

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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AUG 16 2018

S.C. SUPREME COURT

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable George C. James, Jr., Circuit Court Judge

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Appellate Case No. 2018-000968

VERNON GOODWIN.....Petitioner,

v.

STATE OF SOUTH CAROLINA.....Respondent.

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**PETITION FOR A WRIT OF CERTIORARI**

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Elizabeth A. Franklin-Best  
Blume Franklin-Best & Young, LLC  
900 Elmwood Avenue, Suite 200  
Columbia, South Carolina 29201  
Elizabeth.a.franklin@gmail.com  
(803) 765-1044  
*Attorney for Petitioner*

Other Counsel of Record:  
Julie Amanda Coleman  
Assistant Attorney General  
P.O. Box 11549  
Columbia, South Carolina 29211-1549  
*Attorney for Respondent*

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## QUESTIONS PRESENTED

I. Whether trial counsel rendered ineffective assistance of counsel when he failed to argue during the directed verdict motion or charge conference that a conviction under the accomplice liability theory requires proof of the defendant's physical presence at the scene of the crime?

II. Whether trial counsel rendered ineffective assistance of counsel when he failed to pursue an alibi defense? Specifically, whether trial counsel rendered ineffective assistance of counsel when he failed to call Deborah Missouri, Petitioner's mother, to testify at trial, and when her testimony would have supported Petitioner's claim that he did not participate in the home invasion and murder of the victims?

## STATEMENT OF THE CASE

Petitioner, Vernon Goodwin, was indicted by the Sumter County grand jury for murder, first degree burglary, eight counts of kidnapping, two counts of assault and battery with intent to kill, five counts of assault with intent to kill, two counts of armed robbery, and six counts of attempted armed robbery during its May 2011 term. He was tried before the Honorable Howard P. King and a jury, along with his co-defendant, Cameren Kelley. Petitioner was found guilty of the lesser-included offense of voluntary manslaughter, and found guilty of the other charges. He was represented by Calvin Hastie, Jr. His co-defendant, Kelley, was represented by David Sullivan. Petitioner was sentenced to an aggregate term of 40 years (40 years for first degree burglary, 30 years for each count of armed robbery, 30 years for each count of kidnapping, 30 years for voluntary manslaughter, 20 years for each count of attempted armed robbery, 20 years for assault and battery with intent to kill, and 10 years for each count of assault with intent to kill):

Petitioner then timely filed a notice of intent to appeal. On May 6, 2013, Petitioner filed a motion to withdraw his appeal. He was represented by Reginald Lloyd. On May 14, 2013, the South Carolina Supreme Court dismissed with appeal.

Petitioner then filed an application for post-conviction relief on October 1, 2013. An evidentiary hearing was held on April 17, 2015 before the Honorable George C. James, Jr. Petitioner was again represented by Reginald Lloyd. Petitioner's co-defendant was also represented by Lloyd, and they held a combined evidentiary hearing. An order of dismissal was filed on January 15, 2018. Petitioner then filed

Applicant's Notice of Motion and Rule 59(e) Motion for Reconsideration and/or Amendment of Order, dated January 26, 2018. Judge James denied that motion by order filed on May 16, 2018.

This petition for writ of certiorari timely follows.

## RELEVANT FACTS

Petitioner, Vernon Goodwin, and his co-defendant, Cameren Kelley, were alleged to have participated in a home invasion and murder on December 14, 2009 at 750 Odell Lane in Rembert, South Carolina. Kemper Holliday was shot and killed. Two others were shot, but survived. The State's theory was that defendant, his co-defendant, and two others broke into the home "to rob, steal money, steal drugs." App. 37, ll. 1-2. At trial, it was uncontested that neither Petitioner, nor his co-defendant were at the scene when the other two entered the house and shot the victim. The State, instead, proceeded on a theory of accomplice liability, and argued that Petitioner and his co-defendant participated in the planning of the crime. These other two co-defendants, the Bracey brothers, had pleaded guilty to voluntary manslaughter at the time of Petitioner and his co-defendant's joint trial. The following relevant testimony was offered at trial.

The State called Investigator Jeffrey Richardson to testify. App. 94. He responded to the scene after receiving a 911 call. App. 103-04. Occupants at 750 Odell Lane told him that two people entered the house to rob them, and the intruders shot them. Lennie Belton, one of the witnesses, told him that the intruders ran to the left of the residence as he was attempting to get away. Richardson went looking for them. About 200 yards into the brush line, he found Calderon Bracey lying on the ground. He had been shot multiple times. He had a black bandanna around his neck, and there were black gloves in the area. Bracey gave a statement that he and his "cousin" were going to rob the place. App. 100.

The state called Hugh Phillips to testify. He and his wife, Ellen, went to Lennie's house so his wife could braid his hair. App. 162. As they were walking up to the trailer, he noticed some lights went off across the field. He thought they may be car lights. App. 165. He then saw two people come to the right side of his car, wearing ski masks. They told him to get out of the car. They took him to the trailer, with a gun to his back. App. 168. They used him to get into the house. He stood at the entry way and they pushed him into the house. App. 169.

Phillips and the other men entered the house and then the intruders fired shots into the ground. One of the assailants started binding the other occupants' hands behind their backs with duct tape. They were told to empty their pockets. They asked where the drugs were. Lennie told them that was all they had; that there was a shortage. The intruders then took the drugs and money. One of the intruders told everyone to come to the front of the trailer. Then Phillips heard shots. He was shot in the back. App. 170. Phillips testified that Lennie Belton apparently shot at the intruders. App. 173. Phillips testified that one of the robbers had a cell phone that rang during these events. App. 174. There were about 8 people in the house when this home invasion occurred. It was a place where people would go to buy drugs. App. 180.

The State then called Lennie Belton to testify. At the time of this home invasion, he was living on Odell Street with Letra Graham and Darren Graham. He had been living there for about 8-9 months. App. 183. That night, they were watching videos and smoking marijuana. He called Ms. Ellen to come braid his hair because

they were going to the club that night. App. 184. He recalled Hugh Phillips, or "Barbados" coming into the house, followed by the two robbers. They fired their guns and told them to get down. Then they started duct taping people. App. 185. Belton testified they were tied up for almost thirty minutes. App. 186. While the intruders were moving everyone in the hallway, Belton managed to get into his room to get his gun. He came back into the other room and saw one of the intruders standing over the decedent. Then Belton fired his gun. As he was firing, his gun jammed. He heard one of the intruders say that he had been hit, and then they left. Belton then went to a neighbor's house. App. 187. He testified that "a lot of shots went off." During all of this, Lance McCray jumped out a window. App. 188. After the intruders left, Belton realized that Kemper and Phillips had been hit. Tr. App. 188-89. Belton testified he didn't know the intruders. He had never seen them before. App. 192.

The State then called Officer Dominick West to testify. App. 219. Significantly, Officer West testified that one of the Bracey brothers implicated Petitioner and his co-defendant in this crime. App. 229. The State read Cameren Kelly's statement into evidence. App. 243. They also read Petitioner's statement into evidence. App. 248. Both Petitioner and his co-defendant denied they had any idea the Bracey brothers wanted to rob the place. They thought they were just going to buy marijuana.

Law enforcement confirmed that they believed Petitioner and his co-defendant only drove the Bracey brothers to the location, not that they stayed, or even took them away from the scene. App. 252.

The Bracey brothers testified for the State. Carlton Bracey testified he has known Petitioner his entire life. App. 367. Petitioner called him and said he wanted to buy some marijuana. Thirty minutes later he arrived at Bracey's grandfather's house. App. 373. Cameren Kelley was with him. Kelley was driving. At the house, according to Bracey, they talked about "hitting a lick." App. 375. Petitioner allegedly told him he could get about \$5,000 from the house. They would steal the drugs and the money. App. 378. According to Carlton Bracey, Petitioner got the gun, gloves, masks, and duct tape from his house for their use. App. 380. Carlton admitted that he shot and killed Kemper Holliday. App. 388. According to Bracey, Petitioner and Kelley were supposed to pick them up after the robbery. App. 390. During the robbery, according to Carlton Bracey, Petitioner called him and asked what was taking so long. App. 391.

On cross-examination, Bracey admitted he had never told law enforcement that Kelley was around discussing a "lick" until he just testified to it in the courtroom. App. 414. He testified that he only told this story about two weeks ago. App. 454-55.

The State called Calderone Bracey to testify. App. 466. He corroborated his brother's testimony that they were at their grandfather's house when Petitioner and his co-defendant came over. They decided to "hit a lick" and rob someone for their drugs and money. App. 473. According to Bracey, Petitioner offered him \$5,000 to commit the robbery.

Calderone Bracey testified that, while at the Sumter County Detention Center, Petitioner asked him to write a letter to the prosecutors telling them he did not have anything to do with it. App. 492.

After an unsuccessful directed verdict motion, the defense rested. App. 569, 587. The jury asked the judge, during their deliberations, to explain the difference between voluntary manslaughter and murder. App. 689. Both Petitioner and his co-defendant were convicted.

## ARGUMENTS

**I. Trial counsel rendered ineffective assistance of counsel when he failed to argue during the directed verdict motion or charge conference that a conviction under the accomplice liability theory requires proof of the defendant's physical presence at the scene of the crime.**

Trial counsel rendered ineffective assistance of counsel when he did not argue that Petitioner was not guilty because he was not physically present when these crimes occurred.

"Under accomplice liability theory, 'a person must **personally** commit the crime **or be present at the scene** of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.'" *See State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002) (quoting *State v. Langley*, 334 S.C.643, 648-49, 515 S.E.2d 98, 101 (1999) (emphasis added)).

It is well-established that mere presence and prior knowledge that a crime is going to be committed, without more, is insufficient to constitute guilt. *State v. Thompson*, 374 S.C. 257, 261-62, 647 S.E.2d 702, 704-05 (Ct. App. 2007). *And see State v. Gibson*, 390 S.C. 766, 701 S.E.2d 766 (Ct. App. 2010). "[P]resence at the

scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a [principal]." *State v. Hill*, 268 S.C. 390, 395-96, 234 S.E.2d 219, 221 (1977).

Trial counsel did not appreciate that his client needed to be present at the scene in order to be charged with the crimes under a theory of accessory liability. At the PCR hearing, trial counsel testified:

Q: And you would agree with me that at the time the State rested, if I am correct, that hand of one hand of all requires sufficient presence to aid and abet the commission of the crime, that that's an element that the State has to have offered evidence for prior to resting its case.

A: That's right.

Q: Let me ask you, did you understand prior to the beginning of the trial, that Mr. Goodwin had indicated or somebody else had indicated that Mr. Goodwin was at home at the time of the commission of these crimes?

A: Yes.

Q: Did you do any investigation, or did your office do any investigation that would establish an alibi for Mr. Goodwin's whereabouts at that time of the commission of these crimes?

A: I don't know, it seems like I talked to family members who there was one like he was home with some folks...

App. 851, ll. 5-24.

Later in the hearing, the following exchange occurred:

Q: Mr. Hastie, was it a trial strategy not to present an alibi defense, or was it that you didn't believe that the issue of presence at the scene of the crime was an issue that would determine the outcome of the case?

A: That was more about my belief. I just knew he wasn't there, and I just think that was a—I didn't think that was a major issue at that time.

Q: And looking back at it, do you believe that the issue of presence or sufficient presence is in fact a necessary element that the State has to prove under hand of one hand of all?

A: Yes.

App. 862, l. 21- 863, l.8.

Under *Strickland v. Washington*, 466 U.S. 668 (1984), a defendant has a Sixth Amendment right to effective assistance of counsel and a remedy for constitutionally deficient assistance. Counsel renders ineffective assistance of counsel, warranting a new trial, when his performance falls "below an objective standard of reasonableness," taking into account prevailing professional norms, and when "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 688. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

Trial counsel rendered ineffective assistance when he did not urge the judge, either on his directed verdict motion, or at the charge conference, that his client was not guilty of the crime because he was not physically present at the scene when these crimes occurred. The State conceded that neither Petitioner nor his co-defendant

were present when these crimes occurred. Nor was there any indication that Petitioner and his co-defendant were prepared to pick them up after their crimes, or that they received any benefits from the Bracey brothers' crimes. Petitioner did not "aid, encourage, or "abet in the perpetration of the crime." Candidly, trial counsel admitted that he did not have any strategic reason for failing to make these motions. See *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (If state contends the alleged deficiency resulted from a strategic decision made at trial, counsel must "articulate a valid reason for employing a certain strategy"); see also *Caprood v. State*, 338 S.C. 103, 525 S.E.2d 514 (2000); *Rhodes v. State*, 349 S.C. 25, 561 S.E.2d 606 (2002). Petitioner was prejudiced by his attorney's substandard performance because, had he made the proper objections, the trial court judge would have entered a verdict of acquittal on his behalf. Respectfully, Petitioner asks this Court to grant his petition for writ of certiorari.

**II. Trial counsel rendered ineffective assistance of counsel when he failed to pursue an alibi defense. Specifically, trial counsel rendered ineffective assistance of counsel when he failed to call Deborah Missouri, Petitioner's mother, to testify at trial, and when her testimony would have supported Petitioner's claim that he did not participate in the home invasion and murder of the victims.**

The defense did not offer any evidence at trial. At PCR, Petitioner's mother, Deborah Missouri testified. The PCR judge found her testimony credible, but that "her testimony did not reach the issues relevant to this proceeding." App. 902. The PCR court recounted her testimony as follows:

Deborah Missouri is Applicant's mother. She testified she lived in Camden with Applicant, Applicant's wife, and her six-year old daughter Millia. She stated on December 14, 2009, Applicant returned home

around 8:00 P.M. She testified she was thirsty for a glass of milk around 7:45 p.m.; the milk in the refrigerator belonged to her Applicant's wife, so she called Applicant to ask for permission to drink some. She testified Applicant never answered the phone, but fifteen minutes later, she saw him and Cameren Kelley in her kitchen. She testified that after a quick conversation with them, Kelley left the house to go home and Applicant went into his room with his wife. She stated Applicant has a car that is listed in her name, but he does not drive because he does not have a driver's license. Ms. Missouri testified she told Trial Counsel about seeing Applicant and Kelley in her kitchen, but Trial Counsel did not use it as an alibi.

App 901-02.

At the PCR hearing, Ms. Missouri unequivocally stated that she saw both her son and Kelley in her house at the time the Bracey's were committing their crimes. App. 864-868. She also testified that she told trial counsel this information prior to trial. App. 869.

Trial counsel was ineffective for failing to offer this incredibly important testimony to the jury. This testimony would have buttressed Petitioner's defense that he had no idea the Bracey brothers were committing a home invasion and murder on Odell Lane. The fact that Petitioner and his co-defendant returned to Petitioner's house and separated from his co-defendant would have undermined the Bracey brothers' contentions that Petitioner and Kelley were going to pick them up after the crimes.

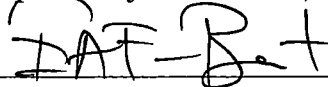
"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691. One component of that duty is to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to

ascertain whether their testimony would aid the defense is unreasonable. *Grooms v. Solem*, 923 F.2d 88,90 (8th Cir. 1991). See *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014) (finding defendant was prejudiced when his trial counsel failed to interview potential alibi witness); *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1995) (trial counsel rendered ineffective assistance of counsel, and defendant was prejudiced by counsel's failure to request an alibi instruction where evidence against defendant was circumstantial and solicitor disparaged alibi during argument to the jury). Again, trial counsel did not offer any strategic reason for his failure to put forward this incredibly important testimony, and Petitioner was prejudiced by his substandard performance. See *Ingle, supra*; *Caprood, supra*; *Rhodes, supra*. Respectfully, Petitioner asks this Court to grant his petition for writ of certiorari.

### CONCLUSION

This Court should grant the writ.

Respectfully submitted,



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Elizabeth Franklin-Best  
Blume Franklin-Best & Young, LLC  
900 Elmwood Avenue, Suite 200  
Columbia, South Carolina 29201  
Elizabeth.a.franklin@gmail.com  
(803) 765-1044  
*Attorney for Petitioner*

August 16, 2018.

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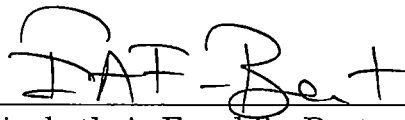
STATE OF SOUTH CAROLINA.....Respondent.

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**CERTIFICATE OF SERVICE**

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I certify that I have served a copy of this petition for writ of certiorari by depositing a copy of it in the United States Mail, on this date, August 16, 2018, postage prepaid, and addressed to the South Carolina Attorney General's Office at P.O. Box 11549, Columbia, South Carolina 29211-1549



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Elizabeth A. Franklin-Best  
Blume Franklin-Best & Young, LLC  
900 Elmwood Avenue, Suite 200  
Columbia, South Carolina 29201  
Elizabeth.a.franklin@gmail.com  
(803) 765-1044  
Attorney for Petitioner

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Elizabeth A. Franklin-Best  
Blume Franklin-Best & Young, LLC  
900 Elmwood Avenue, Suite 200  
Columbia, South Carolina 29201  
Elizabeth.a.franklin@gmail.com  
(803) 765-1044  
Attorney for Petitioner

# BLUME FRANKLIN-BEST & YOUNG, LLC

## ATTORNEYS AT LAW

JOHN H. BLUME  
ELIZABETH FRANKLIN-BEST  
LAURA W. YOUNG  
KEIR M. WEYBLE *OF COUNSEL*  
DAVID I. BRUCK *OF COUNSEL*

900 Elmwood Avenue, Suite 200  
COLUMBIA, SOUTH CAROLINA 29201  
PHONE: (803) 765-1044  
FAX: (803) 765-1143

August 16, 2018

The Honorable Daniel E. Shearouse  
Clerk  
South Carolina Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

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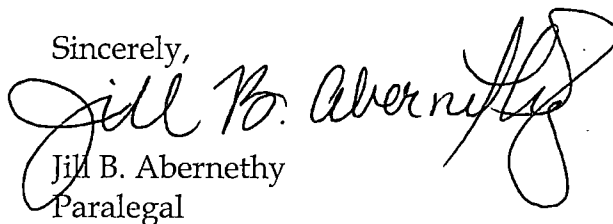
Re: *Vernon Goodwin v. State of South Carolina*  
2018-000968

Dear Mr. Shearouse:

Please find enclosed, with certificate of service, the original and six copies of the Petition for Writ of Certiorari and the original and one copy of the Appendix in regards to the above captioned case.

If you should have any questions, please feel free to contact our office.

Sincerely,

  
Jill B. Abernethy  
Paralegal

cc: Julie Amanda Coleman, Esq.