come in
17 starting the domino affect of his decision to testify to
18 explain what was on the tape so the jury could hear the
19 whole truth, so what am I missing here?

20 Ms. Blanchette: I understand your reasoning so
21 I wouldn't say you're missing anything in that regard. My
22 concern is I had not intended to introduce it.

23 The Court: But they can, I mean it doesn't
24 matter what you intended to do.

25 Ms. Blanchette: And that's perfectly fine. I'm

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1 just asking that it actually be State's Exhibit Number 20
2 that be introduced since if we're looking at the prejudice
3 prong and what was actually given to the jury versus a CD
4 found in Mr. Goude's file that we don't know if it was the
5 same thing, and then I ask if the State does intend to use
6 State's Exhibit Number 20 whether it just be the record be
7 left open and I have a chance to respond that we are given
8 an opportunity to view it and respond?

9 The Court: Okay, I'm going to overrule your
10 objection. I guess the authenticity of this piece of
11 plastic might be in the question maybe you can clarify that
12 for the foundation purposes, Ms. Catoe?

13 Ms. Catoe: Yes, Your Honor.

14 The Court: Ask him if he knows if that's the
15 same one.

16 Ms. Catoe: (Continuing)

17 Q Mr. Goude, have you reviewed this, this CD
18 that came from your file, it's State's Exhibit 1 for ID?

19 A That's where I got my notes from.

20 Q All right, and so you did review this
21 before trial?

22 A Yes.

23 Q And do you recall as stated on page three
24 hundred twenty that State's Exhibit Number 21, which is the
25 CD of the defendant's statement was intro -- was published,

Mr. Goude - Direct Examination by Ms. Blanchette

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1 was played in open court, and did you see that when it was
2 played in open court?

3 A Yeah, I saw on the thing where it was
4 admitted.

5 The Court: Page three hundred twenty, it says
6 was played in open court. Do you remember it being played
7 in front of the jury?

8 A Let me look at three hundred twenty, that's
9 what would have been done, so, yes, and --

10 Q Do you recall that, do you recall any
11 differences between the tape you reviewed and the tape that
12 was played in open court?

13 A No, as far as I can remember they were the
14 same information, the same statements to the police, the
15 thing that was played in court and the thing that was given
16 to me and that I made my notes on that I just read from.

17 Q All right --

18 The Court: All right, the applicant's objection
19 is, is overruled. We'll discuss later about leaving the
20 record open, okay, or and you, you got the right to, I
21 guess where I'm having some difficulty this is still part
22 of your case and you're asking to call, to recall your
23 client, that's certainly within my discretion. We'll
24 address that later on. If, if you recall him it's not
25 going to be today.

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1 Ms. Blanchette: And, Your Honor, I just briefly
2 discussed it with him and he said that he addressed
3 everything he needed to about the CD or video, whatever it
4 is, when he was testified in court. The only thing I'd ask
5 is that I could be provided a copy of that for my record.

6 The Court: Certainly, if you change your mind
7 about that, let me know. I certainly do agree that you're
8 entitled to address that issue if you would like to and I
9 don't know who's going to make the copy for you.

10 Ms. Catoe: I have it on my computer and I can
11 email it to her. I can do it right now if Your Honor
12 wants.

13 The Court: No, don't do it now, we'll do it at
14 some other time but we're not going to stop for you to do
15 it now.

16 Ms. Blanchette: Thank you, Your Honor, I just
17 wanted to make sure I was covered on record.

18 The Court: Yes, ma'am, all right. If you
19 change your mind, Number 1 for the State is in, if you
20 change your mind about what you think you ought to do you
21 certainly let me know, okay.

22 (Whereupon, State's Exhibit Number 1 entered into
23 evidence.)

24 Ms. Catoe: (Continuing)

25 Q All right, getting back to the statement,

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1 Mr. Goude, and I believe we covered this thoroughly but
2 I'll just ask you just to be sure. I believe you testified
3 you felt the statement was helpful to the defendant's case
4 and that you wanted it in evidence?

5 A Yes, the issue never came up between Mr.
6 Parker and me that we were not going to testify except that
7 the statement was going to come into evidence and it never
8 came up that Mr. Parker would never testify if the
9 statement did not come into evidence. If Mr. Parker was
10 going to have a trial and refuse the prosecution's offer he
11 had to testify. He had to put into evidence how he took
12 the woman out of the trailer. If you didn't have the
13 statement in evidence explaining why he went there and what
14 happened and he didn't testify then the only evidence that
15 would have been present in court would be the prosecution
16 witness saying I'm laying in my trailer, he comes in my
17 trailer, tapes me hand and foot, carries me out and puts me
18 in a truck and drives me away. and the grandma, if we
19 called her, saying my grandson goes in this woman's
20 trailer, brings her out carrying her taped hand and ---

21 The Court: That's not responsive. We've got to
22 restrict our answers to respond to the questions, okay.

23 Ms. Catoe: (Continuing)

24 Q Did, did you and the applicant Mr. Parker
25 discuss and review his statement prior to trial his

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1 statement to police?

2 A We discussed it.

3 Q And did you discuss the impact that would
4 have at trial if you went to trial?

5 A And the impact was it was pretty much the
6 duct tape was the main thing, the main impact.

7 Q All right, considering that Mr. Parker did
8 waive his Miranda rights on the tape, did you feel there
9 was a probability or any probability that the statement
10 would have actually been suppressed?

11 A No.

12 Q Is it also fair to say that you didn't call
13 Mr. Parker as a witness at the Jackson v. Deno hearing
14 because you really didn't want to have the statement
15 suppressed and you didn't want to, you didn't see any
16 reason to push the issue?

17 A I don't recall the point on the hearing; I
18 didn't make a note one way or the other. I didn't have
19 anything written down where I see, it might be in the
20 transcript, it might not, I just don't remember that point
21 about Mr. Parker saying that he'd wanted a lawyer. I saw
22 the tape and it had the rights all on it; that's what my
23 notes up at the top of my note said, right silent. On the
24 rights I wrote them down, they was on the CD and the uncle
25 had never told me, of course, he might, I'm not saying what

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1 the uncle said was true, I'm not saying what the uncle said
2 was not true. I'm saying that my notes did not show that
3 the uncle when he had talked with me months before the
4 trial had said anything about we were forced or coerced or
5 we wanted a lawyer and we couldn't have one, or whatever.

6 Q All right, and you also don't believe that
7 the defendant told you that either before trial?

8 A I don't remember anything in my notes
9 saying that.

10 Q And do you normally take good notes of
11 everything?

12 A I try to.

13 Q All right, and regarding the issue of the
14 alternate juror going in to deliberations, isn't it true
15 that the verdict had not yet been received at that point?

16 A I think so.

17 Q All right, and so there was some chance of
18 a not guilty on both charges?

19 A Like we talked awhile ago I thought we had
20 just as good a chance with thirteen jurors or fourteen or
21 twelve; they all heard the same evidence that was presented
22 in trial. I did not want a mistrial. You can call that
23 trial strategy if you want to, which I guess it is, I did
24 not want to retry this case and the prosecutor now know
25 everything that we were going to think, say, and have

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1 theories of, so I would not make, I did not make a motion
2 for mistrial for that reason because I didn't see that it
3 would hurt us any. It may be a point that you could make
4 if you're, if you don't think any further than do I have a
5 point to make, but if you think to paragraph two or page
6 two that you, what's the result of me making this motion
7 getting a mistrial. I don't want a mistrial in this case,
8 so we, I did not make a motion for a mistrial.

9 Q All right, and the jurors also agreed that
10 the alternate did not discuss the kidnaping charge; isn't
11 that correct?

12 A I think that's what the transcript says,
13 yes, ma'am.

14 Q All right, regarding discovery and your
15 discussion with your client, did you discuss and review
16 with your client the SLED reports, and I don't need dates
17 or anything, just if you did it?

18 A We would have talked over the evidence
19 against us and as I recall, yes, we would have talked over
20 the evidence against us and the SLED reports. As I
21 remember mostly of what they were talking about was duct
22 tape in the truck and/or the little garage storage unit in
23 Summerville at the grandmother's house and/or duct tape in
24 the prosecuting witness' trailer in Georgetown and we all
25 agreed, we being the prosecuting witness, my client, and

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1 his grandmother, that the lady was duct taped by my client
2 in the trailer, in the truck, and they went to the storage
3 unit in Summerville, so whether there was duct tape in
4 there or not it did not really change what anybody was
5 saying, so we covered the evidence that was against us.

6 Q And you still didn't, you thoroughly
7 discussed everything that you needed to discuss with Mr.
8 Parker prior to trial?

9 A Yes.

10 Q Now regarding the applicant's issue about
11 the State v. Jefferies case and the knowledge versus intent
12 requirement for the charge of kidnaping, did you feel that
13 that was something you wanted to discuss or that you needed
14 to discuss with Mr. Parker in the context of the plea
15 negotiations?

16 A I don't think that you can accidentally
17 kidnap the prosecution witness whether you, and I don't
18 think the jury got into or gets into the minute legal
19 points that have been made here today or that sometimes are
20 made in the instructions or the law. I think the jury was
21 going to use their common sense, that's what the Judge
22 tells them to, use your common sense, your knowledge of the
23 world to decide whether they thought that we kidnaped the
24 woman or we did not, so whether you call it I am duct
25 taping her and taking her out of the trailer and I got the

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1 specific intent to duct tape her and take her out of the
2 trailer or whether you called it I duct taped her and I
3 take her out of the trailer and I know that I'm duct taping
4 her and taking her out of the trailer or I voluntarily duct
5 taped her and taking her out of the trailer or I knowingly
6 duct taped her and taking her out of the trailer, from the
7 jury's point of view and my client's point of view in
8 testifying I think it all means the same thing and the jury
9 is the one that votes not guilty or guilty. If they think
10 we did it and committed a crime they were going to vote in
11 a way we don't like and if they think we were not planning
12 on hurting or kidnaping her and they think we were not
13 trying to commit a crime and they think that we did not
14 know we were committing a crime I think it's coming out to
15 be in the jury's mind all the same thing so I would ask the
16 Judge to in representing Mr. Parker to give a more
17 favorable charge to my client than maybe the law would
18 warrant. I might would ask that the Court charge specific
19 intent on kidnaping and I might know that you don't have to
20 have a specific intent, not that I am stupid, the reason
21 I'm asking for that charge, but because I think that
22 potentially the Judge might would charge it and being
23 favorable to us and it might help the client.

24 Q All right, so if I understand you, you're
25 saying you don't think that would have or would have or

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1 could have factored into Mr. Parker's decisions regarding
2 the plea?

3 A I'm saying that he and I talked over the
4 evidence against us and what he did and went over what we
5 were going to ask him and what he was going to say, based
6 on what he told me happened, and that's the way we worked
7 it.

8 Q All right, Mr. Goude, do you recall seeing
9 any coaching of the victim in this case?

10 A Not that I recall.

11 Q Do you recall Mr. Parker mentioning any
12 coaching of the victim to you?

13 A I don't recall; he may have. If he says he
14 told me he saw her looking at notes then I believe that he
15 probably saw that and if he says he told me that then he
16 probably told me that.

17 Q All right, let me ask you this, was the
18 trial held in this courtroom or the old, or this courthouse
19 or the old courthouse?

20 A I, I don't remember; it was held in ---

21 Q January 2007?

22 A January '07, that's five years ago, it was
23 probably, it was probably before this courthouse opened but
24 I don't remember exactly when this courthouse opened.

25 Q All right, and are you familiar with the

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1 courtroom in the old courthouse?

2 A I am.

3 Q And if I understand correctly there is just
4 one courtroom?

5 A That's correct.

6 Q All right, and do you recall Mr. Parker's
7 testimony about seeing the Solicitor and the victim behind,
8 I think it was the chambers door; do you recall that
9 testimony from earlier?

10 A It was kind of not clear to me what Mr.
11 Parker was saying on that point.

12 Q All right, can you think of any reason why
13 the victim would have been behind the chambers door?

14 A I don't think I remember anything about
15 that point.

16 Q Okay, all right, can you explain to me your
17 strategy in your closing argument?

18 A Any particular part or --

19 Q Just generally your trial strategy
20 regarding closing arguments?

21 A Well the older you get and the more cases
22 you do, the more experience you have just like in anything,
23 and when you're talking in front of a jury all of the
24 brilliant legal CLE guys say don't use notes, get, throw
25 the podium in the trash can, get away from that thing, and

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1 try to crawl up into the jury box with the jury, get in
2 their lap or sit in one of their chairs and be one of the
3 jurors, think just like the juror, be a juror; and when
4 you're talking to the jury what we are trying to do in Mr.
5 Parker's case is convey to them, and I guess it's the part
6 about the Muslims where the applicant was saying he
7 couldn't understand what the Muslim's in my closing
8 argument had to do with being in Summerville or whatever,
9 so I guess I'll address that specific point, I looked at
10 it this morning when they were talking, let me just look
11 here at that first page, have you got the page number?

12 The Court: All right, we've been here just
13 about two hours. We're going to take a break right now and
14 I know where we are, we're at the, you're asking about his
15 closing argument strategy --

16 Ms. Catoe: This was the last question, Your
17 Honor.

18 The Court: Okay, well we'll take a break after
19 that cause I would assume Ms. Blanchette will have some
20 questions. All right, you can answer it, Mr. Goude. You
21 okay, all right, go ahead.

22 The Witness: (Continuing)

23 A I'm turning to page six hundred sixty-nine
24 since they asked about the Muslims and you're asking me
25 about it so I'll, what I was trying to do there, and that's

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1 on page six hundred seventy in the beginning of my closing
2 argument, is trying to impress on the jury, and I just
3 compared other places in the world that has trials and
4 courts where they don't have the wonderful jury system that
5 we have here in South Carolina and Georgetown County and
6 the United States of America where individual citizens
7 coming off the street make the decisions. They're not
8 getting paid money; they're not trying to get a better job.
9 They're not being paid by the defense or the prosecution;
10 they're not afraid. They're not like the Muslims and the
11 Arabs that they're murdering one another, that we live in a
12 free country with a jury, and I'm trying to bring that to
13 the jury's conscious and uplift the jury and raise them to
14 the heights, because in every jury's heart and soul they
15 got this little image that maybe all this stuff we read as
16 children and in school about how wonderful we are and how
17 honest the jury can be and how smart and impartial they can
18 be, they all know that somewhere in their little souls and
19 little hearts, so if you will bring that out to them they
20 will rise to that occasion and they will be great and
21 honest and honorable and impartial and they will look at a
22 defendant that's got no money and no friends and a little
23 poorly paid defense lawyer and then they'll look at the
24 prosecution's table where they got all the money in the
25 world and high pensions and they will give a equal result

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1 to the little guy that's got no money and the little lawyer
2 that's got no money, against all the power that's right
3 against them. So when you start making your closing
4 argument you try to bring all that stuff out and if you'll
5 let them rise to the occasion they will rise to the
6 occasion, so you got to cover everything that you can ever
7 think of or dream of, the Bible, Shakespeare, world
8 affairs, the political debates, football, everything to try
9 to get them to connect with you and your little client
10 that's sitting over there.

11 Q All right, and can you explain your comment
12 where you call, you essentially, you refer to your client
13 as or your client's actions as, as stupid?

14 A When you want the jury to identify with you
15 and open their mind and soul to you and not sit there with
16 all their arms crossed blocking out everything you're
17 trying to say on your closing argument you got to tell them
18 the truth. You can't get up there and say, oh, this is
19 such an easy case, the prosecutor lied, the police lied,
20 the girl lied, I order you to vote not guilty. That is
21 stupid. You've got to admit the truth and tell them the
22 truth. It was stupid for Mr. Parker to go there and tape a
23 woman's legs and hands with duct tape. Has any of us ever
24 done that in our life? Any juror ever done that in their
25 life? They know it was stupid; they don't need me to tell

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1 them. If any lawyer can stand up and say it was not stupid
2 or if Mr. Parker can stand up and say it was not stupid or
3 any of his family or his uncle or his mama or his brothers
4 is going to go to the jury and say it was not stupid what
5 Mr. Parker did that day I would like to hear them say it
6 because it was stupid, so I told the jury it was stupid.
7 You've got to tell them the truth; it was the truth.

8 Q And the truth works here in some regard
9 because he was acquitted of ---

10 A The truth worked we did not get life in the
11 penitentiary on burglary in the first degree, that's
12 exactly true.

13 Ms. Catoe: All right, thank you, Mr. Goude, I
14 have no further questions.

15 Ms. Blanchette: Your Honor, I have one
16 question.

17 The Court: Yes, ma'am.

18 Ms. Blanchette: And I can be very brief.

19 The Court: All right.

20 Redirect Examination

21 By Ms. Blanchette:

22 Q The State asked you about page one hundred
23 ninety-nine to two hundred seven where there was a proffer
24 done and then the State indicated that the Judge ruled that
25 he would not let in specific instances of violence; would

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1 you agree if the transcript reflects that the proffer was
2 about specific instances of violence and the Judge ruled
3 those could not come in?

4 A Is that a question for me?

5 Q Yes, would you agree that the portion of
6 the transcript that the State referenced on pages one
7 hundred ninety-nine through two hundred seven covers
8 specific instances of prior violence and the Court ruled
9 those instances would not come in?

10 A I agree that on the bottom of page two
11 hundred seven the Court said I'm, line twenty-four, I'm not
12 going to allow any of the testimony that was offered in the
13 proffer in front of the jury except I agree that that's
14 what the Court said. I don't remember exactly what all the
15 offer proffering contained.

16 Q And Court's ruling was regarding a proffer
17 so there were other times throughout the trial when
18 instances of violence or bad conduct on Mr. Parker's part
19 came in; is that correct?

20 A I'm sure bad conduct came in cause I think
21 we talked about drug, drug use and stuff by both parties.

22 Ms. Blanchette: I have no further questions,
23 Your Honor.

24 The Court: Okay, anything else, Ms. Catoe, from
25 this witness?

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1 Ms. Catoe: Nothing further.

2 The Court: Thank you, Mr. Goude, you can step
3 down. All right, would there be any other witnesses from
4 the applicant?

5 Ms. Blanchette: Your Honor, I have no further
6 witnesses. I have a couple of cases to hand up and about a
7 three minute argument and that's all I have for the Court
8 today.

9 The Court: All right, do you need to take a
10 break? Okay, all right, Ms. Catoe, will the State be
11 offering any witnesses?

12 Ms. Catoe: No, Your Honor.

13 The Court: Okay, yes, ma'am?

14 Ms. Blanchette: Your Honor, just going back to
15 the applicant's statement issue. I do agree with the Court
16 that we have the burden here to show prejudice. The
17 difficulty in doing post conviction relief is we also
18 teeter on the edge of doing a retrial, so I just ask when
19 the Court considers that it's in the light of just the
20 prejudice prong that we have to show and the testimony
21 given today, and not evidence of my client's guilt or
22 innocence in this matter.

23 Just briefly in summary, this is not just a case
24 about duct tape. We heard that over and over and over
25 again from Mr. Goude. This isn't just about duct tape;

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1 this is about a complete break down in the adversarial
2 process, ineffective assistance of counsel that rendered
3 the outcome of this trial not reliable and we would argue
4 that the outcome could reasonably be different if all our
5 allegations of ineffective assistance of counsel had not
6 occurred.

7 Now it may appear I'm arguing more of a
8 cumulative affect I am not, I'm arguing that each issue
9 that we have alleged today can stand on its on and I have
10 cases to support those, but I'd also argue pursuant to U.S.
11 v. Cronic that here if we look at all of the issues
12 together this is a case where prejudice could be presumed,
13 and recently our South Carolina Supreme Court relied upon
14 U.S. v. Cronic and I do not have a copy of this case, I'm
15 sorry for the Court today, so I'll give you the cite, but
16 they addressed and applied Cronic in the PCR case
17 underlying State v. Nance which has been one of our major
18 cases decided this year.

19 The PCR case underlying State v. Nance is Nance
20 v. Oszmith and that is located at 367 SC 547 and that was
21 decided in 2006.

22 In U.S. v. Cronic the United States Supreme Court
23 made it clear that "an accused right to be represented by
24 counsel is not a," "is a fundamental component of our
25 criminal justice system and lawyers in criminal cases are

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1 not luxuries, they're necessities, no matter what their
2 theory is." If it's just all about duct tape they still
3 have a job to do, and the Court went on to say "if counsel
4 entirely fails to subject the prosecution's case to a
5 meaningful adversarial testing then there has been a denial
6 of the sixth amendment rights that make the adversarial
7 process itself presumptively unreliable" and that's what
8 our Court found in Nance v. Oszmith that ended up in State
9 v. Nance.

10 Here, like I said this is not a case about duct
11 tape, it's a case about the break down of the adversarial
12 process. Just to highlight a couple of our allegations,
13 we're alleging counsel failed to prepare and investigate,
14 failed to make viable motions, failed to utilize witnesses,
15 and failed to make contemporaneous objections and move for
16 mistrial when needed.

17 As to some of the specific allegations listed in
18 the amendment to support allegations one, two, four, five,
19 and seven, I will be providing the Court a copy of Lyles v.
20 State. In that decision our Court addresses the matter of
21 ineffective assistance of counsel and what an attorney must
22 do for his assistance to be deemed reasonable.

23 I'll also be handing the Court a copy of Kolle,
24 k-o-l-l-e, v. State which addresses an attorney's duty to
25 advise a client prior to the acceptance or rejection of a

1 plea offer.

2 The Court: Advise him of what?

3 Ms. Blanchette: I'm sorry, what was that?

4 The Court: Advise him of what?

5 Ms. Blanchette: Advise him as to the State's
6 evidence, the law, to make sure it's a knowing and
7 voluntary, either acceptance or rejection of that plea
8 offer. In there in Kolle the Court found deficient
9 performance for advising that the plea wasn't a good deal
10 without going through everything, advising to reject
11 without going through the State's evidence.

12 I'll also be handing up a copy of State v.
13 Sierra. We touched on briefly that the Solicitor with his
14 questions interjected his own testimony about the bond
15 hearing. In Sierra it indicates that when a Solicitor uses
16 questioning and cross examination to testify that is a
17 violation of the confrontation clause.

18 I also have a copy of Brown v. State which is a
19 2009 case which addresses counsel's duty to object during
20 closing arguments.

21 I've already referenced U.S. v. Chronic, I do
22 have a copy of that also for the Court, and finally a copy
23 of Bennett v. State which addresses ineffective assistance
24 of appellate counsel in regards to an Anders brief.

25 I hope that I have answered the Court's questions

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1 throughout the course of the day but if the Court has any
2 other questions regarding our allegations or any
3 clarifications that are needed I'd be happy to do that.

4 The Court: The alternate situation, it happens,
5 you know, fairly frequently, isn't the trial judge vested
6 with the discretion of asking the jury, did ya'll discuss
7 this in a meaningful way with the alternate and is, are you
8 telling me that Judge Hayes would have had no choice but to
9 grant a mistrial if Mr. Goude had asked for one?

10 Ms. Blanchette: Your Honor, based upon my
11 appellate experience, which may be limited and I may be
12 incorrect in saying this, I believe that Mr. Goude had a
13 duty to ask for a mistrial for that issue to be properly
14 preserved. The Judge did do an inquiry but Mr. Goude made
15 no argument and as an attorney that also handles direct
16 appeal if I looked at that issue I would probably come to
17 the same conclusion Ms. Hudgins did that it was not a
18 meritorious issue because of counsel's failures. He made
19 no argument; he did not ask for a mistrial. He did not
20 force a ruling from the Court, even though that's within
21 the discretion of the Court to make that ruling he has to
22 ask.

23 The Court: All right, anything else?

24 Ms. Blanchette: No, Your Honor, I think we've
25 set forth a detailed amendment and you've been very patient

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1 in hearing all the testimony today.

2 The Court: Ms. Catoe?

3 Ms. Catoe: May it please the Court, Your Honor,
4 just briefly. The State submits that the testimony from
5 Mr. Goude and some of the testimony on cross from Mr.
6 Parker explained any of the alleged errors that, that the
7 applicant has alleged today.

8 As to the other issues we submit there's no
9 prejudice and I would also just point out that the
10 applicant is relying on the case of U.S. v. Cronic because
11 there is overwhelming evidence of guilt in this case.

12 We just submit the applicant failed to meet his
13 burden of proof and so as to not waste the Court's time I
14 will be happy to answer any specific questions as to
15 particular issues.

16 The Court: All right, how about what they claim
17 was a domino affect when he didn't even, he did not object
18 on the, to the introduction of the tape on the basis that
19 the police didn't scrupulously honor his request for
20 counsel? I mean nobody's has mentioned the line of cases
21 that says that law enforcement must scrupulously honor a
22 defendant's request for a lawyer and not reinitiate
23 questioning except in limited circumstances.

24 Ms. Catoe: My response to that would be Mr.
25 Goude wanted the statement in. He made the motion because

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1 he makes it in every case as he said, but he didn't want to
2 push the issue because he wanted the statement to come in,
3 so that would be my response to, to the Court, as Mr. Goude
4 explained the strategic reason.

5 The Court: That was a valid trial strategy to
6 let the tape in?

7 Ms. Catoe: Absolutely, Your Honor.

8 The Court: Cause it would let in other things
9 that otherwise wouldn't have come in?

10 Ms. Catoe: It let in things that were helpful
11 to the defense.

12 The Court: All right, okay, any other points
13 you'd like to make?

14 Ms. Catoe: Not unless Your Honor needs
15 clarification on the State's position on anything.

16 The Court: All right.

17 Ms. Catoe: Thank you, Your Honor.

18 The Court: All right, anything in response?

19 Ms. Blanchette: Just very briefly, Your Honor,
20 I am also not aware of a case that said there can be a
21 valid or a reasonable trial strategy to do what Mr. Goude
22 did here where there was clear evidence that he asked for
23 an attorney and possibly evidence of coercion and he just
24 chose to not call the witnesses.

25 The Court: All right, let's assume the

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1 statement had never come in and your client had never taken
2 the stand because as he says I didn't think I had any
3 choice, I had to explain some things, did the victim
4 testify?

5 Ms. Blanchette: The victim did testify.

6 The Court: Did she testify she was duct taped?

7 Ms. Blanchette: I believe she went into all the
8 details that the State needed her to.

9 The Court: And where did she say she was duct
10 taped, her hands, her feet, and her mouth?

11 Ms. Blanchette: Your Honor, I don't want to
12 misstate the record, so if I could just have a second.

13 The Court: Did she say that he carried her to
14 the car? I guess what I'm trying to figure out is what,
15 what would have been the different evidence in front of the
16 jury if the statement had not come in and your client never
17 took the stand?

18 Ms. Blanchette: Your Honor, without answering
19 your specific question on what she testified to, the
20 difference would have been then we would have just looked
21 at what the State put up at that point.

22 The Court: And wouldn't he perhaps now be
23 saying, you know, I should, he should have made me take the
24 stand?

25 Ms. Blanchette: Well I think we're getting into

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1 speculation at that point, Your Honor. My client testified
2 that he took the stand because the statement came in. I
3 believe he also testified that he did not want that
4 statement to come in.

5 The Court: Okay.

6 Ms. Blanchette: I am just, I can't get my mind
7 around why Mr. Goude would make the motion if he wanted the
8 statement to come in. I would stipulate or consent cause
9 you're running the risk of it not coming in, don't just put
10 up a motion that's garbage and frivolous and waste the
11 Court's time. If you want the statement to come in intro-,
12 make sure the statement gets introduced, agree with the
13 State, that's not hard to do. They do it in a lot of cases
14 but here he made the motion, so once he makes the motion I
15 think he has a duty to be effective when he presents that
16 motion and that's what I think the Court has to look at,
17 was he effective in making that motion; we would argue he
18 was not. Was my client prejudiced as a result, yes,
19 because the statement came in, then he testified, and I
20 don't want to do Mr. Parker disservice but if you look at
21 the defense in this case there is nothing helpful that was
22 put up for him. It would have been much better if they
23 would have sat down and remained silent after the State
24 presented their case. The Court will have an opportunity
25 to review it in detail, that's just my opinion, but I

Mr. Goude - Redirect Examination by Ms. Blanchette 241

1 believe like you said it was a domino affect. Once that
2 statement came in ---

3 The Court: No, I didn't say that, I'm saying
4 that's what you said.

5 Ms. Blanchette: Right, as the Court said
6 summarizing what I had said, it was a domino affect. Once
7 that statement came in as a result of his ineffectiveness
8 during that hearing we were left with the defense that he
9 had which defense counsel characterized as useless.

10 The Court: All right, okay, anything else?

11 Ms. Catoe: If I could just respond just very
12 briefly, Your Honor. I believe the Court is supposed to
13 look at prejudice and effectiveness overall and not just as
14 to these particular issues that counsel has just mentioned,
15 and I would reiterate again that counsel was effective in
16 having his client acquitted of burglary first which carried
17 a life sentence and the only other thing I would point out
18 in addition to the victim's testimony, the officers did
19 find and photographed and testified about remnants of the
20 duct tape around the victims feet and, and hands, or
21 whatever it was. Thank you, Judge.

22 The Court: Okay, all right, thank ya'll very
23 much. Now, Mr. Parker, you need to understand the
24 appellate rights that you have. I will be making a
25 decision and I will be signing an order. It will be

Mr. Goude - Redirect Examination by Ms. Blanchette 242

1 granting your petition or denying it. If you feel like you
2 want to appeal from any part of the order you will, you
3 will have thirty days from the date your client receives
4 written notice of the entry of that order; do you
5 understand that?

6 Applicant Parker: Yes, sir.

7 The Court: All right, yes, ma'am?

8 Ms. Blanchette: I have a copy of those cases
9 for the Court.

10 The Court: Okay, you can hand those up and
11 we'll take just a few minutes in recess.

12 End of requested transcript- - - -

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CERTIFICATE OF REPORTER

I, the undersigned Brenda R. Babb, official court reporter the South Carolina Court Administration, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina.

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

July 9, 2013
Brenda R. Babb
Brenda R. Babb, CVR
OFFICIAL REPORTER

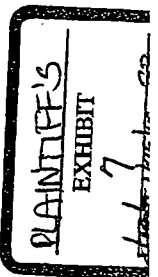
11-13-06 ^{to the me} Note - she died Oct 2006.

I, Deborah Lee Vercruysse was at Shirley S. Ward and Nicholas Lee Parker's house on January 29th, 2006 the day that Belinda (Driggers) Mitchum said that Nicholas Lee Parker kidnapped her. I was asleep in the bedroom with Nicholas Lee Parker's brother not even 10 feet from the bedroom that Nicholas Lee Parker and Belinda (Driggers) Mitchum was in. After I, Deborah Lee Vercruysse woke up I went out of the bedroom that I was in to go to the bathroom. As I, Deborah Lee Vercruysse was walking out of the bedroom Belinda (Driggers) Mitchum was walking out of Nicholas Lee Parker's bedroom not tied up or gagged with Nicholas Lee Parker walking out behind her. I then watched Belinda (Driggers) Mitchum knock on the wall next to Sherry E. Parker's bedroom and then open up the curtain and look at Sherry E. Parker and say "bye momma I'll see you tomorrow I'm going home". I, Deborah Lee Vercruysse then watched Belinda (Driggers) Mitchum walk out of the hallway with Nicholas Lee Parker behind her to leave the house to go back to her mother's house in Georgetown County. I, Deborah Lee Vercruysse then went into the bathroom and went back in to the bedroom that I was in and went back to sleep. I, Deborah Lee Vercruysse am telling the truth and I am willing to take a lie detector test and testify in court on behalf of the statement that I just typed.

Name printed X Deborah Lee Vercruysse

Signature X Deborah Lee Vercruysse

This statement was typed by Deborah Lee Vercruysse on May 28th, 2006.

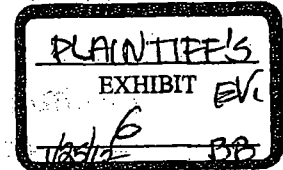


1108 Lido Lane
Summerville, SC 29483
address
843-824-0204
843-688-5912

Spila Wood
my commission expires April 17, 2013

REUBEN GOUDE
-LAWYER-
119 1/2 SCREVEN ST.
PO BOX 706
GEORGETOWN, SC 29442
PH: (843) 527-2505
FAX: (843) 546-4134

May 25, 2006



Solicitor
PO Box 1688
Georgetown, SC 29440

Re: Polygraph Test

Dear Solicitor:

I represent Nicholas Lee Parker on the charges of Burglary and Kidnapping. My client is requesting a Polygraph test.

Thank you

Reuben Goude
RG
cc: [illegible]

Request polygraph

SLED LAB No. L06-02232
December 07, 2006

Page 2 of 2

- Item: 8 One bed comforter with silver duct tape.
Item 8.1 One piece of silver duct tape.

RESULTS:

One piece of duct tape found. The unknown duct tape is the same in physical and chemical characteristics with the duct tape standard (Item 9). The unknown piece of duct tape could have come from the roll of duct tape. Also, several red hair fragments and several gray hair fragments were found.

- Item: 9 One roll of silver duct tape collected from coffee table.

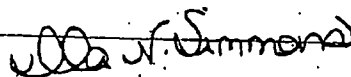
RESULTS:

Duct tape standard.

- Item: 10 One piece of silver duct tape collected from coffee table.

RESULTS:

One piece of duct tape found. The unknown duct tape is the same in physical and chemical characteristics with the duct tape standard (Item 9). The unknown piece of duct tape could have come from the roll of duct tape.



Ila N. Simmons
Forensic Scientist



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

Dustin Morris
Georgetown County Sheriff's Office
P.O. Box 1292
Georgetown, SC 29442

TRACE EVIDENCE
December 07, 2006
SLED LAB: L06-02232
Your Case No: 01062049
Incident Date: 01/29/2006
[V] Belinda Mitchum
[S] Nicholas Parker
[S] Shirley Ward

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 6 One piece of silver duct tape recovered from a 1996 Dodge Ram truck underneath front passenger seat.

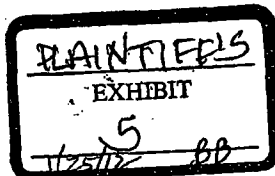
RESULTS:

~~One piece of duct tape found. The unknown duct and the roll of duct tape (Item 9) were at one time a single item.~~

Item: 7 One piece of silver duct tape recovered from rear room of garage apartment.

RESULTS:

One piece of duct tape found. The unknown duct tape is the same in physical and chemical characteristics with the duct tape standard (Item 9). The unknown piece of duct tape could have come from the roll of duct tape.



Item: Latent impression represented in Item 12 - Photographs and negatives taken of developed
12.1 fingerprint on roll of duct tape.

RESULTS:

NOT IDENTIFIED with Item 13 / Parker, Nicholas

NO CONCLUSION will be rendered due to the quality of Item 14 / Ward, Shirley Silvers.
Please submit complete inked finger and palm prints for further examination and
comparison.

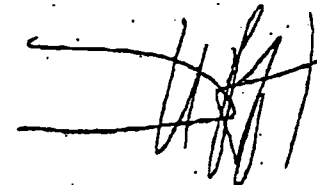
NOT IDENTIFIED with Item 15 / Mitchum, Belinda Darlene.

The latent(s) submitted were not suitable for the South Carolina Automated Fingerprint
Identification System (SCAFIS). Please submit complete inked fingerprint and palm prints
for further examination and comparison.

Item: One (1) ten print card bearing the name Parker, Nicholas Lee SID# 01261731
13

Item: One (1) ten print card bearing the name Ward, Shirley Silvers SID# 01679347
14

Item: One (1) ten print card bearing the name Mitchum, Belinda Darlene SID# 01472806
15



Jeff Parrott
Forensic Scientist



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

Dustin Morris
Georgetown County Sheriff's Office
P.O. Box 1292
Georgetown, SC 29442

LATENT PRINTS
May 30, 2006
SLED LAB: L06-02232
Your Case No: 01062049
Incident Date: 01/29/2006
[V] Belinda Mitchum
[S] Nicholas Parker
[S] Shirley Ward

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

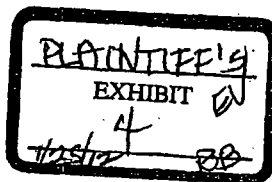
ITEMS OF EVIDENCE:

Item: Hinge lifter containing fingerprint collected from Arbys cup.
11

RESULTS:

IDENTIFIED with Item 15/Mitchum, Belinda Darlene

Item: Photographs and negatives taken of developed fingerprint on roll of duct tape.
12



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

Table 1 - Profiler Plus

Items	D3S1358	vWA	FGA	D8S1179	D21S11	D16S51	D5S818	D13S317	D7S820	Amele- genin
Belinda Mitchum (item 1)	17,18	14,17	20,22	12,13	28,30,2	13,14	12	9,11	10	X
Duct tape (item 3)	17,18	14,(17)	20,22	12,13	28,30,2	13,14	12	9,(11)	10	X
Hair (item 4.1)	-	-	-	-	-	-	-	-	-	X(Y)
Hair (item 4.2)	(14)	-	-	(15)	-	-	-	11	-	X
Hair (item 4.3)	-	-	-	-	-	-	-	-	-	-

(-) = alleles between 75 and 149 cfs

- = no results

Table 2 - Cofiler

Items	D3S1358	D16S530	TH01	TPOX	CSF1PO	D7S820	Amele- genin
Belinda Mitchum (item 1)	17,18	11,12	9	8	10,12	10	X
Duct tape (item 3)	17,18	11,12	9	8	10,12	10	X

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Jennifer L. Clayton
Forensic Scientist

cc: Georgetown County Solicitor's Office



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

DNA ANALYSIS

ITEMS ANALYZED:

- 1 Buccal standard from Belinda Mitchum
- 3 Swabs collected from piece of duct tape
- 4.1 Hair
- 4.2 Hair
- 4.3 Hair
- 4.4 Hair
- 7.1 Hair
- 10.1 Hair

EXAMINATIONS

DNA analysis was attempted on the items above using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in Table 1 and Table 2.

RESULTS

Duct tape
The DNA profile developed from item 3 matches the DNA profile of Belinda Mitchum. The probability of randomly selecting an unrelated individual from the population having a DNA profile matching this item is approximately 1 in 660 trillion.

The partial DNA profile developed from item 4.2 is from an unidentified female individual, but is insufficient for CODIS (Combined DNA Index System) entry.

The partial DNA profile developed from item 4.1 is too weak for reliable interpretation.

No DNA profile was developed from item 4.3.

No human DNA was detected for items 4.4, 7.1, and 10.1.



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

Items Submitted:

Results of Examinations:

4.2	Hair	4.2	See DNA analysis.
4.3	Hair	4.3	See DNA analysis.
4.4	Hair	4.4	See DNA analysis.
5	White envelope containing possible human hair collected from rear floorboard	5	No hair suitable for STR DNA analysis.
6	Piece of silver duct tape containing possible hair recovered from 1996 Dodge Ram truck underneath front passenger seat	6	No hair suitable for STR DNA analysis.
7	Piece of silver duct tape containing possible hair recovered from rear room of garage apartment		
7.1	Hair	7.1	See DNA analysis.
9	Roll of silver duct tape collected from coffee table	9	No analysis performed.
10	Piece of silver duct tape containing one strand of hair collected from coffee table		
10.1	Hair	10.1	See DNA analysis.



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

Dustin Morris
Georgetown County Sheriff's Office
P.O. Box 1292
Georgetown, SC 29442

DNA ANALYSIS
December 08, 2006
SLED LAB: L06-02232
Your Case No: 01062049
Incident Date: 01/29/2006
[V] Belinda Mitchum
[S] Nicholas Parker
[S] Shirley Ward

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

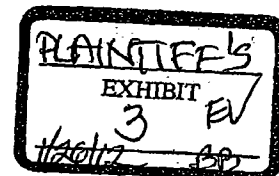
Robert M. Stewart, Chief
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

- | | | | |
|-----|---|-----|------------------------|
| 1 | Buccal standard from Belinda Mitchum | 1 | See DNA analysis. |
| 2 | Known head hairs from Belinda D Mitchum | 2 | No analysis performed. |
| 3 | Swabs collected from piece of duct tape | 3 | See DNA analysis. |
| 4 | Searchie hinge lifters containing hair and fiber samples collected from rear floorboard | | |
| 4.1 | Hair | 4.1 | See DNA analysis. |





A. LANE CRIBB, Sheriff of the Georgetown County

DETENTION CENTER

Michael L. Schwartz
Administrator
2294 Brown Ferry Road
Georgetown, SC 29140
(843) 546-5511

April 18, 2011

Law Office of Tricia A. Blanchette, LLC
PO Box 12725
Columbia, SC 29211

RE: Nicholas L. Parker v. State; Docket No. 2010-CP-22-0190

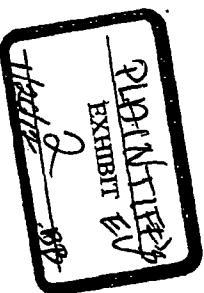
Dear Ms. Blanchette,

On April 11, 2011, you requested a copy of phone recordings from our inmate telephone system in 2006. Since then we have changed from Evoxcom to Securus and the old equipment has been taken out, those recordings are not available.

Please do not hesitate to call if I can be of any assistance in the future.
(843) 545-3421

Sincerely,

Sharon W. Norton
Sharon W. Norton
Deputy Administrator
Georgetown County Detention Center



State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit

REPLY TO ☐
P.O. BOX 1276
CONWAY, SC 29528
843-915-5460
FAX: 843-915-6461



REPLY TO ☐
P.O. BOX 1688
GEORGETOWN, SC 29442
843-545-3169
FAX: 843-545-3132
FAX: 843-545-3268

J. GREGORY HEMBREE
Solicitor

November 15, 2006

Reuben Goude, Esq.
Post Office Box 706
Georgetown, SC 29442

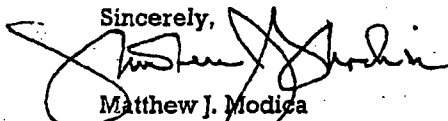
RE: State of South Carolina vs. Nicholas Parker

Dear Reuben:

Please be advised that there is a good possibility this case will be scheduled for trial in the January 2007 term of General Sessions Court. Therefore, if the defendant intends on accepting the plea offer (kidnapping with a negotiated sentence between 13-16 years subject to review with law enforcement and the victim) that we discussed with the defendant out at the jail on Monday, November 13, 2006, he must do so during the December 2006 term of court.

In this regard, enclosed please find a SLED report and a compact disc obtaining photographs. Please remember that SLED is doing further analysis and when those reports become available they will be forwarded. However, if you believe you need additional information, please feel free to contact me.

Sincerely,



Matthew J. Modica
Senior Assistant Solicitor

MJM/tdp

Encl(s)



STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

State of South Carolina,)

vs.)

Nicholas Parker)
Defendant.)

IN THE COURT OF GENERAL SESSIONS

PROSPECTIVE DEFENSE WITNESSES

- 1- Roland Ward
- 2- Sherry Ward Parker
- 3- Shiley Ward
- 4- Leonard Long
- 5- Nicholas Parker



Michaels Picket
2394 Brownsberry rd.
Georgetown, SC 29440

CHARLESTON SC 294
03 JAN 2007 PM 1 T



29442

Reuben Claude
P.O. Box 106

119 1/2 Screen Street
Georgetown, SC 29440

~~29442~~



Jan 2nd 2007 1131

Atty. Reuben Claude
P.O. Box 706
119 1/2 Screven Street
Georgetown, SC 29442

Re: Motion to be relieved

Dear Mr. Claude,

My reason for writing is with great concern regarding your past history as a public defender. Reports will indicate with the commission on lawyers conduct that you are not a good defense attorney. From my personal experience and observation of your representation of me in my defense falls below the norm of a competent defense attorney; specifically, communication, diligence, and advocacy. Based upon the aforesaid and your malfeasance and misfeasance of your duty as a officer of the court, I do not trust you, and I do not feel safe with you representing me. Therefore, it is my respectful request that you relieve yourself as my attorney this term of general sessions court, because it is evident that the attorney and client relationship is destroyed.

Best Wishes

Nicholas
Hacker

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address:
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

June 2, 2010

C. Reuben Goude, Esquire
PO Box 706
Georgetown, SC 29442

RE: Nicholas Parker v. State; 2010-CP-22-0190

Dear Mr. Goude:

I have been retained to represent Mr. Parker in his above referenced PCR Action. I met with him last week at Broad River, and he requested that I write to you and obtain a copy of his file from Criminal Case No.: 2006-GS-22-269. It is my understanding that his PCR might be scheduled during the week of August 23rd, so I would greatly appreciate your response as soon as possible.

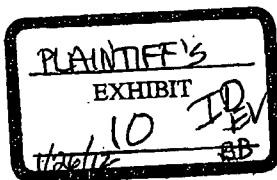
If you have any questions regarding this request or need any additional information, please contact me. I greatly appreciate your assistance with this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Tricia A. Blanchette".

Tricia A. Blanchette
Attorney at Law

cc: Nicholas Parker



Phone: 803-988-0008 Facsimile 803-988-8070

Email: BlanchetteLaw@Gmail.com

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Nicholas L. Parker, # 320005;

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-22-190

ORDER DENYING
POST-CONVICTION RELIEF

FILED
GEORGETOWN COUNTY, S.C.

2013 MAR 25 PM 4:24
ALMA Y. WHITE
CLERK OF COURT

This matter came before the Court pursuant to an Application for post-conviction relief filed February 1, 2010, by Nicholas L. Parker. Respondent made a Return on March 1, 2010. An evidentiary hearing was convened at the Georgetown County Courthouse on January 23, 2012.¹ The Applicant was present in court and represented by Tricia A. Blanchette, Esquire. The Respondent was represented by Christina J. Catoe, Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to an order of commitment from Georgetown County. The Applicant was indicted in March 2006 for burglary in the first degree (2006-GS-22-268) and kidnapping (2006-GS-22-269). C. Reuben Goude, Esquire, represented the Applicant. On January 29 – February 2, 2007, the Applicant was tried, and the jury found him guilty of kidnapping but not guilty of burglary. The Honorable John C. Hayes, III, sentenced the Applicant to twenty-five years for kidnapping. A Notice of Appeal was timely filed, and an Anders Brief was submitted on the Applicant's behalf by Katherine H. Hudgins, Esquire. The South Carolina Court of Appeals affirmed the

¹ A previous PCR hearing was held on August 24, 2011, which resulted in a continuance of the case and an order that the entire PCR hearing be held again after counsel for the Applicant had a chance to review trial counsel's file.

convictions on October 8, 2009 (2009-UP-457), and the case was remitted to the circuit court on October 26, 2009.

ALLEGATIONS

In his Application, Mr. Parker alleged that his custody was unlawful for the following reasons:

- (1) Ineffective assistance of counsel:
 - a. Failure to conduct an independent investigation and prepare for trial;
 - b. Failure to speak to or utilize defense witnesses; and
 - c. Failure to object or investigate coaching of victim/state witness.

In an Amendment to the original Application, submitted March 28, 2011, the Applicant raised the following additional allegations:

- (2) Ineffective assistance of trial counsel for failure to prepare and investigate by obtaining all necessary phone records;
- (3) Ineffective assistance of counsel for stipulating to the admissibility of prior violence at trial;
- (4) Ineffective assistance of trial counsel for failure to ensure that the Applicant had full knowledge and understanding when he rejected the plea offered by the State;
- (5) Ineffective assistance of trial counsel for failure to call witnesses, specifically the Applicant, or present argument during the Jackson v. Denno hearing;
- (6) Ineffective assistance of trial counsel for failure to present viable argument during the suppression hearing on the constitutionality of the search and seizure;
- (7) Ineffective assistance of trial counsel for failure to address the amendment of the indictment with the Applicant and to ensure that the Applicant was present in the courtroom when the indictment was amended;
- (8) Ineffective assistance of trial counsel for the failure to call vital defense witnesses;
- (9) Ineffective assistance of trial counsel for failure to properly advise the Applicant regarding the lesser mental state of knowing, which was applicable to the kidnapping charge, and ineffective assistance of counsel for presenting testimony and argument on the mental state of intent, which was not applicable to the kidnapping charge;
- (10) Ineffective assistance of trial counsel for failure to properly advise and prepare the Applicant before taking the stand. Such failure resulted in trial counsel eliciting damaging and irrelevant testimony. Ineffective assistance of counsel for failure to raise a confrontation clause violation during the Applicant's cross-examination.

- (11) Ineffective assistance of trial counsel for failure to enter a contemporaneous objection to the State's closing argument;
- (12) Ineffective assistance of trial counsel for failure to present a viable directed verdict argument;
- (13) Ineffective assistance of counsel for failure to present any argument or move for a mistrial when Attorney Colvin argued that the State had violated the sequestration order;
- (14) Ineffective assistance of counsel for failure to move for a mistrial when an extra juror was involved in the jury deliberation;
- (15) Ineffective assistance of appellate counsel for failure to properly raise all meritorious issues on appeal.

In a second Amendment to his Application, the Applicant raised the following allegation:

- (16) Ineffective assistance of trial counsel for failure to request that the trial court charge the jury on the lesser offense of false imprisonment as was argued in the Applicant's direct appeal.

One final issue was raised at the outset of the PCR hearing, as follows:

- (17) Under U.S. v. Cronin, 466 U.S. 648 (1984), counsel failed to subject the State's case to meaningful adversarial testing which made the adversarial process in this case presumptively unreliable.

The Applicant indicated he was seeking a new trial as a result of ineffective assistance of counsel.

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). Where ineffective assistance of counsel is alleged as a ground for relief, 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. 668 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler at 441, 334

S.E.2d at 814. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood, at 109, 525 S.E.2d at 517 (citations omitted). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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, 385 S.E.2d 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.E.2d at 625. When a defendant challenges his conviction after a trial, the proper consideration is whether there is a reasonable probability that, absent the errors, the fact-finder would have had a reasonable doubt respecting guilt. Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007) (citations omitted). In order to receive relief, an applicant must prove both ineffective assistance and resulting prejudice. See, e.g., Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

Brief Summary of Factual Background

The Applicant and the victim dated for a significant period of time and lived together in several different locations, including the Applicant's grandparents' house in Summerville, South Carolina. They fought with one another and also did drugs together. Shortly before the incident in question, the victim left the Applicant and planned to move into a trailer her mother owned. At trial, the victim testified that, in the early morning hours of January 29, 2006, the Applicant broke into her trailer without her permission, duct-taped her arms and legs, and carried her,

against her will, to a truck driven by the Applicant's grandmother. She testified that the Applicant and his grandmother then took her to the grandmother's house in Summerville and that the Applicant kept her there for a period of time before helping her pack up her belongings - which were still at the house from when the victim was living there with the Applicant - and took her back to her trailer.

The Applicant acknowledged that the victim's general description of events was accurate, but stated that the victim had agreed to meet with him that morning and agreed to go back to Summerville with him to get her belongings from his grandmother's house. The Applicant explained that he did not break into the victim's house since he had her permission to come pick her up. The Applicant also explained that, while he did briefly put duct tape on the victim, he did so in a fit of rage before he even realized what he had done. The Applicant stated that he removed the duct tape soon thereafter and that the victim voluntarily went with him to Summerville and voluntarily remained with him until that afternoon when his grandmother dropped her back off at her trailer.

The PCR Hearing

At the PCR hearing, this Court had before it the Applicant's PCR file, including all pleadings filed, the records of the Georgetown County Clerk of Court regarding the conviction, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript. This Court also had before it a transcript excerpt from the previous PCR hearing held on August 24, 2011. The portion of this transcript that was before the Court was the portion containing the testimony of Kenneth Roland Ward, Jr., Joshua James Parker, and Methais Parker. This transcript excerpt was incorporated into the record by agreement of the parties. This Court also had before it all exhibits entered by the Applicant (a total of ten exhibits) and by the State



(one exhibit – DVD of Applicant's statement to police). At the hearing, this Court heard the testimony of Kenneth Roland Ward, Sr., Nicholas L. Parker (the Applicant), and C. Reuben Goude, the Applicant's former defense attorney. This Court carefully listened to all of the testimony presented and weighed the same according to credibility.

Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code § 17-27-80 (2003):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Allegation # 1, (a)-(c)

The Applicant first alleges that counsel was ineffective for failing to conduct an independent investigation of his case and failing to prepare for trial, failing to speak to or utilize defense witnesses, and failing to object to or investigate the coaching of the victim. This Court finds no merit to these allegations. This Court finds credible counsel's testimony at the PCR hearing indicating that he conducted a sufficient independent investigation of the case and that he sufficiently prepared for trial. At the time of the Applicant's trial, counsel had been practicing in the area of criminal law for almost thirty years and had a wealth of experience in preparing and trying cases. Counsel took extensive notes documenting his preparation of this case. For example, counsel visited the crime scene, took his own photographs, and reviewed the Applicant's video statement to police. Counsel also spoke to the defense witnesses of which he was made aware and utilized the witnesses he believed would be helpful to the defense. (See Trial Transcript, p. 331-662). Although counsel did not call the Applicant's uncle, Kenneth Roland Ward, Sr., as a witness at trial, counsel explained that he did speak with this witness prior to trial and was not made aware that Mr. Ward would be able to provide any helpful testimony. Counsel also spoke with the Applicant's cousin, Kenneth Roland Ward, Jr., prior to trial and had



planned to call him as a defense witness. However, counsel believed this witness was not present in court when it was time to present the defense case. In any event, this witness's testimony would have been cumulative to the testimony of the defense witnesses who were called at trial; therefore, this Court finds that the Applicant failed to prove prejudice from counsel's failure to call this witness. See Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011).

Moreover, this Court finds that the testimony of Kenneth Roland Ward, Jr. would not have changed the outcome of trial inasmuch as it would not have shed any light on the true issues in the case, which were whether or not the initial entry into the victim's trailer was a burglary and whether the incident at the victim's trailer constituted a kidnapping. For the same reasons, this Court finds that the testimony of Methais Parker and Joshua James Parker would not have changed the outcome of trial. Additionally, counsel was not made aware prior to trial that Methais Parker was a potential witness, and the Applicant told counsel not to subpoena Joshua Parker because he was not awake at the relevant time and did not have any pertinent facts to relate to the jury. In sum, this Court finds that the Applicant failed to prove that counsel's investigation and preparation of the case, including his investigation and preparation of defense witnesses, was constitutionally deficient or that the Applicant was prejudiced.

The Applicant also alleged that counsel failed to investigate and object to coaching of the victim. The Applicant testified that he saw the victim reviewing documents during a break in trial and that he believed the victim was being coached by the solicitor. However, this Court finds no credible or sufficient evidence establishing that any actual improper coaching of the victim took place, or that counsel was made aware of it at the relevant time. Therefore, the Applicant failed to meet his burden of proof as to this allegation.

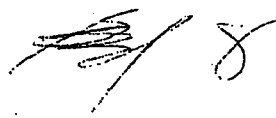


Allegation # 2

In his second allegation, the Applicant alleged that counsel was ineffective for failing to obtain necessary phone records. The Applicant testified at the PCR hearing that, back in 2006, he asked his attorney to obtain copies of phone records showing that he called his grandmother's house from the jail and spoke with the victim, who was at his grandmother's house. The Applicant stated that in his conversations with the victim, the victim said that she did not want the Applicant to be "locked up" and that her "momma made her do it." The Applicant testified that the victim explained things in their conversations that would have helped him at trial, and specifically, that the victim indicated that the Applicant did not kidnap her. He stated that the phone recordings could have been used to impeach the victim's testimony at trial because her trial testimony was different.

First, this Court finds that the Applicant failed to prove to the Court's satisfaction that any conversation between the victim and the Applicant was, in fact, recorded. Notably, trial counsel, who had been practicing law in the area for thirty years, testified he was not aware of the jail making recordings of all inmate calls. Second, the Applicant failed to credibly establish that the victim said anything during phone conversations that would have helped the Applicant at trial.² Third, this Court finds credible trial counsel's testimony that the Applicant informed him of the alleged phone calls and requested the recordings on January 29, 2007, the day of trial. Considering that counsel received this information too late to actually obtain the recordings (if any such recordings in fact existed), his performance in attempting to utilize the information about the calls was objectively reasonable. Counsel asked the victim about the calls on cross-

² Even assuming the truth of the Applicant's allegation the victim stated on the phone to him that she did not believe he kidnapped her, this statement would not likely have changed the outcome of trial since, regardless of the victim's beliefs about what happened, the evidence established that a kidnapping did in fact occur. Indeed, the Applicant admitted, both at trial and at the PCR hearing, that he committed conduct that constituted the offense of kidnapping.



examination (Trial Transcript, p. 194, lines 1-7), and, during the Applicant's direct examination, elicited testimony regarding a call and the Applicant was permitted, over the State's objection, to describe the subject matter of the conversation.³ (Trial Transcript, p. 420-21; p. 432, lines 2-16). Importantly, nothing the Applicant described the victim as saying in that conversation actually refuted that a kidnapping took place. (See Trial Transcript, p. 420, line 19 – p. 421, line 3). Accordingly, the Applicant failed to prove that counsel was ineffective or that he was prejudiced.

Allegation # 3

In his third allegation, the Applicant alleged that counsel was ineffective for "stipulating to the admissibility of prior violence at trial." This Court finds that counsel's strategy not to object to evidence of prior violence between the victim and the Applicant was risky but understandable under the facts and circumstances of this case. As counsel told the judge at trial, evidence regarding the rocky history between the parties – including their history of drug use together – was necessary to allow the jury to reach a fair verdict in this case. (See Trial Transcript, p. 41-46). This Court finds reasonable and proper trial counsel's view that if the jury did not hear of the victim's own part in the prior incidents of violence and drug use, the jury would see her as a helpless female and be more likely to convict. This Court finds reasonable counsel's strategy to allow evidence of the parties' rocky history so the jury would be less likely to empathize with the victim, even though the trade-off was revealing some bad acts of the Applicant as well. In any event, the trial judge did ultimately prohibit the most damaging evidence of prior violence (see Trial Transcript, p. 172-174 & p. 191-207), though some prior events did bleed into the trial. In sum, this Court finds that counsel's trial strategy was objectively reasonable under the circumstances of this case, and that the Applicant failed to

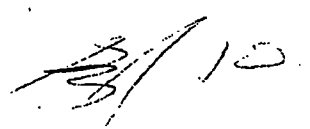
³ Further, as trial counsel pointed out at the PCR hearing, the Applicant's mother also testified at trial regarding having continuing contact with the victim even after the incident in question.

prove he was actually prejudiced by any particular testimony about prior violence.

Allegation # 4

In his fourth allegation, the Applicant alleged that trial counsel was ineffective for failing to ensure that the Applicant had full knowledge and understanding when he rejected the plea offered by the State. At the PCR hearing, the Applicant claimed that trial counsel failed to ensure he understood the indictment, the discovery, and the elements of the offenses, such that the Applicant did not have a full understanding of whether or not he should accept the State's plea offers. Specifically, regarding the elements of kidnapping, the Applicant alleged that counsel did not explain to him that the offense of kidnapping required only "knowledge" rather than "intent" for the mental state element, and that, had he known this, he would have considered the plea offer differently. Trial counsel's testimony at the PCR hearing indicated that he reviewed everything he needed to review with the Applicant prior to trial and prior to plea discussions, including the discovery, the elements of the offenses and potential penalties, and the facts of the case and how they might play out at trial. Trial counsel testified that he advised the Applicant to accept the State's plea offers, but the Applicant always wanted less time than the State was offering. Regarding the mental state for kidnapping, counsel indicated that he believed that the difference between knowledge and intent was a minute legal point that was not a critical factor in the case, either in the minds of the jurors or in the context of plea discussions.

This Court finds credible trial counsel's testimony regarding his advice to the Applicant. This Court finds that the Applicant was fully and properly advised regarding all relevant considerations pertaining to the State's plea offers, with the exception that counsel did not explain to the Applicant the distinction between knowledge and intent with respect to the kidnapping offense. However, the Applicant failed to credibly convince this Court that he would



have considered the plea offers any differently had counsel more specifically educated him regarding "knowledge" versus "intent," especially considering the Applicant's trial testimony that the only reason he did not accept a plea was because he wanted a jury to be able to hear the truth about what happened. (Trial Transcript, p. 454, lines 12-17). Accordingly, this Court finds that, even if counsel was ineffective for failing to more specifically advise the Applicant regarding the mental state for kidnapping, he failed to prove he was in fact prejudiced with respect to accepting or rejecting the plea offers.

Allegation # 5

In his fifth allegation, the Applicant asserted that counsel was ineffective for failing to call witnesses, specifically the Applicant, or present argument during the Jackson v. Denno hearing. At the PCR hearing, the Applicant testified that his lawyer failed to call him, his uncle, his cousin, and Officer Hayward to establish that the Applicant invoked his right to counsel and was made promises of leniency prior to giving a videotaped statement to police. He asserted that his video statement was involuntary and coerced. He stated that he informed trial counsel about these facts on the phone, but they never discussed it again. The Applicant also testified that the reason he decided to take the witness stand at trial was because the video statement, which the State introduced at trial as State's Exhibit # 21 and played for the jury (see Trial Transcript, p. 319-20), made him look bad. He asserted he was prejudiced because, if his attorney had properly handled the suppression hearing (see Trial Transcript, p. 294-303), the video statement would not have come into evidence and, consequently, he would not have taken the witness stand.

During the Applicant's cross-examination before the jury at trial (see Trial Transcript, pages 446-54), the Applicant stated that it was his intention when he went down to the police



station to turn himself in to talk to the police and give his version of events. He testified that when he arrived at the police station, he realized he needed a lawyer and told Officer Hayward this. The Applicant stated that Officer Hayward then told him that if he gave a statement, it would help him get a lower bond. The Applicant testified that at that point he changed his mind and decided to give a statement. The Applicant specifically denied being "forced" to give a statement and testified that he made the decision, despite what Officer Hayward said to him, to tell his version of events. The Applicant also testified that he wanted to give his version of events to get the truth out and that was the reason he did not take a guilty plea. (See Trial Transcript, p. 450-54).

Trial counsel testified at the PCR hearing that there was nothing in his file to indicate that the Applicant informed him prior to trial of any invocation of his right to an attorney, or of coercion by Officer Hayward, before he gave the video statement. Counsel testified that he spoke with the Applicant's uncle, Kenneth Roland Ward, Sr., prior to trial but was never informed that the uncle knew anything about the Applicant making a request for counsel to the police or being coerced to give the video statement. Counsel also stated that he and the Applicant discussed the video statement prior to trial and discussed the impact of the statement at trial. Counsel stated that the Applicant never told him that he would have chosen not to testify at trial if his video statement was not admitted at trial. Counsel indicated that he and the Applicant discussed the fact that if the Applicant was going to reject the plea offer and go to trial, he would need to have the statement admitted to help explain the circumstances of the incident in question and would also need to testify; otherwise, counsel stated, the only evidence in the record would establish both first-degree burglary and kidnapping. Counsel testified that the version of events the Applicant detailed in the video statement was largely and in pertinent part consistent with the

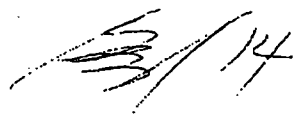
Applicant's trial testimony. Counsel stated that he felt that the video statement was helpful to the defense case and harmful to the prosecution and that the video statement allowed certain information – information that was helpful to the defense and was otherwise inadmissible – to come before the jury. Counsel stated that he had a note in his file stating that he was "really glad" the video statement came in.

After careful review of the entire record, this Court finds that the Applicant, who bears the burden of proof in this matter, failed to credibly establish by a preponderance of the evidence that he invoked his right to counsel or was made promises of leniency prior to giving his video statement. First, the testimony presented by the Applicant was not sufficiently clear regarding the timeline, circumstances, and particulars surrounding the purported invocation. For example, at one point in the PCR hearing the Applicant testified that he told Officer Hayward he "might need a lawyer," and other times he stated that he told Officer Hayward he wanted a lawyer or needed one before he would talk to police. Compare Davis v. U.S., 512 U.S. 452 (1994) ("maybe I should talk to a lawyer" was not an unambiguous request for counsel) with State v. Kennedy, 333 S.C. 426, 510 S.E.2d 714 (1998) ("well, I think I need a lawyer" was an unambiguous request for counsel), and State v. McCray, 332 S.C. 536, 547, 506 S.E.2d 301, 306 (1998) (defendant's statement that he intended to retain a lawyer at some future date did not constitute an invocation of his right to counsel). Additionally, the Applicant failed to present the testimony of Officer Hayward at the PCR hearing to corroborate the Applicant's and his uncle's testimony about what occurred prior to the video statement. Without this testimony, this Court is not convinced by the preponderance of the evidence that the Applicant in fact invoked his right to remain silent or that promises were made to him before he gave his statement. Furthermore, the Applicant failed to meet his burden to prove his statement would have been ruled involuntary

since at trial, he said his statement was voluntary, denied he was forced to make the statement, testified that he made his own decision to provide a statement despite what Officer Hayward may have said to him, and stated that he wanted to get the truth out and give his own version of events. (See Trial Transcript, p. 446-52).

Secondly, this Court cannot find trial counsel ineffective with respect to his handling of the Jackson v. Denno hearing because the Applicant failed to credibly prove that trial counsel was made aware of the alleged invocation of rights or coercion prior to the hearing. This Court finds there was insufficient credible evidence to establish counsel was on notice of, or had reason to know of, either of these matters until it was too late. Prior to trial, counsel was only aware that the Applicant, while being videotaped, waived his Miranda rights and then provided a statement. Notably, counsel believed the videotaped statement was favorable to the defense case and he wanted to have it admitted before the jury.

In that vein, the Applicant failed to convince this Court that he suffered prejudice from the admission of the video statement at trial. As trial counsel pointed out, the version of events the Applicant provided in the video statement was largely and in pertinent part consistent with the Applicant's trial testimony. The video statement was helpful to the defense case and harmful to the prosecution in that the video statement allowed information into evidence that was helpful to the defense and was otherwise inadmissible to come before the jury. The statement also reinforced certain points that were made throughout the trial, including during the Applicant's own testimony, which strengthened the Applicant's credibility and his version of events and, very likely, resulted in his acquittal on the first-degree burglary charge. Therefore, this Court finds that the Applicant failed to establish that he suffered prejudice from any ineffectiveness in counsel's handling of the Jackson v. Denno hearing.



Allegation # 6

In his sixth allegation, the Applicant contended that counsel was ineffective for failing to present a viable argument during the suppression hearing regarding the constitutionality of the search and seizure of his grandparents' property. At the PCR hearing, the Applicant testified that his attorney failed to call any witnesses or make any further arguments in support of his motion to suppress. The Applicant testified that, consequently, the trial judge was not made aware prior to trial that the Applicant's grandparents, although they gave verbal consent for the police to search, declined to actually sign a written consent form.

This Court rejects the Applicant's contentions. First, the Applicant failed to establish he had standing to challenge a search of his grandfather's truck. See, e.g., State v. McKnight, 291 S.C. 110, 114-15, 352 S.E.2d 471, 473 (1987) (a defendant who seeks to have evidence suppressed must establish that his own Fourth Amendment rights were violated, since these are personal rights which may not be asserted vicariously; a defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate a legitimate expectation of privacy in connection with the searched premises in order to have standing to challenge the search). On this issue, the Applicant failed to prove that there were any viable grounds for suppression of the evidence. The Applicant's grandfather consented verbally to a search of his truck, and the fact that he did not wish to sign a written consent form did not vitiate his verbal consent. The Applicant failed to point to any meritorious grounds that counsel should have presented. Therefore, counsel was not ineffective for failing to raise further grounds in support of suppression, and the Applicant was not prejudiced.

Allegation # 7

In his seventh allegation, the Applicant alleged that counsel was ineffective in failing to address the amendment of the indictment with the Applicant and ensure the Applicant was present in the courtroom when the indictment was amended. Prior to commencement of trial, and before the Applicant was brought into the courtroom, the solicitor moved to amend a clerical error in the first-degree burglary indictment. This indictment, although stating the appropriate charge of burglary in the first degree, contained an incorrect statutory reference to S.C. Code § 16-11-312(A), rather than § 16-11-311(A), on the face of the indictment. After reviewing the indictment, defense counsel indicated that he had no objection to the amendment of the indictment and the trial judge permitted the amendment.

This Court finds that the Applicant is not entitled to any relief on this ground. First, the amendment was merely to correct a scrivener's error and did not impact the nature of the offense. See, e.g., State v. Jones, 211 S.C. 319, 321-22, 45 S.E.2d 29, 30 (1947) (an amendment to an indictment is permissible to correct formal defects, such as scrivener's errors, which do not change the nature of grade of the offense charged), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Second, both defense counsel and the Applicant were fully aware at all times prior to trial that the charge was burglary in the first degree. Third, the Applicant was acquitted of the burglary charge and therefore could not possibly have been prejudiced by the amendment to the indictment. Accordingly, this Court concludes that the Applicant suffered absolutely no prejudice whatsoever from counsel's failure to discuss the amendment of the burglary indictment with him and failure to ensure he was present when the indictment was amended.

Allegation # 8

In his eighth allegation, the Applicant contended that trial counsel was ineffective for failing to call vital defense witnesses. This allegation has already been addressed above as a part of Allegation # 1.

Allegation # 9

In his ninth allegation, the Applicant asserted that counsel was ineffective for failing to properly advise him that "knowledge" was the required mental state for kidnapping, rather than "intent," and that counsel was ineffective for presenting testimony and argument addressing the mental state of intent which was not applicable to the kidnapping charge. This Court has already addressed this issue as it relates to the plea discussions as a part of Allegation # 4 above. Again, this Court does not believe that the Applicant would have considered the plea offers any differently had counsel more specifically educated him regarding "knowledge" versus "intent." For the same reasons, the Applicant failed to convince this Court that he would have changed his mind about testifying had he known of this distinction or that counsel's failure to advise him about the knowledge element was actually prejudicial to him at trial. Initially, this Court believes that the "knowledge" versus "intent" distinction was simply not as pertinent to the factual scenario presented by this case as it was in the case of State v. Jefferies. See State v. Jefferies, 316 S.C. 13, 446 S.E.2d 427 (1994) (defendant convicted of kidnapping where he stole an automobile and continued to drive away even after realizing there was a child in the backseat). In any event, at trial, the Applicant provided testimony denying both intent and knowledge of what he was doing. Counsel argued in closing that this was not a kidnapping event, particularly where the victim had already agreed on the phone to go with the Applicant, and that, rather than intending to kidnap the victim, he intended to protect her. The defense's denial that the Applicant intended to kidnap the victim certainly did not hurt his case; after all,

his denial of intent did not suggest he was admitting knowledge. Considering the facts and circumstances of this case, this Court cannot find any prejudice to the Applicant from either his own testimony regarding intent or counsel's mention of intent in closing. Therefore, the Applicant is not entitled to relief on this ground.

Allegation # 10

In his tenth allegation, the Applicant alleged that counsel was ineffective failing to properly advise and prepare the Applicant before taking the stand, resulting in the elicitation of damaging and irrelevant testimony. At the PCR hearing, the Applicant testified that, because his attorney failed to prepare him to testify, he made a number of negative admissions not pertinent to the case while he was on the stand. Specifically, he pointed to two instances of "negative" testimony. The first instance was where the Applicant testified that he and the victim had previous fights and that they did drugs together. (See Trial Transcript, p. 352-53). The second instance was where the Applicant testified that he did not cause the victim's injuries "intentionally." (See Trial Transcript, p. 456).

First, this Court finds credible trial counsel's testimony that he prepared the Applicant to take the stand. Further, the elicitation of testimony about prior episodes between the victim and the Applicant, and about their drug use, played into counsel's trial strategy, which this Court previously concluded was reasonable in the discussion of Allegation # 3 above. In any event, this Court finds that the testimony referenced by the Applicant on pages 352-53 of the trial transcript was not, in fact, testimony that was damaging to the defense case. Similarly, the testimony on page 456, wherein the Applicant states that he did not "intentionally" cause the victim's injuries, was not prejudicial to the defense in any way, nor was it contradictory to the elements of kidnapping since the Applicant was referring to injuries that were not a part of the

kidnapping charge. Therefore, the Applicant failed to prove ineffective assistance of counsel or prejudice.

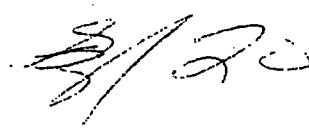
As a part of Allegation # 10, the Applicant also alleged that counsel was ineffective for failing to object to a Confrontation Clause violation during the Applicant's cross-examination. During cross-examination of the Applicant at trial, the solicitor, in response to the Applicant's assertion that the victim continued to "lead him on" even after he was arrested, asked the Applicant to acknowledge that the victim was standing right beside him (the solicitor) at the bond hearing. (See Trial Transcript, p. 491-92). The Applicant denied that the victim was present at his initial bond hearing but agreed that the victim was present at the bond reduction hearing in general sessions court. (See Trial Transcript, p. 492-93). The solicitor then asked the following questions: "Okay, so, was it leading you on when she stood right here where the Judge was right there and I expressed to the Judge that she was deathly afraid of you? You didn't get a clue then that she wasn't leading you on?" (Trial Transcript, p. 493, line 23 - p. 494, line 1). Trial counsel did not object to the questions posed by the solicitor.

In State v. Sierra, 337 S.C. 368, 523 S.E.2d 187 (Ct. App. 1999), a case cited by the Applicant in support of his argument, the Court of Appeals concluded that a Confrontation Clause violation occurred because the solicitor asked the former co-defendant, who was testifying for the State, about a prior inconsistent statement he made to her during a pre-trial meeting - which the witness denied - then made an argument in closing regarding this prior inconsistent statement even though there was no actual evidence in the record of the prior inconsistent statement. Importantly, the prior inconsistent statement was highly relevant to the crucial issue of who the drugs in question belonged to. This Court finds that State v. Sierra is distinguishable from the Applicant's case for several reasons. First, the questions posed by the

solicitor in this case were in response to the Applicant's own testimony that the victim had been leading her on; in other words, the Applicant opened the door to these questions. See, e.g., Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) (conduct that would otherwise be improper may be excused under the "invited reply" doctrine if the prosecutor's conduct was an appropriate response to statements or arguments made by the defense). Second, the questions did not involve a prior inconsistent statement made to the solicitor; instead, they involved facts that could have been testified to by persons other than the solicitor. Third, the solicitor's questions in this case went to a collateral issue rather than a crucial issue. Fourth, the solicitor made no reference to these questions or the Applicant's responses in his closing argument. (See Trial Transcript, p. 700-711). Therefore, this Court does not believe that State v. Sierra is controlling. Furthermore, assuming counsel was ineffective for failing to object to the solicitor's questions, this Court finds that the Applicant failed to prove he suffered sufficient prejudice. Again, the solicitor's questions went to a collateral issue; moreover, there was other evidence in the record indicating that the victim was afraid of the Applicant. Therefore, this Court finds that, considering the context of the questions and the entire record, the Applicant did not suffer sufficient prejudice so as to warrant a new trial on this ground.

Allegation # 11

In his eleventh allegation, the Applicant asserted that trial counsel was ineffective for failing to contemporaneously object to comments made during the solicitor's closing argument. First, the Applicant alleged that counsel should have objected when the solicitor indicated that the victim was a criminal domestic violence victim. (See Trial Transcript, p. 703, lines 7-23). Trial counsel testified at the PCR hearing that he did not object to these comments because there was testimony in the record supporting that the victim was indeed a criminal domestic violence



victim; because he did not feel the comments were, in the grand scheme of things, prejudicial to his client; and because he did not wish to call the comments to the attention of the jury by making a big deal out of them. This Court finds that counsel's explanation for not objecting was reasonable. Further, this Court finds that an objection and motion for mistrial would not likely have changed the outcome of trial since the comments were supported by evidence in the record and were not so prejudicial as to warrant the extreme measure of a mistrial. See State v. Goodwin, 384 S.C. 588, 605, 683 S.E.2d 500, 509 (Ct. App. 2009) (a mistrial should only be granted when absolutely necessary and dictated by manifest necessity; a defendant must show both error and resulting prejudice in order to be entitled to a mistrial; an allegedly improper closing argument must be viewed in the context of the entire record, and the relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process).

The Applicant also alleged that counsel should have objected to the solicitor's comment, made at the conclusion of his closing argument, that the victim had waited a year for "this nightmare" to be over and that it was time to end that nightmare. (See Trial Transcript, p. 710, line 24 – p. 711, line 1). Counsel testified at the PCR hearing that he did not object to this comment because he believed it was true that both the victim and the Applicant had suffered a nightmare and he was simply not concerned about this comment since he did not believe it would influence the jury in light of the other evidence in the case. Counsel also noted that he made his objections based upon what he believed was in the best interests of the Applicant at the time, and stated that it was not his practice to object to things that he believed would be inconsequential to an appellate court or a jury.

This Court finds counsel's explanation for not objecting to be reasonable. The comment was supported by inferences that could be drawn from evidence in the record, and this Court does not believe that the comment was so prejudicial that it infected the trial with unfairness and made the Applicant's conviction a denial of due process. See Goodwin at 605, 683 S.E.2d at 509. Accordingly, the Applicant is not entitled to relief on this ground.

Allegation # 12

In his twelfth allegation, the Applicant argued that counsel was ineffective for failing to present a viable directed verdict argument. However, the Applicant failed to explain or set forth any grounds that counsel should have raised, and there was clearly sufficient evidence presented to surpass the directed verdict stage. Therefore, the Applicant failed to meet his burden to prove ineffective assistance of counsel or prejudice.

Allegation # 13

In his thirteenth allegation, the Applicant alleged that trial counsel was ineffective for failing to present any argument or move for a mistrial when his grandmother's attorney argued that the State had violated the sequestration order. During trial, the Applicant's grandmother's attorney (Mr. Colvin), who was present because the grandmother, who had pending charges, was going to be testifying, told the trial judge that he believed the State had violated the sequestration order because he observed one of the solicitors talking to a police officer (Officer Hayward), apparently trying to ascertain whether or not to call Hayward as a reply witness based upon some unexpected testimony from the Applicant. (See Trial Transcript, p.607-16). Officer Hayward was never called as a reply witness.

Trial counsel testified at the PCR hearing that he did not make an issue over this situation because he did not believe the solicitor and the police officer were doing anything "crooked" or

dishonest that was going to adversely affect his client or the defense case. This Court finds counsel's explanation for not objecting to be reasonable. Further, this Court finds that the Applicant failed to prove he suffered any prejudice from counsel's failure to object. The purpose of a sequestration order is to prevent the jury from hearing testimony that might be tainted by the testimony of other witnesses. Here, Officer Hayward was not called as a reply witness. Therefore, Appellant could not have suffered prejudice, and relief on this ground is denied.

Allegation # 14

In his fourteenth allegation, the Applicant contended that counsel was ineffective for failing to move for a mistrial after learning that an extra juror had been involved in the deliberations. At the end of trial, it was discovered that one of the alternate jurors had not been separated from the twelve primary jurors and that this alternate juror was present for approximately five minutes of jury deliberations. (See Trial Transcript, p. 731-33). This alternate juror told the judge that he did not participate in any discussions with the jury. The foreman of the jury told the trial judge that the alternate did not participate in the discussion pertaining to the kidnapping charge, although he "may" have "said a few words" regarding the burglary charge. Notably, the jury continued to deliberate for thirty more minutes after the alternate was removed.⁴

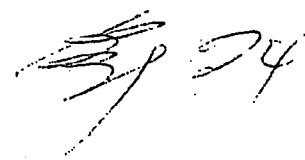
Trial counsel testified at the PCR hearing that he did not move for a mistrial regarding this issue because he did not want a mistrial. He explained that a mistrial would be bad for his client because at the second trial, the prosecution would already be privy to all the defense's theories and the defense would no longer have the advantage of surprise. This Court finds counsel's explanation to be reasonable, especially considering that at that point in the trial, the verdict was unknown and might have been entirely favorable to the defense. Further, the

⁴ The total deliberation time was thirty-five minutes. (See Trial Transcript, p. 731, lines 1-4).

Applicant suffered no prejudice since the alternate, if he participated at all, only participated in deliberations regarding the burglary charge, and the Applicant was acquitted of that charge. See State v. Grovenstein, 335 S.C. 347, 517 S.E.2d 216 (1999) (a defendant must show prejudice from an alternate juror's participation in jury deliberations). Therefore, the Applicant is not entitled to relief on this ground.

Allegation # 15

In his fifteenth allegation, the Applicant argued that appellate counsel was ineffective for failing to properly raise all meritorious issues on appeal. The Applicant's direct appeal attorney filed an Anders brief on the Applicant's behalf, raising an issue about the sex offender registry and about the trial judge's failure to charge the jury regarding the lesser offense of false imprisonment. The appeal was dismissed pursuant to the Anders procedure. At the PCR hearing, the Applicant stated that appellate counsel failed to raise the issue of the Jackson v. Denno hearing, the extra juror in deliberations, or the situation that Attorney Colvin raised to the court about the solicitor's alleged violation of the sequestration order. This Court finds that raising these three issues would not have resulted in a successful direct appeal. The Jackson v. Denno issue was not preserved for review because there was no contemporaneous objection when the Applicant's statement was admitted into evidence; in any event, the trial judge's ruling admitting the statement would have been affirmed on appeal since his determination that the statement was voluntary was supported by evidence in the record. (See Trial Transcript, p. 294-303). See, e.g., State v. Simmons, 384 S.C. 145, 162-63, 682 S.E.2d 19, 28 (Ct. App. 2009) (on appeal, the circuit court's decision as to the voluntariness of the statement will not be reversed unless so erroneous as to demonstrate an abuse of discretion). The other two issues were not preserved for review because there were no contemporaneous objections. Therefore, this Court



finds that the Applicant failed to point to any meritorious issues that were preserved for appellate review. The Applicant is not entitled to relief on this ground.

Allegation # 16

In his sixteenth allegation, the Applicant contended that trial counsel was ineffective for failing to request a jury charge regarding false imprisonment. This Court finds that the law is clear that false imprisonment is not a lesser-included charge of kidnapping. See State v. Berntsen, 295 S.C. 52, 367 S.E.2d 152 (1988). Therefore, counsel was not ineffective for failing to request this charge.

Allegation # 17

In his final allegation, the Applicant argued that, under U.S. v. Cronin, 466 U.S. 648 (1984), counsel failed to subject the State's case to meaningful adversarial testing which made the adversarial process in this case presumptively unreliable. The thrust of this allegation was that counsel was so ineffective that prejudice to the Applicant should be presumed. This Court must reject the Applicant's argument. From the beginning, counsel advised the Applicant to plead guilty in light of the evidence against him. The Applicant refused to take counsel's advice because he wanted to "get the truth out" before a jury and because he wanted less prison time than was being offered. Trial counsel was, therefore, constrained to take this case to trial even though he and the Applicant were both well aware that the Applicant did in fact commit acts that constituted kidnapping. In light of this predicament, defense counsel's goal was to try to get the jury to see the whole picture of the parties' relationship and use their common sense to conclude that, first, no burglary occurred, and secondly, that the taking of the victim was not a true kidnapping particularly since the victim, the Applicant's girlfriend, had already agreed to go with the Applicant that morning. This Court finds that trial counsel was clearly successful in some

respects inasmuch as the jury found the Applicant not guilty of the more serious burglary charge, which carried the possibility of a life sentence. Under these circumstances, this Court finds that the reasoning of Cronic does not apply. This Court does not believe that defense counsel abandoned his role as an advocate for the Applicant. Compare Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006). Accordingly, the Applicant is not entitled to relief on this ground.

CONCLUSION

In conclusion, based upon the entire record, this Court finds and concludes that the Applicant failed to meet his burden of proof as to any of his claims. Therefore, the Application for post-conviction relief must be denied and dismissed with prejudice for failure to meet the burden of proof under Strickland v. Washington, 466 U.S. 668 (1984), and Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Counsel's attention is directed to Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), and Rule 59(e), SCRCP, regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S.C. Code Ann. § 17-27-80 (2003). This Court further advises that if Applicant desires to secure appellate review of this Order, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

IT IS THEREFORE ORDERED THAT:

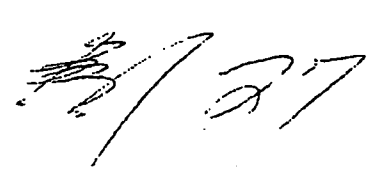
1. The Application for post-conviction relief is **DENIED and DISMISSED with PREJUDICE.**
2. The Applicant must remain in the custody of the State for completion of his sentence.

AND, IT IS SO ORDERED this 20th day of March, 2013.



George E. James, Jr.
Presiding Judge
Fifteenth Judicial Circuit

Sumter, South Carolina



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	DOCKET NO.: 2010-CP-22-190
	)	
NICHOLAS L. PARKER, 320005,	)	
Applicant,	)	MOTION FOR REHEARING
v.	)	PURSUANT TO RULE 59(a), SCRC
	)	AND/OR MOTION TO ALTER ORDER
STATE OF SOUTH CAROLINA,	)	AMEND PURSUANT TO
Respondent,	)	RULE 59(e), SCRC

FILED
GEORGETOWN COUNTY, S.C.
2013 APR 17 PM 2:23
ALISA Y. WHITE
CLERK OF COURT

COMES NOW Applicant, through his undersigned attorney, and requests that this Court conduct a rehearing and direct the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amend the findings of fact and conclusions of law in the standing Order, pursuant to Rule 59(e), SCRC.

This matter comes before the Court by way of an Application for Post Conviction Relief filed on February 1, 2010. On February 15, 2012, an evidentiary hearing was held at the Georgetown County Courthouse. The Honorable George C. James, Jr., presided over the evidentiary hearing. Applicant was represented by Tricia A. Blanchette, Esquire. Respondent was represented by Christina J. Catoe, Assistant Attorney General. On March 20, 2013, an Order Denying Post-Conviction Relief was signed by the Honorable George C. James, Jr. The Order was filed on March 25, 2013. On April 5, 2013, Applicant, through counsel, received written notice of the entry of the Order, from which this Motion follows.

Pursuant to Rule 59, SCRC, Applicant would ask this Court to reconsider the Order Denying Post-Conviction Relief in its entirety and grant Applicant relief on the issues raised at the evidentiary hearing and ruled upon in the Order. Specifically, Applicant

would ask this Court to conduct a rehearing on the issues listed as Allegation #5 and Allegation #9.

As to Allegation #5, Applicant submits that he clearly testified that he invoked his right to counsel prior to his video statement and trial counsel was ineffective for failing to utilize witnesses or make an argument on this ground during the Jackson v. Denno hearing. In the standing Order, this Court reasoned that Applicant made an ambiguous request for a lawyer, but Applicant submits that a proper review of his evidentiary hearing testimony will show that he was clear in his request.

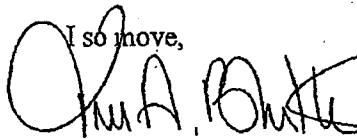
The Fifth Amendment's privilege against self-incrimination provides an individual who has been accused of a crime the right to consult with an attorney and to have an attorney present during custodial interrogation. Miranda v. Arizona, 384 U.S. 436, 478-79, 86 S.Ct. 1602 (1966). This privilege has been extended to the States via the Fourteenth Amendment. Malloy v. Hogan, 378 U.S. 1, 6, 84 S.Ct. 1489 (1964) ("[T]he Fifth Amendment's exception from compulsory self-incrimination is also protected by the Fourteenth Amendment against abridgment by the States."). Once an accused has invoked his right to have an attorney present during custodial interrogation, he may not be subjected to further police interrogation "unless the accused himself initiates further communication, exchanges, or conversations with the police." Edwards v. Arizona, 451 U.S. 477, 484-85, 101 S.Ct. 1880 (1981).

Applicant submits that he invoked his right to have an attorney present prior to his interrogation and counsel was ineffective for failing to address his invocation during the Jackson v. Denno hearing. Applicant further submits that he did not ambiguously invoke his right, and Applicant does not agree that counsel was credible when he explained that

Applicant did not inform him about it. As a result, Applicant would respectfully the opportunity to be reheard on this issue and/or for the Court to amend his findings in the Order Denying Post-Conviction Relief.

Turning to Allegation #9, Applicant submits that he was adamant at the evidentiary hearing that he would not have proceeded to trial nor would he have testified in the manner that he did if counsel would have explained the applicable mental state (knowing) to him prior to trial. In the standing Order, this Court held that Applicant was not believable that he would have considered the plea offers or his testimony differently if counsel would have educated him regarding "knowledge" versus "intent." Applicant would respectfully request the opportunity to be reheard on this issue and/or for the Court to amend his findings in the Order Denying Post-Conviction Relief.

For the above stated reasons and based upon the testimony, evidence and argument presented at the evidentiary hearing, Applicant requests that this Court conduct a rehearing and direct the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amend the findings of fact and conclusions of law in the standing Order, pursuant to Rule 59(e), SCRPC.

I so move,


Tricia A. Blanchette
Attorney for Applicant
Post Office Box 12725
Columbia, South Carolina 29211
(803) 988-0008

April 10, 2013
Columbia, SC

10
A5

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Nicholas L. Parker, # 320005,

Applicant,

v.

State of South Carolina,

Respondent.

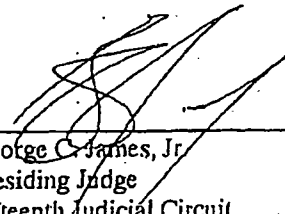
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-22-190

ORDER

This matter came before the Court pursuant to Applicant's Rule 59(a) and Rule 59(e) motion dated April 10, 2013. After careful consideration of all issues raised, Applicant's motion is denied.

AND, IT IS SO ORDERED.



George C. James, Jr.
Presiding Judge
Fifteenth Judicial Circuit

April 30, 2013
Sumter, South Carolina

FILED
GEORGETOWN COUNTY, S.C.
2013 MAY -7 PM 3:01
ALMA Y. WHITE
CLERK OF COURT

WITNESSES:

GEORGETOWN SHERIFFS DEPARTMENT
ARREST WARRANT/TICKET NUMBER:

H-827502

0095 16-03-0910

SID:

DOI: 1-29-06

D/L

ACTION OF GRAND JURY

Date

Foreman of Grand Jury

VERDICT

Guilty

Jane A. Duml

Foreman of Petit Jury

DOCKET NO. 06-GS22-269

**The State of South
Carolina,**

County of Georgetown

21283

002

MM

COURT OF GENERAL
SESSIONS

March

TERM 2006

THE STATE

VS.

NICHOLAS LEE PARKER

1108 Lilac Lane

Summerville, SC 29483

DOB: 3-31-82

SS#: 249-51-0484

**J. GREGORY HEMBREE,
SOLICITOR**

INDICTMENT FOR

KIDNAPPING

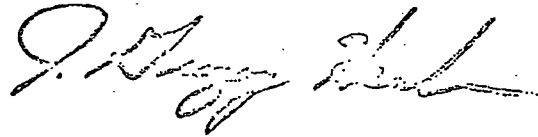
STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT FOR
Kidnapping

At a Court of General Sessions, convened on March 15, 2006 the Grand Jurors of Georgetown County present upon their oath:

That Nicholas Lee Parker did in Georgetown County on or about January 29, 2006, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Belinda Darlene Mitchum, without authority of law, in violation of Section 16-03-0910, S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

ARREST WARRANT

STATE OF SOUTH CAROLINA
 COUNTY OF GEORGETOWN
 827502

FILED
 16 MAR 16 AM 8:16
 CLERK OF COURT

THE STATE
 against
 NICHOLAS LEE PARKER

Address: SUMMERVILLE SC 000029483

Phone: [REDACTED] SSN: [REDACTED]
 Race: [REDACTED] Height: 6 Weight: 140

DL State: [REDACTED] DL #: [REDACTED] Agency ORI#: [REDACTED]

Prosecuting Agency: [REDACTED]

KIDNAPPING
 Offense: [REDACTED]

Code/Ordinance Sec. 16-03-0910 Offense Code: [REDACTED]

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of [REDACTED]

The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
 defendant Nicholas Lee Parker on 3-9-06

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
 JUDGE BENJAMIN F. DUNN
 110 N. MORGAN AVE.
 JREWS, S.C.

295100000

STATE OF SOUTH CAROLINA

County/ Municipality of GEORGETOWN

Personally appeared before me the affiant
 being duly sworn deposes and says that defendant
 did within this county and state on 1/29/2006

State of South Carolina (or ordinance of County/ Municipality of [REDACTED])
 the following particulars:
 DESCRIPTION OF OFFENSE: KIDNAPPING

16-03-0910

I further state that there is probable cause to believe that the defendant named above did
 the crime set forth and that probable cause is based on the following facts:
 THAT ON OR ABOUT JANUARY 29, 2006, IN GEORGETOWN COUNTY, THE DEFENDANT DID
 UNLAWFULLY KIDNAP BELINDA DARLENE MITCHEM AT LOT #14 B B SMITH TRAILER PARK
 GEORGETOWN SC WITHOUT THE AUTHORITY OF THE LAW. THIS BEING AGAINST THE
 PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA.

CASE #01062049

1/30/2006

Signature of Affiant

STATE OF SOUTH CAROLINA
 County/ Municipality of [REDACTED]

Affiant's Address 430 NORTH PRASER STREET
 GEORGETOWN SC 29440
 Affiant's Telephone 0435465102

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
 If appearing from the above affidavit that there are reasonable grounds to believe
 of GEORGETOWN did violate the criminal laws of the State of South Carolina (or ordinance of [REDACTED]) as set forth below:

DESCRIPTION OF OFFENSE: 16-03-0910
 NICHOLAS LEE PARKER

16-03-0910

HAVING PROBABLE cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on January 30, 2006

Signature of Issuing Judge Benjamin F. Dunn (L.S.)

Judge Code: 16

Judge's Address 110 N. MORGAN AVE.
 JREWS, S.C.

Judge's Telephone 8432648321

Issuing Court: [X] Magistrate [] Municipal []

ORIGINAL

WITNESSES:

GEORGETOWN SHERIFFS DEPARTMENT
ARREST WARRANT/TICKET NUMBER:

H-827501

0079 16-11-0311(A)

SID:

DOI: 1-29-06

D/L

**ACTION OF GRAND JURY
TRUE BILL**

Date

Foreman of Grand Jury

3/15/06

VERDICT

Foreman of Petit Jury

DOCKET NO. 06-GS22-268 X ✓

**The State of South
Carolina,**

County of Georgetown

21283

002

MJM

COURT OF GENERAL
SESSIONS

March

TERM 2006

THE STATE

VS.

NICHOLAS LEE PARKER

Summerville, SC 29483

DOB

SS#:

J. GREGORY HEMBREE,
SOLICITOR**INDICTMENT FOR**Burglary 1st

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

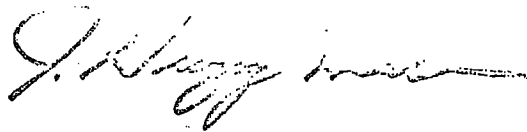
INDICTMENT FOR

Burglary 1st Degree

At a Court of General Sessions, convened on March 15, 2006, the Grand Jurors of Georgetown County present upon their oath:

That Nicholas Lee Parker did in Georgetown County on or about January 29, 2006, while acting in concert with another enter without consent and with intent to commit a crime therein, the dwelling of, Belinda Darlene Mitchum, located at [REDACTED] BB Smith Trailer Park, Georgetown, SC, causing bodily harm to the victim, in violation of Section 16-11-31(A), South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)

v.

VERDICT FORM
2006-GS-22-268

NICHOLAS PARKER,

DEFENDANT.)

— We find the Defendant Nicholas Parker Guilty of Burglary in the First Degree, as charged.

— We find the Defendant Nicholas Parker Guilty of the lesser included offense of Burglary in the Second Degree.

~~X~~ We find the Defendant not Guilty.

Lance A. Duvall
Foreman

February 2, 2007
Georgetown, South Carolina