VOLUME TWO OF TWO

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

APPENDIX

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avenue, trying to get you there. But what are the things she does tell you? She tells you about the car out there, multiple people use it, okay? She wouldn't be surprised if Darrell Goss would use it, but lo and behold, he would never drive it. What did she say? Because of a driver's license. She said DUS, driving under suspension. That shows you one other time before when he was suspended he was driving, so that doesn't hold a whole lot of water about him not having access to that automobile.

They mentioned in the trial about Andy logging items. The man has been beaten, brutally beaten, in the hospital. He's got clothes all over the place. Of course he's not going to log items. He doesn't know exactly what was stolen. The sunglasses, and now they're trying to get you off of the facts.

Remember what Andy said, just like Jim said: No sunglasses were stolen in the store that day. But we have Ben Goss's thumbprint on there. Well, I would hope his prints would be in his own house. He lives there. That has no link to the crime scene, absolutely no relevance at all.

We go to the automobile. Who's in the house? Ben and Darrell Goss, right outside the driveway, his automobile that we've been told multiple people use it in

the house. Okay? There's a weapon in there. What else? Before I get too far ahead of myself, also in the room is a pair of Nikes. Look at the pictures. I know that they objected because I tried to get Hallman to say they were new, but look at the inserts. Obviously, common sense will tell you those are brand knew.

Pair of Nikes in the room, pair of Nikes in the trunk of the car. Look at the pictures when you get back there of the crime scene. There are boxes of those same Nikes that have been gone through several times. You can see that. Same pair of Nikes the day after the crime, in the house, Darrell Goss is there, with a car right outside, and, of course, we put the DMV lady on there to show, one, that they couldn't argue to you that we don't know whose car that is. It could have been some random friend that pulled up there, but no, where does the car come back to? That residence. It's there. Darrell Goss was there.

The testimony, now, put James Hill on there. Old pistol, couldn't trace it. We wanted to be able to tell you who it came back to; otherwise, they would say, We don't know whose gun that is. It could be anybody's gun. They ran fingerprints on it. Three came back. They weren't identifiable. There is nothing you can do about them. It's what they tried to do.

And, of course, as Catherine Leisy told you, there is blood on it. Now, remember, look at the pictures of the crime scene. There is blood splatters all over there, drops of blood. When he's down on the ground, getting beat with the gun, he says he sees the pistol. That is where the blood came from. He didn't get hit by the pistol. That is his blood. He's going to try to explain that away.

He couldn't do it. Ladies and gentlemen: The latent prints on the front door, they're wet. It's just as good as a facial identification. It takes the guessing game out, okay? It makes it easier on y'all, and there is two theories. There is only two ways to look at this for Darrell Goss: One: Monday, he was in the store. We heard that in testimony, so Tuesday goes by, Wednesday goes by, all day Thursday goes by.

Somehow those prints weren't cleaned at all, and they stayed wet the whole time. We know that is not possible. Second theory is by chance the man with the worst luck of any man alive, worst luck of any man alive, stumbles upon a robbery in progress, walks up to the window, throw his hand up on there, doesn't go in, leaves, goes back to his house, the next night, police show up there, I'm just going to randomly hide. I'm just going to randomly have all these tags in the room right

beside me. I'm just going to randomly have two pair of Nikes, hadn't been hardly touched, got the inserts in the things, and just randomly, right outside in my driveway, is a pistol that has got the victim's blood on it. That is a lot of hurdles for Mr. Smiley to jump. And I tell you what --

MR. SMILEY: Your Honor, I'm going to object.

THE COURT: Overruled. Go ahead.

MR. LAWTON: Our standard is beyond a reasonable doubt. He wants you to put a standard that is beyond all doubt, and that is not it. You just need to be firmly convinced of Darrell Goss's guilt, ladies and gentlemen, and he also wants you to believe that a hand to one, hand of all doesn't apply.

We might as well put the AK47 in Darrell Goss's hand. It doesn't matter. He was there, participating in the crime that led to the kidnapping of David and the beating of Andy and the armed robbery.

Ladies and gentlemen: I want to thank y'all for being here this week. I know four days of being away from your family, your jobs and everything is tough, but this is the best judicial system in America, in the world. Nobody does any better than us, okay? This is the way it should be, letting jurors decide guilt and innocence. I wouldn't have it any other way. Put the

burden on us. Put the burden on the state to stop these hardened criminals from doing things like this in our community.

I don't back down one bit, and that is why we're here today. Ladies and gentlemen: Perfectly fine. I love it that every defendant comes in here with a presumption of innocence, and that is the way it should be here in America, and I can tell you, at the same time that every defendant, just like these two that ever, ever walked into a courtroom or any courtroom in America, have had that same presumption of innocence, that cloak of innocence draped over their shoulders, but, ladies and gentlemen, we've met our burden. That presumption has been lifted. These guys are guilty of these heinous, senseless crimes. Please, I ask you, please do not let them get away with it. Thank you.

THE COURT: Mr. Apostolou?

MR. APOSTOLOU: Thank you. As briefly as I may, a single accusation, a single accusation is a powerful, powerful thing: I saw him, he did it, and it's a powerful, powerful thing, and that is why we're here. You take that single accusation and you combine it with zero supporting evidence, absolutely zero supporting evidence. Then you add in a stream of inconsistencies, and then you add in the defendant's own words, I mean the

victim's own words: I don't think I can identify the guys if I see them again. Those are from that night, 6/14/2007, the day of the robbery. That is what the victim said that night.

You factor in absolutely no other evidence at all. You factor in the inconsistencies that we've seen throughout the testimony, and you factor in the defendant's words, and you take that single acquisition. Instead of being a powerful, powerful thing, it becomes a dangerous and it becomes a scary thing.

What happened to Andy is a tragic thing. Everybody in this courtroom is going to agree on that. He's brand new in this country. He's starting a business right away, and what happens to him is a terrible thing. But that doesn't relieve us of our burden to make sure that we convict the right people for that crime. We're not going to give Andy justice by convicting anybody for that crime. We're here to convict the people that the state has proven to you beyond a reasonable doubt were the ones that committed this crime.

So I agree with Mr. Lawton: We're here for justice, we're here for Joy Mack's justice, because he's the one that is on trial today.

Analyzing Joy Mack's case is really a two-part analysis. The first part is you're going to

analyze the victim's version of what happened. The second part of it is you're going to analyze the accuracy of the identification. I would suggest to you that you have to believe beyond a reasonable doubt the victim's version of the events to even get to the second version, because if you don't believe the victim's versions of events, the accuracy of identification is not possible. So let's talk about the victim's versions of the events.

Now, bear in mind, the police report, we learned from the police report, that there is another version of what happened that night, that four black males entered the store, that the fifth black male came in afterwards, and that the man with the AK47 was light skinned, wore a red shirt. That is in the police report. That is the information we got from the police report.

But let's talk about Andy's version. It's different from that version. Okay? Now, it's been kind of hard for me to wait all the way through this trial to talk about this version, but Andy's version was that the door opened. He sees Joy Mack walking down, gets to him, he pulls out a gun, gets within five feet, and pulls out a gun. Having the defendant walking to him and pulling out a gun does not do justice to Andy's version of the events. If Andy said he had a pistol that is what the defendant pulled on him, I would say that makes sense.

If he walks up, pulls a pistol out, that's fine. But that's not what he's saying. He's saying that he's got an AK47 machine gun in his pants.

Stop and think about that for a second. He's got an AK47 hidden in his pants, and he walks 70 feet over there. Andy is watching him the whole time. What was Andy's testimony? Nothing unusual about the way he was walking. Mr. Smiley asked him if he was limping when he was walking there. No, he wasn't limping. Absolutely nothing distinguishable about the way he was walking up to him. The only thing that was distinguishable is when he gets there he pulls out an AK47 out of his pants.

How in the world is somebody going to sneak up on somebody that is being watched with a machine gun in their pants, a three to four foot long rifle, was his testimony? I mean, just think about that. But we know that he didn't run, so I'm going to let you think about that, and you can analyze that version of it, but I would suggest to you that somebody with an AK47 in their pants doesn't sneak up on anybody.

Look at the other version. That makes a little bit more sense. The four guys come in, the man with the AK47 comes in afterwards. If you believe the second version is possible, it's possible, then you can't come back with a guilty verdict against Joy Mack, because

that's not the version of the events that Andy talked about. He talked about this guy walking straight towards him. He saw his hands. His hands were down by his sides. He wasn't carrying anything to hide that AK47, but somewhere in his pants is an AK47 that he doesn't see walking until it gets right there. I suggest to you, ladies and gentlemen, that is really basically an impossibility.

But I'm going to let y'all analyze that when y'all get back in the chambers, and y'all can think about that for a little bit more. So let's talk about the accuracy of the identification.

Andy makes an identification on Joy Mack. Doesn't do it that night. This is what he said that night: I don't think I can identify him if I see him again.

What testimony did he have that night? Well, he testified while he was sitting there that he saw Joy Mack starting to walk towards him. I think Mr. Lawton started at that rail and started walking towards him. I think that's probably not 70 feet. We kick it out a little bit more. How long does it take to walk that distance, five, eight seconds, tops? That's how long he had to look at Joy Mack.

Once he's in the store, he testified that

he's down on the ground. He said the robbery lasted three to five minutes, but most of that time he was down on the ground. He wasn't looking. So that's the distance that he had to look at Joy Mack. Well, what impressions did he have that night? What did he tell us? He said he had black jeans, he had a red shirt, and he had a gray skull cap.

He said he was a little taller than me. That's what he said in his statement, made two hours afterwards. O.J. Faison got on the stand and told us that they want to take a statement from the victim as soon as possible because they want it as fresh as they can get because the way that human's perception works is it goes down over time. They want to get it as soon as it happens to understand, so that is what they got. They got black pants, red shirt, gray skull cap. Defendant, a little taller than me. I don't think I would be able to recognize him if I saw him again.

Well, he took the stand and testified at the trial that he was wearing a black hoody, he was wearing a black snow cap. We don't even know what that is, black snow cap, and black jeans. Mr. Smiley asked him a question, he said, Didn't you have a different identification, the night of the robbery?

And Andy said, Yeah, I did. You know what?

I did, and what I said at the time of the robbery was right. So it's already been brought to his attention.

But then I asked him how he was wearing the hoody that night, and he was explaining where the hoody was up on him and where the snow cap is. So Andy went through a traumatic event. This is a terrible thing that happened to him. His impressions, obviously, were off, but he still doesn't know what happened that night.

This is a year and a half later. He still can't tell us specifically what happened, and if he doesn't know specifically what happened, how can you possibly know what happened? Andy is eager to find something, to find what happened.

His wife testified that he was scared. He was nervous. It's got to be a terrible, terrible thing. His business caters to young black males. He was robbed by five young black males. Every time that door opens, he's hitting the panic button. He's nervous; he's scared. Is this guy going to do it? That is going to put somebody on edge, so let's talk about the actual identifications. Let's talk about the first identification that he's got.

He sees Joy Mack pull up to his door. He sees him through the window. Doesn't do anything about it. Okay? He sees him at the store. He's outside of

the store. That is the first time he sees him. Doesn't do anything about it. Why not, we ask him. Because he's scared. Does that make any sense? Eighteen hours after the robbery, he's already seen another alleged defendant coming into that same store. Eighteen hours after the robbery he's already called police, seeing somebody that was connected with the crime.

He follows him out of the store, and he takes their tag number. He gives it to the police. We also heard testimony that he may have been over at the Dollar Tree, trying to detain the suspect. That is not very consistent with somebody who is scared. Mr. Lawton has talked about hand of one, hand of all, and Andy has talked about the fact that he wasn't scared of that guy because that guy didn't have the AK47.

Well, you're going to be scared of all five of these guys. The solicitor is right: All five of these guys that are involved with it are bad guys. You're going to be scared of all five of them. So if he's not scared to chase this guy out of the store, but he is scared to chase Andy out of the store, I would suggest the reason he didn't call the police was because he didn't really know. He wasn't sure.

That is one week after the defendant said, I don't think I could identify the guys. That is the first

encounter, is one week. Another week goes by for the second encounter. The second encounter occurs inside the store, in cars, in that mall again, so now this is two weeks after Joy Mack allegedly robbed this store, two weeks after Joy Mack's codefendant, Darrell Goss, has been arrested, could have been given information to the police.

Most armed robbers are going lay low if their codefendant got picked up a day after the robbery. Most armed robbers that are in a conspiracy like that are going to avoid where the robbery took place, but that is not what Joy Mack did. Joy Mack went right back inside the store. The solicitor said witness intimidation, they're trying to scare him, or something like that.

I asked Andy if they had any conversation at all. He said no. He Joy came in, he looked, he shopped, and he left. Andy also said something else important that day. He said, I think that's the guy. I'm almost sure.

This is 6/29/07. That is what he said he told his wife: I think that's the guy, I'm almost sure. 6/29/07, two weeks after he said he couldn't identify him he's still not sure. Look at the way this identification is going. What did O.J. Faison tell us? That memory and identifications go down. His is going up. He sees him

the first time, doesn't do anything about it, but the seed gets planted. He starts thinking. Second time, I think that might be the guy. I think that's the guy who robbed me. I'm almost sure, calls the police that day.

Joy Mack is there. He's going around the business. He's not doing anything, so that brings us up to the third identification, happens the day after that. Where does it happen? Again, same mall.

Now we're two plus weeks after the victim has said, I couldn't identify him if I saw him. Two weeks after Darrell Goss has been in custody, couldn't have been given information about his codefendants if, in fact, they were actual actually codefendants.

So where does the third one occur? It occurs right there. Well, Officer Singletary is the one that talked to us about that. He said that he's standing there in a North Charleston police uniform, that he's standing there with the victim of the armed robbery on the walkway, and Joy Mack comes walking right out of the store and walks right up to him.

He also told us that there was a back door to that business that Joy Mack was in. I would suggest to you, ladies and gentlemen of the jury, a guilty man sees a North Charleston police officer and the victim of an armed robbery talking right in front of the store, a

guilty man goes out the back door. The innocent man walks out the front door, and I didn't say a not guilty man, I said an innocent man, because I think the evidence shows that Joy Mack is innocent of this entire thing, that this identification is wrong.

And whether it's deliberate, I don't think it's deliberate, I'm not going to suggest it's deliberate, but it doesn't matter to Joy Mack. It's wrong. That's what you have to determine, whether it's wrong, not whether it's deliberate or why or anything like that. So what is that third identification? Joy Mack comes walking right up to him. He's not running, he's not avoiding.

Officer Singletary says, yeah, he was polite, nice. Officer said, I put him on trespass notice. Joy said okay, went about his business. Is that consistent with a guy who has just had an armed robbery? No, it's not.

What did Officer Singletary also tell us? He told us that he wanted to arrest him on the spot because of identification, but he called and he talked to other officers that were more familiar with the case, and they told him, Don't arrest him, just put him on trespass notice.

What does that tell you about the North

Charleston police department's assessment of this? They've already gotten one call, the day after the robbery, and now he's calling about somebody else? What does that tell you about that?

The fourth encounter, Charleston police department takes warrants out to Joy Mack. Doesn't know anything about it. They publish his photo in the newspaper. The defendant cuts it out, keeps it. He comes into this courtroom and identifies Joy Mack, after he's been holding onto the article for a year and a half, showing a picture of Joy Mack. So those are the identifications, four different identifications, that they've had on that.

Look at how they're built. It starts with nothing happening. It goes to, I think that's the guy. I'm almost sure, to number three where he's positive. It's growing. That's not the way that humans work. Officer Faison told us that people's memories go down every time. He's building. What he's done, unfortunately, is he's convincing himself, and I can understand why. He went through a traumatic event, and it is a terrible thing, but Joy Mack didn't do it, so it's not Joy Mack's fault.

Joy Mack didn't take the stand to testify against you. That is why I get to talk to you last,

because Joy Mack didn't put up a defense. Joy Mack doesn't have to put up a defense. There is no burden on this. Mr. Lawton, commendable, he stood up and said the burden is on us. That is how the American justice system works. The burden is on the state to prove to you beyond a reasonable doubt that the defendant's version of what happened, Joy Mack walks 70 feet toward him with an AK47 hidden in his pants somewhere, pulls it out when he gets five feet from him, and that identification is 100 percent accurate.

They have the burden, but Joy Mack doesn't have to prove anything to you, and the judge is going to tell you that you cannot hold the fact that Joy Mack did not testify against him at this trial. That is his right. That doesn't mean anything, but I would suggest to you that Joy Mack has communicated to you already two different things: One, we're in a trial, so he's already told you he didn't do it, or he says he didn't do it, and y'all are going to ultimately make that determination.

But the second thing that Joy Mack has told you during this whole trial is look at his conduct. Is this the conduct of a guilty person at all? If you look at it, his conduct is best characterized as oblivious. He doesn't have any idea what's going on. He doesn't have any idea what the factors that are swirling around

him are. He's shopping in the store, looking at clothes, the same store that he's allegedly robbed a week earlier without a mask while his codefendants already been picked up. That is not the actions of a guilty man. He's completely oblivious. The 29th when he's there, he goes into the store. He leaves. The police are called. He comes back. He comes back to the mall. If he was really running, he would be out of the way, but that's not the actions of it.

On the third time, the officer and the detective -- the officer and the victim are standing there. He's wearing a uniform. What do you think they're talking about? They're obviously talking about the robbery, but Joy Mack just walks right up to him because he doesn't have any idea what's going on. He's totally oblivious, and his obliviousness is very consistent with his innocence, and that is what he's been communicating to you throughout the trial.

These gentlemen are codefendants. When this trial started, I told you, the most important thing I'm going to tell you, it's two trials, it's not one. It's two. You're going to have to make a determination based off the evidence they presented against one and the evidence they presented against two, and, fortunately, this is an easy case to do that because there is no

evidence overlapping whatsoever. And, in fact, there has been no connection between Joy Mack and Darrell Goss at all. Have you seen anything to show any contact between Joy Mack and Darrell Goss at all? Absolutely not. There hasn't been one iota of evidence. It's their burden of proof.

This is a single witness identification case. Those are scary. You probably have the highest rate, because what do we know? We know that sometimes people are just wrong. They're not trying to be malicious, they're not trying to be evil, but sometimes they're just mistaken, and that is what this is, a single witness identification. The judge is going to do something. He's going to send the jury charge in there with you, and he's going to tell you to look. He's going to give you the ability to look at the jury charges and show you what the state has to prove in a single witness identification case.

Officer Faison told us they've developed a suspect. They turned the full power of the North Charleston police on him. They do search warrants. They do go out and look for other witnesses. They do all the things, they focus the entire full force of North Charleston police department on it, and this is the best they got. They got nothing else other than that

identification.

So the judge is going to tell you that the jury instructions say to scrutinize with great care when it's a single witness identification and that the state has the burden to prove the accuracy of that identification beyond a reasonable doubt.

If you think it's possible that there is a mistaken identity at the end of this trial, you have a reasonable doubt, and you have to come back with a not guilty against Joy Mack.

But you don't have to take my word for it, ladies and gentlemen. You have the words of Andy, the victim, the night of the robbery: I don't think I could identify the guys if I see them again, yet two and a half weeks later, he makes an identification. 6/29/07: I think that's the guy that robbed me. I'm almost sure.

Yet, the next day, he makes an identification, so you don't have to take my words for it, you have his words. You also have the words of the other gentleman that is in there, Davuthan Kilic. You also have his words and the actions of his words, because Mr. Smiley is absolutely right: If he ever identified either one of these people, he would be in the courtroom today.

So you are the finders of fact. You will

make the ultimate decision. I'm asking you to end this nightmare for Joy Mack and come back with a not guilty verdict.

Thank you.

THE COURT: You want to take your chart down, if you would, please. Thank you.

Madame forelady and members of the jury: The state of South Carolina charges the defendant Joy Mack with one count of armed robbery, one count of assault and battery with intent to kill, and one count of kidnapping. The state of South Carolina also charges the defendant Darrell Lee Goss with one count of armed robbery, one count of assault and battery with intent to kill, and one count of kidnapping.

I will give you copies of these instructions in written form. During your deliberations, you may refer to the instructions to guide your decision-making. You must consider the instructions as a whole and not follow some and ignore others. Madame forelady, after you finish with the break, I will give you the charge book back.

Now, as to these indictments, the defendants have entered a plea of not guilty, which places upon the state the burden of proving the defendant guilty. A person charged with committing a crime in South Carolina

is never required to prove himself innocent. I charge you that it's a vital, important rule of the law of evidence that a defendant in a criminal trial, no matter how great or serious may be the offense with which he is charged, must always be presumed innocent until his guilt has been proven beyond a reasonable doubt.

This presumption of innocence remains with the defendant at all times. From the moment of his appearance in this court, throughout the trial until you the jury have, upon the testimony and evidence presented, reached a verdict of guilty beyond a reasonable doubt. For it is the solemn duty of the jury, if not clearly convinced of his guilt beyond a reasonable doubt, to acquit the defendant, so the burden of proof is upon the state to establish by evidence to your satisfaction the guilt beyond a reasonable doubt of these defendants.

And what is reasonable doubt? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. If you have such doubt as to the guilt of the defendant, then he would be entitled to a verdict of not guilty. Reasonable doubt may arise from the evidence which is in the case or from the absence or lack of evidence in the case.

You alone must make the determination of whether or not reasonable doubt exists as to the guilt of

the defendant. The term reasonable doubt should be given its everyday plain and ordinary meaning. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.

There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you're firmly convinced the defendant is guilty of the crime charged, you must find him guilty. On the other hand, if you are not firmly convinced of the defendant's guilt, you must give him the benefit of the doubt and find him not guilty.

The evidence from which you will decide the facts consists of the sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witness; the exhibits that have been received into evidence; any facts which the lawyers have agreed to stipulate.

Certain things are not evidence. You may not consider them in deciding what the facts are. I will list them for you: Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they've said in opening statements, closing arguments, and at other times is intended to help you interpret the

evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory controls.

Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objections or by the Court's ruling on the objection. Testimony that has been excluded or stricken, or that you've been instructed to disregard, is not evidence and must be disregarded. Anything you may have seen on television, read in the newspaper, or heard from others when the court was not in session is not evidence. You are to decide the case solely on the evidence received in trial.

Under the constitution and laws of South Carolina, you, the jury, can make the findings of facts in this case. I'm not permitted to indicate to you how I may feel about testimony and evidence which has been presented throughout the trial. It's been my intention to be fair and impartial toward each of the parties involved.

To determine the facts in this case, you will have to evaluate the credibility, which means the believability of each witness. Some of the things you

may consider as you decide whether or not to believe a witness's testimony about a particular matter include what was the manner and appearance of the witness who testified? Was he or she hesitant or straightforward? Was the testimony of witnesses consistent or inconsistent? How did a witness come to know the facts that he or she testified to? Was the person present during the incident, or did he happen on the scene after it occurred?

Is there some reason a witness would want to give testimony which would help or hurt one side or the other? In other words, was the witness biased or prejudiced? Was the witness strengthened or weakened by other testimony in evidence?

You may believe as much or as little of each witness's testimony as you think proper. You may believe the testimony of single witness against that of many or just the opposite. Of course, you do not determine the truth merely by counting the number of witnesses presented by each side. Throughout this process, you have but one objective: To seek the truth, regardless of its source.

The same constitution and laws which designate and make you the finders of the facts, as I just explained, also make me the sole instructor of the

law. You should accept the statements of the law as I give them to you. The attorneys are not the instructors of the law. Please base your decision-making on what the law is and not what you think the law should be.

There are two types of evidence which are generally presented in a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of facts, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all the evidence in a case on a contested issue. You may find some direct and some circumstantial evidence. To determine the facts in this case, you will have to evaluate the credibility, which means the believability of each witness.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists with witnesses we call expert witnesses, a witness who by education and experience has become expert in some art, science,

profession, may give an opinion as to the subject the witness claims to be an expert in and may also give the reasons for the opinion.

You should consider any expert opinion given by a witness, and like any other evidence, give it the weight you think it deserves. If you decide an expert witness's opinion is not based on sufficient education experience, or if you decide that the reasons given to support the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness's testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. You do not have to accept the expert's opinion even though it's uncontradicted. An expert's opinion that is otherwise helpful to the jury should not invade the province of the jury just because it is an opinion on the ultimate issue to be decided. The jury still retains the power and duty to judge the credibility of the expert and the weight to be given to his or her opinion.

Ladies and gentlemen: I charge you further that the fact that the defendants elect not to testify on their behalf cannot and must not be considered against them under any circumstances or in any manner whatsoever

The decision of any defendants not to take the witness stand or testify in his own behalf does not create any inference against him. I tell you now that you must not permit to weigh in even the slightest degree against such defendants. You should not permit this fact to enter into the discussions or deliberations of the issues in the case.

I charge you that it's the law of this state that if a crime is committed by two or more persons who have acted together in the commission of an offense, the act of one is the act of all. By way of illustration, two people can be guilty of killing another of murder only when one of the two had a pistol and only one bullet. If both together, acting together, assisting each other in the crime of the offense, the law says that under those circumstances the act of one is the act of all, and, as it is sometimes said, the hand of one is the hand of all.

I charge you there are two defendants in this case, each of whom is charged with armed robbery, assault and battery with intent to kill, and kidnapping. Whatever verdict you find does not have to be the same as to both defendants. You take each defendant, consider the evidence as to him, and write your verdict in accordance and in conformity with the evidence in the

case and the instructions I've given to you and will hereafter give you. That is to say, where more than one person is charged with a crime, if the evidence warrants it, you may convict one and acquit the other, or you may acquit both, or you may convict both. It will depend upon your view of the testimony and evidence, which you alone are to act on.

An issue in this case is the identification of the defendant as the perpetrator of the crime charged. The state of South Carolina has the burden of proving identity beyond a reasonable doubt. It's not essential that the witness himself be free from doubt as to the correctness of his statement; however, you, the jury, must be satisfied beyond a reasonable doubt that the accuracy of the identification the defendant before you may convict him.

Identification testimony is an expression of belief or impression by a witness. In appraising the identification testimony of a witness, you may consider the opportunity the witness had to observe the alleged offender at the time of the offense and to thereafter make an identification, and in doing so, you may consider matters such as how long or short a time was available, how far or close the witness was, and how good were lighting conditions.

You must also consider the witness's degree of attention. You must consider the accuracy of the witness's prior description of the criminal. Finally, you may also consider the level of certainty demonstrated by the witness at the confrontation. It is for you, the jury, to determine the accuracy of the identification of the defendant.

If the identification by the witness may have been influenced by the circumstances under which the defendant presented to him for identification, you should scrutinize the identification with great care. You may also consider the length of time that elapsed between the occurrence of the crime and the next opportunity of the witness to see the defendant, as a factor bearing on the reliability of identification.

You must consider the credibility of each identification witness in the same way as any other witness. You may consider his or her truthfulness as well as the capacity, opportunity, and circumstances of the observation of matters about which he or she testified.

What is armed robbery? The crime of armed robbery includes all the elements of larceny and robbery. First I would like to explain to you what is meant by larceny and what is meant by robbery.

What is larceny? I charged you that there are four elements which must be present and established beyond a reasonable doubt to make out the crime of larceny. These four elements are: That there was a taking; that the taking was of the personal property; that after being taken the product was carried away; that the taking and carrying away of the property was done with the intent to steal.

Robbery includes each of the four elements I've just explained. In addition to these four elements, two other elements are necessary to make out the crime of robbery.. Those elements are the property must be taken from the person of another or in his presence, and that the taking and carrying away of the property must have been accomplished by placing the other person in fear, by violence or threats of violence, so as to make that person surrender that property without their consent and against their will.

Therefore, the crime of armed robbery includes all the elements of larceny and robbery. In order to make out the crime of armed robbery, however, an additional element must be proved. The robbery must have been committed while armed with a deadly weapon. The person committing the robbery must have had and used a deadly weapon with which he obtained possession of the

property or placed the one possessing the property in fear in order to obtain the property.

Section 16-11-338(A) of the code of laws of South Carolina provides a person convicted for the crime of robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor or some other deadly weapon commits armed robbery.

Assault and battery with intent to kill: The defendants are charged with assault and battery with intent to kill. In order to prove assault and battery with intent to kill, the state must prove beyond a reasonable doubt that the defendant, with malice aforethought, unlawfully attempted or offered to commit a violent injury upon another person and the present ability to complete the attempted injury.

An assault is the intentional creation of a reasonable fear of immediate bodily harm. It's not necessary that the attempted injury or harm actually take place. For example, if I walk up to you, and when we are within arm's reach I draw back to hit you, that is an assault.

A battery is the unlawful touching of another person by a person who has committed the assault. An unlawful touching can be caused by a part of the accused's body or by any object the accused puts in

motion.

A battery is the completion of the assault by using or applying force to another person, however slight, in a rude, angry, or resentful manner without legal justification for doing so. Using my earlier example, if I carry through the assault by hitting you, then that is a battery.

Malice is hatred, ill will, or hostility towards another person. It the intentional doing of a wrongful act without just cause or excuse with an intent to inflict injury or under circumstances that the law will infer an evil intent. Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be express or inferred. These terms express and inferred don't mean different kinds of malice but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proved.

Express malice is shown when a person speaks words which express hatred or ill will for another or

when the person prepared beforehand to do the act which was later accomplished; for example, lying in wait for a person or any other acts of preparation going to show that the deed was within the defendant's mind would be express malice.

Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. Whether the instrument has been used as a deadly weapon depends on the facts and circumstances of each case.

The following are examples of instruments which may be deadly weapons: A pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a slingshot, metal knuckles, a razor, gasoline, a fire bomb or a Molotov cocktail, and lighter fluid.

If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be considered by you, the jury, along with the other evidence in the case, and you may give the weight you decide it should receive.

A specific intent to kill is not an element of assault and battery with intent to kill, but there

must be a general intent to commit serious bodily injury. Intent means intending the result which actually occurs, not accidentally or involuntary. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent.

Evidence of the character of the assault, the character of the instrument used, the manner in which it was used, the purpose to be accomplished, and the resulting wounds or injuries may be considered in determining the intent with which the assault was committed. Intent may be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another's life.

Kidnapping: The defendants are charged with kidnapping. The state must prove beyond a reasonable doubt that the defendants knowingly and unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away another person without authority of law.

Knowingly means with knowledge or consciously, not accidentally. Seize means to take hold of suddenly or forcibly. Confine means to limit, restrict, or enclose within bounds, imprison, or shut or keep in. Inveigle means to lure, entice, or lead astray by false representations, promises, or other deceitful

means.

Decoy means to lure by, or as if by, decoy. A decoy is something to entice a person into a trap. Kidnap is to remove a person against his will by unlawful force or by fraud. Abduct means to carry off secretly or by force for an illegal purpose. Carry away means to remove. The state does not have to prove that the defendant did all of these things. Instead, if you find beyond a reasonable doubt that the defendant did any of these things, you may find the defendant guilty of kidnapping.

Something done without the authority of law is something that the law does not sanction, permit, allow, condone, or provide justification for. The kidnapping does not have to be for any personal or monetary gain for any illegal purpose but may be for any reason whatsoever.

You have been selected as fair and impartial jurors to impartially try and determine the facts of the case, and when you comply with your oath to do so, then no one will have a right to criticize your verdict, and you will have fully discharged your duty as jurors. You are to decide this case according to the testimony that you have heard from the lips of the sworn witnesses, along with other evidence introduced.

I charge you that as jurors you must decide the issues in this proceeding without bias and without prejudice to any party. You cannot allow yourself to be governed by sympathy, by prejudice, by passion, by public opinion or any other arbitrary factor.

Both the state and the defendant have the right to expect that each of you will carefully and impartially consider all the evidence in the case and that you will follow the law as I have explained it to you.

Nothing I may have said or done during the course of this trial has been in any way intended to express or suggest a view of the case or an opinion as to the facts, the weight of the evidence, or the credibility of the witnesses. If any of my actions or words have seemed to so indicate, you will disregard such and form your own opinion as to these matters.

Madame forelady, ladies and gentlemen of the jury: I have prepared three verdict forms for each defendant, and as you've been charged, I laid out the elements of each crime. Each crime is independent of the other and the state has a responsibility to prove the defendant guilty on each crime beyond a reasonable doubt, and I have prepared one verdict form on each defendant as to each charge.

First verdict form has the state versus Daniel Lee Goss. We, the jury, unanimously find the defendant Darrell Lee Goss guilty of armed robbery. We, the jury, unanimously find the defendant Darrell Lee Goss not guilty of armed robbery. Second says we, the jury, unanimously find the defendant Darrell Lee Goss guilty of assault and battery with intent to kill; we, the jury, unanimously find the defendant Darrell Lee got not guilty of assault and battery with intent to kill; and we, the jury, unanimously find the defendant Darrell Lee Goss guilty of kidnapping; we, the jury, unanimously find defendant Darrell Lee Goss not guilty of kidnapping. I have prepared identical verdict forms from the defendant Joy Mack. It has the same information on it for the armed robbery, the assault and battery with intent to kill, and the kidnapping, has a place for the forelady to sign and date.

Ladies and gentlemen: You can find both defendants guilty of all three; you can find one defendant guilt of one charge, the rest innocent. Whatever you determine to be the facts in the case will apply as to the not guilty or the guilty verdict of each defendant, if you find both defendants guilty of all, acquit both defendants of all, or whatever combination you determine, based upon the facts that you determine as

you apply the law, which I just charged you.

Ladies and gentlemen: I will tell you as the verdict form says, your verdict has to be unanimous. All 12 of you have to agree. I would tell you that it's a collective reasoning process. I would ask you to listen to each other's opinion, look at the evidence, discuss the evidence, and arrive at a fair and just verdict based upon your view of the facts and the law as I have charged you.

Madame forelady, what I'm going to do is ask you to go to the jury room, and before you begin deliberations, I have to take my charge up with the attorneys. I may have to bring you back and add something or take something away. So don't begin your deliberations until the bailiff brings the verdict forms, the charge book, and I will send back to the jury room along with all the exhibits, and instruct you to begin your deliberations.

Madame forelady and the two alternates, I believe Ms. Mikell and Ms. Jarrell, if you just keep your seats, Madame Forelady and other members of the jury may follow the bailiff to the jury room.

(Jury leaves the courtroom at 11:28 a.m.)

THE COURT: All right. Exception to the charge from the state?

MR. LAWTON: No, Your Honor.

THE COURT: Any exceptions to the charge from the defendants?

MR. SMILEY: No, Your Honor.

MR. APOSTOLOU: No, Your Honor.

THE COURT: All right. If you would, come up and make sure all the exhibits are present, put on the record from the state that all your exhibits are present and the defendants' exhibits are present.

MR. SMILEY: Yes, sir.

THE COURT: I'll tell the jury to begin their deliberations.

(Recess taken.)

(In open court, jury not present.)

THE COURT: All right.

I received two notes from the jury, one note requesting they want to see the police reports, another note requesting Andy's testimony and the initial police report. I informed the jury that the police report is not admissible into evidence, and they would like to listen to the entire testimony, Andy's entire testimony.

We are in the big courtroom. The acoustics in this courtroom are not that good from a recording standpoint. What the attorneys have told me and all the parties have agreed is that the court reporter can go in

the jury room and play Andy's testimony, and I will sent a deputy in the jury with her, and I will instruct the jury not to talk during the testimony but to listen, and if, in fact, they reach a point where all 12 jurors do not want to listen anymore, she can stop and come back to the courtroom and continue with deliberations.

Is that everyone's understanding, Mr. Smiley?

MR. SMILEY: Yes, Your Honor.

THE COURT: Mr. Apostolou?

MR. APOSTOLOU: Yes, Your Honor. Originally we had requested that replaying the tape be done in the big courtroom, which the Court was amenable to, but due to the acoustics, or lack thereof, we are now agreeing to take them into the jury room.

THE COURT: Does the state agree with that?

MR. LAWTON: They're going to start it from the beginning?

THE COURT: Yes. Only thing I'm saying is if the jury, all 12, decide they've heard everything they want to hear, then the court reporter can stop. I'll put the deputy in the jury room to make sure that they don't deliberate or talk while they're listening to the tape.

Does that answer your question?

MR. LAWTON: Yes, sir.

THE COURT: All right. Which deputy wants to

go?

(Recess taken.)

THE COURT: All right.

(4:54 p.m. In open court, jury not present.)

THE COURT: The forelady said they had reached a decision on one defendant, and they requested a break, which I have given them a break, and the foreperson has given the Court verdict forms on the one defendant.

Now, do you want me to bring the defendant up when I read them, or do you want me to wait and put them on the record and postpone any type of --

MR. SMILEY: You're looking at me.

THE COURT: It's your client.

MR. SMILEY: I would like him present when you read it.

THE COURT: Will y'all bring Mr. Goss up. I'm looking at you now, so you know which one I'm talking about.

MR. SMILEY: I've already instructed his family.

THE COURT: All they're going to do is read the verdict. They're not going to do anything else until they reach a verdict on the other case.

MR. SMILEY: Yes, sir.

THE COURT: I understand we had this discussion and everybody agreed that we would go ahead in court and read the verdict on the one defendant. That defendant happens to be Darrell Lee Goss, and we will put everything on hold until the jury reaches a decision on second defendant; is that correct?

MR. SMILEY: That's correct.

THE COURT: Is that right, Mr. Smiley?

MR. SMILEY: Yes, sir.

THE COURT: That correct, Mr. Apostolou?

MR. APOSTOLOU: Yes, sir.

THE COURT: And from the state?

MR. LAWTON: Yes, sir.

THE COURT: On the verdict form, the state versus Darrell Lee Goss we, the jury, find the defendant, Darrel Lee Goss, guilty of kidnapping, signed by the forelady, dated February 26, 2009, indictment number 2008-GS-10-10805.

State of South Carolina versus Darrell Lee Goss, we, the jury, unanimously find the defendant, Darrell Lee Goss, guilty of armed robbery, signed by the forelady and dated February 26.

Case number 2008-GS-10-10806, state of South Carolina, plaintiff, versus Darrell Lee Goss, we, the jury, unanimously find the defendant, Darrell Lee Goss,

guilty of assault and battery with intent to kill, signed by the foreperson, dated February 26, 2009.

The Court has announced those verdicts, and once the jury reaches a verdict on the second, if you want to poll the jury or whatever you want to do at the time, feel free to do --

MR. SMILEY: Yes, sir. And we will reserve our right.

THE COURT: We'll stand at ease and await the jury verdict on the second defendant.

(Recess taken.)

THE COURT: Will you go ahead and bring defendants in, please. While we're waiting on Mr. Smiley, let me see you over here.

Anything from the defendant before we bring the jury?

MR. APOSTOLOU: No, Your Honor.

MR. SMILEY: No, Your Honor.

THE COURT: Bring the jury in, please.

(5:48 p.m., in open court, jury present.)

THE COURT: Madame forelady, I understand that you have reached a verdict on Mr. Joy Mack; is that correct?

THE FORELADY: Yes, Your Honor.

THE COURT: Would you pass the verdict forms

to the bailiff please, ma'am. You have previously reached a verdict on Darrell Lee Goss, which we have already announced to the Court.

All right. State of South Carolina, plaintiff, versus Joy Mack, case number 2008-GS-10-05695, we the jury, unanimously find the defendant, Joy Mack, guilty of armed robbery, signed by the foreperson, dated today.

Indictment No. 2008-GS-10-05697 we, the jury, unanimously find the defendant, Joy Mack, guilty of kidnapping, signed by the forelady and dated today; and case number 2008-GS-10-05696, state of South Carolina versus Joy Mack, we, the jury, unanimously find the defendant, Joy Mack, guilty of assault and battery with intent to kill.

I understand the parties would like to have the jury polled; is that correct?

MR. SMILEY: Mr. Goss would, yes, sir.

MR. APOSTOLOU: Yes, Your Honor, I would like to have the jury polled.

THE COURT: What we'll do is we'll poll the jury separately on Mr. Goss first, since that is the first verdict we received, and then we'll poll the jury on Joy Mack.

THE CLERK: Ladies and gentlemen, I'll be

will give you then ten days if you want it.

MR. SMILEY: I don't think I need ten days, Your Honor.

THE COURT: All right. I ask Mr. Goss to hear any motions you have.

MR. SMILEY: As to motions I have, I renewed the motions I made at the close of the state's case for a directed verdict, based on -- or to set aside the verdict at this point this time, based on the fact of the insufficiency of the evidence.

I know your previous ruling and respect that, Your Honor, but I feel to protect the record, I need to make it again, but I think that would be the only motion I have.

THE COURT: Those motions are denied. As to Joy Mack?

MR. APOSTOLOU: He will take ten days.

THE COURT: You want ten days on Joy Mack. That's fine. I'll be happy to give it to you. Solicitor, do you have the sentence sheets?

MR. LAWTON: I believe Deputy Solicitor Durant is bringing those up, Your Honor.

THE COURT: All right. Madame forelady, ladies and gentlemen of the jury: The only thing that will remain will be sentencing of the defendants. You're

welcome to stay, if you want to stay, but we don't have a sentence sheets, and we're waiting for sentence sheets, and I know it's five minutes to 6:00 and you have been hard at it all day. You're welcome to go, and you're welcome to stay. It's your choice.

You're free to go if you want to go. Let me ask you this: I believe y'all have to walk a while down to the Cumberland parking lot; is that correct?

THE CLERK: Yes, Your Honor.

THE COURT: Do you think we could get somebody to escort them, please? I'm going to have the deputy sheriff escort you to the parking garage, okay? I enjoyed working with you this week, and thanks very much for your service. The court wouldn't be able to function. I want to thank you so very much.

Winston Churchill used to say the highest service that any citizen could give to its country, other than war time, is serving on a jury, and I think that is probably a true statement. You ones that would like to leave are free to go. If you'll follow the bailiff, he'll show you where to go.

All right. Mr. Smiley?

MR. SMILEY: Yes, sir.

THE COURT: If you, Mr. Goss, would stand, maybe you could come around and stand right here. I'll

be glad to hear you concerning sentencing. I know the sentencing sheet is on the way, but I would like to hear anything you have to tell me about sentencing.

MR. SMILEY: Yes, sir. I'm going to ask you for a minimum sentence in this case. Of course, Mr. Goss maintains his innocence with respect to the jury, but even looking at the evidence in the light most favorable to Mr. Goss, he was not shown to have struck anybody, not shown to have bound anybody in this case, and would have been one of the persons alleged to have carried away the goods, and I think that is something in mitigation I would offer.

I know by any stretch of the imagination, it's hand of one, hand of all is a very serious crime. Also, I would like to say he's 23 years old, Your Honor. He's a young man. A ten-year sentence is a large chunk of time in one's life, eight and a half years before he would even have an opportunity to see the light of day.

THE COURT: How old is he?

MR. SMILEY: He's 23 now. He was 21 at the time of the incident, Your Honor. He's 23 now, and I will tell you that he has had some brushes in the past. I think the most significant thing he's had on the conviction he has had --

THE COURT: I thought he had some motor

vehicle --

MR. SMILEY: Possession of stolen vehicles, and there was a chop shop allegation he pled guilty to in the past. He's pled guilty to all of his crimes in the past. This is the first trial he's ever had. I believe he had one ABHAN in the past, Your Honor, assault and battery of a high and aggravated nature. He hasn't had any strikes in this case, and I would ask you for a minimum sentence, or as minimal as possible as mitigation for Darrell, would offer up -- he came up in a hard household.

You saw his mother. You've seen the conditions that he grew up under. He does have two children, Your Honor, that he has cared for. He has been involved in their life. I've met both of them on different occasions, Your Honor. I've known Darrell since he was 16 or 17 years old. He has always, with one exception, treated me with respect, and we worked that out, and he's an intelligent young man that I would like to see get on the right course and further his life.

So given all those factors, I would ask you for a ten-year sentence on each of the crimes, concurrent with credit for any time served. He's been incarcerated since June 15, 2007, since this crime.

THE COURT: Have you figured it out?

MR. SMILEY: I can real quick, June 15, 2007, that would be --

THE COURT: Twelve months, plus, what --

MR. SMILEY: Twenty-one months, yes, sir.

THE COURT: Solicitor, do you agree with that? Or do you know --

MR. LAWTON: They're calculating it, Your Honor.

MR. SMILEY: He's been in since June 15th.

MR. LAWTON: Yeah, he's been in since the date of arrest.

THE COURT: June 15, 2007?

MR. SMILEY: Yes, sir.

THE COURT: Anything else?

MR. SMILEY: That would be all, Your Honor.

THE COURT: Mr. Goss, I would like to hear anything you would like to tell me.

DEFENDANT GOSS: I just ask you to just have mercy upon me right now, because I was innocent of this situation, but as Mr. Smiley said, I just wish you could just give me the minimum sentence you could. That's all.

THE COURT: Thank you very much. I'll be glad to hear from the state. I know you gave me his criminal record before we started trial, but can you give it to me again, please.

MR. LAWTON: Yes, sir, Your Honor. He has a 2003 B&E; 2003 possession of a stolen motor vehicle; 2003 chop shop; 2003 possession of a stolen motor vehicle; an '04 ABHAN, not going to comment on guilt or innocence. I'm not sure what I'll do with this charge at this time. I haven't reviewed it, but he is out on bond, Your Honor, for kidnapping armed robbery, that was 4/27/06 so he was out on bond for armed robbery and kidnapping, Your Honor.

I'm not sure we'll go as far as sentencing. I'll certainly put that in your hands, Your Honor. I don't know if the victim --

THE COURT: You say he's got charges pending?

MR. LAWTON: He was out on bond for armed robbery and kidnapping.

THE COURT: This armed robbery and kidnapping?

MR. LAWTON: No, different.

THE COURT: So those charges are still pending?

MR. LAWTON: Yes, sir, and I'll evaluate what I'll do, mainly depending on his sentence.

THE COURT: That's up to you. You can prosecute or not prosecute.

MR. SMILEY: I hope you wouldn't consider that in your sentence, Your Honor. I could say a whole

lot about that case. I'm very familiar with it, and I would be very surprised if the state were able to reach any kind --

THE COURT: Well, I don't care about that. It's a charge, it's not a conviction. It was a prior conviction. All right.

Solicitor, I'll be glad to hear anything from you or anyone else that would like to say anything. Solicitor, would you like to say something?

MR. LAWTON: Your Honor, I would just -- I was talking about these solicitors sitting behind you.

THE COURT: Anything you would like to say?

MS. WILSON: Your Honor, we certainly appreciate the way you handled court this week. As far as this defendant goes, I don't know how often you've been in this circuit, but one of the things that has been a plague on this community is people who are out on bond.

I understand he may not be guilty of that earlier charge but he was certainly on bond where he signed a contract to get out of jail to be on his best behavior. What we do know is after he signed that contract to get out on bond, he committed a heinous armed robbery and a kidnapping.

We also know, unfortunately, that a -- we were very fortunate to get a conviction in this case.

One of the key witnesses in this case has been in grave fear of his life. We have staked out his home, his work, his school, his medical appointments, and attempts to find him to bring him to testify.

The witnesses for the people that he has come in contact with over the past week have said that he is shaking in fear, and that is a reason that he never appeared here in court. That is because of Mr. Goss and Mr. Mack, and anything that you can do on sentencing to ensure this community that Mr. Goss can't plague them again, we certainly would appreciate it.

THE COURT: Okay. Thank you very much. Solicitor Lawton, is there anything you would like to tell me?

MR. LAWTON: No, Your Honor.

THE COURT: You got the sentence sheet?

MR. LAWTON: Yes, sir.

THE COURT: All right. I guess I should have said solicitor and assistant solicitor. I apologize. Okay. Mr. Goss, indictment number 10807, that is the kidnapping, sentence of the state, department of corrections, period of 20 years as concurrent with the other indictment. Indictment No. 10805, that is armed robbery, sentence of the state, sentence of the state, department of corrections, period of 20 years as

concurrent with the other indictments. Credit for jail time since June 15th of '07. Indictment No. 0806, that is the assault and battery with intent to kill, sentence of the state, department of corrections, period of 20 years. That is concurrent with the other indictment, give you credit for jail time since June 15, '07. Concurrent means it runs together.

MR. SMILEY: Thank you, Your Honor.

MR. LAWTON: May I approach, Your Honor?

THE COURT: Yes, sir. All right. I'll be glad to hear you as to Mr. Joy Mack.

MR. APOSTOLOU: Thank you, Your Honor.

Obviously, while we respect the decision of the jury, we are disappointed. From the first moment I met Joy, he said that he wasn't involved with this. I believed him then; I still believe him. We certainly respect the verdict. It doesn't change my belief in him at all, but, obviously, the time for that has come and gone. He is 23, 24 -- 23 years old. He has a son that is six years old. He's got a girlfriend with whom he has a longstanding relationship.

His record is a little bit of drugs. I would suggest to you that he's not a menace to society. I don't think he's -- he hasn't accumulated a lot of charges. I would ask you for the minimum sentence,

Judge. I don't think that he's in the category of the Gosses, or the Goss family. I think he is -- I would ask you for the minimum sentence, and I thank you.

THE COURT: Let me tell you, I understand Mr. Goss had much more serious criminal record than Mr. Mack. I think he's got, what, distribution?

MR. LAWTON: Yes, sir, Your Honor.

THE COURT: Is the only charge against him, but my concern -- I'm not going to argue with you whether he's innocent or not innocent. A jury of 12 people have found him guilty, and what concerns me is somebody is willing to put a gun in somebody's face and rob them. That is quite serious, and if he'll do that, he'll kill you. He'll hurt you, and he did hurt this gentleman. He beat him in the head with a rifle. So he is a menace to society, irrespective of his prior record, and I'm just telling you my thoughts.

I've really got a problem with somebody walking into a store with a gun, saying, Give me your money, and then beat him and tie him up and ransack the store.

MR. APOSTOLOU: I understand that, Judge, and certainly --

THE COURT: And this is the man, according to the testimony, that had the gun, Mr. Goss did, so -- at

least from the victim's testimony. I understand there was a gun there with the victim's blood, so apparently Mr. Goss and one of other three had the pistol, but this man was identified by the victim that beat him in the head with the rifle. And I understand you think that eyewitness identification is flawed, you know, but it wasn't flawed to 12 people.

MR. APOSTOLOU: I understand that, Judge.

THE COURT: So I'll be glad to hear you on that.

MR. APOSTOLOU: Okay.

THE COURT: You said he's been nice to you, he's been a nice guy, and all this kind of stuff, so I'll be glad to hear you, okay? Because I'm seriously thinking about loading him up.

MR. APOSTOLOU: Well, Judge, I would -- I think that Joy should get the benefit of the fact that his record isn't that bad. I understand these are serious allegations, and I understand that, you, know that the victim put him at that role, and I understand that the jury has made their decision and they've come back.

I would say that he is a young man that has a lot of life left in him. I understand these are serious charges, and he's certainly going to do a significant

amount of time on them.

If we're going to go with the allegations as they are, the gun was loaded. It was an AK47. This easily could have been a murder. It could have been a double murder. It wasn't. He was in the position to have killed both of them and gotten out of there and eliminated any witnesses, and, frankly, under the facts that we've got, probably would have gotten away with it.

So the fact that this didn't end in a murder is what ultimately led to him being convicted today, and I think that that suggests, based on the fact he has nothing violent in his history whatsoever, that he's not a killer and that he is not a menace to society -- and I understand this is a very serious charge, but the fact is it didn't go further than it did.

They're in the back of the store. It's closing time, and all the other stores -- they could have been in and out of there and away from all this, and the victims could have been in much worse shape than they are. The victim was treated in the hospital and released on the same day. It could have been a much worse situation, and certainly a serious situation, and we're obviously not going to stand for that, but I think that the fact that he did have a -- if he did, and, obviously, the jury found that he did had an AK47 over top of these

people --

THE COURT: He also stated what it could have been something else other than an AK47.

MR. APOSTOLOU: It easily could have been a much worse situation, and I think that the fact that it didn't, I think I would suggest to you that he should get the benefit of that. And I know it's a terribly serious situation, but there is nothing in his history of any kind of violence whatsoever.

THE COURT: How old is he?

MR. APOSTOLOU: He's 24 years old. He has one son, six years old.

THE COURT: How far did he go in school?

DEFENDANT MACK: I have my GED, sir.

THE COURT: You have your GED?

DEFENDANT MACK: Yes, sir.

THE COURT: All right. Mr. Mack -- I'm sorry, Mr. Apostolou. I was just telling you my thoughts. I was thinking out loud to you. I wanted to hear what you had to say.

MR. APOSTOLOU: I understand that. I do understand that, Judge. I just feel like this situation could have gone a lot worse. It's a very serious situation, but there is nothing -- it's totally out of character for his record. He's just -- it's totally out

of character for his record, and he should get the benefit of that. It could have been a lot worse. It's a very bad situation, but --

THE COURT: All right. Mr. Mack, anything you would like to tell me?

DEFENDANT MACK: Yes, sir. Basically --

THE COURT: I'm sorry. What?

DEFENDANT MACK: Basically, from the beginning, from the beginning of the end of the case you made on me, I basically was lost in this whole situation. I'm not disputing the fact that the jury found me guilty of these charges, I'm just basically saying my point of view on this.

And I respect the jury's decision on what they did, because, I mean, that was their job. They could either find me guilty or not guilty based upon the facts, and I just ask you, Your Honor, just to have leniency, have mercy on me, Your Honor, because I am innocent, but I just respect -- I respect the decision of the jury because they found me guilty. They did their job.

THE COURT: Okay. You got anything else, Mr. Mack? I don't want to cut you off.

DEFENDANT MACK: I have a son that I -- that is six years old, lives with me. I got a girlfriend

who -- me and her were together for a long, long time. My mother's getting old. She's sick, Your Honor. I just beg that you have leniency on me.

MR. APOSTOLOU: He has been in jail about a year about a half as well.

THE COURT: When was the arrest?

MR. APOSTOLOU: He was arrested July 24th of 2007.

THE COURT: Solicitor, I'll be glad to hear from the state.

MR. LAWTON: Your Honor, I believe Andy would like to address the Court.

THE COURT: I'll be glad to hear from him.

MR. LAWTON: I think he decided not to, Your Honor.

MR. AYAZGOK: I would like to say thank you, Your Honor. Thank you for everything.

MR. LAWTON: Your Honor, I just want to put on the record that Mr. Apostolou approached me a while back, said his client maintained his innocence and asked to be put on a polygraph exam, and we did that and it came back as a failed exam.

I did that out of respect for Mr. Apostolou. I'm not willing to put somebody on trial that has a chance who was innocent, so I did that just to assure

that, and the results came back as deceptive.

THE COURT: Came back as deceptive, not unreliable, or what is the other word they use on the lie detector? Inconclusive.

MR. LAWTON: There was deception. Deception, yes, sir.

THE COURT: All right.

MR. LAWTON: And I just respect your decision, Your Honor. I'll put it in your hands.

THE COURT: Okay. Thank you very much. Solicitor, do you have anything you would like to add?

MS. WILSON: No, sir. I appreciate your earlier comments.

THE COURT: All right. Thank you.

Mr. Mack, you understand all these are 85 percent crimes. You will not be eligible for parole, do you understand?

DEFENDANT MACK: Yes, sir.

THE COURT: All right. Mr. Mack, indictment 5696, that is assault and battery with intent to kill, sentence of the state, department of corrections for a period of 20 years, concurrent with that, give you credit since July the 24th, 2007.

Indictment number 5698, as to kidnapping, sentence of the state, department of corrections, period

of 22 years as concurrent, give you credit for time served since July 24th, '07; indictment number 5695, that is armed robbery, sentence of the state, department of corrections for a period of 22 years. That is concurrent with the other indictment, and give you credit for time since July the 24th, '07.

And I will say to you that your lawyer has done a good job for him because I was quite frankly thinking about giving you 35 years, so your lawyer talked me down to 22. Good luck to you.

- - -

(Whereupon, the proceedings were concluded.)

- - -

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 26th of February 2009.

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

May 19, 2009

Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRELL GOSS,

APPELLANT

FINAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in overruling defense counsel's objection to the solicitor's burden shifting closing argument?

II. Whether the trial court erred in refusing to allow defense counsel to impeach the victim with a pending charge of counterfeiting goods?

STATEMENT OF THE CASE

Appellant was convicted of kidnapping, assault and battery with intent to kill, and armed robbery after a jury trial held before the Honorable J. C. Nicholson on February 23-26, 2009 in Charleston County. Sentences of twenty (20) years were imposed on each charge.

This appeal follows.

ARGUMENT

The trial court erred in overruling defense counsel's objection to the solicitor's burden shifting closing argument.

The victim was robbed, beaten, and dragged to the back of his newly opened men's clothing store off Dorchester Road in North Charleston. The victim was able to identify a co-defendant but could not identify appellant as one of the suspects. A moist palm print on the outside of the door to the store and a tip led police to appellant. A search of appellant's residence led police to some clothing and shoes from the store. Appellant's defense was that he was not a participant and the State's case was circumstantial.

During closing argument the solicitor commented to the jury on the State's case and argued that there were a lot of hurdles for defense counsel to jump. Defense counsel objected. The trial court overruled the objection without giving a curative instruction or telling the jury to disregard. It just told the solicitor to "go ahead." (ROA p. 302, lines 1-8) That ruling was in error.

The above argument by the solicitor was burden shifting as the defense did not have the burden of proof. The argument deprived appellant of a fair trial as guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution. Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450 (1979) By failing to give a curative instruction and by telling the solicitor to go ahead, the trial court implied that the solicitor's argument was proper and that the burden of proof was on the appellant. The error was not harmless in this case because the State's case was circumstantial and the evidence of guilt was not overwhelming. In addition, appellant's defense was not totally implausible. State v.

Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996); State v. Truesdale, 285 S.C. 13, 328 S.E.2d 53 (1984).

ARGUMENT II

The trial court erred in refusing to allow defense counsel to impeach the victim with a pending charge of counterfeiting goods.

Just prior to opening arguments defense counsel advised the trial court that the victim had a pending charge of counterfeiting goods which he intended to cross-examine the victim about. The trial court refused to allow impeachment on a prior bad act. (ROA p. 2, line 21- p. 4, line 9) That ruling was in error. Rule 608 (b), SCRE allows cross-examination of a witness about prior bad acts to impeach a witnesses' credibility. State v. Outlaw, 307 S.C. 177, 414 S.E.2d 147 (1992). Here the same office that was prosecuting appellant's case had pending charges against the victim. Appellant should have been allowed to cross-examine the victim to show bias or lack of credibility. Appellant was deprived of a fair trial as he was not allowed full cross-examination of the State's key witness.

CONCLUSION

Appellant's convictions should be reversed.

Respectfully submitted,

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

This 1st day of February, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 1st, 2010

Robert M. Pachak
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRELL GOSS,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the FInal Brief of Appellant in the above referenced case has been served upon Julie M. Thames, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of February, 2010.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 1st day of February, 2010.

Felicia K Kirby (L.S.)
Notary Public for South Carolina
My Commission Expires: August 15, 2010.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE, Respondent,

vs.

DARRELL GOSS, Appellant.

FINAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
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TABLE OF AUTHORITIES

Cases:

Other Authorities:

STATEMENT OF ISSUES ON APPEAL

I.

Is the Appellant's issue with regard to the solicitor's closing argument preserved for review when the grounds argued on appeal were not argued at trial, and further; if the issue is preserved, did the trial court correctly overrule defense counsel's objection when the argument was not burden shifting?

II.

Did the trial court properly refuse to allow defense counsel to impeach the victim with a pending charge of counterfeiting goods when the victim's testimony was irrelevant to any evidence relating to Appellant and when the testimony was not proffered, thus any alleged prejudice is purely speculative?

STATEMENT OF THE CASE

For purposes of this Brief, the Respondent concurs with the Statement of the Case provided by Appellant.

ARGUMENT

I.

Appellant's issue with regard to the solicitor's closing argument is not preserved for review when the grounds argued on appeal were not argued at trial, and further; if the Court finds the issue is preserved, the trial court correctly overruled defense counsel's objection when the argument was not burden shifting.

The Respondent first submits this issue is not preserved for review.

The general rule of issue preservation states that if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. I'On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see also Ellie, Inc. v. Miccichi, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App. 2004) ("Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error.").

An objection must be on a specific ground. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997); State v. New, 338 S.C. 313, 318, 526 S.E.2d 237, 239 (Ct. App. 1999). A general objection which does not specify the particular ground on which the objection is based is insufficient to preserve a question for review. State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997). In order to preserve for review an alleged error, the objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial court. State v. New, 338 S.C. at 318, 526 S.E.2d at 239; see also Campbell v. Bi-Lo, Inc., 301 S.C. 448, 454, 392 S.E.2d 477, 481 (Ct. App. 1990) (holding where the ground for objection is not stated in the record, there is no

basis for appellate review).

Trial counsel's objection to the solicitor's closing argument was a general objection. He did not give any specific grounds for the objection and only now on appeal raises the issue of burden shifting. (R.p.302). There can be several reasons to object to a closing argument; arguing facts not in evidence, golden rule violation, burden shifting, and others. Because no specifics were given for the objection at issue, and the trial judge overruled the objection without eliciting more from trial counsel, there is nothing for this Court to review. Therefore, this issue is not preserved for review.

Should the Court elect to decide this issue on the merits, the Respondent submits the trial judge did not err because the argument was not burden shifting.

A trial court is allowed broad discretion in dealing with the range and propriety of closing argument to the jury. State v. Condrey, 349 S.C. 184, 195-96, 562 S.E.2d 320, 325 (Ct. App. 2002). Ordinarily, a court's rulings on such matters will not be disturbed. Id., at 196, 562 S.E.2d at 325-26. An appellate court must review the argument in the context of the entire record. State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id.

The Respondent submits the solicitor's closing argument was not burden shifting nor did it infect the trial with unfairness so as to deny due process. When read in context, it is clear the solicitor was reciting the plethora of evidence against Appellant in order to demonstrate that the State had met its burden of proof; he was not shifting the burden to Appellant. (R.pp.301-302). Immediately after the objection was made, the solicitor

discussed that the State was required to prove Appellant's guilt beyond a reasonable doubt, not beyond all doubt. (R.p.302). The Respondent submits the solicitor's argument was his way of letting the jury know that the State did not have to prove each element beyond all doubt, but that it was required to prove each element beyond a reasonable doubt. He was arguing to the jury that, considering all the evidence against Appellant, the State had met the burden of proving Appellant's guilt beyond a reasonable doubt. The Respondent submits the solicitor's closing argument was appropriate and did not shift the burden of proof to the Appellant.

II.

The trial court properly refused to allow defense counsel to impeach the victim with a pending charge of counterfeiting goods when the victim's testimony was irrelevant to any evidence relating to Appellant and when the testimony was not proffered, thus any alleged prejudice is purely speculative.

The Respondent submits the trial judge properly refused to allow trial counsel to impeach the victim with a pending charge of counterfeiting goods when the witness's testimony did not in any way implicate Appellant. Any testimony about a pending charge against the victim was irrelevant. In addition, as no proffer was made, no prejudice has been shown. Moreover, even if the judge erred in not allowing the impeachment evidence, it was harmless due to the overwhelming evidence against Appellant.

For evidence to be admissible, it must be relevant. Rule 402, SCRE. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears, and it is not required that the inference sought should necessarily follow from the fact proved." State v. Sweat, 362 S.C. 117, 126-27, 606 S.E.2d 508, 513 (Ct. App. 2004). Relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; State v. Pagan, 369 S.C. 201, 210, 631 S.E.2d 262, 266 (2006). A trial court's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. McLeod, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004). Determination of relevancy is largely within the discretion of the trial court and will not be reversed absent an

abuse of that discretion. State v. Sweat, 362 S.C. at 127, 606 S.E.2d at 513.

Generally, the failure to make a proffer of excluded evidence will preclude review on appeal. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 402-403 (1986). Where no proffer of excluded testimony is made, the court is unable to determine whether the appellant was prejudiced by the trial court's refusal to admit the testimony into evidence. State v. Jackson, 384 S.C. 29, 34, 681 S.E.2d 17, 19 (Ct. App. 2009). Where trial court refuses to allow a proffer of testimony, but the appellate court can determine from the record what testimony was intended to show, this Court will address the merits. State v. Schmidt, at 303, 342 S.E.2d at 403.

While Rule 608(b), SCRE, allows cross-examination of a witness about prior bad acts to impeach a witnesses' credibility, the Respondent submits that the victim's credibility was not relevant to the case against Appellant. Appellant argues that he should have been allowed to cross-examine the victim to show bias or lack of credibility; however, the victim's testimony did not in any way implicate Appellant. Appellant was identified by a sweaty palm print left on the door of the store where the armed robbery took place. (R.pp.57-58; pp.111-113; p.143). Based on the palm print, a search warrant was obtained and several items matching the ones sold at the store along with tags identical to the ones used at the store were found at Appellant's house. (R.pp.90-91; pp.120-123; p.136; pp.160-162). In addition, a gun was found in the trunk of a car at Appellant's house. (R.pp.118-119; p.121). That gun had blood on it which was found to be the victim's through DNA testing. (R.pp.200-202). The victim did not identify Appellant; in fact, trial counsel was able to argue in closing that the victim specifically stated he did not see Appellant in the store

during the robbery. (R.pp.277-279; pp.50-51). Thus, the victim's testimony was not relevant to the case against Appellant except as to describe the events that occurred during the robbery and the officers also testified to these events. The trial judge did not abuse his discretion in this case.

The Respondent further submits that because no proffer was made, no prejudice can be shown. Trial counsel merely informed the judge that he wanted to ask the victim if he had a pending charge. Trial counsel argued he should be allowed to ask the victim about a pending charge for counterfeiting goods to show he had an incentive to testify in the way the State wanted. He argued that under a Rule 403 analysis, he should be allowed to cross-examine the victim about the charge to show bias. (R.pp.2-4). However, this testimony was never proffered and the victim never testified that he was or was not charged with a crime, nor did he testify when the charge, if it existed, arose. The Respondent submits that it is entirely possible that the victim was charged some time after the robbery occurred and that the victim's story was the same at trial as it was at the time of the robbery; thus, no prejudice could arise. Without a proffer, this Court cannot determine any prejudice and thus cannot review this issue.

The Respondent further submits for the reasons listed previously, even if the trial court erred in not allowing trial counsel to cross-examine the victim about this charge, no prejudice can be established when the victim's testimony in no way implicated Appellant. Appellant was identified as a suspect because of the fingerprints on the door, not because of anything said by, or witnessed by, the victim. Thus, any error, if it existed, was harmless.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's convictions and sentences should be affirmed.

Respectfully submitted,

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JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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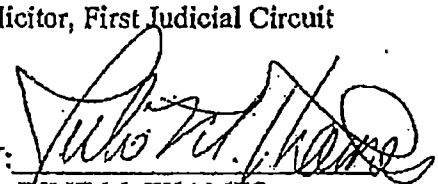
BY: 
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ATTORNEYS FOR RESPONDENT

February 1, 2010.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE, Respondent,

vs.

DARRELL GOSS, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

DARRELL GOSS,

Appellant.

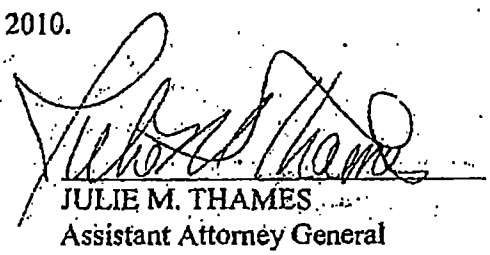
PROOF OF SERVICE

I, Julie M. Thames, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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

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

This 1st day of February, 2010.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Darrell Goss, Appellant.

Appeal From Charleston County
J. C. "Buddy" Nicholson, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-214
Submitted May 1, 2011 – Filed May 17, 2011

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Julie M. Thames, all of Columbia; and Solicitor Scarlett Anne Wilson, of Charleston, for Respondent.

PER CURIAM: Darrell Goss appeals his convictions for kidnapping, assault and battery with intent to kill, and armed robbery, arguing the trial court erred in the following: (1) overruling Goss's objection to the State closing argument and (2) refusing Goss's request to impeach the victim with the victim's pending charge o counterfeiting goods. We affirm[1] pursuant to Rule 220(b)(1), SCACR, and the following authorities:

. As to whether the trial court erred in overruling Goss's objection to the State's closing argument, we note preservation was questionable but affirm on the merits: State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 76 '66 (1997) "[A] trial [court] is vested with broad discretion in dealing with the range of propriety of closing argument, and ordinarily his rulings on such matters will not be disturbed."); id. ("[Appellate courts] must eview the argument in the context of the entire record."); id. ("The appellant has the burden of showing tha any alleged error in argument deprived him of a fair trial."); id. ("The relevant question is whether the [State comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.

. As to whether the trial court erred in refusing Goss's request to impeach the victim with the victim's pend charge of counterfeiting goods: Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 557, 658 S.E.2d 6 (2008) ("[T]o warrant reversal based on the admission or exclusion of evidence, the appealing party mu how both the error of the ruling and prejudice."); Morris v. Tidewater Land & Timber, Inc., 388 S.C. 317, 3 96 S.E.2d 599, 606 (Ct. App. 2010) (holding a trial court's error in excluding certain testimony was harml

AFFIRMED.

SHORT, KONDUROS, and GEATHERS, JJ., concur.

1] We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

2011-CP-10-3480

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)

Darrell L. Goss #305517)
Full name and prison number (if any) of Applicant.)

v.) APPLICATION FOR

State of South Carolina) POST-CONVICTION RELIEF

FILED
2011 MAY 27 PM 2:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention: Lieber Correctional Institution
2. Name and location of Court which imposed sentence: Charleston County General Sessions
3. Name(s) of co-defendant(s) (if any): Joy Mack
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) 2007-GS-10-10805 / Armed Robbery
   (b) 2007-GS-10-10806 / Assault and Battery With Intent Kill
   (c) 2007-GS-10-10807 / Kidnapping
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) February 26, 2009 / twenty (20) years Concurrent
   (b) February 26, 2009 / twenty (20) years Concurrent

Revised 3/2003

592.

(c) February 26, 2009 / twenty (20) years concurrent

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty Yes

(c) after a plea of nolo contendere _____

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

Yes

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

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. Submitted May 1, 2011 - filed May 17, 2011

ii. _____

iii. _____

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

i. Unpublished Opinion No. 2011-UP-214

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Violation of the Sixth Amendment to the United States Const

(b) Violation of the fourteenth Amend. to the U.S. Const.

(c) Violation of Article I Section 3 of S.C. Const.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Counsel was ineffective in his assistance

(b) Counsel was ineffective in his assistance

(c) Counsel was ineffective in his assistance

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Sixth Amend. Violations Cannot be raised on appeal

(b) fourteeth Amend. Violations Cannot be raised on appeal

(c) Article 1 Section 3 Violations Cannot be raised on appeal

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

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

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

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

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. James W. Smiley, IV / 178 1/2 King St., Chas, SC 29401

ii. Robert M. PachaK / SCCID 1330 Lady Street, Suit 401, Columbia, SC 29201-3332

iii. _____

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

i. arraignment, trial and sentencing

ii. direct appeal

iii. _____

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

New trial

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

No

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Charleston)

I, DG, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Darrell L. Goss

Darrell L. Goss #305517

SWORN to and subscribed before me this 23rd day of May, 2011.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

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

I, DG, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Darrell L. Goss

Darrell L. Goss #366517 *Applicant*

SWORN or affirmed to and subscribed before me this
23RD day of May, 2011.

Sylvia Jones

Notary Public

My Commission Expires: 1/24/2018

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 4, 2009

James Watson Smiley, IV, Esquire
3842-B Leeds Ave.
Charleston, SC 29405

Scarlett Anne Wilson, Esquire
Ninth Circuit Solicitor's Office
101 Meeting St., Ste. 400
Charleston, SC 29401

Re: Goss, Darrell L. v. State

Dear Counsel:

This will acknowledge receipt of a letter from Mr. Goss received in this office on February 2, 2009, and addressed to Chief Justice Toal, with reference to the above matter. A copy of this letter is enclosed for your files.

We are asking that each of you file a response to this letter on or before February 16, 2009. Please be sure to show proof that you have served your response on Mr. Goss.

Very truly yours,

CLERK

Exhibit 23 a.

The Supreme Court of South Carolina

ORDER

The following matters are dismissed pursuant to Key v. Currie, 305 S.C. 115, 406 S.E.2d 356 (1991), because no extraordinary reason exists to entertain them in this Court's original jurisdiction:

1. Darrell Goss. Letters to the Chief Justice received February 2, 2009 and February 9, 2009. Case Tracking No. 2009115146.

2. Oscar Lee Sykes v. People of the State of South Carolina. Petition for a Writ of Mandamus dated February 12, 2009. Case Tracking No. 2009117166.

3. Robert Holland Koon. Letter to the Chief Justice dated February 5, 2009. Case Tracking No. 2009116547.

IT IS SO ORDERED.

C.J.

J.

J.

J.

Columbia, South Carolina
March 4, 2009

Exhibit 23 h

300

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS THE NINTH JUDICIAL CIRCUIT
Darrell L. Goss, 305517 Petitioner,	)	Case No: 2011-CP-10-3782
-V-	)	MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR POST CONVICTION RELIEF
State of South Carolina Respondent.	)	

Petitioner, Darrell L. Goss ("Petitioner"), Pro se, hereby submits this memorandum of law and attachments thereto in support of his application for Post Conviction Relief and therefore, Petitioner would respectfully show unto this Court:

BACKGROUND FACTS

The victim was robbed, beaten, and dragged to the back of his newly opened men's clothing store located off Dorchester Road in North Charleston. The victim identified Petitioner's co-defendant as one of his assailants; however, he victim could not identify the Petitioner as a suspect (Footnote-1). Petitioner was implicated by a palm print lifted off the glass surface located on the outside of the glass door to the store where the armed robbery took place. As a result, a search warrant was

(FN-1)During direct examination, the victim testifed that he did not see Petitioner in the store during the robbery.

obtained and several cloths items matching the ones sold at the store were found at Petitioner's mother's house. Additionally, a gun was found in a car parked in the driveway of Petitioner's mother's house. (Footnote-2), That gun had blood on it which was found to be the victim's through DNA testing. Petitioner's defense was that he was not a participant and the State's case was circumstantial.

During the guilt phase of the trial, the State presented over fifteen (15) witnesses. None of which could place Petitioner in the store during the robbery or link Petitioner to the gun.

Petitioner at the guilt -or- innocence phase of trial put up one witness. Petitioner's mother testified that she purchased all of the stolen clothes items that were found at her house from off the street.

The jury found Petitioner guilty of armed robbery, assault and battery with intent to kill, and kidnapping under a "hand of one, hand of all" theory. Sentences of twenty (20) years were imposed on each charge.

Petitioner appealed. The Court of Appeals affirmed. Petitioner now seeks Post Conviction relief alleging that he was denied the right to effective assistance of counsel guaranteed by

(FN-2) The State's witness Angela Watts of the Department of Motor Vehicles testifed that the owner of the car is Sha'ron R. Goss who lives at Ranger Drive, Petitioner's mother's house.

the Sixth and Fourteenth Amendments to the United States Constitution.

LAW / ANALYSIS

A Defendant in a criminal proceeding has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668, 104 S.CT. 2052, 80 L.Ed.2d 674 (1984). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgement in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007).

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109 S.E.2d 514, 517 (2000). In order to establish ineffective assistance of counsel, the PCR applicant must show that: (1).Counsel's performance was deficient; (2).the deficient performance prejudiced the applicant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the trial would have been different. Id. (citing Strickland v. Washington) " a reasonable probability is a probability sufficient to undermine the confidence in the outcome of the trial." Id. (citing Ard v. Catoe) "furthermore, when a Defendant's conviction is challenged, the question is whether

there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt." Id. (quoting Strickland v. Washinton).

ISSUE: INEFFECTIVE ASSISTANCE OF COUNSEL.

SUPPORTING FACTS:

(A). Trial Counsel failed to conduct an interview with Petitioner prior to trial and otherwise failed to ascertain petitioner's version or statement of facts regarding the facts and circumstances of the case prior to trial which resulted in trial counsel being unable to make an informed decision regarding the potential value of variety of available defenses to the criminal charges brought against Petitioner (e.g., had trial counsel interviewed Petitioner or otherwise ascertained Petitioner's version of facts' trial counsel would have realized that Petitioner had a reliable alibi, Moreover, trial counsel would have realized that multiple reliable and credible witnesses were available to be use as "rebuttal witnesses" at Petitioners' trial who could have explained the presence of the stolen clothes items at Petitioners' mother's house, and could have also explained the presence of the gun found inside the car at Petitioner's mother's house).

(B). Trial counsel refused to provide Petitioner with a copy of the Rule 5 discovery material involved in the underlying

criminal proceeding and thus, prevented and denied Petitioner from assisting in his own defense regarding the criminal accusations brought against him.

ARGUMENTS

(A)(1). TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT PETITIONER'S ALIBI.

Trial counsel failed to investigate, discover, and present Petitioner's alibi (Exhibits 1-14). Had trial counsel conducted an interview with petitioner prior to trial, trial counsel would have discovered that petitioner had a reliable alibi. As a result of trial counsel's failure to interview Petitioner prior to trial, trial counsel was unable to make an informed decision regarding the potential value of petitioners' alibi and thus, trial counsel failed to present Petitioners' alibi. Glover v. State, 318. S.C. 496, 458 S.E. 538 (1992).

(A)(2). TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY INVESTIGATE THE FACTS AND CIRCUMSTANCES OF THE CASE BROUGHT AGAINST PETITIONER.

Trial counsel failed to conduct an interview with Petitioner prior to trial and otherwise failed to ascertain Petitioners' statement of facts regarding the facts and circumstances of the case brought against Petitioner, (Exhibits 15-17). Had trial

counsel interviewed Petitioner or otherwise ascertained Petitioners' version of fact's trial counsel would have discovered that: (1). Petitioner had a reliable alibi; and (2). That multiple reliable and credible witnesses were available to be used as "rebuttal witnesses" at Petitioners' trial. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), (A criminal defense attorney has a duty to make reasonable investigation and at a MINIMUM, counsel has a duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.) ; Wiggins v. Smith, 539 U.S. 510 (2003).

(A)(3). TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT RELIABLE AND CREDIBLE REBUTTAL WITNESSES.

Trial counsel failed to investigate, discover, and present reliable and credible rebuttal witnesses at Petitioners' trial who could have explained the presence of the stolen clothes items found at Petitioners' mother's house, and could also explained the presence of the gun found inside the car located at Petitioners' mother's house (Exhibits 18-22). Had trial counsel conducted an interview with Petitioner prior to trial, trial counsel would have discovered that multiple reliable and credible witnesses were available to be used as "rebuttal witnesses" at Petitioners' trial. As a result of trial counsel's failure to interview Petitioner prior to trial, trial counsel was unable to

make an informed decision regarding the potential value of Petitioners' witnesses and thus, trial counsel failed to present Petitioners' reliable and credible rebuttal witnesses at Petitioners' trial. Sullivan v. Fairman, 819 F.2d 1382 (7th.Cir 1987).

(B). TRIAL COUNSEL REFUSAL TO PROVIDE PETITIONER WITH DISCOVERY MATERIAL DENIED PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT TO ASSIST IN HIS DEFENSE.

As acknowledged by the United States Supreme Court in Drope v. Missouri, 420 U.S. 302, 96 S.CT. 896 (1975), a Defendant in a criminal proceeding has a "RIGHT TO ASSIST" in his own defense.

In the present case, the trial counsel refused to provide the Petitioner with the discovery material in Petitioners' case. As a result of trial counsel refusal to provide the Petitioner with the discovery material, Petitioner was prevented from exercising his Constitutional right to assist in own defense regarding the criminal accusations brought against him. (footnote-3).

CONCLUSION

WHEREFORE, based upon the foregoing, Petitioner respectfully request this Honorable Court to issue him an order granting him a new trial.

(F3). Prior to jury selection, trial counsel advised the trial court that there was a matter pending in the Supreme Court with Chief Justice Toal regarding the case (Exhibit 22). Petitioner had filed a compliant with Chief Justice Toal complaining that trial counsel refused to provide him with a copy of Rule 5 discovery material.

Respectfully Submitted,

/s/ Darrell L. Goss.

Darrell L. Goss, #305517
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, S.C 29472

Petitioner, Pro se

Ridgeville, South Carolina

September 16th., 2011

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS THE NINTH JUDICIAL CIRCUIT
DARRELL L. GOSS, 305517 Petitioner. -v- STATE OF SOUTH CAROLINA Respondent.	CASE NO: 2011-CP-10-3782 **APPENDIX OF EXHIBITS**

Exhibit Number:

1). 2-Page affidavit of Darrell L. Goss

2). Affidavit of Angelique Gadsden

3). Affidavit of Ben Goss

4). Affidavit of Kwamane Goss

5). Affidavit of Bernard Godfrey

6). Affidavit of Rondell Pugh

7). Affidavit of Mia Wright

8). Affidavit of Phylicia Henderson

9). Affidavit of Lakriesha Douglas

10). Affidavit of Domenic L. Hartwell

11). Affidavit of Jaton Edwards

12). Affidavit of Desmond Brown

13). Affidavit of Monica Mitchell

14). Picture

15). Letter from Darrell Goss

16). 3-page visitor's log sheet

17). Letter from Darrell Goss

18). Affidavit of Angelique Gadsden

Exhibit No. :

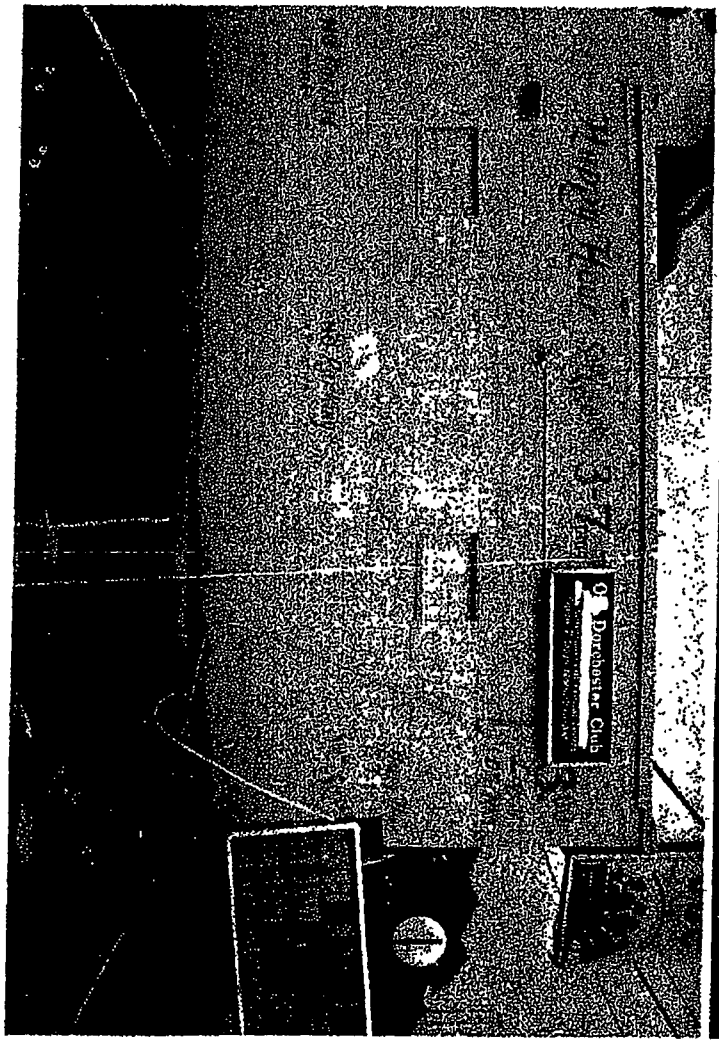
19). Affidavit of Clifford Hartwell, Jr.

20). Affidavit of Ben Goss

21). Affidavit of Bernard Godfrey

22). Affidavit of Sha'ron Goss

23). 2-page Order from Chief Justice Toal



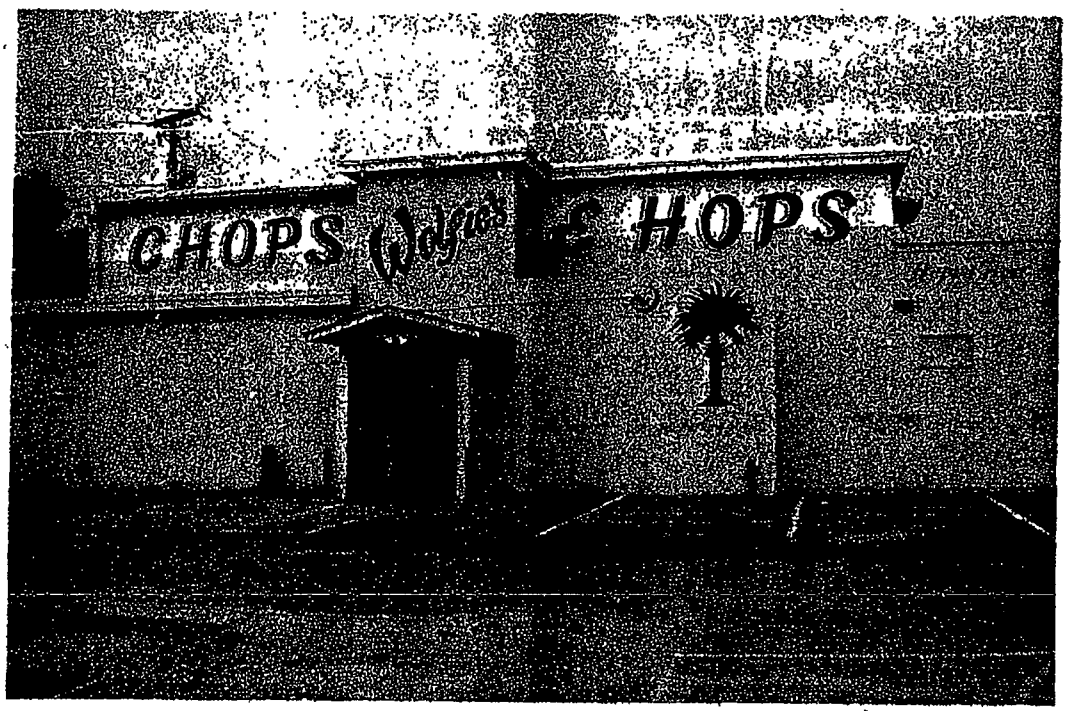


Exhibit 14

JUNE 15, 2008

DEAR MR. SMILEY,

I'M WRITING YOU TO LET YOU KNOW THAT IT'S BEEN ONE YEAR NOW THAT I'VE BEEN LOCKED UP FOR A CRIME THAT I DID NOT COMMIT AND I'VE NOT SEEN OR SPOKEN TO YOU CONCERNING THIS CASE YET. I'VE WRITEN YOU SEVERAL LETTERS, MADE SEVERAL PHONE CALLS, AND LEFT SEVERAL MESSAGES WITH YOUR CLERK "MS. LINDA" ALL WITHOUT ANY RESPONSE FROM YOU.

MR. SMILEY ALL I'M ASKING IS THAT YOU COME TO THE JAIL TO SEE ME AND LET ME KNOW WHAT'S GOING ON WITH THE CASE, AND THAT YOU SEND ME A COPY OF THE RULE 5 MATERIAL.

SINCERELY,
Darrell Goss

Exhibit 15

VISITOR REGISTER

NAME	COMPANY AND ADDRESS	CITIZEN OF U.S.A	DEPARTMENT OR PERSON VISITED	PURPOSE OF VISIT	TIME IN	TIME OUT
N C Smith	Solicitor's Office		D. Goss	Legal	1:45	2:00
Elliott Darnwell	atty	✓	Sarah Santiago Abarca	"	2pm	3pm
una Gaines	Interpreter	✓			2:--	3:--
K Runey	P.D.		Frank McManus	legal	2:30	
[illegible]	PD		Frank Spann; Corey Thomas; Melvin Smalls; D. Simpson	legal	3:05pm	5:20
n Bryan	PD		Client	Legal	4:45	5:00
e Cuba	Atty		Clients	Legal	7:29	8:4[illegible]
Edwards	Christ Gospel Church		Legal	Legal	7:35	
ele Forsythe	Atty		Agne Padilla Legal	Legal	8:45	9:05
ardo Curry	Atty		R Richmond R Chandler	Legal	8:[illegible]	9:50
Turner	DCPDS		L. M. Fry	Legal	8:42	9:20
Anderson	PD		Amy McCormick Jeffrey Frye	Legal	859	10:19
Crocker	PD		Several	Legal	9:10	10:30
Mitchell	34 Broad St.	✓	Lawanda Johnson	Legal	9:26	10:10
Brown	DCPDA		J. Cuttle	Legal	9:20	9:45

Exhibit 16 a.

1/2/09	1804	J. LANE	CPD	Y	BROWN - AARON	INTERVIEW	1042	1105	1/5/09		J
1/2/09		B Hicklin	DSS		Q. Collins/K. Green	VISIT	1055	1155	1/5/09		S
1-2-09		Susan Kay	A	Y	[illegible] Henry Bowers	legal	13:00	13:45	1/5/09		S
1-2-09		Samuels C.	Church		Brandon Scott	Visit	1400	1410	1/05/09		F
1-2-09		Rev. John Smith	Bethel Bapt-St		Dewis Scott	V.S.I.	2:30	3:48	1.5.09		
1/2/09		Cody Goeber	PD	Y	Seven 1	Legal	3:35	4:35	1/5/09		J
1/3/09		Ashley Dennis	PD		Dawan Traylin	legal	11:30	12:40	1/5/09		L
1/3/09		MICHAEL OWEN	ATTY	✓	DALE HAWKINSON	LEGAL	2:28 Pm	2:51 Pm	1/5/09		J
1/4/09		MG Baker	FPD		Antwan Robertson Alonzo Taylor	legal	4pm	5:25	1/5/09		
1/4/09		Andrew Barnes	PD		Chris Bolton	legal	4:45	5:15	1/6/09		
1/4/09		Jim Sadler	ATTY		D. Goss M. Wine	Legal	8:30	9:30	1/6/09		
1/5/09		Thon Montalvo	Atty		Ben Pringle	legal	8:31	9:19	1/6/09		
1/5/09		E. L. Giaw JR.	P.D.		R. N. Sandberg R. K. White	"	0743	10:40	1/6/09		
1/5/09		Ashley Ameika	Atty		Leroy Lloyd	legal	10:30	11:30	1/6/09		
1/5/09		Jay Cole	atty	✓	Kenthan Gilyard	Legal	10:00	10:25	1/6/09		
1/5/09		C Fuller	Atty		D. Kellman	legal	1025	10:36	1/6/09		
		K Kerr	atty		R Martin	"	10:30	10:45	1/6/09		

Exhibit 16 b

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3/26		J Mikell	PD		Goss, Mauttie, Richardson	legal	1:30				
3/26		C Winslow	PD		German	legal	1:50				
3/26		Andrew Barnes	attorney		client	legal	12:35				
3/26		[redacted]	PD		clients	legal	1:45				
3.26		S. ALMEIDA	PD		MULTIPLE	LEGAL	1.50				
3/26		Michelle Suggs	PD BESNAK OFFICE	✓	clients	usual	2:38				
3/26		Herence Price	legal		CLIENTS	legal					
3/26		DSI atchison	[illegible]		client	legal	3:46				
3/26		Cameron Blagg	PD		clients	legal	3:45				
3/26		Rev Dr. Mark Feaster	Bethany Church		Tutor Feaster	Pastoral care					
3/26		Cam Littlejohn	Attorney Columbia SC		Pierre Sanders	legal					
3/27		Dale Dayes	PD + Judge		inmates	Legal	8:45				
3/27		Philip Middleton	Atty	✓	c Mack	legal	11:45				
3/27		Carol Ward	DSS		Gary Miles	interview	12:05				
3/27		Bob Haley	FPDO		Client	legal	1:00				
3.27		C Sumner	Atty	✓	CLIENT	WITNESS	1:25				

Exhibit 16 c.

JANUARY 5, 2009

DEAR MR. SMILEY,

I WANT TO APOLOGIZE FOR MY BEHAVIOR LAST NIGHT DURING OUR VISIT. I WAS VERY ANGRY DUE TO THE FACT THAT YOU WASN'T COMING TO VISIT ME OR PROVIDE ME WITH A COPY OF THE RULE 5 MATERIAL. HOWEVER, I'VE TALKED WITH MY FAMILY AND WE WANT TO KEEP YOU ON THE CASE.

ONCE AGAIN, I TRULY DO APOLOGIZE FOR MY BEHAVIOR AND I HOPE THAT YOU WOULD FORGIVE ME.

SINCERELY,
Darrell Glass

Exhibit 17

STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS
Darrell L. Goss, #305517, Applicant,)	2011-CP-10-3782
v.)	RETURN
State of South Carolina, Respondent.)	

The Respondent, making its Return to the application for post-conviction relief filed May 27, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the September 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-10805), assault and battery with intent to kill (ABWIK) (2007-GS-10-10806), and kidnapping (2007-GS-10-10807). James Smiley, Esquire, represented the Applicant. The Applicant proceeded to trial on February 23-26, 2009, after which a jury found him guilty as indicted. The Honorable J.C. Nicholson, Jr. sentenced the Applicant to confinement for twenty (20) years for each offense. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Pachak, Esquire, of the South Carolina Commission on Indigent Defense, represented Applicant on appeal. After full briefing by both sides, the South Carolina Court of Appeals

affirmed the conviction and sentence. State v. Goss, Op. No. 2011-UP-214 (S.C. Ct. App. filed May 17, 2010). The Remittitur was issued on June 9, 2011.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the Final Brief of Appellant, the Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, and the Remittitur dated June 9, 2011.

II.

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

1. Ineffective assistance of counsel.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Matthew J. Friedman
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

August 17, 2011.

520

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2011-CP-10-3782
	)	
DARRELL L. GOSS, #305517	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Charles T. Brooks III, Esquire
309 Broad Street
Sumter, SC 29150

DATED this 17th day of August, 2011

Anne R. Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA | COURT OF COMMON PLEAS

COUNTY OF CHARLESTON | 2010-CP-10-03782

DARRELL L. GOSS
Applicant,
-vs-
STATE OF SOUTH CAROLINA,
Respondent.

TRANSCRIPT OF RECORD

September 16, 2011

Charleston, South Carolina

B E F O R E:

The Honorable Deadra L. Jefferson, Judge.

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

Charles Brooks, Esquire
Attorney for the Applicant

Matthew S. Friedman, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

I N D E X

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
Applicant's 1	Visitation Log	17	17
Applicant's 2	Letters	18	18
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(September 16, 2011.)

THE COURT: Mr. Brooks, are you ready to go forward with Mr. Goss?

MR. BROOKS: Yes, Judge, but Mr. Goss says he wants to proceed on his own.

MR. FRIEDMAN: Your Honor, I haven't seen James Smiley yet today.

THE COURT: Does the state have any witnesses in Mr. Goss's case?

MR. FRIEDMAN: Just Mr. Smiley, Your Honor.

THE COURT: All right. Bring Mr. Goss out, please.

This is Darrell L. Goss versus State of South Carolina, 2011-CP-10-3782. It's before the Court on an application for post-conviction relief which was filed on May 27 of 2011 on indictments 2007-GS-10-10805, which is armed robbery; 10806, assault and battery with intent to kill; and 10807, kidnapping, where he received 20 years concurrent on each of the sentences after a guilty verdict.

An appeal affirmed the conviction, and an unpublished opinion dated June 9 of 2011 -- well, the remitter was issued June 9 of 2011. Case was tried by Judge Nicholson on February 23rd through 26, 2009. James Smiley represented the defendant at trial. He is

represented by Charles Brooks, and the state is represented by Matthew Friedman.

We are in the process of trying to locate Mr. Smiley. We're getting voice mail at his office, but we should have a cell phone number for him somewhere, and my staff is trying to locate it so we can make an additional attempt to contact him.

Is the state ready to proceed?

MR. FRIEDMAN: Yes, Your Honor.

THE COURT: Is the applicant ready to proceed?

And I actually skipped one other thing. As soon as you stood up to speak, I realized I had eliminated something from the record, and I apologize.

He alleges, as the basis for his application, ineffective assistance of counsel. It does not specify in particular what the basis of that ineffective assistance would constitute.

Yes, sir?

MR. BROOKS: May it please the Court: Mr. Goss has indicated to me this morning that he wants to do his case himself. He is ready to go forward, and he wants to proceed pro se.

THE COURT: Mr. Goss, I understand, and the law allows to you represent yourself, but I would

strongly suggest to you that you allow Mr. Brooks to represent you because he is familiar with the rules of court, as well as the procedures, and he does a lot of these and he be can incredibly helpful to you. There are pitfalls in this process that he's aware of that you are not aware of, so I would strongly recommend you allow him to guide you throughout the proceedings and then if there anything you feel has not been covered, the Court will certainly will entertain anything further that you would like to present that is germane to the injuries raised in your application.

THE APPLICANT: Good morning.

THE COURT: Good morning.

THE APPLICANT: I would like to proceed pro se, Your Honor, on the basis that me and Mr. Brooks didn't even have time to consult with this case. He doesn't even know --

THE COURT: Well, it's driven on the record, so, really, him talking to you, I don't know how much that would have assisted you to some extent --

THE APPLICANT: Yes, ma'am, but I would like to exercise my constitutional right to proceed pro se.

THE COURT: I'm going to let Mr. Brooks represent you, and if there is anything further you want to put on the record, I'll let you do that, if there is

anything you feel he hadn't covered with you, although the rules don't allow for dual representation. I'll bend the rules a little bit.

THE APPLICANT: Your Honor, I --

THE COURT: Sir, I've heard you. I've ruled. End of it. Have a seat. Thank you. Have a seat, or the deputies will help you have a seat. Have a seat.

If there is anything that he does not cover that you are troubled with, I will allow you to present it yourself. You are getting the benefit of both worlds. There is no prejudice to you.

Mr. Brooks, are you ready to proceed?

MR. BROOKS: I am, Judge. I would put on the record that Mr. Goss and I -- I have conversed with him through e-mail, and I have had a telephone conference with him that was arranged through SCDC.

THE COURT: And I understand there is a lot of difficulty seeing inmates at the department of corrections. It has been reported to me it is a reflection of a lack of staffing, a lot of lockdowns, security issues, and I really haven't been able to get to the whole bottom of what the issue is, coupled with the fact a lot of facilities for whatever reason have now taken the position that they really don't want visitors at the institution, and they are now, even in

Charleston -- our current jail was built so that there are no visitors. It's supposed to all be done electronically through video conferencing. Of course, nobody talks to each other, so it ain't working.

So we got to figure out how we're going to fix it, but I understand that is currently the situation at the department of corrections, and I'm hearing more and more from lawyers that they have not had the ability to visit with clients through no fault of their own because of procedures that have been put into place, so I'll well aware of that issue.

MR. BROOKS: And I'll tell you what I have found more effective, at least what SCDC wants, Judge, is they want you to do a phone conference because --

THE COURT: More secure for them.

MR. BROOKS: Right. They put you in there, and they're quick and easy to do that, but when you want to go down there, your time is very limited. You can't go weekends, you can't go after hours, and then even from 9:00 to 5:00, shift changes and security and meals everything, you will spend three hours just to talk to a gentleman for 30 minutes, and that's what is going on.

And basically, Judge, that's what we had to do in light of the fact that PCR is pretty much strictly on the record.

THE COURT: And we're probably -- at some point I've had some minor discussions with it -- about it as chief administrative judge with -- in an overall sense to try to see how we can deal with it because there's going to have to be some change in policy, which is probably going to require court administration to deal with the institution, but the statute gives them the ability to monitor and handle with whatever policies that are in place, but at the same time people are going to have to be given the opportunity to meet with their clients. But as I understand it, you can't even go on the weekends anymore.

MR. BROOKS: Going to the jail is different than going to prison. Prison -- if you need to schedule a phone conference, they set that up, put you down in a room. In this situation, Mr. Goss actually called me. We had a phone conference, and that is as it pertains to his case, and I want to put that on the record.

THE COURT: Normally, I would not go to those lengths to say what I did, but I just wanted -- and probably more so to make Mr. Goss aware of some of the problems that you were probably encountering in meeting with him is that the institutions have made it increasingly difficult.

I don't want to say that. I don't know if

they're making it increasingly difficult. I think it's a reflection of, one, the budget deficits we have in South Carolina, the requirement that they have had to cut staff and a lot of security issues that they have to deal with that are important to them and have valid reasons, but at the same time really contradicts the ability for lawyers to have access to their clients.

So I'm hearing more and more it's taking people two months to see somebody, and it has to be from 9:00 to 5:00, and if you miss the appointment, it takes another two months to schedule another appointment.

MR. BROOKS: And they'll recommend you talk to them on the phone.

THE COURT: Because it's easier. It's less of a security issue, so I guess I want to say I understand what's going on. I don't know what the solution ultimately will be, but I know it's going to have to be addressed, but money answers all things, and if we had more money, we'd have more guards. I'm sure that is going to be their rationale, but that's not happening anytime soon, so we just have to figure out solutions.

You may proceed when you're ready.

MR. BROOKS: Well --

THE COURT: You can question Mr. Goss, and

then if he wants to add anything else that he feels you haven't covered, I'm going to allow him to do that.

MR. BROOKS: What about Mr. Smiley?

THE COURT: We have to find him.

MR. BROOKS: So we'll just go ahead until the Court finds him?

THE COURT: Uh-huh. I assumed you were going to call Mr. Goss.

MR. BROOKS: I was, Judge.

THE COURT: And your other witness would be Mr. Smiley?

THE APPLICANT: Yes, sir.

THE COURT: You may proceed.

DARRELL GOSS,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROOKS:

Q. Mr. Goss, you were represented by Mr. Smiley in this case.

A. Yes, sir.

Q. All right. And he was retained; is that correct?

A. Yes, sir.

Q. How long was he on your case prior to going to trial?

A. He was on my case for two years.

Q. One of the things that you've alleged as part of the ineffective assistance of counsel is this failure to investigate; is that correct?

A. That's correct.

Q. And during that period of time were you in jail or were you out on the street?

A. I was in the county jail, sir.

Q. Do you recall how many times you met with Mr. Smiley in preparing for trial?

A. Yes, sir.

Q. How many times did you meet with him?

A. I met with Mr. Smiley zero times to prepare my case. I did met with Mr. Smiley one time when he was offering me a guilty plea offered by the state. Me and Mr. Smiley, we never talked about the case. We never discussed the case, the one time that he did came to visit me at the county jail, Your Honor, and I have it marked as an exhibit, the visitation log from the jail that would show Mr. Smiley did visit me one time, and that one time he did came to visit me, he offered me the guilty plea by the state, and I started to inform Mr. Smiley of my innocence and tell him, Mr. Smiley, I'm not involved in this crime.

I don't want to take no guilty plea, and I was

about to go into details, and Mr. Smiley stopped me and he be like, Don't tell me anything. This was his exact words, don't tell me anything about the case because whatever you tell me, I'm stuck with.

So after he said that I got real angry at Mr. Smiley, and I said, How you mean I can't tell you nothing about the case? You is my lawyer.

So after that I used some cuss words pertaining towards Mr. Smiley, and I told him I don't want him to represent me anymore and I walked out the visitation room. That is the only time I saw Mr. Smiley until the day of my trial.

When my trial began, during jury selection that's when I gave Mr. Smiley the names of my witnesses that I would ask him to call because all those witnesses was present at the trial would have testified to the evidence that was found at my mother's case. I had my cousin whose car that was found in, Sharon Goss, he was at my trial testifying to the fact that he bought that gun from the guy that was selling the clothes outside my house, the same testimony my mother testified to at trial.

Also, I had my kid's mother, Angelique Gadsden, she was willing to testify to the fact that she did witness guys that was selling clothes that day outside of my mother's house, and she witnessed that, my mother,

Sharon Goss purchased some clothes. Also, I had my little brother, Clifford Hartwell on the witness list, and he was a witness as well was present at the courthouse, willing to testify to the fact he saw those guys selling clothes outside my mother house, and Mr. Smiley never called none of those witnesses, Your Honor.

He didn't -- the only witness he did call was my mother; however, he knew that my mother was -- excuse me -- he had knew my mother would be impeached on a false information conviction she was just convicted for. So he knew in advance the jury wouldn't believe her testimony, though I guess he still called her, and if he had called the other witnesses who could have supported what she was saying, Your Honor.

And so I believe that Mr. Smiley was ineffective for failing to present my alibi because, like I said, he never came to visit me at the county jail, and had he visited me and conducted an interview with me, I would have told Mr. Smiley that I was at my son's baby shower on the day this crime happened. I would have told Mr. Smiley that, but I was never afforded an opportunity to do so.

And I would have told Mr. Smiley, had he come visited me at the county jail and interviewed me, I would

have told Mr. Smiley I had other witnesses who could have testified to the same event my mother was testifying to, Your Honor, and Mr. Smiley didn't never interview none of my witnesses, it was just --

Q. One of the other things that you said is his failure to investigate. Did he have a private investigator assist him in the preparation of this case?

A. No, sir.

Q. Okay. So these witnesses, they had to solely come from you telling him, correct?

A. Yes, sir, and the only time I got the opportunity to tell him was during the jury selection. The whole 20 months I was sitting in the county jail, I never had the opportunity to discuss my story with him. I never had the time to tell my side of story that could have proven me innocent at my trial.

Q. Now, this one particular visit you said you only visited one time prior to going to trial?

A. Yes, sir, one time.

Q. Okay. What is this you are handing me?

A. That is the visitation log book from the Charleston County Jail that I had a subpoena, because prior to this case, I filed several complaints against Mr. Smiley. I filed a legal malpractice action against him. I filed a complaint with him in the disciplinary

counsel, and I also --

Q. Let me help you out here. This date he has highlighted is January 4, '09?

A. Yes, sir.

Q. And you went to trial?

A. February 23rd, 2009.

Q. And that is the only time you saw him come to the jail?

A. That's the only time I saw Mr. Smiley.

Q. And you were in the jail the entire time?

A. I was in the jail for 20 months.

Q. And, like you said, this is the only time he came to visit?

A. That was only time he came to visit. I got copies of those letters too. I told Mr. Smiley, You need to interview me. I need to tell you this. I need to tell you that.

Mr. Smiley ignored all my letters, he never responded, and I said when he did came --

Q. This is the visitation log from the county jail.

A. Yes, sir. That's the visitation log from the county jail.

Q. And you want to ask the Court to put this into evidence?

A. Yes, sir. I want to ask the Court to add it into

evidence.

THE COURT: Any objection from the state?

MR. FRIEDMAN: I have no objection, Your Honor.

THE COURT: Marked and admitted without objection.

(Visitation log marked for identification and admitted into evidence as Applicant's Exhibit No. 1.)

BY MR. BROOKS:

Q. All right. Now, Mr. Goss, what was the next thing you wanted to say?

A. Okay. Next one I was getting to ready to say is I would like to offer my letters, copies of my letters, that I was writing to Mr. Smiley while I was in the Charleston County Detention Center informing him to come visit me and provide me with the Rule 5 materials.

Q. And you have one letter, June 15, 2008, and this is the letter you wrote to Mr. Smiley, your attorney; is that correct?

A. Yes, sir.

Q. In this letter you ask him for Rule 5 material and to discuss your case; is that correct?

A. Yes, sir.

Q. And you also have another letter, January 5, 2009 where you're asking -- you apologize for the behavior on

the last visit, and you talk with him about the Rule 5 letter; is that correct?

A. Exactly.

Q. This was a letter sent from you to Mr. Smiley?

A. Yes, sir.

Q. And you're asking to put this into evidence.

A. Yes, sir.

MR. FRIEDMAN: No objection.

THE COURT: Marked and admitted without objection.

(Letter marked for identification and admitted into evidence as Applicant's Exhibit No. 2.)

BY MR. BROOKS:

Q. After that letter, he never came back to you see; is that correct?

A. Yes. He never came back to see me after January 4, 2009.

Q. The next time you saw him was basically sitting in a courtroom like you're here today.

A. Yes, sir.

Q. Picking a jury.

A. Yes, sir.

Q. Okay. And go ahead.

A. And that is when I was allowed the opportunity to give him my witnesses who was willing to testify and

tell -- and explain how those stolen clothes got up in my house and also explain how that gun was found in the car, in the driveway of my mother's house.

Q. And who are these witnesses again? One at a time, slowly.

A. All right. You got to have my little brother, Clifford Hartwell, junior.

Q. And what did you tell Mr. Smiley how Mr. Hartwell would help you?

A. I told Mr. Smiley Mr. Hartwell would explain how those clothes items got to my mother's house.

Q. All right. Next witness?

A. My kid's mother, Angelique Gadsden.

Q. And what did you tell Mr. Smiley how her testimony would help?

A. She would have testified to the same exact testimony that my brother, Clifford Hartwell, was going to testify, to that she saw those guys out there selling those clothes items that day and she saw that my mother as well as Sharon Goss purchased some clothing from those guys, that they were already back to the house, my mother's house.

Q. And the next witness you gave to Mr. Goss?

A. Sharon Goss.

Q. He was going to testify to basically those same

things?

A. Yes. He was going to testify to the fact that he bought the gun from those same guys that were selling the clothes. He was going to testify that he bought that gun and that he placed it -- he was the one who had ownership of that gun as well as his car because the gun was found in his car, so he was at trial going to testify to the fact that yes, he did bought that gun and yes, he did placed it in his car.

Q. Any other witness you tried to tell Mr. Smiley about?

A. I told him about my other brother, Benny Goss.

Q. And --

A. He was going to testify to the same event, that he saw those guys out there selling clothes and he saw my mother. Sharon Goss went down the street and purchased some clothes and came back to the house. He was going to testify to that as well.

Q. Any more witnesses?

A. No, sir. That's all.

Q. And did you tell me about an alibi witness at a baby shower?

A. Oh, yes, sir. At the date and time of this crime, Your Honor, I was at my son's baby shower. My son's baby shower was held at the old Dorchester Club on Dorchester

County at 3557 Dorchester Road. At the time that this crime was being committed, I was attending my son's baby shower. My son's baby shower was held at 7:00 p.m. all the way until 9:00 p.m. I believe that the crime happened somewhere around 7:30, so during the time that this crime was being committed, I was at my son's baby shower. My son was just born prior to, and I was attending his baby shower, and I had witnesses who was there at the baby shower who was willing to testify to the same event, that they was at the baby shower as well, and they saw me at that baby shower from -- during that time from 7:00 to 9:00 p.m.

Q. Were those the people that you intended to tell Mr. Smiley about?

A. Yes, sir. That's -- Mr. Smiley had came and interviewed me, as he supposedly, should have, I would have told him that at the time of the crime I was somewhere else. I was at my son's baby shower. I would have told him that.

Q. Now, is the other things that you want to put into evidence, you had a conversation, Darrell?

A. Yes, sir. I had -- I have my affidavit, I would like to offer into evidence. I have the affidavit of my witness, Angelique Gadsden, that I would like to offer into evidence. I have --

Q. Is Ms. Gadsden here?

A. Yes, sir. I have an affidavit of my brother, Ben Gadsden. I would like to offer --

THE COURT: We only take live testimony because the state can't cross-examine affidavits.

MR. BROOKS: I understand that. I was just making sure my client -- is he here?

THE WITNESS: No, he's not. No, the only person that is here is Angelique Gadsden, Bernard Goffrey, Felicia Henderson, Lucretia Douglas, and that's all. Also, here I have a picture I would like to offer as well. That's the old Dorchester Club on Dorchester Road where I was on June 14, 2007, and that is a picture of it that I would like to offer as well.

Q. Now, you understand, Bernard Godfrey, Felicia Henderson, Lucretia Douglas, and Angelique Gadsden, we're not going to submit their affidavits because they're here. We're going to call them to the stand.

THE COURT: Tell me which ones would corroborate that he was at the baby shower.

MR. BROOKS: Angelique Gadsden, Lucretia Douglas --

THE COURT: Are they related to him?

MR. BROOKS: Angelique is the mother of the child.

THE COURT: I understand. Who is Lucretia Douglas?

MR. BROOKS: A friend. Bernard Godfrey.

THE COURT: Is he related to him?

MR. BROOKS: He's an uncle, and Felicia Henderson.

THE COURT: Is she related to him? What is his relationship to him?

MR. BROOKS: Friend.

THE COURT: And each of them would say he was at the baby shower?

MR. BROOKS: That's my understanding.

THE COURT: The Court takes judicial notice that those individuals, if they had been called to testify, would have testified that he was, in fact, at this event, which he has call -- which -- the baby shower. Is that acceptable to the state?

MR. FRIEDMAN: Yes, Your Honor.

MR. BROOKS: Is Your Honor taking notice in lieu of me calling them to the stand?

THE COURT: Yeah, because I assume they're going to say there was a baby shower at this location and he was there from 7:00 to 9:00.

MR. BROOKS: I have affidavits here.

THE COURT: I will enter it as a stipulation

as to what is what their testimony would be.

MR. BROOKS: There won't be any need to call them to the stand.

THE COURT: No, I assume -- I have no reason to doubt what he's saying, that they would all testify that they were there with him at the baby shower.

MR. BROOKS: Yes, ma'am.

THE COURT: From 7:00 to 9:00.

THE WITNESS: Your Honor, with the exception of two of those witnesses, all those witnesses, but the other witnesses, Sharon Goss, he would have --

MR. BROOKS: We didn't get to that yet.

THE COURT: I am clear what Sharon Goss would have testified to, sir. Let Mr. Brooks help you, please.

BY MR. BROOKS:

Q. Just to put on the record, Cliff Hartwell -- what was your expectation of what Cliff Hartwell would testify to?

A. He's going to testify to the fact that he witnessed my mother, Sharon Goss, brought clothes items from some guys that were down the street on June 15.

Q. And these were the clothes that police say was stolen?

A. Yeah, stolen, stolen item.

Q. And that would contradict the state's theory of

the case?

A. Yes, sir.

Q. Sharon Goss would say that he bought these clothes?

A. He bought the clothes -- he was with my mother. She bought the clothes, but he bought a gun from those same group of guys that was selling the gun.

Q. And Clifford Hartwell witnessed the transaction?

A. Clifford Hartwell witnessed the transaction.

Q. And are these people in court today?

A. Yes, they are all.

THE COURT: Court takes notice that would the substance of their testimony. Any exception from the state?

MR. FRIEDMAN: No, Your Honor.

THE COURT: You may proceed.

BY MR. BROOKS:

Q. You understand that we don't have to put the affidavits in, we don't have to call them, she has already taken judicial notice what they were going to say as it relates to the stolen clothes.

A. She's not going to call them?

Q. She has basically said she knows what they're going to say and didn't dispute that. Do you understand that?

A. I need it on the record for appeal purposes.

THE COURT: Sir, it's better than a record. I have taken notice that that is what they're going to testify to, all right? And the state does not object.

MR. BROOKS: It's on the record.

THE COURT: Let's let Mr. Brooks do his job.

BY MR. BROOKS:

Q. This is a picture of the club where the baby shower was.

A. Yes, sir.

Q. Do you know who took those pictures?

A. Lucretia Douglas.

Q. And Lucretia Douglas is one of the people that were here to say you were there on that particular date on that particular time at 7:00 to 9:00?

A. Yes, sir.

Q. You had to be there as opposed to at the scene of the crime?

A. Yes, sir.

Q. And you're asking the Court to take this into evidence, which is a picture of that club taken by Lucretia Douglas?

A. Yes, sir.

THE COURT: I don't know what purpose that would serve. It's really not relevant. Picture of the

club is not relevant. Established.

BY MR. BROOKS:

Q. Is there anything else you want to put in?

MR. BROOKS: My client has some memorandums and amendments he would like to be typed up. I have shown Mr. Friedman a copy. We would like to make this a part of the record.

MR. FRIEDMAN: No objection.

THE COURT: It will be marked and admitted.

(Memorandums and amendments marked for identification and admitted into evidence as Applicant's Exhibit No. 3.)

BY MR. BROOKS:

Q. I believe that covers everything. The Court has taken judicial notice of your witnesses, so that's on the record. In regards to the alibi and regards to the clothes that were purchased; in regards to the stolen clothes, to the gun, the Court has taken judicial notice of that; the memorandum has been put into the record.

A. Okay. All right. I just want to make sure that my three issues has been presented to the Court.

Q. You testified to those three issues, failure to investigate, failure to call contradictory evidence -- to rebut the state's evidence, and failure to call alibi witnesses. We have called that, and we've put the

memorandum of law into the record that highlights that as well.

A. Okay.

Q. Is there anything else?

A. I just would like to say that Mr. Smiley's ineffectiveness is all stemming from the fact that he never got an interview with me. I continue to stress that if he had done what any reasonable lawyer would have done, which would have first -- what they're trying to say about anything, that the state's case was entirely circumstantial. They couldn't place me at the scene of the crime. There was no overwhelming evidence, so I would believe, in light of that, a reasonable attorney would have consulted with his attorney to understand what is going on, what transpired, and had he done that, I would have given everything to Mr. Smiley at that time.

I didn't know that -- because he refused, refused to give me the Rule 5 discovery material so because I wasn't aware of all, all I was aware is what my family was telling me, what the rumors they were hearing, so I was trying to contact them so he could come to the county jail and see me.

So had he done that, I know the outcome of my trial would have been different because he would have been able to effectively represent me. He would have

been able to tell the jury that I had an alibi -- he would have been able to put up an alibi defense, and as well he would have been able to call rebuttal witnesses to rebut all the state's evidence against me.

Q. Okay. All right. Mr. Goss, answer any questions from Mr. Friedman.

THE COURT: Mr. Friedman, you may proceed.

MR. FRIEDMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. FRIEDMAN:

Q. Good morning, Mr. Goss.

A. Good morning.

Q. You testified you only met one time with Mr. Smiley?

A. Yes, sir.

Q. And you testified that was to discuss a guilty plea?

A. Yes, sir.

Q. Do you remember what that plea offer was?

A. Yes, sir.

Q. What was that?

A. That was 12 years nonviolent.

Q. Nonviolent?

A. He said that the state was offering 12 years nonviolent but he would recommend ten years nonviolent.

He said it was most likely that I would get the 12 years due to the fact that I had a prior conviction.

Q. Whose decision it was to reject the plea offer?

A. I don't understand the question.

Q. Was it your decision to reject the plea offer or your attorney's decision?

A. My decision. I rejected it because I didn't have no involvement in this crime, and I was about to tell him, but he shut me all the way off. He said, Don't tell me anything about the case, because whatever you tell me I'm stuck with.

Those were his exact words, and I went off on him, got mad, cursed him out. I walked out.

Q. You also testified he failed to investigate. What else did you want him to investigate?

A. I wanted him to investigate -- I believe that would be the first part of the investigation, to interview potential witnesses. I was a potential witness in the case. He never interviewed me. I could have -- if he had interviewed me, I could have told him that I was at another location at the time of the crime. I would have told him about the witnesses, and so that would have gave him evidence that he could have gone and investigate, interview witnesses, go to interview my alibi and the defense and their witnesses. He would have

been able to interview me.

Q. Did you ever discuss the alibi defense with him?

A. I wasn't allowed to. I wasn't able to. The only time he came to see me, I attempted to. I said, I'm innocent of this crime. It was somebody else.

Right at that moment, he shut me down and told me don't tell him nothing about the case, so as I was attempting to, he cut me off and shut me down.

Q. Did you ever review the discovery with him?

A. No, sir. He refused to give me discovery. I sent multiple letters to his office requesting discovery. I even wrote chief Chief Justice Jean Toal telling her he refused to give me the Rule 5 discovery material and I believed that was all part of the mess he was trying to do to me. He didn't want to give me the facts.

Q. Did he ever tell you about your right to testify at trial?

A. Yes, sir. At trial he told me. He told me he don't think it's best that I testify because I had those prior convictions and the jury would look at that, so he told me he don't believe it's best I testify. I didn't testify.

Q. Whose decision was it not to testify?

A. Mine.

Q. When did you tell him about your potential

witnesses?

A. During the jury selection. No, no, sir. I was never able to tell him about the alibi. I told him the witnesses that I was -- that I wanted to call to rebut the state's case against me, by at the time, during jury selection, I wasn't able to tell Mr. Smiley I had an alibi.

Q. Did he give you a reason for not calling your witnesses?

A. No, sir.

Q. I believe you testified that those witnesses, their testimony would have been the same as your mother's; is that correct?

A. A few of them. Like I said, you got two events that took place, so some would have testified to my alibi and some would have testified to the evidence that was seized from my mother's house.

MR. FRIEDMAN: I have nothing further, Your Honor.

THE COURT: Any redirect?

MR. BROOKS: No, ma'am.

THE COURT: You may call your next witness.

MR. BROOKS: We call Mr. Smiley.

JAMES WATSON SMILEY, IV,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROOKS:

Q. Mr. Smiley, how are you today?

A. Good.

Q. Were you representing Mr. Goss?

A. I did.

Q. And you were retained?

A. Yes. Nominally, yes. I had known the Goss family for a long time?

Q. Can you give a brief summary of what the state's case was.

A. Certainly. The state's case, as Mr. Goss said, was circumstantial. They three major pieces of evidence. They had a fingerprint on the front door -- actually, a full palm print on the glass door on the outside. They had a gun recovered from an automobile in the front yard of the Goss's family home that Darrell resided at that had the victim's DNA embedded in it, and they had tons -- not tons, a lot of clothes they found inside the home that still had tags attached to it.

Q. Okay. And not to mention he went on trial with the codefendant, who had much more of a case than he.

A. Oh, they had a good case against the codefendant, but I don't believe there were any Bruton issues to be

able to try the case separately. I would have loved to have tried this case separately.

Q. Did you make a motion to sever?

A. No, I think I have to have some legal basis to make that motion, and unfortunately, the main reason I would say that I could sever the trial would be based on the fact that one of the parties had made a statement that I couldn't cross-examine in this case that wasn't true.

Q. The codefendant, Joy Mack, there were no statements?

A. No, there were no statements from either party about who did what.

Q. Okay.

A. And I'll tell you right now, because I believe in Darrell's innocence. I won't tell you otherwise. I think the jury came to the wrong conclusion in this case.

Q. Okay.

A. Even in light of the evidence we had to overcome.

Q. Now, do you recall how many times you met with Darrell prior?

A. I don't. Darrell had more than this set of charges, all right? He had had another set of charges of robbery, kidnapping, burglary that had occurred about 18 months to two years prior to this event that he had been

in jail and gotten out, and then this event happened and he got put back in.

I saw him when he was first arrested once or twice, to the best of my recollection, and then a period of time went by where I didn't see him. I told him it's going to be a while. He had 19 pending indictments, or charges, against him. During that time he filed a -- he wrote Justice Toal in the middle of the case, complaining, basically was asking for a speedy trial at that point in time, if I remember correctly.

And both Justice Toal had directed both me and the prosecutor to respond to it, which we did, and she -- I don't know, it wasn't really legal actions, but we submitted letters to her and then she dismissed it. I saw him around the time that that was done to talk to him about it, and then I can't tell you I met with him on a real regular basis because this case took some time.

As he said, he was in jail for about 20 months. I vividly remember the time that we had a disagreement, though. I don't remember it being that close to trial. I thought it was a little earlier than that, but I'm not disputing what he says, because he and I had words, there is no doubt.

Q. Now, you did not have an investigator in this case?

A. No, I did not.

Q. Did you -- you didn't call any of these witnesses that -- let me say this: You've been sitting here, you heard --

A. Certainly.

Q. -- Court take judicial notice about this.

A. Uh-huh.

Q. Did you call any witnesses at the trial?

A. Obviously not.

Q. Okay. And particularly the ones that were going to say he was at the baby shower?

A. I didn't know about an alibi. I'm not saying there wasn't one, I didn't know about one, and if I should have known about that, I'm wrong. First time I've heard about an alibi, it was after the case was tried. If that's my fault, that's my fault.

Q. Okay. Did you hear the Court take judicial notice about the clothes and the guns, what the other witnesses would have testified to about that?

A. Yeah, and I would agree I knew about some of the witnesses that would testify about the fellows being on the street selling it. I don't recall, because I think it would be significant, about the information about Sharon Goss purchasing the pistol from those guys and putting it in the car, because if I had known that, I

could have elicited from Thomasina, his mother, when she was on the stand, because, as he said, she was present right there when Sharon purchased the gun, so I didn't have a recollection of that.

But as far as having other people that would testify that there was guys out on the street selling the clothes, I knew about those, but I used the mother, and I agree she had a little bit of a record, but I felt she was pretty persuasive and told the event very well, about the clothes and what happened.

Q. Okay.

MR. BROOKS: Beg the Court's indulgence, Your Honor.

BY MR. BROOKS:

Q. During that meeting where words were exchanged between you and Mr. Goss, do you recall you saying, Stop, don't tell me anything, whatever you tell me --

A. I don't recall that, but I wouldn't say I wouldn't say that. There is a lot of times that I tell my clients that I need you to be quiet until we are able to get to the point that I can tell you what the state's case is, and I can discuss with you possible defenses and what the law is, and then we'll talk about what I need to know about the case.

I didn't get that far with him, because we

exchanged words. We later made up. I'm not going -- I mean, I told him if he didn't want -- didn't we even have a motions hearing about whether I was going to be his lawyer? I don't remember.

The judge kept me on the case. I told the judge, you know, if he wanted to remove me, that's fine, but I'm not asking to be taken off the case. I've known this family, I've known Darrell since he was a young boy, and while I understood his frustration with this situation, I was still willing to be his lawyer, and I think that result would still be me being his lawyer so yeah, we had that.

For lack of a better word, we made up. I do remember going over the discovery with him. If he says I didn't, I'm not here to say he's not telling the truth. That's not what I'm saying. I just don't have that same recollection, and I want to make clear, Judge, as a general policy, when I have a client that's incarcerated at the Charleston County Jail, I don't give them a copy of their discovery. However, as a general policy, I certainly go over every page, and while I don't have a clear recollection of what day or what time or was it in my file that I went over to prepare the case, I certainly had to, is I felt like I tried a really good case, or I felt pretty good about it.

I felt like we explained the fingerprint on the outside of the door, because he had been to the store with his mother prior to that, and while the victim in the case testified they cleaned that door over and over and over that day, is you can't age a fingerprint, and I think I established that at trial, so I felt like we defeated that, and then the next thing is I think we defeated -- I felt like we had defeated the gun, and then, of course if I had known, or if I had heard about Sharon, that would have been something to consider. I don't know if I would have called him or not.

I would have probably asked the question of Thomasina while she was on the stand, but that was hard to overcome that there was a gun with the victim's DNA on it in a car that wasn't -- and I stabbed at trial, it wasn't Darrell's car, but it was in the yard of the residence, so, again, it was circumstantial, it wasn't direct, and I felt like we had given a pretty good explanation of -- that he didn't have any control over that car, and there wasn't an explanation for that and I used Thomasina to explain all the clothes, and I attacked it in two different ways.

First, the tags weren't unique to Urban Gear. They were just regular old little orange tags, so I established we couldn't say they were unique to that

store. Second of all, the fellow, even though they had been open a short period of time, couldn't give an inventory to the police of what was stolen, so I cross-examined the victim on that for white quite a while: So you can't tell us whether it was one pair of shoes, ten pairs of shoes; you can't tell us what kind of shirts; they aren't unique to your store, so we went through that.

Additionally, there was stuff found in the house that didn't come from the store with price tags on it, sunglasses, hats, and I established that, so it supported what Thomasina had told the jury, that there were fellows out there selling stuff and she, in fact, bought them because they were such a good deal. And, yes, she probably knew she was buying stolen goods, but everybody on the street was buying them.

So I think we attacked each of the three elements, all right? If there was an alibi, I didn't know about it, all right, and it's my fault for not knowing about it. It's not my fault for not knowing about it today, that I'm hearing about the alibi. I'm not saying it didn't exist, I'm just saying we didn't have a discussion about the alibi. I thought we could defeat the case with circumstantial evidence.

As far as calling up other people to testify to

the same thing that Thomasina had, strategically, Thomasina, to put her up there, she actually had a little bit of a record, but Thomasina speaks very well, and she came through. The other people were bolstering, to a certain degree, but that's not why I didn't put them up. It's my belief the more you put out there, they start pitting your people against each other, and I had a strong, what I felt, was a strong witness who testified. So I didn't call -- again, Your Honor, if I had known about the alibi, and if it was my fault for not knowing -- and I can tell you, we had difficulty communicating.

And if I could just finish up, because I think I could cover everything, is I wasn't angry with him about the situation. I understood his frustration. It was just that he didn't want to hear what I had to say, and the explanation, he just didn't want to hear it, and he wanted a trial.

I said, All right. We'll get ready for a trial. My getting ready for a trial, is first can I defeat the state's case? I felt like, because it was circumstantial, and the three points that we had put up good, solid defenses to each of those circumstances, and so even if I had had the alibi, unless it was airtight, I don't know if I, strategically, would have put it up

there because you live and die by your alibi, and I thought we had a pretty -- it turns out we didn't because he lost.

I thought we had a pretty good case in defense, and while we had to try the case with Mr. Mack, who had -- they had a much stronger case against us. Sometimes that helps us, because we can sit to the side and say, you know, you got an ID on Mack. That's the guy that beat the fellow. They can't even -- they couldn't even identify Darrell as being there, and there also was, after the event, subsequent altercations between the victim and Mr. Mack, and none of that with Darrell.

And so I felt good about it, and I felt terrible about the result. There is no doubt about that. I mean, I've known the Goss family forever. It's not something that I -- and, yeah, I look back over and say, What could I have done different?

And, yes, Darrell and I could have communicated better, and I will take responsibility for my part of that, and as far as doing an investigation, I lost money on this case, as far as defending Darrell, because literally, the way I did things -- his mama is the one that initially paid me. I might have got $1,000 for this case, and that is the way I am. I'm not complaining, but it also hamstrings some of the things I could do.

Lastly, on this plea offer, I still to this day think he should have considered it, and it wasn't so much -- I already told you --

Q. He testified that it was ten or probably going to be 12?

A. I'm going to get to that. He had 19 indictments against him, all right? From not just this event, but another event and another little thing in between, but 19 indictments of which we had armed robberies, kidnappings, burglaries, lot of large crimes.

Q. Separate incidents?

A. Yeah. One major arrest, and I'm not telling you they were great cases, all right, I'm just telling you we were looking at a pile of time, and Mr. Lawton offered us one count of strong-arm robbery, dismiss everything else, with a cap, not a negotiated, but a cap of 12, all right? So it was from zero to 12, and I absolutely told Darrell, Do not look to get less than 12.

I will certainly ask for that, but given the fact we're getting all these other charges dismissed, the fact that we have got a victim in this case that's not, for lack of a better word, a street guy, all right, he was a business owner, and Darrell's record, I said we should expect 12, but even if you got 12, given what we're getting dismissed, I think you need to strongly consider

because I know if you accept that, you come back with life.

All right? Whereas if you get convicted at trial -- because I had told him, I expect the judge to give you 30, all right? I argued passionately for the 20, but that was that discussion. It got cut off because he was upset. I was talking to him about the plea because he said, I didn't do it, and I said, You need to listen to me and it escalated from there. All right?

MR. BROOKS: No more questions.

THE COURT: Any questions for the witness?

MR. FRIEDMAN: Just briefly.

CROSS-EXAMINATION

BY MR. FRIEDMAN:

Q. Mr. Smiley, how long have you been practicing law?

A. Since 1993.

Q. I think you testified you didn't recall how many times you met with the applicant?

A. No, and I'm not going to tell you I met with him a ton, but I met with him more than -- my recollection, I'm not saying he didn't tell you the truth. My recollection is more than once, certainly.

Q. Do you remember if you discussed elements of the charges of what the state was required to prove?

A. Yes.

Q. Did you discuss his version of the facts?

A. Not to any degree, I'll put it that way. I was focussed beating the circumstantial elements of the state's case.

Q. Did you discuss potential defenses with him?

A. I told him what my theory of the case was, yeah.

Q. Did you review the discovery with him?

A. My recollection is I did, and, again, I'm not trying to say he's not telling the truth. That's not what I'm saying here.

Q. Did you think you had enough time to prepare for trial?

A. Yeah. I was prepared for trial. I wasn't prepared for an alibi defense because I didn't know about it, and, again, that's my fault. I'm wrong. I'll make it clear.

Q. What kind of investigation did you do?

A. The investigation, in my case, was limited to taking the discovery, sitting down, finding out how I was going to defeat it, figuring out if I felt that was strong enough.

As far as going out on the street and talking to people, didn't do any of that; hire investigator, didn't do any of that. I got the discovery and figured out how we were going to defeat each one. The witness that was

going to help me defeat it was Thomasina Goss, who I had a relationship with and knew her and knew when she told me something I could bank on it, at least that's the way I saw it.

MR. FRIEDMAN: I have nothing further, Your Honor.

THE COURT: Any redirect?

MR. BROOKS: No, ma'am.

THE COURT: Mr. Smiley, what happened with those other indictments?

THE WITNESS: After he was convicted, they were dismissed.

THE COURT: If you knew about the alibi, would you have put it up?

THE WITNESS: And as I testified --

THE COURT: You said if it wasn't airtight you wouldn't have.

THE WITNESS: If it wasn't airtight, and I can't tell you whether it was airtight. From what they've described, it sounds like a really good alibi, but at the time I did not have that, and, like I said, if I didn't have it, I'm not telling you it didn't exist back then. It's my fault if I didn't ask the right questions on that, but in this case, can I tell you, I would have put it up? No, ma'am, I can't tell you I

would because I had thought we had already -- I thought we had what we needed to beat the circumstantial elements of the case. It wasn't going to be easy, but I thought we had. I think Mr. Brooks wants to ask me a question.

THE COURT: I'm going to let him, soon as I'm done.

THE WITNESS: I tend not to put up an alibi unless I really have to, Judge.

THE COURT: My next question was going to be in the breadth of your experience of doing this type of work, do you find juries generally take the word of the person's family member credibly? Just in the whole picture of this entire case, and the entirety of this record is what I'm --

THE WITNESS: No, ma'am. I think there is always skepticism when a family member testifies, and what I tell a family member when they're going to testify is you can't slip up on anything. An uninterested party or a state's witness can get the color of something wrong, for instance, and the jury doesn't label them a liar, whereas a biased party, or a family member, messes up on something small, they just discount the whole testimony.

However, through my relationship with Thomasina, I knew she spoke well, I guess is -- I knew

she had some history, there is no doubt about that, Judge, and she had some crimes of dishonesty, but she spoke well and she was convincing -- a convincing woman, and so when I went over the testimony with her, I felt confident in what she was going to testify to and felt it was pretty convincing in my mind.

THE COURT: Did she ever mention to you these other people?

THE WITNESS: No, ma'am.

THE COURT: Or being in the presence of this other person when a gun was purchased?

THE WITNESS: No, she did not mention the purchase of the gun, but that would have been very significant to me.

THE COURT: Can you think of any reason she would not have mentioned it to you?

THE WITNESS: No, ma'am, unless I didn't ask the right question, but she communicated well.

THE COURT: You were about to say something. You said Darrell and --

THE WITNESS: Sharon. If I had known that Sharon had purchased a gun, even though he would have had to get -- putting him on the stand about that would have given me a little concern about purchasing a gun and putting it in the car in the yard. I probably would have

called him. I can't say I wouldn't. I did not get that information, and, again, if I didn't elicit that --

THE COURT: Do you think there was a possibility it still would have implicated your client due to the fact they're related?

THE WITNESS: Yes, ma'am. It's possible.

THE COURT: Sort of a double-edged sword.

THE WITNESS: Yes, ma'am. And I thought when the jury went out, when I turned to Darrell and talked to him, I thought it was as good a case as we could have put up. I felt very good about the case. In retrospect, I don't know that I would have done anything different but for I would have considered putting Sharon Goss up, now that I know about that, and, again, that's my thing.

THE COURT: Do you think that would have made any difference in the outcome?

THE WITNESS: Well, it would have helped defeat the circumstantial evidence, and that was probably -- of the three, the clothes, we gave a strong explanation for. I don't know whether the jury bought it or not, but that was what our testimony was. And the fingerprint is -- I think the gun, the DNA on gun in the car, was probably of the three the hardest and so I might -- it might have made a difference. I can't say it would, because he was a family member.

THE COURT: Did he live at the house?

THE WITNESS: Yes, ma'am. There were about 14 people that lived in that house at the time, not just family members, but cousins and what have you. There were a lot of people that lived there. Thomasina, bless her soul, has taken care of a lot of people and has always got an open door and an open heart, despite her difficulties too.

THE COURT: And you said, based on the applicant's testimony, is it your perception that the alibi would have been airtight?

THE WITNESS: Well, I just heard about the alibi after the fact, and I can't say if it would or wouldn't. It sounded good, I can tell you that. 7:00 to 9:00 at the club would have covered the time. It would have been helpful if we had a picture of him there or something around that time, time stamped, but, you know, I'm just telling you what would have made it perfectly airtight. I have only presented alibis in my career five times.

THE COURT: I would imagine it was with individual witnesses who were not related to the individual.

THE WITNESS: Yes, ma'am, and all five times we were successful, however, but I very rarely used an

alibi because of the fact that they only listen to the rest of the case if your alibi fails, and we had a good circumstantial defense, I believed.

THE COURT: And you don't know if any of these withins had a record or otherwise that may have been used to impeach their credibility?

THE WITNESS: I know a little bit about some of the family members. I don't know all of the people who would have testified. A couple members had records, I wouldn't say a large scale, but small records, and that is from me just knowing the family.

THE COURT: Knowing that, would that have affected any sort of strategic decision about using them?

THE WITNESS: I don't know because Ms. Goss also had a record. It would depend on how they presented. Ms. Goss, while she had a record, presented in, my mind, well, so I can't just tell you I would have discounted them, but it certainly would have been something I would have had to consider.

THE COURT: Any questions as a result of my questions from the applicant?

MR. BROOKS: Yes, ma'am.

BY MR. BROOKS:

Q. In particularly about the alibi that you say you didn't know about, if you had known about it, is it fair

to say that you might have gotten an investigator to check out these people who may have led you to other people who might have been disinterested?

A. I would tell you that I wouldn't have gotten an investigator because I didn't have any funds in the case, but would I have done something?

Q. That's the next question. Would have you gone -- for instance, one of the people the Court has taken judicial notice is Lucretia. If you had talked to Lucretia, is it fair to say Lucretia might have said A, B, and C were also there?

A. It's fair to say, instead of going out and searching her, if I had known about the alibi, I would say, Darrell, get them to my office, because that's what I have done in the past when I'm on limited funds. If they want to testify, get into my office. It didn't happen, and if it was my fault, I was wrong.

Q. And if those people had come in and then you found out that they would have been disinterested, you know, not family members, is it fair to say they may -- and if they turned out to not have any records --

A. If I felt like the alibi was airtight, I would have presented it. I don't know if the alibi was airtight because I did not know about it to pursue it.

Q. And it's fair to say that if you had to, you might

have found out it might have been airtight.

A. That's exactly what I'm saying. I can't judge the alibi because I didn't know about it back then. If it's my fault for not getting that information, all right, from my client, then I was wrong.

Q. And another thing. You talked about Sharon and buying the clothes and the gun. Is it fair to say if you talk to Sharon, you might have been able to find out who the fellows were that were selling the gun and the clothes?

A. You're pushing a little far now because I asked Thomasina who they were and she did not know them, all right, and Thomasina knows about everybody in that neighborhood, so what it tells me is y..were outside the neighborhood. That's all I can tell you, all right? And so talking to Sharon, as far as the clothes go, would it have helped? I don't know that it would, because Thomasina, she's the matriarch. She knows what is going on. I don't know how else to say it, so I don't know that by itself would have made any difference, the knowledge of Sharon buying a gun, which I didn't know about, and I had talked to Thomasina about the event in detail.

While I had not spent a lot of time with Darrell, I had spent a lot of time with Thomasina, and I'm not

telling you that's right or wrong, I'm just telling you what it is, so Thomasina told me about going to the store with Darrell because she had told me about the fellows in the street selling the clothes, and while she knew they were probably stolen, she bought a bunch of them. She's got 14 people in that house. She bought everything under the sun, but she did not tell me about the gun, and she didn't tell me she knew Darrell was at the shower, all right?

Like I said, maybe I didn't ask the right questions, but she and I communicated over the years, and still do, fairly well, so that's all I can say.

MR. BROOKS: Okay. Nothing else, Judge.

THE COURT: Any questions from the state in light of the Court's questions?

MR. FRIEDMAN: No questions.

THE COURT: You may step down.

THE WITNESS: Thank you, Judge.

THE COURT: You're welcome.

Anything further from the applicant?

MR. BROOKS: That's the applicant's case.

THE COURT: Anything from the state?

MR. FRIEDMAN: No.

THE COURT: Actually, I need to ask this question, Mr. Smiley. If you need to chime in, please,

if I'm inaccurate, feel free to correct me.

Have you explained to your client, Mr. Brooks, that if the Court grants the relief he's requesting, it only gives him a new trial and he starts from square one?

MR. BROOKS: Which would include those indictments that got dismissed?

THE COURT: Have you explained to him all those dismissed indictments probably would be reinstated? And I will go out on the limb and saying knowing prosecutors as I do, they will all be reinstated. There is no statute of limitations in South Carolina. They were not dismissed with prejudice, and they will try you one at a time until they get life without parole. That would be their goal.

And I need to make sure, because I don't like to sugar coat things for people, that he really understands where he is at in this process and what he faces because if he were to be granted a new trial, that is what they're going to do, and you're going to get served with life notice and they're going to try you one at a time on those armed robberies, or whichever one is most serious.

They're going to try him until they get a conviction on two of them and get life without parole,

and then they'll they dismiss the others again because they won't have any interest in trying the rest of them. So -- and they're not going to be in any mood to deal. They're not going to make any offers. That is going to be their posture. So I'm not saying this to discourage you at all because it's not the Court's prerogative. It's not my life. I don't have to make the decisions, and I tell people this all the time.

The most severe, significant thing that's going to happen to me today is I'm going to go home. I'm going to water some flowers. I might wash some dishes; you know, I might clean my house. It does not affect me, but it affects you significantly, and so I like for people to make decisions with their eyes wide open. I don't ever want them to have any misapprehension about what they think it's going to be, what it might be because people tend to look at life through rosy glasses, and this is not a rosy situation.

So, you know, that old adage, be careful what you ask for, because what you ask for may involve a lot more than you anticipate; and I can tell you, based on this -- not just this solicitor's office, this solicitor's policy from the state of South Carolina. If you get the relief you're requesting, they're going to reinstate every single one of those indictments, and they

probably wouldn't retry you on this one. They'll retry you on something else and forget about this one, and so I don't want you to put yourself unwittingly in jeopardy and then later say, I really didn't know that was going to happen.

So I just need to make sure that you understand that the Court can't present it, can't do anything else, only thing I can do is grant you a new trial. And is that pretty much an accurate summary?

THE WITNESS: Yes, and the other concern we had, dismissed, found guilty at trial --

THE COURT: That's not with prejudice, though. That format specifically says with or without prejudice, and if it's not with prejudice -- and there is no statute of limitations on any crime in this state. They can reinstate them and all it takes is a form.

THE WITNESS: And the only other thing I can tell you, Judge, is that other cases, while they're separate events --

THE COURT: I don't know the strength of them or not. I have no idea.

THE WITNESS: This was probably the strongest case, but that's neither here nor there.

THE COURT: I just don't want -- it's my job to look at the totality of it, because I don't have a

position. I guess -- I have the luxury of being objective, completely objective, and so -- and knowing the system as I do, because I've been in it a long time, and I don't want him to be in a posture where he's surprised if he gets what he wants and they show up at the institution and say, Oh, by the way, we have reinstated all your indictments, and, by the way, here is a life without parole notice and have a good day.

And I don't want him to call you up or call you up and say, I didn't know that this was going to happen. I just want to make sure he's fully informed.

MR. BROOKS: In my letters to my clients, I basically explain to him, and all my clients in general, PCR is the only remedy they can get from the Court. My client is articulate, understanding, and competent and he has heard what the Court has explained to him and we chatted about the phone conference.

He explains to me he knows all the risk; is that correct, Darrell?

THE WITNESS: Yes, sir.

THE COURT: Because I don't take a position. Like I said, it doesn't affect me. I just need to make sure you make a fully informed decision.

MR. BROOKS: And you still want a new trial in this matter?

THE APPLICANT: Yes, sir.

THE COURT: Any closing argument?

MR. BROOKS: May it please the Court, Judge, basically all the things we placed on the record in light of the questions we've asked and you've asked and Mr. Smiley and what Mr. Goss has indicated, but my client has an alibi defense that was not put forward at trial that actually would show that he was not involved in this crime, and it is a very sketchy circumstantial evidence case. This is one of those cases where I think a large part of why he was found guilty is because he was sitting at a table with somebody they had a lot stronger case on, and a lot of times that happens, even though there are no Bruton issues and statement issues.

A lot of times when you put two people at a table and you got one person that he got a certified slam dunk case on, the jury ends up sending everybody to jail.

THE COURT: Hasn't always been my experience. Juries are incredible at that. They have a lot of common sense, and they acquit as many people as they convict and the collective body of 12 people -- it's funny. I've seen them in joint trials acquit everybody. I've seen them convict some and acquit others.

I stopped trying to figure out juries a long time ago. I still get butterflies before I take a

verdict because I don't know what they're going to do. I don't show it, but they shock me all the time. I never know what they're going to do.

MR. BROOKS: That would be our particular alibi defense, not all these people in the Court to notice -- not all of these people are family. You got more than one in there that are friends, and as Mr. Smiley indicated, he didn't know about it, but he definitely should have followed up on it, and that could have led to other people who might have been -- even had more credibility, who would not have been friends or closer friends, and we don't know what the testimony is about the closeness of kinship and friendship and that sort of thing.

But you might have gotten more and more people there that would have said, you know, Darrell Goss was at this baby shower at this club, such and such a place, such and such a time.

THE COURT: Did they take any pictures?

MR. BROOKS: Well, Judge, we could call them to the stand and ask them -- I'm sorry, ma'am?

THE COURT: No video?

MR. BROOKS: I mean, I don't know if there is video.

THE COURT: It's weird to have a baby shower

and people aren't tickled pink and taking pictures and everything, especially on phones. People put everything on You Tube anymore. No privacy. I don't understand how people live that way.

MR. BROOKS: Maybe these folks are different now just because --

THE COURT: Not this generation. They are narcissistic. They love looking at themselves.

MR. BROOKS: I understand.

THE COURT: That's just -- I take that back. It's not this generation. I mean, there are just certain things traditionally you do at a baby shower, and usually photographs --

MR. BROOKS: Judge, this would have been four years ago. They might not have kept all that, so assuming that they did, they just don't want to have a man's life hang on those generalizations. So we think --

THE COURT: Well, it's not a generalization. I think you could take notice that at a baby shower that people take picture because they want to document it. That's a critical, life-changing event. That is something that people document.

MR. BROOKS: But even if they did, Judge, there's no guarantee they would take a picture of him?

THE COURT: The daddy?

MR. BROOKS: I tell you this: Everything I know about the baby shower ain't got nothing to do with the daddy.

Those are for the mamas and the baby. Daddy could be sitting over in the corner. Nobody concerned about daddy. I got three kids at home and nobody's worried about me. That would help my client's case.

THE COURT: Once you have babies you don't count anymore.

MR. BROOKS: That would be our argument, my client knew the risk and he wishes to have a new trial for those things that have been testified to.

THE COURT: Mr. Friedman?

MR. FRIEDMAN: Thank you, Your Honor. The state would submit that applicant has failed to meet his burden. The issue is ineffective assistance of counsel, and in this case, counsel had no idea about the alibi witness defense until today. He testified that even if he knew about the alibi defense he might not have used it. He also didn't know about Sharon purchasing the gun from the same people that he purchased clothes from. That's something he might have looked into, but, again, he didn't know about it. I don't think he could be found ineffective for something he didn't know about.

As far as the other witnesses that he did

know about, they did testify about buying the clothes. He already had applicant's mother testifying. He said it was a strategic decision to call her because he thought she presented well on the stand and he knew her previously. The state would submit that any other testimony about that would be cumulative to her testimony.

As far as for the investigation, he did not hire an investigator, but he testified that he reviewed discovery, properly prepared the case for trial, and thought he had a good circumstantial defense, and at the end of the day, it didn't work out, but he was trying to get the case, and for that reason, I would ask the Court deny it and dismiss the application.

THE COURT: At this time I'm inclined to degree with the state that he has failed to meet his burden of proof in proving Mr. Smiley was ineffective. There are some things that just don't -- as my mentor would say, the puzzle just doesn't fit for me in light of the entirety of the record.

I read the record before court and I review everything, but sometimes it's necessary for me to read it again in light of the testimony, and I would like to do that before I render a decision, because there are some things I want to read again and go over again,

because I cannot make a decision just based on isolated sets of circumstance. I have to make a decision based on the totality of the record and whether -- what I've heard today undermines my confidence in the outcome of the trial.

I will tell you preliminarily that there's some things that trouble me, again, that don't fit because I'm objective and I'm a lawyer. I know I think like a lawyer. It's an occupational hazard. We all get brainwashed once we go through that process, but it's just a little hard for me to believe, because I've been in this process so long, that if you have an alibi that people are not shouting that from the rooftops. They will call your lawyer, contact your lawyer, especially the mother of your child.

The other thing I'm a little concerned about is that his mother told him everything else, all the details about the purchase of this clothing, but she was in the presence of a gun being purchased, which she had to know was found in the car in front of her house because a search warrant would have had to have been executed. She would have been there for all that to have taken place and said nothing.

That doesn't make any sense to me, that she would tell everything about the purchase of the clothing

while that was in your house, but while you didn't witness your other son purchase a gun, because mothers love children equally, I think sometimes one child might be more endearing, but ultimately mothers love their children equally, and I don't think she would act to protect one child over another when one child was facing something so significant, especially knowing she would testify.

And the law understands Mr. Smiley, to some extent, is between somewhat of a rock and hard place because he has some legitimate affection for this family. He has been with them a long time, has known them for a long time, and has, based on what I have observed, some real legitimate affection for Mr. Goss's mother and probably, you know, as we all do, it falls on our shoulders. If something happens in my office, obviously, I feel like it's my responsibility, I don't care who did it, because ultimately it's my responsibility, and what is what I perceive of him, but there are some things -- there is a give and take in a relationship with your attorney, and when you have that much contact with a family and there are such critical things that are just not spoken, all of it just doesn't fit for me, and I need to go -- and the other part of it too is I need to -- as he testified, that unless the alibi was airtight, he

would not have -- you know, he would not have elicited that testimony, I need to look at that in light of the entire record and look at the weight of the evidence and see if it would have made a difference, because the other thing -- the other part of this, without belaboring it because I know both you and Mr. Friedman are acutely aware of this, jurors very rarely take the word of a family member. It's all jaded, and he's correct, even if there is one little inconsistent thing, they're generally all written off as not telling the truth and that tends to be drastic in a case, because that could turn the whole tide of the case because they will figure because you're family is lying that somewhere you're culpable and it's always not making sense.

The other thing is there are so many ways the solicitor could have driven a truck through their credibility, and something as little as a picture -- there are no pictures, you know, they comment on the absence of evidence, and that may well have been as, if not more, damaging than not having presented that.

So I need to read the record again, and I need to think about it a little bit. I need to see if I can resolve those inconsistencies in my mind and look at the entirety of the record and determine if, in fact, what has been presented would have made a difference

ultimately in the outcome of the trial because the thing about an alibi is if it doesn't succeed completely, it will sink you just as quick as it can save you, and, generally, alibi witnesses are considered more credible when they're completely detached and have no relationship to the person, unless you have some independent corroboration of what they're saying.

But I'm going to have to look at the entirety of the record and then I'll make a decision at that time, and if I decide on behalf of the applicant, I'll let Mr. Brooks know that I need him to prepare an order, and if I decide for the state, I'll have Mr. Friedman provide an order.

Either way, I'll let you know in about -- I'll read some this afternoon and just see how long it takes me to read the entire record again.

MR. BROOKS: Yes, ma'am.

THE COURT: Thank y'all so much. Have a good weekend.

- - -

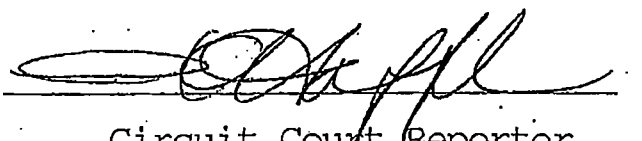
(Whereupon, the proceedings were concluded.)

- - -

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 16th of September 2011.

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

February 21, 2012



Circuit Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Darrell L. Goss, #305517, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-10-3782 **ORDER OF DISMISSAL**

Presiding Judge:	Deadra L. Jefferson
Applicant's Attorney:	Charles T. Brooks, III., Esq.
Respondent's Attorney:	Matthew J. Friedman, Esq.
Trial Counsel:	James W. Smiley, IV., Esq.
Date of Hearing:	September 16, 2011
Court Reporter:	Amanda Haffenden

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 27, 2011. The Respondent filed its Return on August 18, 2011. An evidentiary hearing into the matter was convened on September 16, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, James W. Smiley, IV. Esquire also testified at the hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the Final Brief of Appellant, the Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, the Remittitur dated June 9, 2011, the PCR application, the State's Return thereto, a jail visit log,

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DLJ

and two letters from Applicant to trial counsel.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the September 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-10805), assault and battery with intent to kill (ABWIK) (2007-GS-10-10806), and kidnapping (2007-GS-10-10807). James W. Smiley, Esq., Esquire, represented the Applicant. The Applicant proceeded to trial on February 23–26, 2009, after which a jury found him guilty as indicted. The Honorable J.C. Nicholson, Jr. sentenced the Applicant to confinement for twenty (20) years for each offense. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Pachak, Esquire, of the South Carolina Commission on Indigent Defense, represented Applicant on appeal. After full briefing by both sides, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Goss, Op. No. 2011-UP-214 (S.C. Ct. App. filed May 17, 2011). The Remittitur was issued on June 9, 2011.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel

   a. Failed to investigate.
   b. Failed to call rebuttal witnesses.
   c. Failed to present an alibi defense.

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 hearing. This Court has further had the opportunity to

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observe each witness who testified at the hearing, and to closely pass upon his or her 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).

The Applicant testified he retained trial counsel, who represented him for two (2) years prior to trial. He asserted he only met with counsel one (1) time to discuss a guilty plea. He testified it was his decision to reject the plea offer for twelve (12) years non-violent because he had no involvement in the incident. He testified counsel did not hire a private investigator. He further testified he sent counsel two (2) letters requesting to discuss his case and requesting Rule 5 materials, but counsel never responded. Applicant testified counsel never reviewed discovery with him. He testified he filed a complaint against counsel as a result.

Applicant testified he gave counsel the names of witnesses to contact, including witnesses who saw Applicant's mother buy clothes and a witness who would testify the gun was found in his car and was bought from the same people selling clothes. The Court took judicial notice of the testimony of the following witnesses who were present at the PCR hearing: (1) Clifford Hartwell, Applicant's brother, would testify his mother, Thomasina Goss, and Sharon Goss bought the alleged stolen clothes from guys in front of the family home, and (2) Sharon Goss, Applicant's cousin, would testify he bought the gun and clothing from the guys in front of the family home and that the gun was found in his car.[1]

Applicant also asserted he had alibi witnesses who would have testified Applicant was at his son's baby shower on Dorchester Road on June 14, 2007 between 7:00 PM and 9:00 PM. Specifically, Applicant named Angelique Gaskins, the mother of his child, Lucretia Douglas, a friend, Bernard Godfrey, an uncle, and Felicia Henderson, a friend. The Court took judicial

[1] The trial transcript reflects the spelling of Applicant's cousin as Sharon Goss. (Tr. 464:24.) However, to clarify the sex of Applicant's cousin as a male, the Court notes the phonetic spelling of the name is Sharone.

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notice of the potential alibi witnesses' alleged testimony. Applicant testified he informed counsel of these witnesses during jury selection, and these witnesses were present at trial ready to testify, but counsel never called these witnesses. Counsel only called his mother as a witness, knowing his mother's testimony could be impeached due to her prior criminal record. He asserted he tried to discuss the alibi defense with counsel, but counsel shut him down and told him not to say anything about the crime. Applicant testified counsel discussed his right to testify at trial and informed him it was not a good idea due to his prior convictions. Applicant testified it was his decision not to testify.

Trial counsel testified he had known the Goss family several years. He asserted the State's case against Applicant was circumstantial consisting of three (3) pieces of evidence: (1) Applicant's partial palm print from the exterior front door of the store, (2) a gun with the victim's DNA on it recovered from a car at the Goss's residence, and (3) a large quantity of clothing with tags attached found at the Goss residence. Counsel testified Applicant went to trial with his co-defendant, and the State had a good case against the co-defendant. He asserted he had no legal basis to move to sever the Applicant's trial.

Counsel testified he did not recall how many times he met with Applicant, but it was more than one (1) time. He testified Applicant had another set of charges for armed robbery, kidnapping, and burglary from eighteen (18) months earlier. He contended Applicant got out of jail on those charges, but then went back to jail when he was arrested on these charges. Counsel testified Applicant had nineteen (19) pending indictments at the time of trial. He testified when meeting with the Applicant he told Applicant he would discuss his potential defenses after determining the State's case, but the two had a volatile disagreement and counsel never got to that point. He testified the Applicant sent a letter to Chief Justice Toal, regarding his right to a

speedy trial, who subsequently instructed counsel and the solicitor to respond to her regarding Applicant's complaint. Counsel testified letters were submitted to Chief Justice Toal, and the complaint was dismissed.[2] Counsel recalled a hearing on Applicant's Motion to be Relieved, but stated the two parties "made-up" and his representation of Applicant continued. Counsel testified he had trouble communicating with Applicant throughout his representation. He further testified Applicant became argumentative and angry when he tried to explain matters with him, because he was adamant in his desire for a trial. He further testified he had an ethical obligation to disclose any plea offers to the Applicant, but that in doing so, the Applicant became more agitated.

Counsel testified he did not know about an alibi defense or about Applicant's cousin Sharon purchasing a gun until after trial. Counsel asserted even if he had known about a potential alibi defense at the time of the trial, he would not have presented it unless it was an airtight defense. He opined the risk of such a defense would be too great, because if it failed, he risked the jury not listening to the rest of his argument regarding the case. He testified it would have been helpful to have a time stamped photo placing Applicant at the baby shower on the date and time of the crime. Based on his knowledge of the Goss family, counsel stated a few of the potential alibi witnesses have a record but he could not testify as to whether their records would have discounted their testimony. Counsel testified he thought they could beat the circumstantial evidence without an alibi witness, and he testified he tried a good case even without the alibi defense. He testified he explained the print on the door, explained that the car in which the gun was found did not belong to Applicant, and explained the clothing through Applicant's mother's testimony. He testified he thought the jury came to the wrong result. He testified Sharon's

[2] Applicant was in the Charleston County Detention Center for approximately twenty (20) months prior to the call of his case. However, a bond was set on his case.

testimony would have been detrimental if he had known about it, but he probably would have elicited the information from Thomasina Goss's testimony rather than calling Sharon as a witness, although it still could have implicated Applicant. He testified he was not positive Sharon's testimony would have made a difference because he is a family member, and juries are always skeptical of the veracity of a family member's testimony. He asserted Applicant's mother, nor Applicant, never mentioned Sharon purchasing the gun. Counsel testified he does not think he would have done anything differently, and he asserted he would not have hired an investigator even if he knew about the potential alibi defense.

Counsel testified he knew about the witnesses who could testify about Thomasina Goss buying clothes, but he made a strategic decision to only call Ms. Goss as a witness. He admitted Ms. Goss had a prior record, but she was persuasive and credible and he felt confident in her testimony. Counsel testified he used her testimony to explain the clothes in the Goss residence and argued the tags on the clothing were not unique to the store that was robbed. He also argued the victim did not give an inventory to the police of what was stolen, as well as the fact there was clothing in the Goss residence that did not originate from the victim's store. Counsel testified he spent a lot of time with Ms. Goss and trusted what she told him. He asserted she knew everyone in the neighborhood, but she could not identify the people who sold her the clothes.

Counsel testified he did not hire an investigator. He asserted he lost money on the case. He testified he received around One Thousand and 00/100 ($1,000.00) Dollars and was limited to taking discovery and determining a valid defense. Counsel asserted had he known about a potential alibi, he still would not have hired an investigator due to the lack of funds. Counsel testified he did not recall telling Applicant not to tell him anything about the case. He testified he advised Applicant of his theory of the case. He testified they had some problems

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communicating, because the Applicant did not want to hear what counsel had to say. He asserted he took a plea offer of twelve (12) years to Applicant, and Applicant was upset that counsel was talking about a plea. Counsel testified he reviewed the discovery with Applicant, but he did not give Applicant a copy of the discovery because he was incarcerated. He testified it is his general practice not to give a client a copy of discovery if they are incarcerated, but he reviews every page of the discovery with the client. Counsel testified he was prepared for trial.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms."

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Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

This Court finds Applicant's testimony is not credible while also finding trial counsel's testimony is credible. This Court finds counsel is a trial practitioner who has approximately eighteen (18) years of experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, discovery, Applicant's constitutional rights, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant failed to meet his burden of proof. This Court finds counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, reviewed the discovery with Applicant, and was thoroughly competent in his representation. This Court finds counsel's representation did not fall below an objective standard of reasonableness.

This Court finds counsel made a valid strategic decision to only call Applicant's mother as a witness at trial. "There is a strong presumption that counsel rendered adequate assistance

and exercised reasonable professional judgment in making all significant decisions in a case." Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Where trial counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Counsel's strategy will be reviewed under "an objective standard of reasonableness." Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002).

Here, counsel testified he thought Applicant's mother's testimony was convincing. This Court finds any further testimony regarding Ms. Goss buying clothes would have been cumulative to her testimony. This Court finds neither Applicant nor Applicant's mother informed counsel that Applicant's cousin purchased a gun from the same people from whom Ms. Goss allegedly purchased the clothing. They enjoyed a close relationship and bond that had developed over many years. Counsel knew the Goss family for several years and trusted Thomasina Goss. The Court finds Ms.Goss's failure to inform counsel that her nephew purchased the gun implausible, particularly if she witnessed the purchase and testified to everything but the fact her nephew purchased the gun. Moreover, Ms. Goss was not called to testify at the PCR hearing that she witnessed her nephew purchase the gun. Further, the Court finds counsel's testimony credible that had he known Sharon allegedly purchased the gun, he would have elicited the information through Ms. Goss's testimony rather than calling Sharon as a witness. The Court finds this would have been a reasonable and valid strategy given a jury's skepticism of the veracity of a family member's testimony. Thus, counsel was not ineffective for failing to call Sharon Goss or the other named witnesses at trial.

In addition, this Court finds neither Applicant nor Applicant's mother informed counsel of a potential alibi defense. This Court finds counsel's testimony credible that he had trouble

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communicating with Applicant and did not learn of a potential alibi until after the trial ended. This Court further finds it implausible that neither the Applicant, nor one of his family members, could find a way to inform counsel of a potential alibi if one in fact existed. The Applicant testified he sent counsel two (2) letters requesting to meet with him and to request Rule 5, SCRCrimP documentation. The opportunity existed for Applicant to inform counsel of an alibi, but Applicant failed to do so until after the trial ended. Counsel testified even if he knew about a potential alibi, he would not have presented an alibi defense unless it was airtight which the Court finds credible. Nevertheless, even if counsel called Applicant's alibi witnesses at trial, the Court finds it would not likely have made an appreciable difference in the outcome of the case given that the majority of the witnesses were family or had a prior criminal record. Moreover, the record reflects a fresh, moist partial palm print was found and lifted from the exterior of the front door of the victim's store which was later identified as belonging to the Applicant. (Tr. 260:15–261:5, 294:2–8, 314:16–19, 315:2–19, 316:9–21.) Testimony of the latent print examiner revealed that although there is no way to determine the age of the print, it had to be recent since it was still wet when found. (Tr. 327:1–5.) Given the conflicting evidence in the record and the fact the alibi witnesses were either close friends or family of the Applicant, counsel was not ineffective for failing to pursue the alibi witnesses.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced

by counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

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 or sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order 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 served and 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.

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AND IT IS SO ORDERED this 23rd day of November, 2011.

D. L. Jefferson

The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Deadra L. Jefferson, Circuit Court Judge

Case No: 2011-CP-10-3782

Darrell L. Goss.....Appellant
S.C.D.C. 305517
v.
The State.....Respondent

NOTICE OF APPEAL

Darrell L. Goss appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Deadra L. Jefferson, November 23, 2011, which I, Charles T. Brooks, III, received on December 5, 2011.

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Deadra L. Jefferson, Circuit Court Judge

Case No: 2011-CP-10-3782

Darrell L. Goss.....Appellant
S.C.D.C.305517

v.

The State.....Respondent

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 5th day of December, 2011, I served the foregoing Notice of Appeal, Order of Dismissal, as well as Certificate of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on December 5, 2011, addressed to the following as indicated below:

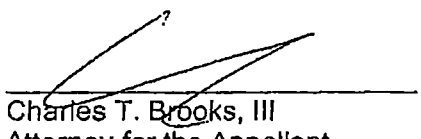
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Matthew J. Friedman, Esq.
Post Office Box 11549
Columbia, South Carolina 29211-1549

Darrell L. Goss, 305517
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina, 29472

Dated: December 5, 2011



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703 NSW20070608189

WITNESSES

OLENTHIAL FAISON
North Charleston Police Department

AGENCY CASE NUMBER

2007024986

ARREST WARRANT NUMBER

F969630

DATE OF ARREST

2007-06-15

ACTION OF GRAND JURY

TRUE BILL

SEP 11 2007

Foreperson of Grand Jury
Date: Erica Cohen

VERDICT

Foreperson of Petit Jury *Date:*

INDICT.DOT

DOCKET NO. 2007GS1010806

The State of South Carolina

County of Charleston

FILED
2007 SEP 12 AM 10: 34
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COURT OF GENERAL SESSIONS

September Term 2007

THE STATE

vs.

DARRELL LEE GOSS

07-3815 (3) ✓

Indictment for

Assault and Battery With Intent to Kill

704

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 10, 2007 the Grand Jurors of Charleston County present upon their oath:

Assault and Battery With Intent to Kill

That in Charleston County, South Carolina, on or about June 14, 2007, the Defendant, with malice aforethought, did commit an unlawful act of a violent nature upon the victims, Davuthan Kilic and/or Aytekin Ayazgok; all in violation of the Common Law of South Carolina and Section 16-03-620 of the 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.

Nathan Williams

NATHAN WILLIAMS
ASSISTANT SOLICITOR

NEW20070608189

WITNESSES

OLENTHIAL FAISON

North Charleston Police Department

AGENCY CASE NUMBER

2007024986

ARREST WARRANT NUMBER

F969629

DATE OF ARREST

2007-06-15

ACTION OF GRAND JURY

TRUE BILL

SEP 12 2007

Foreperson of Grand Jury
Date: Lisa Cohen

VERDICT

Foreperson of Petit Jury *Date:*

INDICT.DOT

DOCKET NO. 2007GS1010805

The State of South Carolina

County of Charleston.

FILED

2007 SEP 12 AM 10: 34

JULIE J. ARMSTRONG
CLERK OF COURT

BY

COURT OF GENERAL SESSIONS

September Term 2007

THE STATE

vs.

DARRELL LEE GOSS

07-3815 (1)

Indictment for

Armed Robbery

706

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 10, 2007 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about June 14, 2007, in Charleston County, South Carolina, at 4400 Dorchester Road, #105, North Charleston by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, DARRELL LEE GOSS, did take and carry away goods and/or monies from the person or immediate presence of Davuthan Kilic and/or Aytekin Ayazgok with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) of the 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.

Nathan Williams

NATHAN WILLIAMS
ASSISTANT SOLICITOR

NSW20070608189

WITNESSES

OLENTHIAL FAISON

North Charleston Police Department

AGENCY CASE NUMBER

2007024986

ARREST WARRANT NUMBER

F969631

DATE OF ARREST

2007-06-15

ACTION OF GRAND JURY

TRUE BILL

SEP 11 2007

Foreperson of Grand Jury

Date: 9/11/07

VERDICT

Foreperson of Petit Jury *Date:*

INDICT.DOT

DOCKET NO. 2007GS1010807

The State of South Carolina

County of Charleston

FILED

2007 SEP 12 AM 10: 34

JULIE J. ARMSTRONG
CLERK OF COURT

BY

COURT OF GENERAL SESSIONS

September Term 2007

THE STATE

vs.

DARRELL LEE GOSS

07-3815 (2)

Indictment for

Kidnapping

708

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 10, 2007 the Grand Jurors of Charleston County present upon their oath:

Kidnapping

That in CharlestonCounty, South Carolina, on or about June 14, 2007, the Defendant, DARRELL LEE GOSS, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victims, Davuthan Kilic and/or Aytekin Ayazgok, without authority of law; all in violation of Section 16-3-910 of the 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.

Nathan Williams

NATHAN WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
DARRELL LEE GOSS)
AKA:)
Race: B Sex: M Age: 23)
DOB: SS#:)
Address:)
DL#: SID#:)

INDICTMENT/CASE#: 2007GS1010807
A/W#: F969631
Date of Offense: 6/14/2007
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Kidnapping
in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
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:

Lawton, Trip	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years of ☐ 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. SINCE 6/15/07
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ 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
§ 90.11 TP (SCCJA Surcharge)	$5	$ 5.00
TOTAL		$ 133.75

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
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.

Clerk of Court/ Deputy Clerk
Court Reporter: A. Haffenden

PRESIDING JUDGE
Judge Code: 2117
Sentence Date: 2/26/09

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA)
710 COUNTY OF Charleston)
STATE VS.)
DARRELL LEE GOSS)
AKA:)
Race: B Sex: M Age: 22)
DOB: SS#:)
Address:)
DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1010805
A/W#: F969629
Date of Offense: 6/14/2007
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Armed Robbery
in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139.
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
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:

Lawton, Trip	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balanee 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. SINCE 6/15/07
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ 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
§ 90.11 TP (SCCJA Surcharge)	$5	$ 5.00
TOTAL		$ 133.75

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
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.

Clerk of Court/ Deputy Clerk
Court Reporter: A. Hafferden

PRESIDING JUDGE
Judge Code: 211711
Sentence Date: 2/26/09

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
DARRELL LEE GOSS)
AKA:)
Race: B Sex: M Age: 23)
DOB: SS#:)
Address:)
DL#: SID#:)

INDICTMENT/CASE#: 2007GS1010806
A/W#: F969630
Date of Offense: 6/14/2007
S.C. Code § : 16-03-0620
CDR Code #: 0014

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: ABWIK/Assault and Battery with Intent to Kill
in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
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:

Lawton, Trip	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. since 6/15/07
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ 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
§ 90.11 TP (SCCJA Surcharge)	$5	$ 5.00
TOTAL		$ 133.75

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
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.

Clerk of Court/ Deputy Clerk
Court Reporter: A. Hartender

PRESIDING JUDGE
Judge Code: 2117
Sentence Date: 7/26/09

SCCA/217 (07/2008)