

STATE OF SOUTH CAROLINA

Volume II of II

IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

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SC SUPREME COURT

HOWARD LEE SIMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002302

APPENDIX

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT #91 (LINEUP PHOTO)**

Howard Sims - Direct examination
by Mr. Rucker

1 A Cause the things that happened like days before the,
2 the incident, they used them right there to get a search
3 warrant to or to take my clothing and stuff and they had
4 nothing to do with what, what the incident, what the
5 incident was about or nothing.

6 Q Do you believe there's insufficient probable cause to
7 issue the warrant?

8 A Yeah, it was -- there was not probable cause but it --
9 how it did it.

10 Q Okay. And in reading the affidavit, you do not
11 believe, on its face, it has sufficient probable cause to
12 issue a search warrant?

13 A No, I don't.

14 Q All right. As to your claim that the, that Ms. Hodges
15 was ineffective for failing to object to an unduly
16 suggestive and unconstitutional photo line-up, did she, in
17 fact, object to that lineup at some point?

18 A Well, she -- I mean I, I -- she objected to the, to
19 the, to, to the like the pretrial. She objected to it. But
20 the, the, the, the whole -- the trial itself, she didn't,
21 she didn't really just object.

22 Q So she never renewed her objection at trial?

23 A Yeah.

24 Q Okay. What was wrong with the lineup?

25 why do you believe it was unduly suggestive?

Howard Sims - Direct examination
by Mr. Rucker

1 A Well, the lineup itself is -- the out-of-court, the
2 out-of-court lineup, I mean she should of been there when,
3 when they had, when they had the lineup and inside -- I mean
4 the in-court. I mean she didn't never -- she just didn't
5 object to it at all.

6 Q All right. And what was the -- if, if the judge looked
7 at the lineup, what makes it suspicious by looking at it?

8 A Everybody, everybody on -- everybody in the six
9 pictures, you know what I'm saying, I'm the only person in
10 the picture that have a gray shirt on. Everybody else got
11 white t-shirts on.

12 Q Okay. Is it---

13 A And it's been black -- it's been like copied.

14 Q All right.

15 A It's not, it's not just like coming from like color
16 where everybody got color in their, in their photo. It's
17 black and white and use to -- mine just stand out. It's
18 just -- it just stand out right there where I got the gray
19 shirt on and everybody else got white, white t-shirts on.

20 Q All right.

21 A So, if you look at it, the first person you gonna look
22 at with who did, that's the man right there in the gray
23 shirt.

24 Q Okay. And did -- your actual identification, the, the
25 witness who testified -- the brother of the victim, what did

Howard Sims - Direct examination
by Mr. Rucker

1 he testify to---

2 A He, he did---

3 Q ---as far as how competent he was---

4 A He was 50 percent. He say he was 50 percent sure. But
5 the description that he give was nothing of, of what they,
6 what they took, you know what I'm saying. He was
7 50 percent. He say, he say it was illuminated light. He
8 didn't know who the -- I mean what -- who the suspect was or
9 what.

10 Q Okay. And did he, in fact, identify you during the
11 trial in front of the jury.

12 A During -- yeah, during, during the trial he did.

13 Q Okay. And do you -- did you -- do you believe that was
14 ineffective for---

15 A It had---

16 Q ---stopping that identification?

17 A Yes, because I mean 50 percent is not a hundred
18 percent. You can not give a person -- life is in, in, in,
19 in somebody else -- is in the hands of the people. For you
20 to be 50 percent, you got to be a hundred percent to send a
21 man away for life.

22 Q Okay. Is there any other issue as to the lineup other
23 than the failure to contemporaneously object and failure to
24 actually question on that or more thoroughly?

25 A No, sir.

Howard Sims - Direct examination
by Mr. Rucker

1 Q Okay. You also alleged that trial counsel was
2 ineffective for failing to object to the admission of an
3 arrest warrant.

4 What's your basis for that?

5 A Say that again.

6 Q You also -- one of your allegations is that the trial
7 counsel failed to object to the admission of evidence
8 obtained pursuant to the arrest warrant for you where they
9 got clothes off of you.

10 A Yeah. Well, this -- that's the -- would you ask me --
11 what are you asking me, did it -- I can't answer -- I
12 don't understand what you're saying.

13 Q I'm just asking you why, why you think she was
14 ineffective for failing to try to suppress any evidence that
15 came through that arrest warrant.

16 A Well, she suppose, she suppress to suppress -- she
17 suppose to suppress it because I mean every -- I mean how
18 they got the search warrant, how they got the search
19 warrant, you know what I'm saying, with the fault, with they
20 gave the wrong -- they got using crimes, other crimes, that,
21 that, that like have nothing to do with, with the, with a
22 murder crime or a crime that they got me up for, right. But
23 see -- actually, you know what I'm saying, it don't -- they
24 ain't seen suppose to -- she ain't suppose to -- she suppose
25 to object off the top, you know what I'm saying.

Howard Sims - Direct examination
by Mr. Rucker

1 Excuse me. She suppose to objected, you know what I'm
2 saying, to the clothing and, and everything that, that they
3 came behind, behind that.

4 Q What's your reason to believe she should of objected to
5 that?

6 A Because I'm saying it wasn't, it wasn't, it wasn't --
7 it was un, it was unduly. I mean it wasn't, it wasn't
8 right.

9 Q All right. The -- additionally you objected to --
10 well, first, let's go back.

11 How many witnesses identified you as committing this
12 alleged crime or this crime?

13 A Ain't nobody. I mean, I mean ain't nobody seen me
14 commit no crime.

15 Q All right. well, the evidence that came out in Court
16 though.

17 How much -- what evidence was used by the solicitor to
18 say you did it?

19 A The evidence was, the evidence didn't really say that I
20 committed no crime. The evidence that they used was
21 evidence from other crimes putting me in the area, you know
22 what I'm saying, and then -- and putting me in another area
23 with it has nothing to do -- it had nothing to do with the
24 crime.

25 The crime -- I mean the, the identification, the

Howard Sims - Direct examination
by Mr. Rucker

1 identification that they give was a person seeing -- say
2 they seen me in the neighborhood and another identification
3 is a store where they say they seen me in a store. I'm
4 saying like five hours later, which they tried to say 30
5 minutes later they seen me in a store, but it been five
6 hours later.

7 Q All right. How do you know it was five hours later?

8 A I mean I got the, I got the reports right here.

9 Q Okay. Did you go over it -- did you get your discovery
10 responses from Ms. Hodges before trial --

11 A Yes, sir.

12 Q -- to be able to look over discovery with her?

13 A Yes, sir.

14 Q How many times did you meet with her to go over that
15 discovery?

16 A Probably twice.

17 Q Okay. How long -- was she appointed or did you retain
18 her?

19 A She was appointed.

20 Q All right. How long before the trial was she
21 appointed?

22 A Probably like a few, a few, a few months before the
23 trial.

24 Q Okay.

25 A Probably five, five, six months.

Howard Sims - Direct examination
by Mr. Rucker

1 Q Were you in jail the whole time while she was
2 representing you before trial?

3 A Yeah.

4 Q Okay. Did y'all go over the issues of the timeline or
5 with the identification process?

6 A Yeah, we went, we went, we went over it. Yeah. Yes,
7 we did.

8 Q All right. And did -- why do you think she didn't
9 correctly object to those issues at trial then if y'all went
10 over them?

11 A Because she -- it was -- she pretty much was in -- I
12 mean pretty much ineffective, ineffective for not, for not,
13 for not doing it.

14 Q Okay. And additionally you object to the chain of
15 custody not being properly challenged.

16 Explain to the judge what you mean by that.

17 A Well, the, the, the, the, the chain of custody, she,
18 she didn't, she didn't, she didn't -- well, she was
19 deficient. I mean she was -- her performance was deficient,
20 deficient performance from you know what I'm saying. She
21 suppose to, she suppose to objected to the chain of custody
22 because the, the paperwork, the paperwork that they had for
23 the chain of custody, you know what I'm saying, on
24 June 1st they had -- they, they received -- they took my
25 clothing, and, and between June the 1st and June the

Howard Sims - Direct examination
by Mr. Rucker

1 6th, you know what I'm saying, they never -- we don't know
2 where the clothing been at or nothing, you know what I'm
3 saying.

4 I got the, the, the only thing they had in the
5 discovery, the only thing they had in the discovery is, is,
6 is evidence of having the chain is what they, they took on,
7 on June the 1st. Between June the 1st and June the 6th
8 don't nobody know where the clothing or the blood samples
9 or, or whatever suppose to be from the defendant or victim
10 whatever like that right there. They don't have none of
11 that right there.

12 I mean it wasn't no kind of out, out of, out-of-court
13 chain of custody, you know what I'm saying. It's no kind of
14 paperwork showing no out of, out-of-court chain custody, you
15 know what I'm saying. The only chain of custody they got is
16 what they saying in these two pieces of paper right here
17 was -- I'd like to introduce -- I mean give you for -- to
18 put in evidence or whatever.

19 MR. RUCKER: Your Honor, may I approach the witness?

20 THE COURT: Yes.

21 A It's the only two things they have right here of the
22 chain of custody and, and that's it. The whole motion, out
23 of the whole motion. Admit it as --.

24 (WHEREUPON, the chain of custody form was marked as
25 Applicant's Exhibit No. 1 for identification purposes only.

Howard Sims - Direct examination
by Mr. Rucker

1 at this time.)

2 Q Okay. I'm gonna show you what's been marked as
3 Applicant's Exhibit No. 1.

4 Do you recognize those documents?

5 A Yes, sir.

6 Q What are those documents?

7 A SLED, SLED laboratory forensic report.

8 Q Did you receive that as part of your discovery?

9 A Yes, sir.

10 MR. RUCKER: All right. I'd ask that Applicant's
11 Exhibit No. 1 be introduced into evidence.

12 THE COURT: Any objection?

13 MS. WHITE: No, Your Honor.

14 THE COURT: All right. It will be admitted as marked.

15 (WHEREUPON, Applicant's Exhibit No. 1 was received into
16 evidence at this time.)

17 Q What, what does that document show as far as chain of
18 custody?

19 A It just say that offense date was June 1st. But
20 submission, when they submitted it to, to the lab to
21 Ms., Ms., Ms. Amy Stevenson, the SLED forensic technician,
22 she, she admitted that she got it right here as six months,
23 six date of 2007. But they was -- but they took my clothing
24 and the blood sample from June the 1st between the time.
25 Don't nobody know where, where the clothing are from.

Howard Sims - Direct examination
by Mr. Rucker

1 Q All right. Is there any paperwork in the discovery
2 showing where the clothing was between the 1st and the 6th?

3 A No, sir.

4 Q And you're alleging that she should have argued that---

5 A Objected.

6 Q ---to try to get the---

7 A Object to, yeah.

8 Q And that evidence was strong because it had blood,
9 alleged blood from the alleged victim?

10 A From the victim.

11 Q Is that right?

12 A Right.

13 Q All right. And so you believe that should of been
14 suppressed and she should of investigated that?

15 A Yeah, cause I feel, I feel like if, if, if she would of
16 suppressed that, you know what I'm saying, the, the, that's,
17 that's been a big part of the, of the case and I don't think
18 that I would of had a life sentence.

19 Q All right. In addition, in addition to the blood
20 evidence that was found alleged on your clothing, what was
21 the, the gist of their, their argument?

22 why did they believe they -- that you did it?

23 what was the argument to the jury is what I'm saying?

24 A The jury -- they was trying to say that the alleged
25 victim was saying his blood sample was, was supposedly been

Howard Sims - Direct examination
by Mr. Rucker

1 on my clothing, clothing.

2 Q Did you ever give a statement in this case or
3 confession?

4 A No, I never -- no. No.

5 Q And the other evidence they have against you is a 50/50
6 identification.

7 Is that right?

8 A Yes, sir.

9 Q Okay. Is there anything additional evidence that they
10 used to find you guilty or that, that was offered to the
11 jury?

12 A That's, that's, that's practically it right there.

13 Q Are there any other issues you want to address to the
14 jury at this point?

15 A The, the Rule 404, which, which is -- come from like my
16 appellate, you know what I'm saying, I mean my lawyer, my
17 trial lawyer. She was kind of -- she was ineffective for
18 not objection to what the investigator, Ricky Spurgeon,
19 said, you know what I'm saying. But that's, that's, that's
20 pretty much it right there.

21 Q And that's for the same thing we talked about---

22 A Yeah.

23 Q ---at the beginning of your testimony?

24 A Yeah.

25 Q All right. Is there additional evidence or anything

Howard Sims - Direct examination
by Mr. Rucker

1 else you want the judge to know about?

2 A No, that's it. That's it.

3 MR. RUCKER: Okay. No further questions, Your Honor.

4 THE COURT: You may cross-examine.

5 MS. WHITE: Thank you, Your Honor.

6 THE COURT: Yes, ma'am.

7 CROSS-EXAMINATION

8 BY MS. WHITE:

9 Q Mr. Sims, you testified that Ms. Hodges did not renew
10 her objection to the identification in Court of you.

11 Is that right?

12 A Yeah.

13 Q So she made the pretrial motion but then, when it was
14 presented in Court, you said she didn't object.

15 Is that right?

16 A Yeah, to my knowledge. Yeah.

17 Q Okay. And that witness, was that the first witness
18 that the State presented that identified you?

19 It was the victim's brother?

20 A He said he was only 50 percent.

21 Q Right.

22 But he was the very first witness for the state?

23 A Yeah.

24 Q Is that right?

25 A Yeah.

Howard Sims - Cross-examination
by Ms. White

1 Q Okay. And so the testimony where he identified you,
2 that was presented as that initial testimony?

3 A I mean he said, he said, he said he was only 50
4 percent. He pointed and he said he was only 50 percent.

5 Q Right.

6 And, and your counsel cross-examined him about that,
7 right, and said something to him about only being 50 percent
8 sure?

9 A Yes. Yeah.

10 Q Okay. She also -- your counsel also moved to suppress
11 evidence that was obtained by the search warrant.

12 Is that correct?

13 A Well, she, she, she -- we had -- she had a motion, she
14 had a motion that's pretrial but she never, she never
15 reopened it or, or, or she was, she was in, ineffective for
16 not retrying to reopen it because that been a -- that was,
17 that was a crucial point of the case too. Well, the judge
18 never, never -- he never rendered a decision on the claim.

19 Q Okay. And she presented there -- the State presented
20 testimony from an Investigator Steadman and that's who --
21 one of the people you say that his testimony was improper?

22 A Yeah.

23 Q Okay. In regards to other testimony, your attorney
24 made a motion to preclude any testimony or prevent any
25 testimony in regards to any kind of prior burglary

Howard Sims - Cross-examination
by Ms. White

1 description.

2 Is that right?

3 There had been an incident in May where somebody --
4 they wanted to use testimony where you had been described.

5 A Yeah.

6 Q And she objected to that and that was ruled hearsay.

7 Is that right?

8 A That's -- that's pretrial.

9 Q Right.

10 A Pretrial, yeah.

11 Q And so that was prevented from coming in at trial.

12 Is that right?

13 A Well, they used, they used my -- they still used the
14 image of me being in the store, you know what I'm saying,
15 which that have nothing to do with -- I mean that's -- I
16 mean in the store. I mean it's got plenty of people that
17 got the same outfits on or whatever. I'm in the store. I
18 could be in the store. I mean it's nothing wrong with me
19 being in the store. Well, it has nothing to do with the,
20 the, the -- what I'm in the penitentiary for got -- serving
21 a life sentence for.

22 Q Okay.

23 A That's just -- that's three, three, three, three, four
24 days later -- I mean earlier than what the, the incident --
25 before the incident even happened. It has nothing to do

Howard Sims - Cross-examination
by Ms. White

1 with it. They shouldn't even had it in the, in the
2 courtroom at all because it was irrelevant to the case.

3 Q Okay. And that's where the clothing came from, is that
4 right, where they---

5 A The clothing came from what?

6 Q The search warrant that they obtained. The clothing
7 was related to the video---

8 A Yeah, they took---

9 Q ---the picture?

10 A Yeah, they took it with.

11 Q Okay. Your attorney, she made a motion to exclude a
12 prior charge or related to a shoplifting charge.

13 Is that right?

14 A Exclude the prior charge?

15 I mean I never was charged with, with, with --.

16 Q And maybe it's shoplifting might not be the correct
17 if -- Page 98 of the transcript, your attorney said we
18 object to preclude any testimony regarding the fact that
19 Mr. Sims was arrested for any other warrants in front of the
20 jury.

21 Is that right?

22 Do you recall that?

23 A You asking me did she say that in front of the jury or
24 said what you, what you --?

25 Q No, that was a pretrial motion.

Howard Sims - Cross-examination
by Ms. White

1 A Oh, okay.

2 Q Do you -- would you agree with me that that was?

3 A She said, she said she didn't want, she didn't want
4 shoplifting being said, I mean spoke, brought up in there.
5 That's pretty much -- yeah, she pretty much said that.

6 Q Okay. And that was about regarding, regarding a
7 violation of probation?

8 A No, she ain't said nothing about regarding a violation.

9 Q Okay. In regards to the other warrants, there were
10 several other motions that were made in regards to a motion
11 to exclude any reference to you being arrested for any other
12 warrants.

13 Is that right?

14 A Well, it was, it was, it was, it was a shoplifting and
15 pretty much a shoplifting she was talking about. She wasn't
16 really talking about nothing else that I, that I, that I had
17 knowledge of.

18 Q Okay. Page 99 when she says that -- mentioning the
19 incident of May 29th where a TV was stolen and no one had
20 identified a suspect.

21 A Yes, that's, that's---

22 Q This was agreed that they were not gonna mention that,
23 right?

24 A Yeah, in the -- yeah, in the, in the Court, in the
25 Court.

Howard Sims - Cross-examination
by Ms. White

1 Q Okay. And they had some other information regarding a
2 shoe print and, at the time, she tried to argue that maybe
3 an investigator should not be able to testify about a shoe
4 print that they found.

5 Is that right?

6 A Yeah, she did that.

7 Q Okay. In regards to the testimony about your -- you
8 said the character evidence. Page 264 of the transcript you
9 mentioned that the officer said I was already familiar with
10 him. Me being an investigator in that area.

11 A Right.

12 Q Is that the reference you mean?

13 A Yeah.

14 Q Okay. And you said counsel failed to object to that,
15 and that you think that was a violation of your, your right
16 to not present character evidence?

17 A Yes, she was, she, she -- yeah, she should of objected.

18 Q Okay. And the officer continued to testify that you
19 had given him a different name, but told him that the
20 officer said he under -- he knew who you were.

21 Is that right?

22 A I mean that's what he say.

23 Q Okay. In regards to the arrest warrant and clothes,
24 you're testifying there was no other chain of custody.

25 Did you ever talk with Ms. Hodges about --

Howard Sims - Cross-examination
by Ms. White

1 A Oh, yeah.

2 Q -- attacking the search of the clothes?

3 A I talked to her, I talked to her about the, the chain
4 of custody, but she never -- I mean she just didn't follow
5 it up.

6 Q Okay. And you said you've only met with her twice?

7 A About twice.

8 Q Okay.

9 A I remember twice.

10 Q All right. And you were in the detention center the
11 whole time --

12 A Yeah.

13 Q -- is that right, or DOC?

14 A Detention center.

15 Q All right. And what -- did you discuss with her your
16 defense and what you were going to present to the jury?

17 A Well, she never came up with a strategy. I mean was
18 waiting for -- she was my attorney and I'm, I'm not, I'm not
19 a lawyer or nothing. So I'm expecting her to come up with a
20 strategy, how we gonna, you know what I'm saying, put up
21 the, put up the defense. But she didn't come up with no --
22 too much of a strategy.

23 Q Okay. All right. Thank you.

24 Your Honor, that's all I have at this time.

25 THE COURT: Anything else?

Kathleen Hodges - Direct examination
by Ms. White

1 MR. RUCKER: No, sir.

2 THE COURT: You may step down.

3 All right. The Applicant may call its next witness.

4 MR. RUCKER: That's all of our witnesses, Your Honor.

5 THE COURT: The State has the right to call witnesses.

6 MS. WHITE: Thank you, Your Honor.

7 We would call Kathy Hodges to the stand.

8 THE COURT: If you'd come forward, ma'am, to my left

9 and be sworn please.

10 (Witness complies.)

11 THE COURT: Put your left-hand on the Bible and raise
12 your right.

13 KATHLEEN HODGES, being first
14 duly sworn, testified as follows:

15 THE COURT: Have a seat.

16 THE WITNESS: Thank you.

17 THE COURT: State your name please.

18 THE WITNESS: My name is Kathleen Johnson Hodges.

19 THE COURT: Thank you.

20 Your witness, counselor.

21 MS. WHITE: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. WHITE:

24 Q Ms. Hodges, if you can tell us just briefly how long
25 you had been practicing law at the time you represented

Kathleen Hodges - Direct examination
by Ms. White

1 Mr. Sims in this case and that was June and July, 2008?

2 A At that point I would have been practicing law for --
3 since 1994. So --.

4 Q Okay. And we'll just---

5 A Fourteen years.

6 Q ---do the math quickly on that.

7 And, at the time, had you handled other cases that were
8 of a serious nature such as murder, burglary first degree?

9 A Yes, I had.

10 Q Okay. Do you recall representing Mr. Sims?

11 A Yes.

12 Q And do you recall how far in advance, he said maybe
13 five or six months, that you were appointed?

14 Does that sound accurate?

15 A Yes, that would be, been accurate and more likely than
16 that probably longer. I -- my recollection is that Mr. Sims
17 was originally arrested on a violation of probation warrant
18 and then, pretty soon thereafter, the City Police Department
19 would of charged him with burglary and a murder charge.

20 My recollection is that he actually went down and
21 finished his violation of probation sentence in the
22 Department of Corrections prior to coming back to
23 Spartanburg to be held pretrial for this case. But I --
24 it's been quite a number of years since 2008.

25 Q Okay. Do you recall -- he testified that you, he

Kathleen Hodges - Direct examination
by Ms. White

1 believes you met with him approximately twice.

2 Do you know how many times you met?

3 A I don't have an independent recollection of how many
4 times I met. I know that we met several times.

5 Q And did you have a chance to review discovery materials
6 with him as he discussed?

7 A Yes.

8 Q And what were the discovery materials that you have
9 from the State?

10 A Well, essentially I was provided everything that the
11 police department and the solicitor's office had gathered
12 during the course of their investigation. There are some of
13 the chain of custody sheets that were provided to me that
14 were very light, and so the copies that I got were light.
15 The copies that I would of made for Mr. Sims would of been
16 even lighter.

17 I do have -- I do have an independent recollection of,
18 of asking Mr. Barnette to get me darker copies so that I
19 could actually be able to figure out what -- some of the
20 chain of custody sheets. They're a couple of incident
21 reports and things like that. But I had been provided
22 essentially all of the incident reports that had been filed
23 by the police department in relationship to this case, the
24 photographs, any sort of scientific analysis, analysis that
25 would of been done either in terms of comparing shoe prints

Kathleen Hodges - Direct examination
by Ms. White

1 to shoes, DNA evidence, all of it.

2 Q Okay. And currently do you work for the Spartanburg
3 County Public Defender's Office?

4 A I do not currently work for the Public Defender's
5 office.

6 Q But the file has been brought that you worked with and
7 the file containing Mr. Sims's documents?

8 A Yes.

9 MS. WHITE: Okay. May I approach, Your Honor?

10 THE COURT: You may.

11 MS. WHITE: Thank you.

12 Q I'm gonna show you these three documents.

13 Are those -- do you recognize those?

14 A I do.

15 Q And can you tell us what those are?

16 A Yes, the first two documents appear to be items that
17 were actually seized at the scene or actually rather from
18 Mr. -- either at the scene or from Mr. David Lammers who
19 would of been the brother of the victim, John Lammers, in
20 this case, and those were basically impounded on June the
21 1st of 2007. And these are the Spartanburg Public Safety
22 Department's chain of custody sheets.

23 The third page is what was seized from Mr. Sims. The
24 address is 145 Broad Street. If my memory's correct, that's
25 the address for the Spartanburg Public Safety Department and

Kathleen Hodges - Direct examination
by Ms. White

1 that includes five items that were seized from him that were
2 his clothing on June the 1st of 2007, and then it appears
3 that it was then taken -- basically seized by one officer
4 and, and then it shows kind of the chain of custody that
5 went from that officer to from there.

6 Q Okay. Thank you.

7 At this time, Your Honor, we'd move to introduce this
8 as Respondent's Exhibit 1.

9 THE COURT: Any objection?

10 MR. RUCKER: Without objection.

11 THE COURT: All right. They'll be marked as such and
12 admitted.

13 (WHEREUPON, the documents were marked as Respondent's
14 Exhibit No. 1 and received into evidence at this time.)

15 THE COURT: You may proceed.

16 MS. WHITE: Thank you, Your Honor.

17 And, Ms. Hodges, the documents that we just referenced,
18 does that relate to the chain of custody argument that the
19 Applicant has presented?

20 A Yes.

21 Q Did -- in your experience, would those documents and
22 the documents that we saw earlier, is that something that
23 you would of attacked an, an insufficient chain of custody?

24 A No, those, those documents I would not of attacked as
25 insufficient chain of custody. The -- part of the reason

Kathleen Hodges - Direct examination
by Ms. White

1 why I asked the solicitor's office to make sure that they
2 got me readable, legible chain of custody sheets was so that
3 I could trace the chain of custody, if there had ever been
4 an issue in terms of chain of custody or concern about
5 contamination or concern, I would have raised that in our
6 pretrial motions on June the 18th, June the 19th, excuse
7 me, or during the trial itself in July.

8 Q Okay. And in regards to the identification, you recall
9 the pretrial motion that you have for the Neil v. Biggers
10 hearing?

11 A Yes, I do.

12 Q And, in your experience, the, the very first witness
13 presented was the witness for the State that made the
14 in-court identification.

15 Is that right?

16 A Yes, one of the, one of the witnesses made an in-court
17 identification, yes, was, was presented.

18 Q Okay. And, in your experience, are you required to
19 then renew your objection when that is the first evidence
20 that's presented?

21 A Well, in this case, it -- depending on the timing of
22 when the hearing occurs and then when the evidence is
23 presented, you know, there may not be a necessarily
24 requirement to renew. The pretrial motions were
25 approximately a month before the actual trial. So I -- my

Kathleen Hodges - Direct examination
by Ms. White

1 recollection of reviewing the transcript shows that I
2 actually did renew my objections to, to the in-court
3 identifications based on my objections made at the pretrial
4 hearing.

5 Q Okay. In regard to -- obviously there were about eight
6 pretrial motions that you argued I believe in the hearing.

7 Does that sound---

8 A Several.

9 Q Okay. And one of those had to do with the search
10 warrant in which they obtained these clothing --

11 A Yes.

12 Q -- the clothing items we're talking about.

13 A Yes.

14 Q Was there anything -- you argued obviously that there
15 was not sufficient probable cause I believe?

16 A I argued both that, that we thought, and I say we being
17 the defense, thought that the search warrant was invalid on
18 its face as well as the affidavit in support of the search
19 warrant either -- there's either omissions in fact or facts
20 that were misleading in that search warrant, and that,
21 therefore, violated I believe it's Franks versus Delaware as
22 well as State versus Missouri. So I argued it both on, both
23 the federal level as well as the state level. Unfortunately
24 the Court did not agree with me.

25 Q Okay. And so, in your recollection, that the Court

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by Ms. White

1 ruled against you on that issue?

2 A It did.

3 Q Okay.

4 A The Court took it under advisement that day and, at the
5 beginning of the hearing, just before -- actually I think
6 we, we were gonna -- the Court was gonna begin to make its
7 rulings. The jury panel was brought in. So we had the jury
8 selected and then the Court actually made its ruling before
9 the actual beginning of the opening statements in the trial.

10 Q Okay. And, if you can, just briefly give me kind of
11 some context as to why the search warrant and the clothes
12 and the items that Mr. Sims has talked about in regards to a
13 photo of him from days before.

14 A Sure.

15 Q How were those relevant to the case?

16 A Sure.

17 The, the State's theory of the case was, on June the
18 1st of 2007, John Lammers is attacked by someone in his
19 home with a knife. His brother, David, sees a person
20 struggling with his brother, and when the police arrive on
21 scene, the -- Mr. John Lammers, you know, is, is deceased.
22 Mr. David Lammers is covered head to toe in blood. The
23 suspect is not on scene.

24 During the course of their investigation, the police
25 department determines that there had been two separate

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by Ms. White

1 incidences of a, of a break-in at that home in Spartanburg
2 County. The first occurred on May the 26th of 2007, and
3 the second one occurred on or about May the 29th of 2007.
4 And I don't -- one of them, and I, and I believe it was the
5 first incident, at that time, Mr. John Lammers who's now
6 deceased, had given a description of a person that he saw to
7 investigators and the investigators went around the
8 neighborhood, the police went around the neighborhood and
9 talked to some witnesses in the neighborhood that saw a
10 person matching a similar description. On the second
11 incident, all we know, and I say all we know, all the police
12 knew really, at that point, was that a TV had been taken out
13 of the home.

14 So there's nothing that tied any, any suspect
15 definitively in that second burglary. However, there was a
16 pattern of, of break-ins that occurred at this particular
17 home. The last one resulting in the death of Mr. Lammers.

18 At some point, and this was kind of a shock to us
19 because it had not been in any, any of the discovery to, to
20 get to trial, at some point, apparently Mr. David Lammers
21 told the solicitor's office that a knife that was found at
22 the home on June the 1st had actually disappeared from the
23 home on May the 26th. So they're trying to tie in that
24 burglary from May the 26th with a description of a black
25 man wearing, you know, kind of some specific clothing to the

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1 person that David Lammers is now claiming that he has seen
2 his brother struggling with.

3 Part of the concern throughout all of this was the
4 descriptions of the person that was seen differed, in
5 defense strategy and opinion, significantly in terms of size
6 as well as clothing description. Mr. David Lammers talks
7 about the person that's wearing a blue t-shirt with a pocket
8 on it. At one point one of the witnesses is in the
9 neighborhood talks about somebody wearing like a red and
10 white striped t-shirt and then it turns into something
11 that's actually like some sort of pattern, and then it
12 becomes not a Polo shirt, but some sort of button down
13 shirt. I mean, you know, there's discrepancies all over the
14 place.

15 So the concern was, in terms of the language and the,
16 and the descriptions that either were included or were not
17 included in the search warrant, was misleading to the
18 magistrate judge issuing the search warrant because, you
19 know, didn't give him a full picture of all the
20 discrepancies and the weaknesses in the evidence.

21 Furthermore, there was an incident -- a shoplifting
22 incident that occurred at some point during May 26th, May
23 29th, timeframe at a Texaco Station. The State claims
24 that Mr. Sims is the person that's seen conducting that
25 shoplifting incident and he's wearing the same shorts that

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by Ms. White

1 they claim that he was wearing the night that or the day
2 that he was arrested that has the blood of the victim on
3 them and a shirt similar to the one that everybody's saying
4 he was wearing that day in the neighborhood. But that's a
5 different shirt than what he's arrested in.

6 So, you know, there was -- and the store clerk says
7 that the person that actually did the shoplifting was
8 wearing a green shirt, which none of the shirts that are
9 shown or seized are green. So it's really a muddled mess.

10 Q Okay. And so, defense strategy, you mentioned it, was
11 to attack these discrepancies first to try to keep them out
12 --

13 A Right.

14 Q -- all the evidence out to begin with?

15 A Right, that they're all unreliable and should not be
16 allowed to be brought before the jury as, as in-court
17 identifications. Number one, Mr. David Lammers is only
18 50 percent sure, and, you know, I mean that's just, you
19 know, in this kind of charge, that's just, you know, that's
20 not sufficient to be able to, to be able to make an in-court
21 identification saying, you know, when somebody's facing
22 these kind of charges.

23 Q And did you have a chance to talk with Mr. Sims about
24 the strategy and how you were gonna go about showing that?

25 A Yes, we, we, we talked about that.

Kathleen Hodges - Direct examination
by Ms. White

1 Q Okay. And, at this point, had he been -- did he have a
2 prior record that led to him being served with notice for
3 life without parole?

4 A He did.

5 Q Okay. Had you ever talked with him about the
6 possibility of a plea?

7 A Well, yes and no. Number one, Mr. Sims denied
8 committing the crimes. So, you know, there was nothing for
9 him to be pleading to.

10 Q Right.

11 A And, number two, we were never offered a plea.

12 Q Okay. So that was never an option on the table?

13 A Right.

14 Q All right. And in regards to the statement that the
15 police officer made about he was familiar with Mr. Sims from
16 the neighborhood, did that stand out to you as something you
17 needed to object to at the time?

18 A Not at the time. You know, in hindsight being 20/20,
19 you know, probably should have objected to that. You know,
20 Detective Spurgeon's testimony was very brief, and so -- but
21 the, but the record does show that, on two occasions within
22 that testimony, he says that he was familiar with Mr. Sims.
23 One is he says from being a detective in the area. The
24 second time just says that he's familiar with him.

25 Q Okay. So he never identified him as someone that he

Kathleen Hodges - Direct examination
by Ms. White

1 had previously arrested or had been involved with a previous
2 crime?

3 A No, he, he did not go, go as far as to say that, that
4 he knew him from either prior investigations or knowing him
5 to, you know, have been either arrested or committed other
6 crimes.

7 MS. WHITE: Okay. Your Honor, I think that's all the
8 questions I have at this time.

9 Thank you, Ms. Hodges.

10 THE COURT: You may cross.

11 MR. RUCKER: May it please the court?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. RUCKER:

15 Q Ms. Hodges, how long did you represent my client,
16 Mr. Sims, before he went to trial?

17 A I honestly don't know. I mean I could, I could pull
18 the -- from, you know, from a file as to how long we
19 represented him. But, but shortly after he was arrested it
20 was assigned to me.

21 Q Okay. So it's fair to say maybe five, six, or more
22 months?

23 A Sure.

24 Q Okay.

25 A That's fair.

Kathleen Hodges - Cross-examination
by Mr. Rucker

1 Q And how many times did you actually meet with him that
2 you know?

3 You said several. I just assume he would---

4 A I honestly don't have an independent recollection and
5 one of the things that I had learned, have learned in, from
6 my practice in the Public Defender's Office, is that I
7 didn't take real got notes in terms of each successive time
8 I was meeting with somebody. I would take notes of our
9 conversations, kind of put them into context, but I honestly
10 don't have a recollection of how many specific times I met
11 with him.

12 Q Sure.

13 And in preparation for your testimony today, did you
14 read back over the transcript and familiarize yourself back
15 with the facts?

16 A I did read back through the transcript and several
17 months ago I read through the entire case file.

18 Q Okay. Did -- I'm interested to, to hear where you, in
19 the transcript, renewed your objection to the in-court
20 identification cause I haven't been able to find it
21 personally myself.

22 A Could I have my copy of the transcript?

23 Q Sure.

24 Your Honor, may I approach the witness?

25 THE COURT: You may.

Kathleen Hodges - Cross-examination
by Mr. Rucker

1 A And are you talking about Mr. Lammers specifically

2 or---

3 Q Yes, ma'am, Mrs. Lammers -- Mr. Lammers specifically.

4 A Okay. Mr. Lammers testimony appears to begin on Page
5 172. It appears what I was remembering when I say that Your
6 Honor, we renew our objections on Page 189 at Line 17, and
7 that Court says, on Line 18, overruled.

8 Q All right. Was that before or after the in-Court
9 identification of the -- of my client?

10 A That is after the in-Court identification.

11 Q Okay. We're required to make contemporaneous
12 objections and to renew those objections, aren't we?

13 A Yes, and that's the testimony on Line 15 as he's
14 sitting over there next to his attorney, he's wearing the
15 khaki pants and a blue shirt. Line 17. Hodges. Your
16 Honor, we renew our objections. The Court, on Line 18,
17 overruled.

18 Q All right. But it was after -- you, you had the motion
19 to suppress the identification a month before or so?

20 A Yes.

21 Q Okay. And then you objected at -- you didn't ask to
22 strike the, the line?

23 You just objected -- renewed objections, but you didn't
24 say specifically what you were renewing, did you?

25 A I -- no.

Kathleen Hodges - Cross-examination
by Mr. Rucker

1 Q So it could of been -- I mean you're having to remember
2 back, but that -- whatever is in your mind is not in the
3 paper, correct, meaning---

4 A I don't think that that's gonna be concise enough for
5 me to be able to answer. I'm sorry, Mr. Rucker.

6 Q Fair enough. Fair enough.

7 You don't know if the judge, for sure, knew that you
8 were renewing your objection to the in-court identification,
9 do you?

10 A Having not said that I was renewing my objections to
11 the in-court identification by Mr. Lammers, no, Judge Cole
12 would not of been put on notice that, that that was
13 necessarily my specific objection.

14 Q Okay. So that, that probably meant then that Mr. Sims
15 would not be able to appeal that issue because it's not
16 clear that you're renewing the objection as to the ID?

17 A I mean I, I -- maybe, maybe not. I mean I -- you know.

18 Q Well, I'll, I'll walk back.

19 You had eight different issues that you brought up in
20 the motion in limine, correct?

21 A Well, I had several different issues. I hadn't counted
22 them up, but, but---

23 Q I'm sorry.

24 A If you say eight, so we'll go with that.

25 Q I'm not trying to be a jerk, but what does several mean

Kathleen Hodges - Cross-examination
by Mr. Rucker

1 to you cause people, some people say three?

2 A I mean several is certainly more than three or four.

3 Q Okay.

4 A I mean there was, there was several issues that I wrote
5 down. Some are intertwined with each other. So I think
6 it's a matter of how you count them but --.

7 Q Okay. And one of the objections though was that he
8 could only testify that he was 50/50 whether it was my
9 client or someone else?

10 A Well, the objections was that he should not be allowed
11 to make in-court identification whatsoever --

12 Q Right.

13 A -- because he was only 50 percent sure --

14 Q Right.

15 A -- of -- that the person that he identified in the
16 photographic lineup being Mr. Sims was the person that he
17 saw struggling with his brother that night.

18 Q Okay. Was the photo lineup entered into evidence?

19 A The photo lineup was entered into evidence.

20 Q All right. Did you renew the objection with that photo
21 lineup coming in specifically to that?

22 A My recollection is that I renewed an objection to the
23 photo lineup -- to the lineup coming in. Whether I renewed
24 it specifically in the terms of those words or not, you
25 know, the, the record's obviously gonna speak for itself.

Kathleen Hodges - Cross-examination
by Mr. Rucker

1 Q Okay. And I want to make sure the record is speaking
2 the way it went that day though.

3 Did you preserve his right to appeal?

4 Were they able to appeal that issue, the identification
5 issue?

6 A Well, I certainly thought that I was reserving his
7 right to appeal. Now, whether Appellate Defense felt that I
8 did or not, you know, I can't speak for that.

9 Q Okay. There's a chance it was not properly preserved
10 though?

11 More than a chance.

12 A Again, I thought that I was, I was properly observing
13 it. If Appellate Defense or this Court determines
14 differently, you know, I, I respect that.

15 Q Okay. The, the real rule is that you have to be as
16 clear on your objection as possible to preserve the record?

17 Isn't that true?

18 A Well, I also am trying not to be an obstructionist,
19 but, you know, if you want to ask me a rule pursuant, I mean
20 I think that that is a fair characterization of the rule.

21 Q Okay. Let me finish your thought. I'm trying to
22 understand how a vague---

23 A Well--

24 Q ---objection can be sufficient to put the judge on
25 notice of what your, what renewal you were doing, what

Kathleen Hodges - Cross-examination
by Mr. Rucker

1 objection you were doing.

2 A I'm pretty sure that Judge Cole knew exactly what I was
3 objecting to having practiced in front of him for a number
4 of years.

5 Q Right, but it---

6 A So, you know, so, so that's one issue. The second
7 issue is, you know---

8 THE COURT: Can I ask a question here?

9 MR. RUCKER: Sure. Yes, sir.

10 THE COURT: Was that ruled on by an Appellate Court?

11 MR. RUCKER: It has not been ruled on by an Appellate
12 Court and part of our argument is they didn't have a chance
13 to review it because it wasn't properly preserved.

14 THE COURT: Is there some record to show that
15 Appellate, Appellate folks chose not to object to it for
16 that reason?

17 MR. RUCKER: There's nothing---

18 THE COURT: Not to raise it for that reason.

19 MR. RUCKER: There's nothing in the Anders brief that
20 indicates they even tried to brief that issue.

21 THE COURT: Okay. So there's been no ruling and
22 there's nothing in their briefs to indicate that they even
23 thought about it?

24 MR. RUCKER: Well, I don't want to mischaracterize what
25 they're saying. I don't think they thought there was a

Kathleen Hodges - Cross-examination
by Mr. Rucker

1 preserved issue. So it's for---

2 THE COURT: Well, you're asking her for their
3 conclusions and I'm thinking we're---

4 MR. RUCKER: Sure.

5 THE COURT: We can go around and around in circles if
6 you keep asking her what their conclusions were.

7 MR. RUCKER: I'm, I'm simply trying to---

8 THE COURT: There's, there's---

9 MR. RUCKER: ---apply the state of the law the way the
10 law works and I may be phrasing my question incorrectly.
11 But I'm just trying to get clear on the record whether you
12 have to be, how specific you have to be in renewing of
13 objections to make sure you didn't, you don't get caught in
14 a trap of making the objection at the limine stage.

15 THE COURT: Well, at the risk of being too bold, I
16 think that depends on how much they want to take the issue
17 up.

18 MR. RUCKER: I understand that.

19 THE COURT: But go ahead.

20 MR. RUCKER: Yes, sir.

21 All right. As to the search warrant that you were
22 objecting, did you renew the objection to the search warrant
23 at trial?

24 A I renewed -- I did not renew the objection to the
25 search warrant at trial in terms of asking to re-litigate

Kathleen Hodges - Cross-examination
by Mr. Rucker

1 the issues as to the search warrant in and of itself because
2 the Court had ruled. I did, however, renew -- my
3 recollection is, and in my review of the transcript, you
4 know, I believe that I renewed the objection to those items
5 coming into evidence based on my objections to the search
6 warrant being pretrial.

7 Q Okay. So if, if Your Honor reads the transcript, he'll
8 be able to see if there's an actual renewal of, of it?

9 A Yes.

10 Q Okay. Everything's in the record?

11 A I would rely on the record as, as an accurate -- when I
12 read, when I read through the transcript, it appeared to me
13 to be an accurate reflection of what I remember from that
14 trial a number of years ago.

15 Q Okay. As far as the chain of custody issue, did you
16 show -- did you give my client new copies with the bolder
17 print or the darker print?

18 A I don't remember.

19 Q Okay. Did those witnesses actually testify at the
20 trial?

21 A Mr. Guthro testified at the trial. I do not remember
22 whether he testified as to chain of custody issues or not.

23 Q Okay. Did you question them before?

24 Did you go out and interview them or call them to check
25 on the -- and you may be familiar with the property and

Kathleen Hodges - Cross-examination
by Mr. Rucker

1 evidence protocols more, but did you follow-up on that to
2 see if it was done correctly?

3 A Well, I mean I wouldn't -- what -- I do remember going
4 to the police department to their evidence room and
5 examining all of the evidence, and ordinarily, when I do
6 that, if the, you know, if I have questions, then I would of
7 asked -- talked to the individual officers. You know, if I
8 had questions or concerns, I would of asked it at that time.
9 I do not recollect -- remember having any questions or
10 concerns. But I do remember reviewing all the evidence that
11 was brought to the -- that was, was at the police department
12 and brought to Court.

13 Q Okay. There was, there was an issue as far as how much
14 blood -- I mean obviously it was a horrifying scene.

15 How much blood was actually on the clothing that was
16 alleged to have been received from the search?

17 A Well, on the, on the clothing for Mr. Sims, there was
18 approximately six spots of blood between -- my, my
19 recollection is that was approximately -- there's, there's
20 very little blood. There were basically six spots or places
21 of blood that were found either on the denim shorts that
22 were collected or from the sock.

23 Q All right. So -- and all that though came through that
24 search warrant issue?

25 A Yes.

Kathleen Hodges - Cross-examination
by Mr. Rucker

1 Q Is that correct?

2 All right. And your testimony was that the videotape
3 showed the clothing that the witnesses disagreed about and
4 this was at a time separate obviously from the alleged crime
5 right after the crime, correct?

6 A The videotape would of been from an incident that
7 occurred prior to the June 1st incident.

8 Q Okay. So their evidence was that he's been seen
9 wearing these clothes.

10 Is that fair?

11 A Yes, that's what their claim was.

12 Q All right. How, how long after the alleged -- the
13 crime occurred was he arrested?

14 Do you know?

15 A I honestly don't remember.

16 Q All right.

17 A But within -- I mean within -- probably within hours.
18 I think within 24 hours.

19 Q Okay. Did, did my client live near this area?

20 A I don't know exactly how close the area he lived. I do
21 know that he would -- had indicated to me that he was
22 staying in a home with another person and gave me as a, as a
23 actual potential defense that this clothing could of come
24 from somewhere else. But, you know, but, in terms of the
25 actual close -- the proximity to -- from home to home, I

Kathleen Hodges - Cross-examination
by Mr. Rucker

1 don't remember.

2 MR. RUCKER: No further questions, Your Honor.

3 THE COURT: Redirect?

4 MS. WHITE: Just briefly, Your Honor.

5 THE COURT: Uh-huh. (Affirmative).

6 REDIRECT EXAMINATION

7 BY MS. WHITE:

8 Q Ms. Hodges, if there was an issue in your practice, you
9 had practiced about 15 years, maybe 14 years at this time?

10 A Yes.

11 Q If you had seen an issue or felt that there was
12 something that was a violation of his rights or that was
13 handled improperly, is that something that you normally
14 would of objected to or made a motion on?

15 A Absolutely.

16 Q Okay. Thank you.

17 That's all I have, Your Honor.

18 THE COURT: Recross?

19 MR. RUCKER: No, sir.

20 THE COURT: You may step down.

21 THE WITNESS: Thank you.

22 THE COURT: Does the State wish to call additional
23 witnesses?

24 MR. RUCKER: No, Your Honor.

25 THE COURT: Anything in reply?

1 MR. RUCKER: No, sir.

2 THE COURT: Be happy to hear from you, Mr. Rucker.

3 MR. RUCKER: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. RUCKER: Your Honor, we renew -- our basic issues
6 are that the search warrant issue was not preserved and the
7 identification issue was not properly preserved, and,
8 therefore, any appeal issue he had was gone.

9 The testimony is that the one eye witness says there's
10 a 50/50 chance it's him based on an ID where he has a
11 different shirt on than the people around. He stands out,
12 in a large part, because of that. The witness is basically
13 saying maybe, maybe not. If that identification doesn't
14 come in, they're gonna have a tough time making the case
15 even with the little spots of blood on the, on the shorts.

16 THE COURT: I'll hear from the State.

17 MS. WHITE: Your Honor, in regards to anything that the
18 Applicant is alleging is improperly preserved, obviously
19 this was an Anders brief. So there's no review in the
20 opinion about specific allegations, but they do---

21 THE COURT: But the entire record is suppose to be
22 reviewed.

23 MS. WHITE: Correct. Anything -- they review the
24 entire report for all preserved and presented objections or
25 all preserved objections is a more accurate statement.

1 However, they don't specifically name those that they do not
2 think are preserved or not.

3 THE COURT: Right.

4 MS. WHITE: I think it's the Applicant's burden to show
5 that, not only was an issue not properly preserved, but had
6 it been presented, it would of been ruled upon in his favor,
7 and I don't think, in this situation, an Applicant can do
8 that. It was obviously addressed, ruled upon by the judge,
9 and there's no indication he abuses his discretion for any
10 of these issues. Counsel obviously did a very thorough job
11 of preparation for trial, reviewed the evidence, met with
12 him, prepared all the pretrial motions, and, unfortunately,
13 he was found guilty but that does not mean that counsel was
14 ineffective in this situation.

15 THE COURT: Well, let me ask about the chain of custody
16 issue.

17 MR. RUCKER: Yes, sir.

18 THE COURT: The documents that been -- have been put
19 in, you had not seen them before today?

20 MR. RUCKER: We have not had those from discovery and
21 they're produced just now with the -- when the Public
22 Defender's file came in.

23 THE COURT: Okay. Do they appear to be proper?

24 I mean---

25 MR. RUCKER: Your Honor?

1 THE COURT: ---I haven't seen them. I don't know what
2 they have on them.

3 MR. RUCKER: They are in evidence, and, in fairness,
4 I'm guessing, with the property and evidence room here in
5 Spartanburg County, I don't believe the witnesses were
6 called to testify to check into any of that. I think those
7 are forms undoubtedly from there, but I can't say that
8 they're reliable or not.

9 THE COURT: And the evidence we're talking about is
10 clothing items that had blood splatters on them?

11 MR. RUCKER: Yes, sir.

12 THE COURT: There weren't separate vials of blood or
13 other things like that?

14 MR. RUCKER: There were, there were -- it was not
15 fungible. It was either---

16 THE COURT: He talked about it as clothing and blood.
17 But I assume it was the clothing that allegedly had the
18 blood on it.

19 MR. RUCKER: Yes, sir, that's true.

20 THE COURT: Okay. All right.

21 MS. WHITE: And, Your Honor, I just will note that, as
22 Ms. Hodges stated, it's in the record as well prior to trial
23 on the day that she had gone to the evidence room and had
24 reviewed all the evidence they had and planned to produce
25 and that was on the record as well before the court.

1 THE COURT: Okay. All right. Thank you very much.
2 I'll take it under advisement.

3 MR. RUCKER: Thank you, Your Honor.

4 MS. HODGES: Thank you, Your Honor.

5 MS. WHITE: Thank you, Your Honor.

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

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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 23rd day of March, 2015.

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

November 13th, 2015



PAMELA E. GREEN, Court Reporter

This Space Reserved For Lab Receipt Barcode.



**SLED LABORATORY
FORENSIC SERVICES REQUEST**

SLED LAB No. L07-08018
Submission: 2 6/6/2007 1:56:51PM

Name of Investigating officer: <u>Inv. Russell Porter</u>	ORI No: <u>SC0420100</u>
Agency: <u>Spartanburg Department of Public Safety</u> Phone No: <u>864-596-2376</u>	Agency Case No: <u>06000507</u>
Fax No: _____ Email: _____	Offense: <u>DEATH</u> <u>INVESTIGATION</u>
Mailing Address: <u>P.O. Box 546</u>	County: <u>Spartanburg</u>
City / State / Zip: <u>Spartanburg, SC 29304</u>	Offense Date: <u>06/01/2007</u>
CC: _____	Officer Involved Shooting <input type="checkbox"/> Yes
	Rush: <input type="checkbox"/> Yes

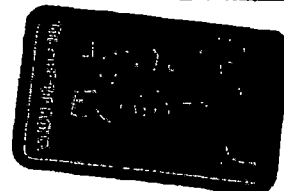
Is this evidence related to another lab number?
 Yes No
 If yes, Lab Number: _____

Agency Item No.	Description of Evidence	Analysis Requested
2	Shoes - Nike shoes collected from Howard Lee Sims,	EVIDENCE PROCESSING
3	Clothing - Blue jean denim shorts from Howard Lee S	EVIDENCE PROCESSING
4	Socks - White socks from Howard Lee Sims, Jr	EVIDENCE PROCESSING
5	Shirt - Shirt from Howard Lee Sims, Jr	EVIDENCE PROCESSING
6	Hat or Cap - Cap Hardee's from Howard Lee Sims, Jr	EVIDENCE PROCESSING
7	Blood standard - John Wayne Lammers	DNA ANALYSIS
8	Swab(s) - Mouth swabs David Lammers	DNA ANALYSIS

Subject(s)	Sex	Race	DOB	SSN
Howard Lee Sims, Jr	M	B		

Victim(s)	Sex	Race	DOB	SSN
John Lammers	M	W		

Comments



(01/18/08)

00188

549

This Space Reserved For Lab Receipt Number.



**SLED LABORATORY
FORENSIC SERVICES REQUEST**

SLED LAB No. L07-08018
Submission: 2/6/2007 1:56:51PM

Submitted By :

Received By :

Russell Porter

Amy Stephens

Inv. Russell Porter

Amy Stephens
Forensic Technician

SPARTANBURG PUBLIC SAFETY DEPARTMENT

1. Status - Check One Evidence Recovered Property Return to Owner Destroy 2. Case No. **6-0005-07**

PROPERTY REPORT

INCIDENT TYPE

Property Sec. # **LG/E14**

3. Date and Time Impounded **6-1-07 0450** 4. SLED Lab No. 5. For Prop - Room Use Only

6. Found or Recovered From Person Place Name **David Lammers** 7. Where property was impounded (Give exact location - address) **City Hall**

8. Owner/Victim's Name 9. Owner/Victim's Address 10. Owner/Victim's Telephone No.

11. Suspect's Name 12. Suspect's Address 13. Charges 14. Warrant No.

Additional Suspect's Name Suspect's Address Charges Warrant No.

14. Item	15. Quantity	16. Description	Barcode
1	1	Pair of Flip Flops (David Lammers)	B8SP
2	1	Bloody Gray Shorts (David Lammers)	BBSL
3	1	Bloody white T-shirt (David Lammers)	BBSR
4	12	Blood Swabs #13-#24	BBSB
5	9	Swabs Collected From David Lammers	BBSD
6	26	DVDs, VHS tapes, CDs #8	BBSJ
7	9	MAGAZINES #7	BBSN
8	1	MAGNUM POKER KNIFE (Bloody) #6	BBS9
9	1	Bloody Piece of Carpet (Shoe Print) #12	BBTJ
10	1	Sword #10	BBST
11	1	Sword Scabbard #9	BBSH
12	2	Swabs From Sword	BBS7
13	1	Finger nail Swabs From victim	BBS5

Signature: *[Signature]*

21. Received By	22. Reason	23. Date and Time Received
<i>[Signature]</i>	ES	6-4-07 1530
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received



STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Howard Lee Sims, Jr.,)
 S.C.D.C. No. 213525,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-42-4121

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 2, 2012. The Respondent made its return on January 8, 2014. An evidentiary hearing was held on March 23, 2015 at the Spartanburg County Courthouse. The Applicant was present and represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Kathleen Hodges, Esquire. The Court had before it the trial transcript, the Spartanburg County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and the PCR exhibits.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. The Applicant was indicted at the November 2007 term of the Spartanburg County Grand Jury for murder (2007-GS-42-5920) and at the July 2008 term for first-degree burglary (2008-GS-42-3750). He was represented by Kathleen Hodges, Esquire.

A handwritten signature or set of initials, possibly 'Rucker', written in dark ink.

After the State called the case to trial, the Applicant was found guilty. On July 17, 2008, the Applicant was sentenced by the Honorable J. Derham Cole to concurrent sentences of life imprisonment for murder and life imprisonment for first-degree burglary.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Sims, Op. No. 2012-UP-256 (S.C. Ct. App. filed May 2, 2012). The Remittitur was sent on May 18, 2012.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of trial counsel.
 - a. Failure to object to officer's testimony.

In a "Notice of Motion to Amend Application for Post-Conviction Relief" filed on September 11, 2014, the Applicant made the following additional allegations:²

1. Ineffective assistance of trial counsel.
 - a. Failed to object to an unduly suggestive and unconstitutionally obtained photo lineup.
 - b. Failed to object to the admission of evidence collected pursuant to the unconstitutionally obtained arrest warrant.
 - c. Failed to object to the admission of items introduced into evidence used to identify the Applicant based on the insufficient proof of the chain of custody of said items.
 - d. Failed to object to improper character evidence testimony provided by the prosecution.

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

² On March 11, 2013, the Applicant filed a pro se amendment to his PCR application. The Applicant, however, was represented by counsel at that time, so this Court will not consider the issues raised in this amendment. See Rule 11(a), SCRCP; Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (holding there is no constitutional right to hybrid representation either at trial or on appeal).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

A.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to testimony from two officers. The Applicant stated trial counsel did not object



when Investigator Spurgeon stated he knew the Applicant. The Applicant stated trial counsel did not object when Investigator Steadman gave testimony about a situation days before the charges at issue.

This Court notes Investigator Spurgeon testified at trial concerning his apprehension of the Applicant:

- Q: So when you first saw him, he ran.
 A: He ran.
 Q: Did he go to the bathroom?
 A: He ran into a bathroom and gave a false name.
 Q: And what's his reaction when you told him what his real name was?
 A: When I told him I was familiar with him, he sort of – his head sort of dropped.

(Trial transcript, pp.264-65). This Court finds Spurgeon's statement "I told him I was familiar with him" was limited in scope and did not prejudice the Applicant as Spurgeon did not state how he knew him. This Court also notes Investigator Steadman testified in a pre-trial suppression hearing and not during the trial itself. (Trial transcript, pp.15-40). This Court finds Steadman's testimony at the suppression hearing was neither objectionable nor prejudicial. This Court concludes it was not incumbent upon trial counsel to have objected to either officers' testimony and the Applicant failed to meet his burden of proving he was prejudiced by the lack of said objections. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

B.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the photographic lineup. The Applicant stated trial counsel should have renewed her objection to the lineup at trial. The Applicant stated the lineup was suggestive because he wore a grey shirt and the other people wore white shirts. The Applicant stated the victim's brother was only 50% sure the Applicant was the perpetrator. Trial counsel testified her

strategy at trial was to attack the identifications.

There was a pre-trial Neil v. Biggers³ hearing in this case. (Trial transcript, pp.42-89). This Court notes testimony about both the white versus gray shirts and the victim's brother being "50% sure" was given. After listening to the testimony from four individuals, the trial judge found the photographic lineup was admissible and that "the witnesses will be permitted to make an in-court identification of the [Applicant]." (Trial transcript, p.90). At trial, the victim's brother identified the Applicant as the man who attacked the victim and the lineup was admitted into evidence. (Trial transcript, p.176; p.197). Three other individuals identified the Applicant as a stranger in the neighborhood (and in the vicinity of the victim's home) and riding a light green girl's bicycle. (Trial transcript, pp.242-43; p.254; pp.258-59). This Court finds the Applicant failed to demonstrate what other argument trial counsel could have made to have the photographic lineup excluded. This Court also notes that, contrary to the Applicant's assertions, trial counsel did renew her objection to the admission of the lineup. (Trial transcript, p.197). Regardless, the admission of the lineup was not prejudicial in light of the in-court identifications. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

C.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the introduction of his clothing into evidence. The Applicant stated trial counsel should have objected because his clothes were collected pursuant to a defective arrest warrant. Trial counsel testified she objected to the introduction of the clothes and later renewed that objection.

The Applicant failed to demonstrate the arrest warrant in his case had fatal deficiencies.

³ 409 U.S. 188, 93 S. Ct. 375 (1972).

The Applicant failed to demonstrate there was an argument trial counsel should have utilized in order to have excluded items seized pursuant to the arrest warrant. There was a pre-trial hearing to suppress the evidence obtained pursuant to the search warrant. (Trial transcript, pp.15-40). Trial counsel argued the search warrant failed to establish probable cause. The trial judge took the matter under advisement but later denied the motion. (Trial transcript, p.41; pp.134-35). Trial counsel renewed her objections at trial when cutting or swabs from the Applicant's clothing were admitted into evidence. (Trial transcript, p.234; p.237; p.346; p.347; p.349; p.350). This Court finds that, based upon the evidence, trial counsel properly focused on attempting to suppress the evidence based on an argument about a defective search warrant. This Court finds the Applicant has failed to demonstrate either that the arrest warrant had fatal deficiencies or that an argument along these lines would have been more successful than trial counsel's attack of the search warrant. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625; see also Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) ("Courts must be wary of second-guessing counsel's trial tactics.").

D.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have challenged the chain of custody. The Applicant stated the evidence in his case was taken on June 1, 2007 but not delivered to SLED until June 6, 2007. The Applicant stated there is no record of where the evidence was during these five days. Trial counsel testified she received chain of custody sheets for the evidence. Trial counsel testified she would not have made an attack on an insufficient chain of custody here.

The Applicant failed to demonstrate a fatal flaw in the chain of evidence. The Applicant failed to demonstrate the evidence was tampered with in some way. This Court notes proof of

chain of custody need not negate all possibility of tampering but must establish a complete chain of evidence as far as practicable. See State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001). This Court further notes that, even if there was a weak link in the chain of custody, this alone would not have prejudiced his case. See State v. Horton, 359 S.C. 555, 568, 598 S.E.2d 279, 286 (Ct. App. 2004) (finding if there is a weak link in the chain of custody, the question is only one of credibility and not admissibility). This Court finds the Applicant has failed to meet his burden of proving he was prejudiced by the lack of an objection to the chain of custody. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

E.

This Court finds in regards to the allegations of ineffective assistance of counsel, trial counsel's testimony was credible, while the Applicant's testimony was not credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in her representation, and that trial counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in her representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving trial counsel failed to render reasonably effective assistance. See Frasier 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION


Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Trial counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6th day of October, 2015.



Roger L. Couch
Presiding Judge
Seventh Judicial Circuit

561

WITNESSES

Spartanburg Public Safety Dept.

[Handwritten signature]

SENTENCE MADE

REPORT MADE

CARD PULLED

ARREST WARRANT NUMBER

CHECKED WARRANTS

Direct Indictment (K263148)

ASSESSMENT AND

FINE CARD MADE

TRAFFIC VIOLATIONS CORN

ACTION OF GRAND JURY

True Bill

[Handwritten signature]

Foreperson of Grand Jury

Date: 11/20/07

VERDICT

Guilty

[Handwritten signature]

Foreperson of Petit Jury

Date: 7/17/08

DOCKET NO. **07-GS-42-**

5920

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

Computer

Computer

COURT OF GENERAL SESSIONS

NOV 26 2007

TERM

THE STATE

vs.

HOWARD LEE SIMS

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

A CERTIFIED COPY

M. Hope Blakely

CLERK OF COURT

SPARTANBURG COUNTY

BY *[Signature]* D.C.

DATED 7-18-08

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

NOV 20 2007

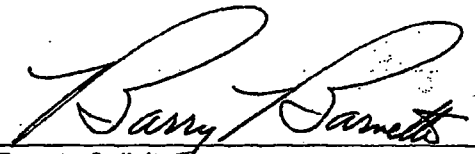
At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

MURDER

The Defendant, Howard Lee Sims, did in Spartanburg County on or about June 1, 2007, feloniously, willfully, and with malice aforethought, kill one John Wayne Lammers, by stabbing the victim with a knife, and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Deputy Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.
AKA: HOWARD LEE SIMS
Race: B Sex: M Age: 35
DOB: SS#:
Address:
City, State, Zip:
DL# SID#

INDICTMENT/CASE#: 07-GS-42-5920
AW#: DIRECT INDICTMENT
Date of Offense: 6/1/2007
S.C. Code §: 16-3-10
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: MURDER
in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS (CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Sally Elamts/ Guy W. Ean Solicitor
refused to sign Defendant
Kathleen Stokes 16840 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 12 months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ 100; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
set by SCDPPPS

PTUP days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:
Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Table with columns for Recipient, *Fine, and amounts. Includes items like \$14-1-206 (Assessments 107.5%), \$14-1-211(A)(1) (Conv. Surcharge) \$100, \$14-1-211(A)(2) (DUI Surcharge) \$100, \$56-5-2995 (DUI Assessment) \$12, \$35.13 (Public Def/Prob) \$500, \$73.3, 1B TP (Law Enforce. Funding) \$25, \$33.7, 1B TP (Drug Court Surcharge) \$100, \$50-21-114(BUI Breath Test Fee) \$50, \$56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$3.75, TOTAL \$128.75

F. Camp Clerk of Court/ Deputy Clerk
Court Reporter: Linda Moffitt

PRESIDING JUDGE
Judge Code: 2
Sentence Date:
CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature]
DATED: 1-18-13

WITNESSES

Spartanburg City Police Department

[Signature]

1. SENTENCE MADE

2. REPORT ENTERED

Computer

3. GARD PULLEN

4. INDEXED

5. CHECKED WARRANTS
ARREST WARRANT NUMBER

6. CHECKED SIGNATURE
Direct Indictment

7. ASSESSMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATIONS COPIES

ACTION OF GRAND JURY

[Signature]

Foreperson of Grand Jury

Date: 6/26/08

VERDICT

Guilty

MARC KITCHENS

Foreperson of Petit Jury

Date: 7/17/08

DOCK

08-GS-42-3750

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 07 2008

TERM

THE STATE

vs.

HOWARD LEE SIMS

Indictment for

BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

564

2008 JUL 17 AM 9:39
[Signature]

CLERK OF COURT
SPARTANBURG COUNTY
JUL 17 2008

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

JUN 25 2008

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE

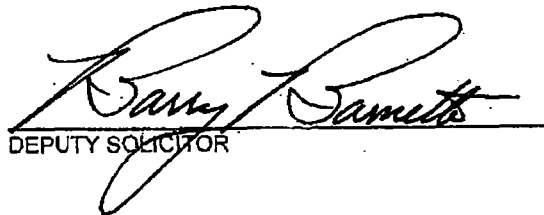
(DWELLING)

That the Defendant, Howard Lee Sims, did in Spartanburg County, on June 1, 2007, willfully and intentionally enter the dwelling belonging to David Lammers and John Wayne Lammers located at _____ Spartanburg, South Carolina without consent and with the intent to commit a crime therein, and either:

- (1) the Defendant did enter in the nighttime and/or
- (2) armed with a deadly weapon; and/or
- (3) caused physical injury to any person who is not a participant in the crime; and/or
- (4) uses or threatens the use of a dangerous instrument; and/or
- (5) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms

In violation of Section 16-11-311 and Section 16-1-57, Code of Laws of South Carolina (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.
HOWARD LEE SIMS
AKA:
Race: B Sex: M Age: 35
DOB:
SS#:
Address:
City, State, Zip:
DL# SID#

INDICTMENT/CASE#: 08-GS-42-3750
AW#: DIRECT INDICTMENT
Date of Offense: 6/11/2007
S.C. Code §: 16-11-311
CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: BURGLARY - FIRST (1st) DEGREE

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (Defendant Initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Solicitor: [Signature]
Defendant: [Signature] refused to sign
Attorney for Defendant: [Signature] 16840

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of life years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
set by SCDPPPS
Recipient:
*Fine:
\$14-1-206 (Assessments 107.5%)
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$
\$56-5-2995 (DUI Assessment) \$12 \$
\$35.13 (Public Def/Prob) \$500 \$
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$
\$50-21-114(BUI Breath Test Fee) \$50 \$
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 3.75
TOTAL \$ 128.75

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:
Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

T. Camp
Clerk of Court Deputy Clerk
Court Reporter: Linda Moffitt

PRESIDING JUDGE [Signature]
Judge Code: 2
Sentence Date: July 11, 2008