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STATE OF SOUTH CAROLINA

DEC - 4 2012

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

DARRELL L. GOSS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

REPLY TO RETURN TO
PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR APPELLANT

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ARGUMENT IN REPLY

The issue in this case is whether trial counsel was ineffective for failing to call alibi witnesses. The State asserts that alibi witnesses need not be called if they are “cumulative” and cites Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989) for this proposition. The facts in Cherry do not support this assertion. In Cherry, a PCR case, the alibi witness on whom the claim of ineffectiveness depended could not account for the defendant’s whereabouts during the entire period of the crime. Cherry at 118-19, 386 S.E.2d at 625-26. The court used this as a ground for affirmance and a reason for finding the testimony cumulative. Id. Furthermore, trial counsel in Cherry met with and interviewed the alibi witness. Id.

In this case, the PCR court took judicial notice of Goss’s witnesses’ testimony and that they would have provided him with a complete alibi for the crime. App. 643, l. 20 – 644, l. 8. The State cannot simply dismiss the testimony of four witnesses who would have presented evidence that Goss could not have committed this crime by simply calling them cumulative. In fact, the nature of the alibi—that Goss was at a baby shower—necessarily requires cumulative witnesses. Had only one witness from this party testified, the jury certainly would have been left with the question of why there were not more witnesses from the party.

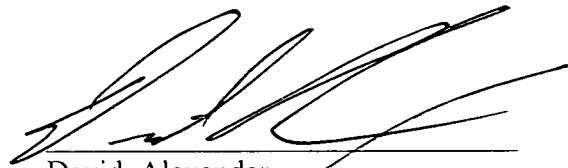
The State’s assertion that trial counsel made a reasonable strategic decision does not comport with the evidence at the PCR hearing. Strategic decisions can only be made after investigation. Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). Trial counsel admitted he did not conduct a proper investigation, therefore, he could not have made a strategic decision. Even though trial counsel knew some of these witnesses, he said he

did not perform an investigation and conducted no interviews. App. 665, ll. 18 – 25. Furthermore, the decision to abandon an alibi defense is a grave one and should only be made after a complete and thorough examination of all of the facts. The evidence at the PCR hearing was that four witnesses would testify as to an alibi for a petitioner. No other evidence supports the PCR judge's conclusion that it was reasonable not to call these witnesses.

CONCLUSION

For the above stated reasons, the Court should grant the petition with the ultimate relief of a new trial.

Respectfully submitted,

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

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT.

This 4th day of December, 2012.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

DARRELL L. GOSS,

PETITIONER,

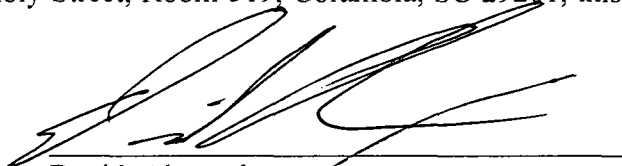
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Reply to Return of Petition for Writ of Certiorari in the above referenced case has been served upon Ashleigh Wilson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of December, 2012.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 4th day of December, 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014 .