

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JERMONTAE MOSS,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Georgia

**APPENDICES TO
PETITION FOR WRIT OF CERTIORARI**

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August 12, 2021

APPENDIX A



SUPREME COURT OF GEORGIA
Case No. S20A1520

April 5, 2021

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JERMONTAE MOSS v. THE STATE.

Upon consideration of the motion for a stay of this Court's remittitur in order that an appeal or a petition for a writ of certiorari may be filed in the Supreme Court of the United States to obtain a review of this Court's judgment rendered in this case on March 15, 2021, such motion is hereby granted, subject to the following conditions:

(1) The clerk of this Court is directed to withhold the transmittal of such remittitur to the trial court for 150 days from the date of this Court's judgment.

(2) The clerk of this Court is directed to transmit such remittitur to the trial court not later than the 155th day from the date of this Court's judgment, provided that the clerk shall continue to withhold the transmittal of such remittitur if an appeal or a petition for a writ of certiorari has been timely filed in the Supreme Court of the United States. Upon the timely filing of such appeal or petition in the Supreme Court of the United States, the clerk is directed to withhold the transmittal of such remittitur until the final disposition of the case by that Court.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 , Clerk

APPENDIX B

In the Supreme Court of Georgia

Decided: March 15, 2021

S20A1520. MOSS v. THE STATE.

WARREN, Justice.

Jermontae Moss was convicted of felony murder, possession of a firearm during the commission of a crime, and theft by receiving stolen property in connection with the shooting death of Jose Marin.¹

¹ The crimes were committed on September 22, 2011. On November 29, 2011, a Houston County grand jury indicted Moss for three counts of felony murder, one count each of attempted armed robbery, aggravated battery, and aggravated assault, three counts of possession of a firearm during the commission of a crime, and one count each of theft by receiving stolen property and carrying a concealed weapon. At a trial held from October 22 to 24, 2012, the State withdrew the charge of carrying a concealed weapon; a jury found Moss guilty of all the remaining counts. On October 25, 2012, the trial court sentenced Moss to life in prison without the possibility of parole (“LWOP”) for felony murder predicated on armed robbery, a consecutive term of five years for a firearm count predicated on attempted armed robbery, and a concurrent term of 10 years for the theft count. The trial court purported to merge the remaining counts for sentencing purposes. Moss timely filed a motion for new trial on November 5, 2012, which he amended through new counsel on March 16, 2018. In separate orders entered on September 13, 2019, the trial court denied the amended motion for new trial but resentenced Moss to LWOP for felony murder predicated on aggravated battery, a consecutive term of five years for a firearm count predicated on aggravated battery, and a concurrent

On appeal, Moss contends that his trial counsel provided constitutionally ineffective assistance and that the trial court erred in sentencing Moss—a 17-year-old juvenile at the time of the crimes—to life in prison without the possibility of parole (“LWOP”) for murder. Neither of Moss’s contentions has merit, so we affirm.

1. Viewed in the light most favorable to the verdicts, the evidence presented at Moss’s trial showed that Marin was the owner of Marin Mexican Food Store in Warner Robins and that, at approximately 9:30 p.m. on September 22, 2011, Marin and Javier Moreno were unloading merchandise from a truck behind the store. While they worked, a man approached Marin and Moreno with a gun and said, “Hey, give me your money.” Marin explained that they had no money as he slowly put a case of tortillas down on the ground. The man then shot Marin in the abdomen. Marin attempted to shoot back with his own gun, but the perpetrator ran away in the direction

term of 10 years for the theft count. The remaining counts were merged for sentencing purposes, vacated by operation of law, or vacated by agreement of the parties. Moss timely filed a notice of appeal on October 9, 2019. The case was docketed in this Court for the August 2020 term and submitted for a decision on the briefs.

of Carl Vinson Parkway.

Moreno called 911 and described the perpetrator as a “black male, skinny . . . in a white shirt and black [exercise] pants.” Moreno also stated that the perpetrator had a red bandana covering his face and wore a hair net over the rest of his head. When police arrived at the scene, an officer was unable to find a pulse for Marin, who was transported to the hospital and later died. Police recovered a .45-caliber bullet and a .45-caliber Blazer brand casing at the scene.

Sergeant Todd Rountree responded to the 911 call at 9:53 p.m. and drove to the mobile home park between Marin’s store and Carl Vinson Parkway. Rountree spotted Moss, who matched the description Moreno provided in his 911 call, holding a large object in his waistband. During a pat-down of Moss, Rountree discovered that Moss had a loaded .45-caliber Taurus pistol that had apparently slipped down inside his pants to the area of his right knee. Rountree eventually was able to move the pistol down the leg of the pants and remove it from the bottom of the pants. Forensic analysis later showed that the pistol Moss was carrying—which

previously had been reported as stolen—fired the bullet and discharged the casing recovered from the crime scene. Moss had a hair net in his pocket, but a red bandana was not recovered.

After police drove Moreno to the scene where Rountree had arrested Moss, Moreno saw Moss and identified his shirt and pants as the clothes the robber was wearing when he shot Marin. Moreno noted that Moss's build was the same as the shooter's, but he did not recognize Moss's face or hair as matching that of the shooter. Police transported Moss to the police station and later collected his clothing, which included black jogging pants, gray pants, red shorts, and a white t-shirt. After advising Moss of his rights, police interviewed him. Moss stated that he had possessed the pistol for about two weeks and no one else had possessed it during that time. An officer swabbed Moss's hands for gunshot residue ("GSR") at the station, but a later test of the "hand wipings" that had been collected did not reveal the presence of GSR on Moss's hands. The GSR results were not presented at trial.

At trial, the State presented testimony that Moss had

committed a previous crime in the mobile home park where police located Moss after Marin's shooting that was similar to the attempted robbery that resulted in Marin's shooting. Specifically, the State presented evidence that Neftally Corado had been watching television alone in his mobile home with the door open on the night before Marin's attempted robbery when a black man walked in and demanded money. The man then shot Corado and fled. Corado survived and identified Moss in court as the shooter. Additionally, the State presented evidence that a bullet casing found in Corado's mobile home after the shooting was fired from the pistol Moss was carrying on the night of Marin's murder.

Although Moss does not contest the legal sufficiency of the evidence supporting his convictions, we have reviewed the record and conclude that, when viewed in the light most favorable to the verdicts, the evidence presented at trial was easily sufficient to authorize a rational jury to find Moss guilty beyond a reasonable doubt of felony murder and the related count of possession of a firearm during the commission of a crime. See *Jackson v. Virginia*,

443 U.S. 307, 318-319 (99 SCt 2781, 61 LE2d 560) (1979).²

2. Moss contends that he was denied the effective assistance of trial counsel in two ways. We conclude that Moss has failed to show that his trial counsel was constitutionally ineffective.

² The sufficiency analysis is much less clear with respect to Moss's conviction for theft by receiving. But as noted, he raises no challenge on appeal to the sufficiency of the evidence supporting that conviction, and—particularly given our holding in Division 3 affirming Moss's sentence of life in prison without the possibility of parole for murder—his concurrent 10-year sentence for theft by receiving has no practical effect. And although our Court—for the few remaining cases that were docketed to our August term of court—generally will continue our practice of reviewing sua sponte the sufficiency of the evidence in non-death penalty cases, we elect not to do so with respect to Moss's theft by receiving conviction here. See *Davenport v. State*, 309 Ga. 385, 392, 399 (846 SE2d 83) (2020) (recognizing that this Court's "long practice of deciding unraised sufficiency claims" in murder cases "has been purely an exercise of discretion; no law requires it" and announcing the end of our practice of considering sufficiency sua sponte in non-death penalty cases with cases docketed to the term of court that began in December 2020, which includes cases docketed on or after August 3, 2020). Indeed, for the reasons explained in *Davenport*, sua sponte sufficiency review is particularly fraught where, as here, the question is a close one and the issue is not briefed by the parties. See *id.* at 397-398 (emphasizing the importance of the adversarial process and noting that the risk that the Court will make mistakes in deciding an issue "is at its highest when we consider an issue that no party has briefed or argued. And this is doubly so when the issue is especially record-intensive, as are almost all sufficiency issues"). See also *id.* at 398 (acknowledging that "[m]any reversals that do occur involve only a sentence for a lesser offense that has no practical effect, given that the defendant has also received a sentence of life in prison or life without parole for the murder"). Accordingly, for the reasons we discussed in *Davenport*, we decline to exercise our discretion to review the sufficiency of the evidence supporting Moss's conviction for theft by receiving and therefore leave that conviction undisturbed.

To prevail on a claim of ineffective assistance of counsel, a defendant generally must show that counsel's performance was deficient and that the deficient performance resulted in prejudice to the defendant. *Strickland v. Washington*, 466 U.S. 668, 687-695 (104 SCt 2052, 80 LE2d 674) (1984); *Wesley v. State*, 286 Ga. 355, 356 (689 SE2d 280) (2010). To satisfy the deficiency prong, a defendant must demonstrate that his attorney "performed at trial in an objectively unreasonable way considering all the circumstances and in the light of prevailing professional norms." *Romer v. State*, 293 Ga. 339, 344 (745 SE2d 637) (2013); see also *Strickland*, 466 U.S. at 687-688. To satisfy the prejudice prong, a defendant must establish a reasonable probability that, in the absence of counsel's deficient performance, the result of the trial would have been different. *Strickland*, 466 U.S. at 694. "If an appellant fails to meet his or her burden of proving either prong of the *Strickland* test, the reviewing court does not have to examine the other prong." *Lawrence v. State*, 286 Ga. 533, 533-534 (690 SE2d 801) (2010).

(a) Moss contends that his trial counsel provided ineffective

assistance by failing to present evidence that a gunshot residue (GSR) test revealed no GSR on Moss's hand and that someone else's fingerprints had been found on the magazine of the pistol that Moss was carrying on the night of Marin's murder (and that was later shown to be the murder weapon).

Prior to trial, the State provided trial counsel with a GBI report showing that a test conducted by an analyst did not reveal the presence of GSR on Moss's hands. The State also gave trial counsel a GBI report showing that a single fingerprint was found on the magazine of the pistol Moss was carrying when he was arrested on the night of Marin's murder, that Moss had been excluded as the source, and that no fingerprint was found anywhere else on the pistol. At trial, trial counsel did not introduce either of the GBI reports into evidence. However, he elicited testimony that the pistol Moss was carrying was processed for fingerprints and that a GSR test had been performed on Moss, and in closing argument argued that the State did not present the GSR or fingerprint results because the results did not link Moss to the shooting. In its order on Moss's

motion for new trial, the trial court found that trial counsel could have made a strategic decision not to introduce the results of the forensic testing into evidence, and instead to argue “that the State wholly failed to produce any results of this testing.” The trial court further found that, even if the failure to introduce the two GBI reports into evidence could be considered deficient performance, “it is apparent . . . that, given that defense counsel emphasized to the jury the lack of any testing results that incriminated Defendant, submission of these two reports would not have likely resulted in a different outcome.”

Pretermitted whether trial counsel was constitutionally deficient in his failure to introduce the GSR and fingerprint reports, Moss has failed to show a reasonable probability that, in the absence of counsel’s deficient performance, the outcome of Moss’s trial would have been different. See *Strickland*, 466 U.S. at 694. Indeed, the GSR and fingerprint reports themselves would not have been especially helpful to the defense. First, the presence of someone else’s fingerprint on the pistol magazine—even coupled with the

absence of Moss's fingerprints—would not necessarily exclude Moss as the shooter, especially in light of the fact that the pistol was discovered inside Moss's pants. Similarly, the report on the GSR test results specifically warned—consistent with certain trial testimony—that the absence of GSR particles from Moss's hands “does not eliminate the possibility that the subject discharged a firearm.” And second, the admission of the GSR and fingerprint reports were duplicative of other evidence and argument presented at trial. To that end, testimony at trial showed that Moss's hands and the pistol he was carrying were tested and examined for the presence of GSR and fingerprints, and trial counsel emphasized in argument that the State did not present the results because they did not link Moss to the shooting. Because Moss has failed to show a reasonable probability that the outcome of his trial would have been different in the absence of his counsel's allegedly deficient performance, his claim of ineffective assistance fails. See *Parker v. State*, 309 Ga. 736, 745 (848 SE2d 117) (2020) (recognizing that a concession about a disputed fact made during trial counsel's closing

argument can make it unlikely that her allegedly deficient performance with respect to the evidentiary issue affected the outcome of the trial); *Haney v. State*, 305 Ga. 785, 790 (827 SE2d 843) (2019) (recognizing that duplicative testimony can show that an alleged deficiency regarding an evidentiary matter did not affect the result of the trial).

(b) Moss also contends that his trial counsel was constitutionally ineffective for failing to demur to the aggravated battery count of the indictment, as well as the felony murder and firearm counts that were predicated on aggravated battery. Under OCGA § 16-5-24 (a):

A person commits the offense of aggravated battery when he or she maliciously causes bodily harm to another by depriving him or her of a member of his or her body, by rendering a member of his or her body useless, or by seriously disfiguring his or her body or a member thereof.

Here, the aggravated battery count charged that Moss “did maliciously cause bodily harm to the person of Jose Marin by depriving him of a member of his body, to wit: shot Jose Marin in the lower abdomen with a firearm causing serious bodily injury

resulting in death.” Moss claims that this count failed to allege that Moss “deprived” Marin of any particular member of his body and that trial counsel was ineffective for failing to seek a demurrer. Alternatively, Moss argues that even if the indictment could be read to allege that Marin was deprived of his abdomen, the abdomen is not a “member” of the body. The trial court concluded that counsel did not provide ineffective assistance by failing to file a demurrer on the aggravated battery and related counts because the abdomen is a member of the body and Marin was indeed deprived of it.

As an initial matter, Moss’s ineffective assistance claim is moot as to the aggravated battery count itself because that offense merged into his felony-murder conviction. But Moss’s claim that the alleged defect in the indictment also subjected the related felony murder and firearm counts to demurrer is not moot, because both of those counts were predicated on the aggravated battery and resulted in convictions. See *Hinkson v. State*, 310 Ga. 388, 393 (850 SE2d 41) (2020) (although the defendant was convicted only of felony murder based on aggravated assault and his complaints about all other

charges in the indictment were moot, this Court nevertheless considered his contentions about alleged defects in the count charging the predicate felony of aggravated assault).

As for Moss’s first argument—that the aggravated battery count failed to allege that Moss deprived Marin of any particular member of his body—we disagree. The indictment used the traditional phrase “to wit” to explicitly link its general allegation that Moss “cause[d] bodily harm to the person of Jose Marin by depriving him of a member of his body” to its more specific allegation that Moss “shot Jose Marin in the lower *abdomen* with a firearm causing serious bodily injury resulting in death.” (Emphasis supplied.) See Black’s Law Dictionary (9th ed. 2009) (defining “to wit” as “[t]hat is to say; namely”). And in any event, the indictment necessarily implied as much because Marin’s abdomen was the only location on his body specified and because no other bodily member was mentioned. See, e.g., *Subar v. State*, 309 Ga. 805, 809 (848 SE2d 109) (2020) (“The allegation that [the defendant] entered [the victim]’s home without authority and with the intent to commit

various felonies necessarily implied that [the defendant] intended to commit the underlying crimes inside the residence.”); *Jordan v. State*, 307 Ga. 450, 455 (836 SE2d 86) (2019) (“The allegation that the house ‘was the dwelling house of . . . [the victim]’ necessarily implied that he had the authority to be present therein.”). Because the aggravated battery count sufficiently alleged that Marin’s abdomen was the member of his body of which he was deprived as a result of Moss’s action, a demurrer based on Moss’s first argument would not have been successful, and Moss “cannot show deficient performance, as counsel cannot be ineffective for failing to make a meritless motion.” *Subar*, 309 Ga. at 809 (citation and punctuation omitted).

As for Moss’s second argument—that even if the indictment could be read to allege that Marin was deprived of his abdomen, the abdomen is not a “member” of the body—Moss conceded during the hearing on his motion for new trial that Georgia courts have “not addressed this particular body part” in the context of aggravated battery, and we have not found any case that has done so. This

Court has generally defined “member” in OCGA § 16-5-24 (a) as a “bodily part or organ,” *Mitchell v. State*, 238 Ga. 167, 168 (231 SE2d 773) (1977), and Georgia courts have construed “member” to include an eye, jaw, brain, spleen, ear, leg, shoulder, finger, genital organ, tooth, rectum, elbow, nose, and wrist.³ But our research has not uncovered Georgia cases explaining or offering examples of body parts or organs that do *not* constitute a bodily “member.” Because existing precedent does not resolve whether “abdomen” is included in the definition of bodily “member,” Moss cannot show that trial counsel’s failure to file a demurrer claiming that the abdomen is not a bodily “member” amounted to deficient performance. See *Griffin*

³ See *Mitchell*, 238 Ga. at 168 (eye); *Baker v. State*, 245 Ga. 657, 667 (266 SE2d 477) (1980) (jaw); *Miller v. State*, 275 Ga. 730, 731-732 (571 SE2d 788) (2002) (brain); *Jarrard v. State*, 152 Ga. App. 553, 555 (263 SE2d 444) (1979) (spleen); *Drayton v. State*, 167 Ga. App. 477, 477 (306 SE2d 731) (1983) (ear); *Howard v. State*, 173 Ga. App. 585, 585 (327 SE2d 554) (1985) (leg); *Terry v. State*, 188 Ga. App. 748, 748 (374 SE2d 235) (1988) (shoulder); *Ganas v. State*, 245 Ga. App. 645, 646 (537 SE2d 758) (2000) (finger); *Byrd v. State*, 251 Ga. App. 83, 84 (553 SE2d 380) (2001) (genital organ); *Rivers v. State*, 255 Ga. App. 422, 423-424 (565 SE2d 596) (2002) (tooth); *Parham v. State*, 270 Ga. App. 54, 55 (606 SE2d 79) (2004) (rectum); *Walls v. State*, 283 Ga. App. 560, 561 (642 SE2d 195) (2007) (elbow); *Jones v. State*, 283 Ga. App. 631, 633 (642 SE2d 331) (2007) (nose); *Goss v. State*, 289 Ga. App. 734, 736 (658 SE2d 168) (2008) (wrist).

v. State, 309 Ga. 516, 520 (847 SE2d 168) (2020) (Where “we have not yet squarely decided” an issue, “trial counsel’s failure to raise a novel legal argument does not constitute ineffective assistance of counsel.”) (citation and punctuation omitted); *Rhoden v. State*, 303 Ga. 482, 486 (813 SE2d 375) (2018) (“[T]here is no requirement for an attorney to prognosticate future law in order to render effective representation. Counsel is not obligated to argue beyond existing precedent.”) (citations and punctuation omitted).

3. Moss contends that the trial court was not authorized to sentence Moss, who was a 17-year-old juvenile when he committed the crimes, to LWOP for murder. We disagree.

(a) Pointing to excerpts from cases like *Veal v. State*, 298 Ga. 691 (784 SE2d 403) (2016), and *Miller v. Alabama*, 567 U.S. 460, 472-473 (132 SCt 2455, 183 LE2d 407) (2012), Moss first argues that the trial court was required to make a specific determination that Moss *himself* (as opposed to his conduct) was “irreparably corrupt,” *Veal*, 298 Ga. at 702 (emphasis omitted), and that the trial court

failed in its obligation to make such a determination here.⁴ See *Miller*, 567 U.S. at 472-473 (“Deciding that a ‘juvenile offender forever will be a danger to society’ would require ‘making a judgment that he is incorrigible.’”) (quoting *Graham v. Florida*, 560 U.S. 48, 72 (130 SCt 2011, 176 LE2d 825) (2010)) (punctuation omitted).

The record shows, however, that the trial court made the determinations required by U.S. Supreme Court case law and this Court’s precedents interpreting it. Specifically, in *Miller*,

the [United States] Supreme Court held that “mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on ‘cruel and unusual punishments.’” As a result, the Court required “a sentencer . . . to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison,” and it specifically noted that “a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.”

⁴ *Miller* was decided four months before Moss’s original sentence was entered, and the trial court did not make a determination about whether Moss’s crimes reflected irreparable corruption or permanent incorrigibility before entry of Moss’s original LWOP sentence. After Moss’s amended motion for new trial was filed, Moss and the State agreed that Moss was entitled to a new sentencing hearing for the trial court to make such a determination before Moss could be sentenced to LWOP for crimes committed as a juvenile.

Raines v. State, 309 Ga. 258, 260 (845 SE2d 613) (2020) (quoting *Miller*, 567 U.S. at 480, 489). And in *Veal*, this Court concluded that, under *Miller* (as refined by *Montgomery v. Louisiana*, 570 U.S. 190 (136 SCt 718, 193 LE2d 599) (2016)), “a trial court must make a ‘distinct determination’ that the defendant is an ‘exceptionally rare’ juvenile who is ‘irreparably corrupt’ or ‘whose crimes reflect permanent incorrigibility’ before sentencing a juvenile convicted of murder to life without parole.” *Raines*, 309 Ga. at 261 (quoting *Veal*, 298 Ga. at 701-703).

Indeed, the trial court offered ample support for its conclusion that Moss’s “behavior does not reflect an immature youth who merely makes impulsive and reckless decisions on occasion, or has an underdeveloped sense of responsibility; rather, it betrays one who is deliberate, malevolent, and exhibits a depraved heart” and that Moss’s crimes do not reflect “unfortunate yet transient immaturity.” (Citation and punctuation omitted.) It reviewed Moss’s juvenile history, including (among other things) prior arrests for burglary and obstruction, prior possession of drugs, and admitted

involvement with the “Bloods” gang. It determined that Moss—who was on probation when he shot Marin—shot a different person (Corado) the night before Marin’s murder during a separate attempted robbery, and noted that Moss ultimately pleaded guilty to criminal attempt to commit murder for that offense. And it concluded that Moss’s “criminal behavior has escalated during the last several years,” that Moss “[s]how[ed] no hesitation, remorse, or reflection whatsoever” when he shot and killed Marin, and that Moss “appeared to be shooting just for the sake of killing.” Based on these things, and after acknowledging that it must consider Moss’s “youth and its attendant characteristics, along with the nature of his crime,” *Miller*, 132 SCt at 2460, the trial court resentenced Moss to LWOP, concluding that Moss’s “*actions* reflect irreparable corruption” (emphasis in original), his “behavior exhibits an irretrievable depravity which appears to foreclose any reasonable prospects for rehabilitation,” and “[h]e thus falls into that ‘rarest of juvenile offenders . . . whose crimes reflect permanent incorrigibility; whose crimes reflect irreparable corruption’”

(Quoting *Veal*, 298 Ga. at 702 (emphasis omitted)).

It is true, as Moss points out, that at one point in its lengthy order the trial court also opined on the role of the “Divine” in the ultimate judgment of a human being:

This Court cannot find, in this case or in any other, that the Defendant *himself* is “irretrievably corrupt” or “permanently incorrigible.” And it is this Court’s firm opinion that no court at any level is ever able to make such a determination; it is beyond human capacity. Only a Divine Judge could look into a person and determine that he is permanently and irretrievably corrupt; that he has reached a state from which there is no return, no hope of redemption, no hope of any restoration.

(Emphasis in original.) But we do not view *Miller* or *Montgomery*—or cases from this Court applying *Miller* and *Montgomery*, such as *Veal*, *White*, and *Raines*—as requiring the trial court to conduct a metaphysical assessment of a juvenile defendant. Given the express determinations contained in the trial court’s order and summarized in part above, we cannot say that the trial court’s additional observations about the metaphysical—especially when viewed in the full context of the court’s order—somehow rendered the trial

court's analysis erroneous.⁵

(b) Moss also contends that he cannot be sentenced to LWOP because OCGA § 17-10-16 (a) prohibits the imposition of an LWOP sentence on a juvenile. We disagree.

OCGA § 17-10-16 (a) provides:

Notwithstanding any other provision of law, a person who is convicted of an offense . . . for which the death penalty may be imposed under the laws of this state may be sentenced to death, imprisonment for life without parole, or life imprisonment as provided in Article 2 of this chapter.

Moss reasons that the portion of OCGA § 17-10-16 (a) that permits an LWOP sentence when a person is “convicted of an offense . . . for which the death penalty may be imposed” is not satisfied here because the death penalty may not be imposed upon juveniles. Moss cites no direct authority for this analysis,⁶ but necessarily implies

⁵ Moss also contends that a jury, and not a judge, must find him irreparably corrupt for an LWOP sentence to be imposed. He correctly concedes, however, that this Court recently held otherwise in *Raines*, 309 Ga. at 268-273.

⁶ Moss analogizes to *State v. Velazquez*, 283 Ga. 206 (657 SE2d 838) (2008), to argue that even when one statute (such as OCGA § 16-5-1 (e) (1) here) provides LWOP as a sentencing option, OCGA § 17-10-16 (a) prevents imposition of that sentence if either Georgia statutory law or United States

that the “notwithstanding any other provision of law” portion of OCGA § 17-10-16 (a) references, and indeed grafts into the statute, the United States Supreme Court’s Eighth Amendment jurisprudence. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 578 (125 SCt 1183, 161 LE2d 1) (2005) (holding that the Eighth Amendment prohibits the death penalty for juveniles).

This interpretation, however, ignores the complete statutory text “read . . . in its most natural and reasonable way.” *Blackwell v. State*, 302 Ga. 820, 828 (809 SE2d 727) (2018) (in construing a statute, “we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language

Supreme Court case law dictate that the death penalty cannot be imposed for that offense. In *Velazquez*, a 4-3 majority of this Court held that a person convicted of rape could not be sentenced to LWOP—which was enumerated as an authorized sentence in the rape statute, see OCGA § 16-6-1 (b)—where the State did not file a notice of intent to seek the death penalty. See *Velazquez*, 283 Ga. at 206-209. The *Velazquez* majority reasoned that under OCGA § 17-10-32.1 and other law in effect at that time, an LWOP sentence was not available if the death penalty constitutionally could not be imposed and thus prevented the State from filing a notice of intent to seek the death penalty. See *Velazquez*, 283 Ga. at 208-209. But Georgia law no longer requires as a prerequisite for an LWOP sentence that the State file a notice of intent to seek the death penalty, and OCGA § 17-10-32.1 has since been repealed. *Velazquez* therefore has no bearing on our analysis of OCGA § 17-10-16 (a).

would.”) (citation and punctuation omitted). To that end, OCGA § 17-10-16 (a)’s reference to an offense “for which the death penalty may be imposed *under the laws of this state*” (emphasis supplied) is most naturally understood to mean an offense for which the governing Georgia statute lists the death penalty as a sentencing option. See *Neal v. State*, 290 Ga. 563, 569 (722 SE2d 765) (2012) (Hunstein, C.J., concurring, joined by all other Justices) (interpreting constitutional language identifying cases in which a death sentence “could be imposed” to include all life-imprisonment murder cases because, under the homicide statute, “murder is clearly a crime in which a defendant, upon conviction, can be punished by death as compared to other crimes”); *Atlanta & W.P.R. Co. v. Hemmings*, 192 Ga. 724, 728 (16 SE2d 537) (1941) (interpreting phrase “any law of the State” in a constitutional provision to mean a “legislative enactment” and not a court decision). Applied here, we conclude that OCGA § 17-10-16 (a) is satisfied because OCGA § 16-5-1 (e) (1) enumerates death as a

potential sentence for murder.⁷ To hold otherwise would import into a Georgia statute an evolving body of United States Supreme Court case law when the text says nothing about constitutional limitations in general or juveniles in particular. Cf. *Raines*, 309 Ga. at 265 (“The prohibition against imposing the death penalty on juveniles and the requirement that a specific determination of irreparable corruption be made before imposing a sentence of LWOP on a juvenile are *constitutional* constraints imposed by the Supreme Court’s interpretation of the Eighth Amendment—not by any Georgia statute.”) (emphasis in original).

Perhaps in anticipation of this conclusion, Moss also argues that if we do not adopt his interpretation of OCGA § 17-10-16 (a), the statute will be rendered “mere surplusage” because its only possible meaning is “that those who cannot constitutionally be sentenced to death may also not be sentenced to life without parole.”

⁷ OCGA § 16-5-1 (e) (1) provides: “A person convicted of the offense of murder shall be punished by death, by imprisonment for life without parole, or by imprisonment for life.”

But that is not so. Although it is true that the General Assembly has made a number of changes to the statutory scheme for murder—including repealing other statutes pertaining to LWOP sentences and adding OCGA § 16-5-1 (e) (1), which enumerates LWOP as a potential sentence for persons convicted of murder—OCGA § 17-10-16 (a) still retains meaning. Indeed, by its plain terms, OCGA § 17-10-16 (a) authorizes death, LWOP, and life in prison as sentences for persons convicted of offenses for which the death penalty may be imposed. And even to the extent OCGA § 16-5-1 (e) (1) controls sentencing for the specific offense of murder, OCGA § 17-10-16 (a) still serves as a general background rule that authorizes LWOP (as well as death and life in prison) sentences for other offenses that meet its requirements, whether those offenses currently exist in Georgia law or may be enacted in the future. Moss’s claim therefore fails.

Judgment affirmed. All the Justices concur.

APPENDIX C

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IN THE SUPERIOR COURT OF HOUSTON COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA) Indictment No. 45448
)
 vs.)
) Vol. IV of IV
JERMONTAE ARTEZ MOSS) Pages 399 - 442

Sentencing Proceedings

Before HONORABLE GEORGE F. NUNN, JR.

October 25, 2012

Houston County Courthouse

Commencing at 10:05 a.m.
Concluding at 11:14 a.m.

Reported by: Janet S. Paris, CCR B-1835

APPEARANCES:

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Reporter's Note: Exhibits noted above are for sentencing purposes only, were retained in Defendant's file, and are not attached to the transcript.

1 THE COURT: All right. Ladies and gentlemen, we
2 are here this morning for the sentencing of
3 Mr. Jermontae Moss. He was convicted yesterday for
4 three counts of felony murder, one count of attempted
5 armed robbery, one count of aggravated battery, one
6 count of aggravated assault, three counts of
7 possession of a firearm during a crime, and one count
8 of theft by receiving stolen property.

9 Does the -- first, let's sort of talk about, so
10 we know where we're going and what merges and what
11 doesn't. I don't think there's any question that the
12 three felony murders all merge.

13 I believe that the two that would merge into the
14 third, the underlying felonies would still remain on
15 those once they merge is the way I read the law.

16 Now, if you take the -- let's just assume that
17 the first felony murder is the one that stands. That
18 was the one based on attempted armed robbery. I
19 think that the attempted armed robbery would stand.

20 On the other two felony murders, you've got
21 aggravated assault and aggravated battery as the
22 underlying offenses, and I believe that the
23 aggravated assault would merge into the aggravated
24 battery, I think, and leave an aggravated battery
25 because that felony murder has merged.

1 So, as I read the law, once the felony murder
2 has merged and basically been vacated, the underlying
3 felony is not vacated. So what I think is that he
4 should be sentenced on one felony murder, one
5 attempted armed robbery, one aggravated battery, one
6 possession of a firearm during a crime, and one theft
7 by receiving.

8 I'm receptive to any contentions or arguments
9 that it should be different from that.

10 Mr. Hartwig.

11 MR. HARTWIG: Judge, would not the attempted
12 armed robbery count, too, since that's what the
13 felony murder is based on? Wouldn't that merge into
14 it?

15 THE COURT: Well, that's -- I think if you were
16 merging -- if the felony murder that you were
17 proceeding on was either the aggravated battery or
18 the aggravated assault, I think it would merge, but
19 attempted armed robbery, it seems to me, is a totally
20 separate crime from the felony murder and it's not a
21 lesser included of the felony murder in that case.

22 I think the aggravated assault and the
23 aggravated battery would, but -- and I may be wrong
24 there. I don't have a problem with doing that. I
25 would just -- it's a little bit of a tricky area as

1 to what merges and what doesn't, but...

2 MR. HARTWIG: I was actually thinking, which is
3 less than what the Court is thinking. I was thinking
4 that because of the Count 1 felony murder, if that's
5 the one that Your Honor is going to sentence him on,
6 since that felony murder count is based on the
7 attempted armed robbery, my understanding was that it
8 would merge into the felony murder.

9 THE COURT: And I think normally it would, but
10 it talks about which -- what facts and what elements
11 are included. I think an attempted armed robbery is
12 totally separate than a felony murder. But if that's
13 what you think and if that's what you're comfortable
14 with, I don't have a problem with merging the
15 attempted armed robbery into the felony murder.

16 So that would leave one felony murder, one
17 aggravated battery, one possession of a firearm
18 during a crime, and one theft by receiving.

19 Again, my theory on the aggravated battery -- my
20 first thought was that all of the underlying charges
21 merge into the felony murders on which they were --
22 for which they were the basis of. And then if you
23 merge the two felony murders into the one, then all
24 of that goes away.

25 But as I was reading the case law it appears to

1 me that once a felony murder is merged or vacated
2 because it merges into something else, and then
3 some of the, I think in all the cases I was looking
4 at, you had a malice murder and a felony murder and
5 the felony murder merges into the malice murder. But
6 then the contention was that once it's vacated
7 because of the merger, then the underlying felonies
8 still stand and they don't merge into it.

9 And so it seems to me that once you merge the
10 two felony murders based on aggravated battery and
11 aggravated assault, then you've got those two
12 charges, and I think the aggravated assault would
13 merge into the aggravated battery, I believe, but I
14 think aggravated battery would still stand, it seems
15 to me.

16 MR. HARTWIG: And with regard to possession of a
17 firearm during a crime, Your Honor, I'm assuming then
18 since the Court is going to proceed with sentence on
19 Count 1, felony murder, I believe all my possession
20 of firearm during a crimes, I think, are all based on
21 felony murders.

22 There is one on aggravated assault, but that
23 merges. So Count 3, I think, would be the
24 appropriate count on the possession of a gun during a
25 crime.

1 THE COURT: Yes. So he needs to be sentenced on
2 Count 1, which is felony murder; Count 3, possession
3 of a firearm during a crime; I think Count 5, which
4 is aggravated battery, and Count 10, which is theft
5 by receiving stolen property --

6 MR. HARTWIG: Yes, sir.

7 THE COURT: -- is what I think.

8 MR. HARTWIG: We would agree with that, Judge.

9 THE COURT: All right. Mr. Davis, I will let
10 you speak.

11 MR. DAVIS: Yes. I would object to the
12 aggravated battery, Your Honor. I think it needs to
13 merge with the felony murder. You only have one
14 victim basically, and Mr. Moss was convicted of
15 felony murder.

16 So it would be my contention that the aggravated
17 battery should merge with the felony murder. It's my
18 position that he should only be sentenced on Count 1,
19 felony murder; Count 3, possession of a firearm
20 during the commission of a crime; Count 10, theft by
21 receiving stolen property.

22 THE COURT: And I think when I first looked at
23 it, I think I did not disagree with what you're
24 saying. But the case law seems to be clear that when
25 the felony murders merge into another offense, and in

1 this case we are indicating that the two felony
2 murders on Count 4 and Count 7 both merge into
3 Count 1, that then there is nothing at that point for
4 the underlying felonies on which they were based to
5 merge into and that they are still left as valid.

6 But, again, I mean, in dealing with a felony
7 murder and a possession of a firearm during a crime
8 and a theft by receiving, we are still talking about
9 life plus 15 years as potential sentences, and I
10 don't want to come back and do it over again. But I
11 don't, I frankly don't think the aggravated battery
12 merges based on my reading of the law.

13 But, as I said, Mr. Davis, initially when I
14 first looked at it and had not really done the
15 research, I think I tended to agree with you, because
16 I just assumed that all of the underlying felonies
17 would merge into the felony murders, and then the
18 felony murders may all go away.

19 But the case law says no. Once you merge the
20 felony murder, there's nothing for the underlying
21 felonies to merge into, so they still stand.

22 But I'm not opposed to doing it that way,
23 Mr. Hartwig. I don't know what your thought is.

24 MR. HARTWIG: Your Honor, I don't -- I think
25 just for appellate purposes, again, I -- you know, I

1 think it could go either way. I don't have any
2 problem with the Court merging the aggravated battery
3 count into the felony murder, which would leave
4 felony murder and possession of a firearm during a
5 crime and theft by receiving a stolen gun. I think
6 clearly those three apply.

7 THE COURT: Yeah, no question about that.

8 All right. At this time, then, let me ask
9 first, Mr. Hartwig, do you have any witnesses that
10 you wish to present with regard to the sentencing?

11 MR. HARTWIG: Yes, sir. The State actually has
12 two witnesses, and there's also, I believe, three
13 people that would like to make statements, victim
14 impact statements. So whatever order the Court would
15 like me to do those in.

16 THE COURT: Whichever way you want to do it.
17 And I'm okay with them standing there at that podium,
18 if you want to do that.

19 MR. HARTWIG: I think what I would like to do is
20 have the victims go ahead and make their statements
21 first.

22 THE COURT: That's fine.

23 MR. HARTWIG: That way they won't be affected by
24 the witnesses that I'm going to put up in a minute.

25 THE COURT: That's fine.

1 MR. HARTWIG: Your Honor, we, at this time we
2 would call Ms. Fredda Bonds.

3 THE COURT: Ms. Bonds, if you'll just stand
4 right there at that podium, and tell me whatever you
5 want to say.

6 MR. HARTWIG: And would you like me to swear the
7 victim impact people, Your Honor?

8 THE COURT: I don't know that it's necessary to
9 do that.

10 MR. HARTWIG: Ms. Bonds, if you would, just tell
11 the Court your name and your relationship to Jose
12 Marin, and then tell the judge whatever you'd like
13 him to know about this case.

14 MS. BONDS: My name is Fredda Bonds, and Jose
15 and I have lived together for the last 13 years as
16 man and wife. My life took a 360-degree turn
17 13 months ago. I lost my heart, my soul mate, the
18 love of my life, my business, my everything.

19 Jose and I were happily together for 13 years
20 minus two months. We both had plans to grow old
21 together, take care of each other, rocking away
22 together on our front porch in our old age. We never
23 dreamed Jose would be so coldly killed at only
24 42 years of age.

25 Our grandchildren lost their only papa. They're

1 eight, four, and two years old. They ask -- they
2 loved him dearly, and he loved them. They ask me,
3 Nana, will Papa be back one day? And I tell them,
4 No, he's in heaven. They ask me why. And I tell
5 them that God needed another angel and then we all
6 cry.

7 My parents are 79 and 81 years old. They can't
8 understand how something so terrible can happen to a
9 man that's so good, someone so good. They loved him
10 like a son. Every time I visit them they are very
11 upset, crying, just can't get over it.

12 Many, many people have been affected by José's
13 death. He was so good to people. He would do
14 anything -- he would help anyone who would help
15 themselves. He was always there to do you a favor.
16 The whole community loved Jose.

17 The business we both worked so hard to build is
18 also gone. It was our dream, our future. Jose lost
19 his life there. Jose, our dream, gone forever.

20 The house we bought four years ago is no longer
21 a warm and happy place. It is a cold empty shell
22 now, a warm home no longer. I feel lost with no way
23 to turn. I am no longer the strong person that I
24 was.

25 I feel lost in a very bad dream and can't wake

1 up. I feel like I am spiraling down a long hill and
2 can't stop. I miss Jose more and more as the days
3 pass. The relationship I had with Jose -- excuse me
4 on that. Every single aspect of my life has been
5 affected, every single aspect.

6 Jermontae Moss has ruined many lives. I see no
7 remorse at all from him. I pray that he will get
8 life without parole. Jose deserves this justice.
9 May God guide your decision. Thank you for your
10 time.

11 THE COURT: Thank you.

12 MR. HARTWIG: We would like to next hear from
13 Herman Marin. And I believe he is the nephew of Jose
14 Marin.

15 Mr. Marin, if you will likewise just state your
16 name and tell us your relationship to Jose and tell
17 the judge what you would like to tell him.

18 MR. MARIN: My name is Herman Marin. I was --
19 Jose Marin was my uncle. He was the brother of my
20 mom. This really affected us. It has very -- it
21 impacts our lives in a terrible way.

22 A few weeks after Mr. Moss did what he did, my
23 mom had a stroke in relationship to what happened.
24 She had to be in the hospital for four or five days.

25 I have a little sister. She's three years old.

1 She loved my uncle so much. She will every day ask,
2 Where is my uncle? We never had any answers for her.

3 She will say, Can we go visit him? And I will
4 say, We can't. The place he is at, we can't go.

5 She will ask, Where is he? And we tell her,
6 He's with God. We can't go over there. I wish we
7 could.

8 She will say, Why not? We can just put some gas
9 in the car and go visit him.

10 It will break our family's heart to hear her say
11 that because he wasn't there, and we just can't do
12 anything to change that.

13 My uncle, we were really close the past few
14 years. He helped us out a lot. Like Fredda said, he
15 was a good man. He would help anybody. He would
16 come over to our house at least every week. Every
17 Thursday, he would stop by our house if we're going
18 home, before going to his business, he will stay by
19 my house, and then he will go unload his truck.

20 Except that night, I don't know -- I remember
21 him sending me a message, a voice message. He said,
22 Hey, Herman, are you still at your house?

23 I said, No, I'm still at work. And he said, oh,
24 okay. I was planning on stopping by to have a drink
25 or grill something.

1 And that just never happened. I wish I would
2 have said, Yes, you can stop by, and we could do
3 that. But, no, it never happened.

4 And like I said earlier, he used to come to our
5 house at least once or twice a week. I remember the
6 last time I talked to him he -- last time I saw him,
7 he was -- I'm not sure what day it was, but he came
8 over to my house. We were going to have a grill, but
9 apparently we were a little late or something. We
10 didn't have time to do any of that. So what he did,
11 he went inside. He grilled me a hamburger, and I
12 took it to work with me.

13 And now all things are gone. We have nothing.
14 He was our only family here in the United States, and
15 we would come to his house, or he would go to our
16 house, and now we can't do any of that. We just --
17 our lives were changed totally.

18 I have my grandparents. They were in Mexico.
19 They had to -- we had to tell them through the phone
20 what had happened. It was devastating. It was super
21 hard for them to fly all the way here knowing what
22 had happened to their son.

23 I still have a lot of uncles in Mexico. Three.
24 One of them was able to come here. He's right there
25 sitting next to me. He's the youngest brother of

1 Jose. He was able to come here, but the other ones
2 couldn't because of passports and all that. They
3 weren't able to make it.

4 It's just super hard for them not being able
5 to -- they weren't able to say bye to their oldest
6 brother. It just -- it was just very hard.

7 And I want to thank everybody that supported us
8 in this courtroom. And Mr. -- I can't remember his
9 name. I want to just thank everybody for their
10 support, and I'm glad that justice will be made. I'm
11 sure my uncle Jose will be as happy, also.

12 And I hope he regrets it because -- Mr. Moss
13 regrets what he did because he destroyed a huge
14 family. And like I said, I love my uncles. Never
15 had a chance to say bye or anything to my Uncle Jose
16 Marin. And I just hope justice will be made today,
17 Mr. -- Your Honor. Thank you.

18 THE COURT: Thank you.

19 MR. HARTWIG: Your Honor, next we would like to
20 hear from Mr. Javier Lara-Moreno. I believe he
21 wanted to speak to the Court through an interpreter.
22 We have Ms. Archila back with us this morning.

23 If you would again, tell the judge your name,
24 and what your relationship was to Jose Marin, and
25 tell the judge whatever you'd like.

1 MR. MORENO: My name is Javier Lara-Moreno. I
2 was a friend and employee of Jose Marin. Now is hard
3 to me explain in English all of my feelings, but she
4 can help me with that. I feel more comfortable
5 speaking my natural language in Spanish.

6 THE COURT: That's fine.

7 MR. MORENO: (Through interpreter) When I moved
8 to this country eight years ago, I have big goals. I
9 had my American dream. I never thought that in less
10 than four minutes it was going to be my worst
11 American nightmare.

12 I was so privileged to know Jose Marin. If
13 somebody had helped me to understand how to fight and
14 follow my dreams, it was Jose Marin. His death
15 impacted our community, our Hispanic community. He
16 always worked very hard, and with example he show us
17 the way.

18 For me, it was very hard to leave that
19 experience because I'm a father. I have two
20 daughters, three years and two years. Just to think
21 about that I could have died that night brings a deep
22 pain in my heart.

23 Jose taught me that you have to keep going. I
24 know it's very difficult for Jose's family and for
25 the Moss family not really to understand why happened

1 what has happened. I hope that both families reach a
2 little bit of peace.

3 To me, it's going to be very difficult. I have
4 to live with that for the rest of my life. I know I
5 have two beautiful, precious daughters. I have my
6 wife, and I have to keep going. And I know that
7 that's something Jose would have wanted, for all of
8 us to keep going.

9 I hope that after this is going to be a relief
10 for all of us. I still know that it's going to be
11 very hard. I hope that time will help us to continue
12 going, and to keep that wonderful memory that we have
13 of Jose.

14 (In English) Thank you so much, Your Honor.

15 THE COURT: Thank you, Mr. Moreno.

16 MR. HARTWIG: Your Honor, at this time the State
17 would call Special Agent Lee Weathersby from the GBI.

18 * * *

19 SPECIAL AGENT LEE WEATHERSBY,

20 Having been produced and first duly sworn,

21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. HARTWIG:

24 Q Could you tell us your name and where you're
25 employed.

1 A My name is Franklin Ledell Weathersby, and I'm
2 a special agent with the Georgia Bureau of Investigation
3 here in Perry, Georgia.

4 Q How long have you been a special agent with the
5 GBI?

6 A Over 12 years.

7 Q Prior to September of 2011, in your law
8 enforcement career, did you ever have occasion to come in
9 contact with an individual named Jermontae Moss?

10 A Yes, I did.

11 Q Do you see that individual here in the
12 courtroom today?

13 A Yes, I do.

14 Q Can you point him out for us, please?

15 A That's him right there.

16 Q With the orange jump suit?

17 A Yes, sir.

18 Q Do you recall the date that you came in contact
19 with him?

20 A Yes. October 10th, 2010.

21 Q And where was that at?

22 A At the Perry Fairgrounds, because the fair was
23 in town.

24 Q All right, sir. And without getting into all
25 the details, did your --

1 MR. DAVIS: Your Honor, I'm going to object to
2 this testimony. I think they are getting into
3 specific incidents.

4 For sentencing purposes they can use prior
5 convictions, but particular incidents that did not
6 result in arrest or did not result in convictions, I
7 don't think would be relevant to this proceeding or
8 admissible to this proceeding.

9 THE COURT: I think in a sentencing hearing it's
10 fairly wide open about what you do. He can't have an
11 enhanced sentence based on something that's not a
12 conviction, but I think they can talk about it.

13 MR. DAVIS: And that would be my -- you know,
14 that goes to the heart of my objection, Your Honor.
15 They are using this to basically enhance your
16 potential sentence. That's the objection that I
17 have.

18 MR. HARTWIG: It's not to enhance the sentence,
19 Judge. It's to make sure that this Court is fully
20 informed, so that the sentence that you impose on him
21 within the sentence range on the three counts that
22 you're going to sentence him on is done with full
23 knowledge and information.

24 THE COURT: You may proceed.
25

1 BY MR. HARTWIG:

2 Q Agent Weathersby, when you had the contact with
3 him, I think you said it was October of 2010?

4 A That's correct.

5 Q Was he arrested on that date by you or by
6 officers with you?

7 A Yes. In that case.

8 Q Yes, sir. And did that case involve disorderly
9 conduct and obstruction-type charges?

10 A Yes.

11 Q At the time he was arrested or thereafter, do
12 you recall him making any statements to you about gang
13 membership or gang affiliation?

14 A Yes, I do.

15 Q And would you tell the judge what those are,
16 please?

17 A While putting handcuffs on him, I patted him
18 down and found a red -- what I call a do-rag in his
19 pocket. I asked him what did that mean, and he said that
20 he was in a gang. I asked him which gang and he said he
21 was a member of the Bloods gang.

22 MR. HARTWIG: Thank you, sir. No further
23 questions.

24 THE COURT: Do you have any questions?

25 MR. DAVIS: I don't have any questions, Your

1 Honor.

2 THE COURT: You may step down. Thank you, sir.

3 MR. HARTWIG: The State calls Detective Mark
4 Wright.

5 You were under oath earlier this week, but I'm
6 still going to swear you in.

7 * * *

8 DETECTIVE MARK WRIGHT,

9 Having been produced and first duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HARTWIG:

13 Q On September 22nd, or into the early morning
14 hours of September 23rd, 2011, following his arrest, did
15 you interview the defendant, Jermontae Moss?

16 A Yes, sir, I did.

17 Q And is that the interview that you previously
18 during the trial of this case had testified about?

19 A It is.

20 Q You had Mirandized him and given him those
21 warnings?

22 A I did.

23 Q During that interview at any point, Detective,
24 did he say anything to you about gang affiliation or gang
25 membership?

1 A Yes, sir, he did. During the interview around
2 the time we were talking about the firearm, I
3 specifically asked him was he in a gang, and he told me
4 that he claimed Bloods.

5 Q He told you he was a member of the Bloods?

6 A That's correct.

7 Q And do you know what their gang color is?

8 A I believe it's red.

9 MR. HARTWIG: No further questions.

10 THE COURT: Do you have any questions, Mr.
11 Davis?

12 MR. DAVIS: I have no questions.

13 THE COURT: You may step down, Detective Wright.

14 THE WITNESS: Thank you.

15 THE COURT: Anything further, Mr. Hartwig?

16 MR. HARTWIG: That's all I have for live
17 witnesses, Judge.

18 I do have some documents that I would like to --
19 again, these are not documents for matters in
20 aggravation of sentence, or to give him a more severe
21 enhanced sentence, but it is to inform Your Honor as
22 to what we believe his record and conduct is.

23 MR. DAVIS: These are juvenile records, Your
24 Honor, which are supposed to be sealed. I would
25 object to the admission of any juvenile records.

1 MR. HARTWIG: I think you're entitled to see
2 these, Your Honor. These are, in fact, certified
3 copies from the Juvenile Court of Houston County.

4 THE COURT: That's fine. I think you can submit
5 those.

6 MR. HARTWIG: Your Honor, I've got first State's
7 Exhibit 100. That's Case 100023810902393. The date
8 on this order is February 8th, 2010.

9 I've got State's Exhibit 101. That is Case
10 Number 10002041. The date on this order is
11 December 6th of 2010.

12 I've got State's Exhibit 102 with a case number
13 of 1002448, and that is dated February 10th of 2011.

14 I'll just give these to Your Honor. I will tell
15 the Court, at the time of the -- at the time of the
16 murder that we are here for today for sentencing,
17 Mr. Moss was on probation, active probation out of
18 Juvenile Court. That's based on State's 102. He was
19 placed on 12 months probation, I believe, in February
20 of 2011. This murder occurred in September of that
21 year.

22 I'll also tell the Court these are not certified
23 records, Your Honor. These are merely for
24 informational purposes. But there are three current
25 pending indictments in my office. These three cases

1 have been indicted by the Houston County Grand Jury.
2 Case -- Indictment Number 2011-C-45447-N. It
3 charges -- indicts Mr. Moss for one count of
4 residential burglary. That occurred on August 24th
5 of 2011.

6 Indictment 2011-C-45426-L indicts this defendant
7 for one count of residential burglary that occurred
8 on September the 11th, 2011.

9 And then there's the case that Your Honor heard
10 about during the trial. This was our similar
11 transaction that was presented where you heard from
12 Mr. Javier Lara-Moreno. That indictment is 2012-C-
13 45757-N, charging him or indicting him with criminal
14 attempt to commit murder, aggravated battery,
15 aggravated assault with intent to rob, aggravated
16 assault with a firearm, criminal attempt to commit
17 armed robbery, residential burglary, theft by
18 receiving stolen property, that being a firearm, and
19 four counts of possession of firearm during a crime.

20 That is the State's evidence, Your Honor. I
21 would just have argument left.

22 THE COURT: Mr. Davis, do you have any witnesses
23 you wish to call?

24 MR. DAVIS: I call Sandra Lane.

25 Can you please state your name and tell how you

1 are related to Mr. Moss.

2 MS. LANE: Good morning.

3 THE COURT: Good morning.

4 MS. LANE: My name is Sandra Lane. Jermontae
5 Moss is my nephew. I'm here this morning to say that
6 my prayers go out to the family, to my family as well
7 in this given situation. I am so sorry to find my
8 nephew in this situation.

9 But at the same time I realize that he is young
10 and having some terrible incidents to happen in his
11 life at a very young age. We have been perhaps
12 misguiding him or inadvertently, you know, teaching
13 him some things that were far beyond his control, if
14 you will.

15 I pray that the Court has mercy on him in that
16 outside influences, he certainly was not reared in
17 this way. He was introduced to the church and had
18 spiritual guidance along the way, but outside
19 influences will interfere with what you're trying to
20 do.

21 If you have children, know that sometimes
22 outside interferences will interfere with parenting
23 and what you're trying to do for your family member,
24 and hope for the best and that they turn out to be
25 productive citizens.

1 I take great pride in that we were looking at
2 his life as he was trying to make some changes in his
3 life, and he took on the same profession that I have
4 as a master barber.

5 He was going to school and he had taken on that
6 same profession, but somehow his life took a turn for
7 the worst, finding himself in this predicament. But
8 in all he's a child and is a child. Even though you
9 may say he's an adult or of age, I say "of age" but
10 not necessarily an adult making good conscious adult
11 decisions. Because a lot of adults are people of
12 age, but have not matured in that area. And him
13 being able to mature has been interfered with by some
14 of the things that have taken place in his life. We
15 are just asking that the Court have mercy upon him in
16 that situation. We certainly do thank you.

17 THE COURT: Thank you, ma'am.

18 MR. DAVIS: Mr. Moss would like to make a
19 statement, Your Honor.

20 THE COURT: All right.

21 THE DEFENDANT: Your Honor, I would just like to
22 say that I'm not a troublemaker at all. I have been
23 through a few things in my life, but, as my aunt was
24 saying, last year I started -- I got my GED in 2010.
25 I started school later on and had a job when I was

1 15. I was trying to get my 15 credit hours to enlist
2 in the U.S. Navy around the time that I was arrested.

3 I would just like to say I am not in any way
4 what these charges describe me to be in any kind of
5 way. I done been through some things and I changed
6 my life around 180 degrees since I been here. I gave
7 my life to the Lord, whether, you know, it may look
8 like it or not. I would like to ask for mercy, and I
9 would like to apologize to the family for the life
10 that was taken away from them. Just pray for peace
11 for both sides. Thank you.

12 THE COURT: Thank you.

13 Is that all, Mr. Davis?

14 MR. DAVIS: That's all, Your Honor.

15 THE COURT: Mr. Hartwig, I will let you make
16 your argument.

17 MR. HARTWIG: Thank you, Your Honor.

18 **SENTENCING ARGUMENT ON BEHALF OF STATE**

19 MR. HARTWIG: Your Honor, first of all, I
20 believe statutory and case law would allow this Court
21 to sentence this defendant on the count of murder to
22 life in prison without possibility of parole.

23 I believe that under Miller vs. Alabama that
24 came out earlier this year, that this Court does have
25 to take into consideration and consider as a

1 potential mitigating factor his youth, and I'll ask
2 the Court to do that.

3 But I am, in fact, going to ask you to give him
4 a sentence of life in prison without the possibility
5 of parole. This murder was not this defendant's
6 first run-in with the law, as I have already shown
7 the Court this morning.

8 He has had not one bite at the apple, not two
9 bites at the apple. He has had a plethora of bites
10 at the apple. He was arrested three times, as shown
11 in State's Exhibits 100 through 102. He was on
12 active probation when this crime occurred.

13 One would think that that would be enough to get
14 the message across and to keep somebody from breaking
15 the law and going out and escalating their crime.
16 But it was not, obviously.

17 You would think that the crimes that Your Honor
18 heard about this week during the trial that happened
19 on September 21st, the night before Mr. Marin's
20 murder, you would think and you would hope that that
21 event in a 17-year-old's life would be enough to
22 scare the heck out of them, to get them to realize
23 this is serious. I've just shot somebody trying to
24 rob them.

25 The light bulb has gone off. I'm scared. And

1 you would hope and you would think that that would be
2 enough, that they would say, I've got to stop. I've
3 got to put the brakes on. This is getting too
4 serious. But that was not.

5 And in fact, a mere 24 hours after that event
6 where he shot someone and nearly took their life, he
7 was back out in the darkness of that neighborhood
8 prowling for his next victim. That victim was Jose
9 Marin, who died that night because of no one else's
10 actions but this defendant.

11 To say that Mr. Marin's death at 42 years of age
12 is senseless is a gross understatement. It's almost
13 something that I actually have trouble putting words
14 to. I have stood up since I took office and before
15 in this county, in front of the citizens of Houston
16 County, and stated many times that we will not
17 tolerate in this county violent crime by gang
18 members.

19 And I have looked the citizens that I represent
20 in the eye, and I've looked these victims in the eye
21 and told them that when we do get people that are
22 affiliated with criminal gangs committing violent
23 crime, that we will seek the most severe punishment
24 available under the law. And I meant it.

25 You have heard from two witnesses this morning,

1 both law enforcement. One, six months or so before
2 this murder was committed, that this defendant at the
3 age of 16 then said, I'm a member of the Bloods gang,
4 bragging about being a gang member, having that red
5 gang symbol on his person.

6 And then the night that Jose Marin was killed,
7 he again tells Detective Mark Wright, I'm in a gang.
8 I'm a Blood.

9 I'll ask Your Honor to remember what he was
10 wearing when he shot and killed Jose Marin, that
11 black and white striped jacket that had red in it.
12 The red shorts that he had on under his black
13 exercise pants, and, most importantly, Judge, what
14 you heard from Javier Moreno, that he had a red
15 bandana covering his face when he shot and killed
16 Jose Marin.

17 He's a gang member. For his age, he is the most
18 violent individual that I have prosecuted in my term
19 as a prosecutor in Houston County. The State of
20 Georgia prohibited me from seeking the death penalty
21 on Mr. Moss, because he is under 18 years of age.
22 And that's the law and that's fine. That's the way
23 it should be.

24 But I believe that the law gives Your Honor the
25 option upon full consideration of all the facts and

1 circumstances, upon full consideration of his
2 criminal record, upon full consideration of his gang
3 activity, admitted from his own mouth on two
4 different occasions, before and after this murder,
5 you have the opportunity, Judge, and the option to
6 sentence this, albeit young, defendant to life in
7 prison without the possibility of parole, or you can
8 give him life with the possibility of parole. That
9 is your decision.

10 I submit to you, Judge, based on the record that
11 I've seen and I've tried to put before this Court,
12 based upon all of the circumstances and factors that
13 I know Your Honor will consider in imposing this
14 sentence, that the mere possibility of a 47- or
15 48-year old Jermontae Moss walking the streets of
16 Houston County is something that we should not have
17 to risk.

18 This case warrants life without parole. This
19 case deserves life without parole, and I m asking you
20 to give him life without the possibility of parole.
21 Thank you.

22 THE COURT: All right. Mr. Davis.

23 **SENTENCING ARGUMENT ON BEHALF OF DEFENDANT**

24 MR. DAVIS: Your Honor, it's my position that
25 sentencing a 17-year-old, who was 17 at the time this

1 incident happened, sentencing him to life without the
2 possibility of parole would be cruel and unusual
3 punishment. The legislature just changed the
4 statute. It used to be the only way you could get
5 life without the possibility of parole is if you
6 sought the death penalty basically.

7 Mr. Hartwig just admitted he could not seek the
8 death penalty against Mr. Moss. So the only reason
9 that Mr. Hartwig is able to ask you to sentence
10 Mr. Moss to life without the possibility of parole is
11 due to the change in the statute. And I don't think
12 that the legislature considered the possibility of
13 sentencing a 17-year-old to life without the
14 possibility of parole.

15 And, you know, I understand the punishment part.
16 And I'm not mad at the Marin family for asking for
17 the maximum. If I was in their shoes, I would
18 probably be doing the same thing, Your Honor, so I
19 understand that.

20 But even if you sentence him and he gets life
21 with the possibility of parole, he will be eligible
22 for parole 30, 35 years. But it's not automatic that
23 he's going to get parole. You know, and I've got a
24 good feeling that there's going to be plenty of
25 people asking the parole board to deny him parole.

1 So it's not like he's just going to
2 automatically get parole when he's eligible. And I
3 think, you know, Mr. Moss understands that. You
4 know, either of these choices in his young mind, you
5 know, it's not a good outcome.

6 So, you know, even if you sentence him to life
7 with the possibility of parole, that's a harsh
8 sentence. It's not a win situation for him. There's
9 a good chance that if you sentence him to life with
10 the possibility of parole, he may stay in there the
11 rest of his life. There's a good chance that could
12 happen.

13 Like I said, I get the punishment part. I
14 understand the punishment part. I understand wanting
15 to send a message to the people. You know, there's
16 been testimony here today that Mr. Moss is affiliated
17 with gangs, but these are just statements coming out
18 of a 17-year-old. One time he was 16 when he made
19 these statements. He was 17 when he talked to
20 Detective Wright. These are just statements coming
21 out of a young man's mouth.

22 There's been no testimony about anybody he's
23 affiliated with. They're just basing these on
24 statements. Sometimes young men his age and his
25 situation, they tend to brag about who they are

1 affiliated with and who they are not affiliated with.

2 And I understand -- like I said, I understand
3 the punishment part. But what I would ask you to do
4 is to focus on redemption and rehabilitation. That's
5 what I would ask you to do.

6 You just heard Mr. Moss speak and said he gave
7 his life to Christ. This is a wake-up call for him.
8 Like I said, even if you sentence him to life with
9 the possibility of parole, he could still end up
10 staying in prison the rest of his life.

11 But I what would ask you to do is to give him
12 some possible hope while he's in prison, some
13 possible hope that he might get out one day. You
14 know, I was 17 one time in my life and I never got
15 into a situation that Mr. Moss has gotten himself
16 into. But I did some stupid things when I was a
17 teenager. And I would hope that nobody would hold me
18 to those stupid decisions that I made when I was a
19 teenager for the rest of my life.

20 So, like I said, it's not going to be a good
21 outcome for Mr. Moss either way. So what I would ask
22 you to do is just not put him, you know, into a
23 hopeless situation. You know, give -- either he's
24 going to have to, you know, redeem himself in prison,
25 but -- you know, for the rest of his life, but he

1 might be able to do some good, Your Honor. You never
2 know what life can do to you as you get older.

3 I'm not the same person that I was when I was
4 17. I can't even fathom the things I did when I was
5 17. I would hope nobody would just condemn me for
6 the rest of my life for things that I did when I was
7 that age.

8 So I would ask that you do give Mr. Moss, you
9 know, the possibility of parole, Your Honor.

10 THE COURT: Let me make just a few comments
11 about what I've heard.

12 I know that Mr. Davis had objected to
13 Mr. Weathersby, for one, testifying about what he
14 experienced at the fair sometime back with regard to
15 the gang. But I will say that I had already watched
16 the entire tape, which this jury did not see, when
17 Detective Wright had interviewed Mr. Moss. And I,
18 too, heard Mr. Moss say on the tape when he was
19 asked, Are you a member of a gang? And he said the
20 exact words that Detective Wright used on the stand.
21 "I claim the Bloods."

22 I don't doubt that Mr. Davis, when he was a
23 teenager, as we all did, we did some stupid things,
24 and some things that may not have been terribly good
25 judgment. But Mr. Davis wouldn't be a reputable

1 attorney at this point in his life if he had done the
2 kind of things that Mr. Moss has done.

3 I heard Ms. Lane, and I appreciate what Ms. Lane
4 said. Ms. Lane seems like a delightful lady to me,
5 and I'm sure it hurts her family to see where Mr.
6 Moss is. I hear Mr. Moss talking about his life
7 turning around and accepting Christ and such as that,
8 and I truly hope that is the case.

9 But as I have said many times, there's nothing
10 more humble and contrite and repentant than a felon
11 who has been caught and is in jail and awaiting
12 sentencing. I hear those kind of things all the
13 time.

14 But what really sticks in my mind, and has
15 throughout this, are really these two nights in
16 succession. And what I've thought about -- and, of
17 course, on the 21st, Mr. Corado, I think his name
18 was, was shot. And he appeared here in the courtroom
19 to testify. Outwardly appeared just as healthy as
20 any of us, because miraculously, and fortunately for
21 him, the bullet that went through him didn't hit the
22 vital organs.

23 But as far as Mr. Moss was concerned -- and I
24 believe I heard that Mr. Corado was in the hospital
25 for a number of days, or maybe even several weeks

1 before he overcame and recovered from his injuries.
2 And as far as Mr. Moss knew, he may have killed him
3 that night. And so he might have already been -- you
4 know, he might already have had a dead man on the
5 street when he went out the second night.

6 And I hear about teenagers doing stupid things
7 and foolish things, and lots of them do. Most of
8 them do. Maybe all of them do. They drive fast and
9 sometimes they get killed in car wrecks and sometimes
10 they kill other people in car wrecks.

11 But that's not intentional. It may be
12 intentional to drive fast. They didn't intend to
13 have a wreck, and they didn't intend to hurt
14 themselves or somebody else.

15 Mr. Moss went to Macon and bought himself a gun
16 and got busy with it. And it was, in both of these
17 instances, he didn't even get any money. He just
18 asked and shot.

19 And I just have a -- I have a real difficult
20 time, Mr. Moss, with somebody with that sort of
21 mentality, and that's not just being young and
22 stupid. There are an awful lot of young and stupid
23 people that grow up. We all have been there. But we
24 don't kill people. We don't take 45 pistols and just
25 shoot people indiscriminately.

1 And that -- I don't know where that mindset
2 comes from. I don't know if it comes from the
3 Bloods. I don't know if it comes from where you have
4 been or what you've seen.

5 But with all due respect to Ms. Lane and what
6 she said, you know, everybody has difficulty in their
7 families. We all have parents or grandparents that
8 die, sometimes unexpectedly. We have heartache. We
9 have tough times. But everybody that goes through
10 that doesn't end up with a gun in their hand out
11 shooting down folks just indiscriminately. And I
12 just have a real, real hard time with that type of
13 mindset and that type of attitude.

14 And, you know, I hear about second chances. I
15 hear that there have been, you know, apparently he
16 has pending charges for -- obviously, I assume that
17 they were pending charges for the incident on the
18 21st, which we heard about. Apparently there are
19 pending charges for some other residential
20 burglaries. And those things -- we have residential
21 burglaries. We have people sentenced for residential
22 burglaries.

23 But when it rises to the level of just gunning
24 down people, and this sort of just heartless,
25 cold-blooded, malignant heart, as the law talks

1 about, to do that, I just -- I have a difficult time
2 in looking at what you say about turning your life
3 around. I think it's a little bit late to be turning
4 it around.

5 You know, we have heard families go through what
6 the Marin family has been through. Those things
7 happen. There's absolutely no reason for it.
8 There's no explanation for it, except people like
9 Jermontae Moss that take a gun in their hand and
10 think they are a big man.

11 Mr. Moss now wants us to think that because he's
12 young that he should be given some consideration and
13 some mercy and some understanding and some leniency.
14 But when you're young and armed, Mr. Marin didn't get
15 any of that. He just, he got a fatal shot through
16 the abdomen before he even really had time to, as I
17 understood it, even say, I'm not going to give you
18 any money.

19 He was just putting the box down and might have
20 been going to get money to give to you. And just
21 shoot him down. And I just -- I have a hard time
22 with that. I'm sort of like Mr. Hartwig now. It
23 sort of scares me to think how your mind works in
24 that situation.

25 I look at a lot of things, and I have, on a

1 number of occasions in situations where young people
2 have gotten into trouble, I like to think -- and I
3 don't know how others perceive it, but I like to
4 think that I do look at not only the punishment side
5 but also the rehabilitation side, as Mr. Davis says.

6 And there are many times when I see people that
7 I think have drug problems that they really want to
8 get rid of, and sometimes maybe I even am too lenient
9 in trying to give them a break or get them help or
10 give them some rehabilitation or get them into
11 treatment or whatever.

12 I see people that sometimes do something really
13 foolish that's a one-time thing. They have no record
14 whatsoever of doing anything wrong, or they make an
15 awfully silly mistake. And many times I have tried
16 to fashion a sentence that I thought would truly give
17 them a second chance.

18 But I'm afraid under these circumstances, every
19 chance that Mr. Moss has gotten, it seems to me, he
20 has taken and used it. I mean, he was apparently, it
21 sounds like, out on bond, maybe on a couple of these
22 occasions having an already been charged and
23 arrested, certainly not on the one for the 21st. He
24 hadn't been charged with that.

25 But I think he was certainly on probation, even

1 if from Juvenile Court, but it sounds like some of
2 these other charges had probably already been lodged
3 against him, and he may have had a bond out on some
4 of those, and still shot two people in two nights.

5 And just mercifully for Mr. Corado, he's still
6 with us. Unfortunately, Mr. Marin is not still with
7 us. But it had nothing to do with what Mr. Moss
8 intended. He just intended to shoot them.

9 **SENTENCING**

10 Based on what we've talked about, I'm -- I do
11 believe -- and even though I have some disagreement
12 about exactly what he could be sentenced on, I think
13 the safest thing is we're dealing with one felony
14 murder, one possession of a firearm, one theft by
15 receiving. The possession of a firearm requires a
16 five-year consecutive sentence.

17 I am, in fact, going to sentence him to life in
18 prison, which is required. I am going to sentence
19 him to life without the possibility of parole. I am
20 going to sentence him to five years of possession of
21 a firearm. That will be a consecutive sentence to
22 the life sentence, as is required. I'm going to
23 sentence him to ten years in the penitentiary on the
24 theft by receiving. I will run that concurrent with
25 the life sentence.

1 That will, in fact, be the sentence of the
2 Court.

3 Are there any questions, Mr. Hartwig?

4 MR. HARTWIG: No, sir.

5 THE COURT: Are there any questions, Mr. Davis?

6 MR. DAVIS: I don't have any questions, Your
7 Honor.

8 THE COURT: All right. That will be the
9 sentence of the Court.

10 Let me just say to the families of everyone, I
11 know this has been difficult. It's been difficult
12 for everybody, for all of us. I'm sorry for both
13 sides that you've had to go through and endure all of
14 this. It's obvious what the Marin family has been
15 through and their difficulty and their loss.

16 And I'm sorry for Mr. Moss's family. What he
17 did is not your fault. It's not something that you
18 had anything to do with, and I'm sorry that you have
19 had to endure this. But these things just --
20 sometimes people just get in a bad situation, and
21 they -- I just feel that I've -- well, I've probably
22 said all I need to say.

23 I am just concerned about Mr. Moss's mindset and
24 how he thinks and I just don't think it's safe and
25 appropriate, as Mr. Hartwig said, for him to be

1 walking the streets at some later time. There's a
2 lot of us who won't be here 30 years from now. But
3 there's another good man like Jose Marin out there
4 that doesn't need to have to face him.

5 And so I offer my condolences to everyone in the
6 courtroom. I appreciate, again, your very
7 appropriate behavior and your respectfulness to the
8 Court in the proceedings.

9 And I hope that you can put this behind you in
10 some way and everybody will live with it. The Marins
11 will live with their loss, and Mr. Moss's family will
12 live with their loss. Both of them have lost
13 somebody they care about, really.

14 But I just hope you will keep your faith and
15 make the best of what's not a really good situation.
16 Thank you for your patience and your cooperation with
17 us.

18 We will be in recess.

19 (Proceedings concluded at 11:14 a.m.)
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C E R T I F I C A T E

GEORGIA, HOUSTON COUNTY.

I hereby certify that the within and foregoing
record is a true, complete and correct transcript of
the proceedings as reported by me in the case herein
stated.

This 23rd day of May, 2016.

Janet S. Paris

JANET S. PARIS
Certified Court Reporter B-1835
State of Georgia



APPENDIX D

IN THE SUPERIOR COURT OF HOUSTON COUNTY

STATE OF GEORGIA

THE STATE	:	
	:	2011-C-45448-N
VS	:	
	:	MOTION FOR NEW TRIAL
JERMONTAE MOSS	:	

MAY 29, 2019

THE HONORABLE G.E. "BO" ADAMS
HOUSTON COUNTY SUPERIOR COURT
PERRY, GEORGIA

APPEARANCES:

FOR THE STATE:

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MR. DAN BIBLER
ASSISTANT DISTRICT ATTORNEY
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1 THE COURT: Good afternoon.

2 MR. FLEISCHMAN: Good afternoon, Your
3 Honor.

4 THE COURT: Put this on the record.
5 Of course, we're here on the case the State v.
6 Jermontae Artez Moss. This is Case Number
7 2011-C-45448. Present in court on behalf of the
8 State I have George Hartwig and Dan Bibler. And
9 Mr. Moss is present in court, and is it Mr. Pines or
10 Mr. Fleischman?

11 MR. FLEISCHMAN: Mr. Fleischman, Your
12 Honor.

13 THE COURT: All right, thank you.
14 Andrew Fleischman here on behalf of the Defense. I
15 understand we were here last year as far as the
16 motion for new trial filed by the defendant, and I
17 also know there's issues with regard to the age of
18 the defendant at the time and being sentenced to
19 life without parole, and in light of the Supreme
20 Court case or cases that came after that, we need to
21 address in Mr. Moss's case now. With regard to
22 that, I'll let y'all just let me know what you're
23 looking at or figuring we're going to do today, and
24 Mr. Fleischman, you can address --

25 MR. FLEISCHMAN: My understanding -- and

1 I'll let Mr. Hartwig correct me if I'm wrong,
2 because I often am -- my understanding is that the
3 armed robbery counts are going to be vacated going
4 forward and that they've agreed that the previous
5 sentence of life without parole was void without the
6 proper findings under *Montgomery*.

7 I believe we're going to have a resentencing hearing
8 today before we have the motion for new trial hearing,
9 but I actually might prefer to do it after we do the
10 motion for new trial hearing and just blend it all up
11 together.

12 THE COURT: Logically it seems like
13 that would be better to do the motion for new trial,
14 obviously if there are grounds, but anyway, and do
15 the sentencing. So Count Two alleged attempted
16 armed robbery and Count Nine -- no. Well --

17 MR. FLEISCHMAN: Yes, sir. Under Count
18 One the problem was that nothing was taken. Under
19 Count Two the element of property of another was
20 absent. For that reason, the State and I have
21 agreed to go forward without those counts.

22 THE COURT: So the issue with Count
23 One is nothing was taken in the alleged offense, or
24 the alleged felony. Underlying felony alleged is
25 armed robbery. And then Count Two, although it says

1 attempted armed robbery. What was the issue with
2 Count Two?

3 MR. FLEISCHMAN: The problem with Count --
4 oh --

5 MR. HARTWIG: And Judge, at the first
6 hearing we addressed this. We do concede and
7 acknowledge that there is a problem with the wording
8 between Count One and the underlying count, because
9 Count One states during the commission of an armed
10 robbery, and then Count Two that it's based on is
11 actually a criminal attempt to commit armed robbery.
12 So we did the research on that, that is a problem,
13 and we don't have any problem with Count One being
14 vacated, or should the Court grant a new trial as to
15 Count One, then we would, based on that, we would
16 nol-pros it.

17 We are not willing to concede any problems with
18 Count Two. We think that Count Two is properly worded.
19 It does not have the phrase in it, the property of
20 another, but it does say that he took it from the person
21 or immediate presence of Jose Marin with the use of a
22 .45 caliber handgun. We think that's sufficient and so
23 I don't want to concede that. But I do say in fairness
24 that if Count One is going to be vacated or nol-prosed,
25 then I think it is only fair to take Count Two out of

1 the equation as well. Count Two would carry a sentence
2 of 30 years, which is ten years more than either of the
3 other underlying felonies that support his other
4 convictions the jury rendered for the felony murder
5 counts, those being aggravated battery and aggravated
6 assault. So since the criminal attempt to commit armed
7 robbery would carry 30, I'm willing to give that up and
8 then just go forward and do a resentencing.

9 I think there may have been some issues with the
10 merger, merger versus vacate in the way that Judge Nunn
11 did the sentence, so we would ask this Court to
12 basically review what Judge Nunn did, resentence him
13 properly for felony murder. I think the way I read the
14 cases, if you sentence him on one of the other felony
15 murder counts, like Count Seven, which is based on
16 aggravated assault, then that aggravated assault merges
17 into it and the other felony murder count, Count Four,
18 is vacated, I believe as Count One would be as well, but
19 Count Four would be vacated. And the way I read the
20 cases is, there's nothing then left of Count Four for
21 Count Five, the aggravated battery, to merge into, so
22 that would be a free-standing count.

23 The case law says you take the most serious one and
24 it's the one that merges. But ag batt and ag assault
25 both carry 20, so I don't know that it makes a

1 difference whether you sentence him on Count Four or
2 Count Seven, because whichever other underlying count
3 survives after the vacate of the murder count, either
4 way they're going to carry 20.

5 So basically he would have -- I think he should be
6 sentenced on one of the felony murder counts, that being
7 Count Four or Count Seven. Whichever one you sentence
8 him on, that underlying sequential count would merge,
9 and the other of the felony murder counts I believe
10 would be vacated. But the other underlying, once the
11 vacate occurs on the other murder, the underlying would
12 remain to be sentenced on. At least that's my reading
13 of the cases.

14 And then what that leaves us with then is the
15 possession of potentially two possession of firearms
16 during a crime. One for -- well, it would be whichever
17 felony, whichever felony survived. So there would be
18 one with possession of firearm during a crime, and then
19 there's the stolen gun that he had, and so there would
20 be a sentence for the theft by receiving stolen firearm.
21 Which essentially is, the ultimate sentence in the end
22 is what Judge Nunn did, he sentenced him on one of the
23 felony murder counts. He sentenced him on Count One.
24 He sentenced him on the theft by receiving stolen
25 property of the gun and then five years consecutive on

1 the gun during a crime.

2 So the other big issue is he was 17 at the time of
3 the murder. We did have a sentencing hearing. We put
4 up witnesses and we introduced evidence, all of which is
5 in the record for Your Honor to consider. I do have one
6 or two updates on things that have happened since that
7 sentencing hearing, but there's a good transcript of it.

8 Following that sentence hearing, Judge Nunn did
9 sentence him to life without possibility of parole. But
10 then under *Montgomery* and *Veal*, you know, Judge Nunn --
11 obviously, we didn't go through the full hearing and
12 meet the standard and do the findings, the Court did not
13 do the findings and do all that's required now. So I
14 think that's an issue, too, that this Court would have
15 to consider all that we've introduced and whatever
16 additional we're going to put up today and then Your
17 Honor decide whether he's going to get life without or
18 life with and issue the findings and so forth to comply
19 with current law, and then obviously whatever issues
20 they're raising under their motion for new trial, in
21 addition to the sentencing and issues.

22 THE COURT: Just so I can summarize,
23 and I'll hear from everybody, but obviously we have
24 11 counts. I understand from the State, they
25 concede, although I understand what you're saying,

1 you don't think in and of itself Count Two posed a
2 problem that you'd have to dismiss it or vacate it
3 or whatever. But at the end of the day, you're not
4 wishing to proceed on Count One or Two, and so
5 obviously the remaining counts, two of which are
6 felony murder. We have the same victim, so you
7 can't have both, but they're both felony murder, so
8 as I understand it, if he's found guilty of felony
9 murder, then the underlying felony would merge into
10 the murder, but then the other felony murder would
11 be vacated because you can only have one --
12 obviously, you can only have the murder of one
13 victim. And then the firearm charges.

14 So is that, Mr. Fleischman, as far as that goes, is
15 that accurate?

16 MR. FLEISCHMAN: Yes, Your Honor. Just to
17 I think summarize. I think Mr. Hartwig and I agreed
18 about this before the hearing. The options for this
19 Court would be probably life plus five, if you run
20 the firearm count consecutive and the theft
21 concurrent; life plus 15, if you run the firearm
22 consecutive, and the firearm consecutive and the
23 theft consecutive; and then also life without
24 parole. So I think somewhere between those three
25 options is where the Court will land.

1 THE COURT: Okay.

2 MR. HARTWIG: Except the only thing I
3 would add to that, Judge, is my reading of the cases
4 is that you got the two felony murder counts. Once
5 the one is vacated, there is nothing for the other
6 underlying felony, the ag batt or ag assault,
7 whichever's left, to merge into. And the way I read
8 the cases is that still stands, it could be
9 sentenced on.

10 THE COURT: Right.

11 MR. HARTWIG: So I would guess, though,
12 if Your Honor wants to go ahead and sentence him on
13 the felony murder associated with the aggravated
14 battery, that the aggravated assault would probably
15 merge into the aggravated battery and then as a
16 free-standing ag assault would merge into the
17 aggravated battery and then it would merge up into
18 the felony murder, and then the other felony murder,
19 based on that, would get -- would be vacated. So
20 I'm not sure whether there's an extra 20 there or
21 not. I guess it would depend on which one the Court
22 was going to sentence him as far as the felony
23 murder.

24 THE COURT: Well, I understand what
25 you're saying. I hadn't digested that at all, but I

1 can understand that argument. At the end of the
2 day, we're having a motion for new trial and then
3 obviously the resentencing given what you guys have
4 already said. I don't know, Mr. Fleischman, if you
5 have a preference.

6 MR. FLEISCHMAN: Let's do the motion for
7 new trial first, so I can get Mr. Davis on to his
8 business.

9 THE COURT: All right. Sure.

10 MR. FLEISCHMAN: And I'll give a brief
11 opening if that's all right, Your Honor.

12 THE COURT: Yes.

13 MR. FLEISCHMAN: Okay, Your Honor. My
14 name is Andrew Fleischman, here on behalf of
15 Jermontae Moss. And the case, this is a really
16 short, straightforward case, and the issues here
17 today are also quite straightforward and short. The
18 big issues we raised, number one and two, have
19 already been resolved. Do you have a copy of my
20 brief, Your Honor?

21 THE COURT: I do.

22 MR. FLEISCHMAN: Okay, great. So we're on
23 to issue four. I'm sorry. We're on to issue five,
24 dealing with the aggravated battery. Now, this
25 issue is kind of interesting. I actually haven't

1 really seen it addressed anywhere. The question is
2 whether the abdomen is a member of the body under
3 the statute. Now, there have been Court of Appeals
4 cases saying that a tooth and a nose or an ear are
5 all parts of the body, they're all members. A
6 member of the body is a separate definable part that
7 may be separated from the body. That's how the
8 Court of Appeals defined it in this one case.

9 I also think that if you read the statute itself, it
10 says a person commits the offense of aggravated battery
11 when he causes bodily harm by rendering a member of his
12 or her body useless or by seriously disfiguring his or
13 her body or a member thereof. So they kind of draw a
14 distinction between the body and a member in two parts
15 of the same statute. I think their goal likely was that
16 stuff like torso shots would not count as aggravated
17 battery, unless you injured a particular organ, at which
18 point that probably could be a member of the body.

19 Our Georgia court has not addressed this particular
20 body part, and nationwide the only thing I found was one
21 California case where they were a little bit skeptical
22 that the abdomen was a body part, and that's cited here
23 in this brief for you to go check on.

24 So I think, Your Honor, had counsel generally
25 demurred on this, this really does not allege that a

1 member of the body was injured. It really ends up just
2 being another aggravated assault count, which if they
3 merge, as opposing counsel says, may end up being moot
4 anyway. But that's the argument on that as far as the
5 demurrer goes.

6 Issue six, we're just going to talk about the
7 suppression hearing just a little bit. This issue is
8 actually raised below, so chances are we're just going
9 to go to the Supreme Court of Georgia on this issue.
10 But the basic issue was that the police stopped Mr. Moss
11 even though he was not similarly dressed to how the
12 person was initially described, and arguably there was
13 insufficient reasonable articulable suspicion to stop
14 him at that time and also to do the pat-down as they
15 did.

16 And then finally, Your Honor, we're going to talk to
17 trial counsel. I keep hoping that I'm wrong about this,
18 I might be mistaken, but when I looked through this
19 transcript, it looked as though trial counsel closes by
20 telling the jury, well, the State would have brought up
21 evidence of GSR and fingerprint evidence if they have
22 it, and they haven't, so you should hold that against
23 the State.

24 But what he didn't do was bring up the actual GSR
25 and fingerprint results. The GSR results would have

1 shown, Your Honor, that Mr. Moss's -- there was no GSR
2 present on Mr. Moss's hand swabs. Now, as the State
3 brought forth evidence, that can be explained if
4 somebody washes their hands or if they're wearing gloves
5 at the time of the shooting. Those are typically two
6 explanations for false negatives. But here the
7 defendant was -- it was ten minutes after the shooting
8 that he was stopped. He was in a trailer park. There
9 wasn't much reason to think he would have had access to
10 running water and no evidence that he was wearing
11 gloves. That might have been exculpatory.

12 Additionally, the magazine of the weapon had a
13 fingerprint on it, but Mr. Moss was excluded from being
14 the person who left that fingerprint. So in a case like
15 this, where the most important circumstantial evidence
16 really was the gun -- he's found with the murder weapon,
17 it ballistically matches -- if you've got evidence
18 pointing to someone else having fired that gun or held
19 that gun, that really weakens the State's circumstantial
20 case, and we'll be asking Mr. Davis about that here
21 today. And that's the end of my opening.

22 THE COURT: Okay.

23 MR. HARTWIG: Just real briefly in
24 response, Judge, if in fact, as counsel claims, that
25 there is any potential problem with the aggravated

1 battery count, then we would suggest that the Court,
2 when you do the resentencing, sentence him on the
3 felony murder that is supported or based on the
4 aggravated assault count, which is going to vacate
5 the felony murder based on the aggravated battery
6 and take care of that issue.

7 THE COURT: All right.

8 Mr. Fleischman, do you want to proceed?

9 MR. FLEISCHMAN: Thank you, Your Honor. I
10 call Mr. Davis. Your Honor, every jurisdiction is
11 different. Do I swear him in?

12 THE COURT: You can, sure. That's
13 fine, if you would.

14 RODNEY DAVIS,

15 having been first duly sworn,

16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. FLEISCHMAN:

19 Q Could you please introduce yourself to the Court?

20 A My name is Rodney Davis.

21 Q And did you represent Mr. Moss at trial?

22 A Yes, I did.

23 Q How long have you been a trial attorney?

24 A Since 1995.

25 Q About how many trials have you done?

1 A I want to say around 20, you know, give or take a
2 few.

3 Q Is your practice exclusively criminal?

4 A No. About 50 percent now is domestic and 25 percent
5 criminal and 25 percent personal injury. Probably would have
6 been more criminal when I was representing Mr. Moss.

7 Q That makes sense to me. You -- as a general rule,
8 do you file general demurrers in your cases?

9 A Every now and then if I see something that's really
10 glaring to me, but it's not a blanket thing that I do.

11 Q Is there any strategic reason you can think of why
12 if you saw an issue you might not raise it?

13 A No strategic -- it would just all depend on the
14 circumstances. Sometimes I might wait to do it on a motion
15 for a directed verdict of acquittal, that way you don't tip
16 the State off.

17 Q That makes sense. In this case do you remember
18 specifically whether you ever spotted a problem with the armed
19 robbery count of the indictment?

20 A I probably -- if I didn't raise it right off the
21 bat, I probably didn't.

22 Q Do you remember specifically finding a potential
23 problem with the ag battery count?

24 A No, I didn't.

25 Q So to the extent that you might not have raised

1 those issues, you're not sure, but it probably wasn't
2 strategic?

3 A It probably wasn't.

4 Q Okay. And you also filed a motion to suppress in
5 this case; is that right?

6 A Yes, I did.

7 Q And you raised the lack of reasonable articulable
8 suspicion to stop the defendant?

9 A Probably did, yeah.

10 Q Okay. You didn't specifically challenge the
11 pat-down. Was there any particular reason you didn't
12 challenge the pat-down as being excessive?

13 A Yeah, I'm not going to remember that, yeah.

14 Q All right. And finally, moving on to the GSR and
15 fingerprint evidence. You heard my opening; do you remember
16 whether that evidence came in here at trial?

17 A I could have sworn that we stipulated to that test
18 coming in. I might be wrong. But I could have sworn -- I am
19 familiar with that test.

20 Q Fair enough. So your impression was that that was
21 coming in and that would be favorable to your case?

22 A Yes, uh-huh (affirmatively).

23 Q So if for any reason it didn't come in, that was not
24 strategic?

25 A It just -- like I said, it wouldn't be strategic,

1 and if I remember correctly, I think the State was on the
2 defensive, you know, trying to explain why there was lack of
3 gunshot residue on Mr. Moss.

4 Q Thank you.

5 A So that's the only reason it would have been
6 strategic.

7 Q That makes sense.

8 A That's it? Okay.

9 MR. FLEISCHMAN: All right. No further
10 questions. Thank you so much.

11 CROSS-EXAMINATION

12 BY MR. BIBLER:

13 Q Hi, Rodney.

14 A Hi.

15 Q Good to see you again.

16 A Good to see you too.

17 Q I know you testified to this, but I just want to get
18 it clear for the record. You said you've been a trial
19 attorney since 1995?

20 A Yes, uh-huh (affirmatively).

21 Q And included in your trial practice, you've done you
22 think 20 trials overall or 20 criminal trials?

23 A Probably half -- I want to say a good majority of
24 those are criminal basically. It might be a little bit more
25 than half as far as the criminal portion of it is concerned.

1 Q I'm certainly not challenging you on this, but I
2 just want to get it in the record. You are a member of the
3 bar in good standing?

4 A Yes, uh-huh (affirmatively).

5 Q And have been for some time?

6 A Since 1995, yes.

7 Q And your practice of law currently, although you
8 said it does still involve some criminal work, you also do
9 domestic and some personal injury?

10 A Yes, I do, uh-huh (affirmatively).

11 Q And have you had any trials in those fields as well
12 or --

13 A Oh, yes. Both fields. All three fields basically
14 I've had jury trials.

15 Q So 20 trials that's criminal, but you've had more in
16 the other fields?

17 A I think my civil practice is catching up with the
18 amount of criminal trials that I've tried in the past.

19 Q Sure. And you attend CLEs obviously and practice
20 regularly, not just in terms of trials, but practice regularly
21 in superior courts, Houston County --

22 A Yes.

23 Q -- and other jurisdictions in Georgia as well?

24 A Yes, I do.

25 Q I'm just curious, because I don't know, are you

1 licensed in any other states or just Georgia?

2 A No, just Georgia.

3 Q Now, let's refer to this case specifically.

4 A Okay.

5 Q You testified that you did, and it's clear on the
6 record, you did file motions, a motion to suppress?

7 A Uh-huh (affirmatively).

8 Q Did you confer with Mr. Moss prior to, certainly
9 prior to trial, but during motion hearings and all of that?

10 A Oh, yeah, I conferred with him, yes.

11 Q And you were provided discovery?

12 A Yes, uh-huh (affirmatively).

13 Q Did you go through that discovery package with your
14 client?

15 A Yes, uh-huh (affirmatively).

16 Q And is that something you do regularly --

17 A Oh, yeah.

18 Q -- when you have a case that's going to trial?

19 A Yes, I do.

20 Q Did you talk to him about the options in his case,
21 about plead not guilty, going to trial, plead guilty, things
22 like that?

23 A Yes. As a matter of fact, Mr. Hartwig did make us a
24 plea offer in the case, and I did go over it with him, yes.

25 Q And he refused that plea offer?

1 A Yes.

2 Q Mr. Moss?

3 A Yes, he didn't accept it, yes.

4 Q With regards to demurrers --

5 MR. BIBLER: And, Your Honor, I
6 presume we're not arguing, but we're focusing right
7 now on the issue of ineffective assistance?

8 THE COURT: That's the grounds for
9 the motion for new trial, right.

10 Q (By Mr. Bibler) With regards to demurrers in this
11 case, you did not file any?

12 A No, I didn't file any, not that I remember.

13 Q Do you normally file a demurrer?

14 A Not -- I don't make it a normal practice unless I
15 really, you know, see something that basically demands or
16 that's pretty much glaring that it will cause me to file a
17 demurrer.

18 Q And again, I'm not challenging you. This is a
19 rhetorical question. You know what a demurrer is?

20 A Yes.

21 Q And you've read indictments before?

22 A Oh, yes.

23 Q In cases that didn't even go to trial you've read
24 indictments before?

25 A Yes.

1 Q You went through this indictment with your client?

2 A Yes, uh-huh (affirmatively).

3 Q So defense counsel kept asking you about was this
4 strategic, kept using that word strategic.

5 A Uh-huh (affirmatively).

6 Q I don't want to focus on that word specifically, but
7 basically the decisions you made in this case were based on
8 your training and experience of a trial attorney, having tried
9 other cases, your consultation with your client, your review
10 of all the documents that you were provided, your
11 conversations with the State; all those things you did,
12 correct?

13 A Yes.

14 Q And you made your decisions as an attorney based on
15 the totality of all of that?

16 A Yes, uh-huh (affirmatively).

17 Q But you did discuss things with Mr. Moss regarding
18 trial procedure, certain decisions that you felt were
19 appropriate?

20 A Uh-huh (affirmatively).

21 Q It wasn't a case of you just all of a sudden
22 ignoring it and not doing anything about it?

23 A No. I mean, I probably didn't get into the
24 technical procedures, you know, with him. But mainly when I'm
25 dealing with clients I discuss, you know, the pros and cons --

1 Q Sure.

2 A -- of, you know, as far as how the evidence is
3 looking.

4 Q And I'm almost done.

5 A Okay.

6 MR. BIBLER: And, Judge, to the
7 content of the indictment, I know that's not why
8 Mr. Davis is up here. Mr. Fleischman addressed it
9 in his opening, and I just would like to reserve
10 time to make my remarks about that.

11 THE COURT: Sure.

12 Q (By Mr. Bibler) The GSR, the gunshot residue, that
13 was something you were aware of?

14 A Yes.

15 Q And this was turned over to you?

16 A Yes.

17 Q Ultimately you decide what evidence to put up, other
18 than your client's testimony?

19 A Yes, uh-huh (affirmatively).

20 Q You're familiar with the evidence in this case.
21 There was a recorded statement. I believe Mr. Moss was found
22 in the vicinity shortly after the incident. There was much
23 more evidence than just a single gunshot residue test,
24 correct?

25 A Yes, there was more evidence than that, yes.

1 Q And that was all turned over to you as well?

2 A Yes, it was.

3 Q You reviewed it and went over it with your client?

4 A Yes.

5 MR. BIBLER: Thank you. Good to see
6 you again.

7 THE WITNESS: Good to see you too.

8 THE COURT: Mr. Fleischman?

9 MR. FLEISCHMAN: Just brief redirect. I
10 don't want to forget to do the thing I'm accusing
11 you forgetting to do.

12 Could I approach, Your Honor?

13 THE COURT: Yes.

14 REDIRECT EXAMINATION

15 BY MR. FLEISCHMAN:

16 Q I'd like to show you what I am going to be marking
17 as Defense Exhibit 1. Would you please take a look at this?

18 A Okay.

19 Q Do you recognize it?

20 MR. FLEISCHMAN: Oh, I'm so sorry. I'm
21 going to bring it back and show it to y'all. I'm
22 sorry. Bad form.

23 MR. HARTWIG: Just tell us what it is,
24 that's fine. We've seen it.

25 MR. FLEISCHMAN: I'm so sorry. This is

1 the GSR report and the fingerprint report.

2 MR. HARTWIG: We've seen it.

3 Q (By Mr. Fleischman) Do you recognize this?

4 A You know, it's been so long. Basically I more
5 particularly remember the GSR, you know, report.

6 Q I'm going to go ahead and show you that. Take a
7 look at this. Do you recognize that?

8 A Yes, I do.

9 Q How do you recognize it?

10 A How do I recognize it?

11 Q Yeah.

12 A Refreshed my memory.

13 Q Okay. So you recognize it?

14 A Yes.

15 Q And what is it?

16 A It's the GSR report.

17 Q Okay. And is that a fair and accurate
18 representation as you remember?

19 A From what I remember. I mean, it's been so long.
20 It would be fair and accurate.

21 MR. FLEISCHMAN: At this time I would like
22 to tender it into evidence, Your Honor.

23 THE COURT: Any objection?

24 MR. HARTWIG: No, sir.

25 THE COURT: And that's Defendant's 1.

1 Q (By Mr. Fleischman) And back to D1, can you please
2 look at this word, excluded, on D1? Do you recognize that
3 handwriting?

4 A Do I recognize the handwriting?

5 Q Yeah.

6 A It could possibly be my handwriting. Okay. It's my
7 handwriting, uh-huh (affirmatively).

8 Q Okay. And do you typically write on documents and
9 highlight documents you receive from the State in discovery?

10 A Yes, I do.

11 Q Does this appear to be a fair and accurate
12 representation of what the State provided you in discovery in
13 this case?

14 A It looks like their usual type of lab report that
15 they would provide to me.

16 MR. FLEISCHMAN: At this time I'd like to
17 tender that into evidence if that would be all
18 right.

19 MR. HARTWIG: That's fine.

20 THE COURT: You marked that as 2?

21 MR. FLEISCHMAN: It's marked as -- this is
22 our D1, the other one is D2.

23 THE COURT: All right.

24 Q (By Mr. Fleischman) Finally, you talked about a
25 plea offer. Do you happen to remember what that plea offer

1 was?

2 A I know they took -- and I have it in my file because
3 I just briefly reviewed it -- but I think they took life
4 without the possibility of parole, or Mr. Hartwig structured
5 it where there was a possibility that Mr. Moss could, you
6 know, get out, if I remember correctly.

7 Q Would it refresh your recollection if you checked
8 that plea offer?

9 A Sure. Here it is right here.

10 Q All right. Thanks. What was the plea offer?

11 A Basically it was life with the possibility of parole
12 and then 35 years, so that was it, uh-huh (affirmatively).

13 Q Okay, thank you. I just want to talk to you a
14 little bit about your relationship with your client.

15 A Okay.

16 Q Have you dealt much with many young clients before?

17 A Oh, yes.

18 Q What's it like dealing with clients who, you know,
19 are teenagers?

20 MR. BIBLER: Your Honor, I object to
21 this. I mean, it's not relevant and that, you know,
22 he can --

23 THE COURT: Well, I know it can come
24 up with -- well, I'm fine. I'm fine with it. I'll
25 overrule the objection.

1 MR. FLEISCHMAN: Just so we don't have to
2 keep Mr. Davis here for sentencing.

3 THE WITNESS: It just all depends on
4 that particular client. Mr. Moss, he was, like I
5 said, he wasn't a troubled client, you know, as far
6 as my dealings with him. I've never had any
7 problems, you know, out of him as far as my
8 interactions with him.

9 MR. FLEISCHMAN: All right. Thank you.
10 No further questions.

11 THE COURT: Any recross?

12 MR. BIBLER: Can I approach and see
13 the exhibits?

14 THE COURT: Yes.

15 RECROSS-EXAMINATION

16 BY MR. BIBLER:

17 Q Rodney, I'm going to hand you D2. I'm sorry. We
18 know each other.

19 A Yes.

20 Q Out of respect I should call you Mr. Davis.

21 A That's fine.

22 Q This is the GSR gunshot residue report that you
23 received?

24 A Yes, uh-huh (affirmatively).

25 Q And down here at the last paragraph it says, Failed

1 to reveal particles associated with GSR. This does not
2 eliminate the possibility that the subject discharged the
3 firearm or was in close proximity to a firearm during
4 discharge or came into contact with an item bearing GSR. Is
5 that correct?

6 A Yes. Yes, that's what it says.

7 Q And that's the document you received?

8 A Yes, that is.

9 MR. BIBLER: Thank you. That's all.

10 THE COURT: Anything else for this
11 witness then? No objection to his being excused
12 then?

13 MR. FLEISCHMAN: No objection, Your Honor.

14 THE COURT: Thank you, Mr. Davis.
15 You're free to go.

16 MR. FLEISCHMAN: Your Honor, that
17 concludes the Defense's evidence.

18 THE COURT: All right. The State
19 wish to present any evidence as far as the motion
20 for new trial? Just argument or --

21 MR. BIBLER: I think just argument at
22 this point as far as motion for new trial. I think
23 we might have some evidence on the sentencing issue.

24 THE COURT: Right. Yeah. I was kind
25 of segregating those issues. Mr. Fleischman, you

1 just reserve closing; is that right? No other
2 evidence?

3 MR. FLEISCHMAN: I'd like to go first.
4 Sorry. Burden -- we're shifting the burden.

5 Hey, Your Honor, I'd just like to talk briefly. So
6 what trial counsel said is that, you know, typically he
7 only files a general demurrer if he thinks something is
8 really glaring; that if he didn't file a general
9 demurrer in this case, it was probably because of just
10 an oversight. And there's a case I'd like to bring to
11 your attention, *Henderson v. Hames*. It's a really
12 tragic case of a brother who accidentally shoots his
13 brother while hunting, and they convict him of felony
14 murder for sort of a negligence while hunting charge.

15 What the Court said is there's really no strategic
16 reason why a lawyer won't raise a general demurrer if
17 there's one there, even if you don't raise it before
18 trial, because general demurrers can be raised at any
19 time. As Ms. Coggins well knows, you might very well go
20 in and say, okay, at trial I'm going to do this at the
21 directed verdict stage and just kick that count. Here,
22 trial counsel didn't raise any demurrers as to any of
23 these counts. So I think at that point you just go to
24 straight prejudice. If there's a problem with the
25 count, if this Court, for instance, thinks there's a

1 problem with an ag battery count or whatever, then you
2 say that's probably prejudicial and you strike that
3 count and grant a new trial as to that count.

4 As far as the GSR, so that's really the crux of
5 this. And once again, I keep waiting to be mistaken
6 because it's so surprising to me that it doesn't appear
7 that it came in at trial, the GSR and the fingerprint
8 report. But this case was really straightforward. The
9 defendant is found ten minutes after the shooting
10 carrying what is revealed, or what is believed to be the
11 murder weapon based on ballistics testing, and the
12 State's theory is he is the shooter.

13 This is very good circumstantial evidence, and the
14 only contrary circumstantial evidence really in the
15 whole case, because the defendant said nobody else had
16 possessed the gun when he spoke to the police, is this
17 fingerprint, this GSR. And it's hard to think of a
18 strategic reason why you wouldn't want the jury to know
19 that. And it's particularly surprising, as I point out
20 in my brief, that they didn't bring that to the jury's
21 attention, because in closing trial counsel says, why
22 didn't they bring those things to you if they thought
23 they would help?

24 It seems to me like it may have just been an
25 oversight. Like maybe in the heat of trial he expected

1 somebody from the State to bring it out and it just
2 never happened and so the jury didn't end up getting
3 that evidence. But that's really textbook ineffective
4 assistance of counsel. Not necessarily that the lawyer
5 is a bad lawyer, but something has slipped his mind,
6 there's some oversight, there's no reason for it.

7 And then we have to go on to prejudice. So the
8 prejudice prong under *Strickland* is, is there a
9 reasonable probability of a different result? Which the
10 U.S. Supreme Court says is less than preponderance but
11 not meaningfully so. Very helpful. I'll say
12 45 percent; 45 percent chance of a different result had
13 this evidence come out. Well, there is only one person
14 who could positively identify the defendant at this
15 trial, and that was the similar transaction witness who
16 had been shot with the defendant the night before
17 allegedly. He, of course, had less opportunity perhaps
18 to view the defendant than many folks would because he
19 had been shot. Notably in this case, the defendant was
20 not wearing a red bandanna that the shooter had
21 allegedly been wearing, and he was wearing slightly
22 different clothes.

23 So you had some circumstantial evidence to suggest
24 that perhaps someone else had shot the victim and given
25 the gun to the defendant. Under those factors, Your

1 Honor, I believe there was a reasonable probability of a
2 different result had the jury been aware of the lack of
3 GSR and the fact that fingerprints -- that someone
4 else's fingerprints were found on the magazine,
5 indicating probably that they loaded it.

6 Now, the State is absolutely right, and that report
7 is right, that the negative result on GSR does not rule
8 someone out as the shooter. GSR has generally been
9 disavowed because it leads mostly to false positives.
10 For instance, there was a 2004 study out of
11 Czechoslovakia that shows that using a Luger you could
12 get GSR on someone's hands from 12 feet away firing a
13 gun. False negatives are less of a problem. Typically
14 they come about when somebody is wearing gloves or
15 they've washed their hands.

16 There might have been some reason here for the
17 defendant to cover for somebody else who committed the
18 shooting. And indeed gang affiliation was a big part of
19 the State's theory of guilt here. That would, of
20 course, still make the defendant culpable as an
21 accessory but not as a party to the crime necessarily if
22 his assistance came afterward. And for that reason,
23 Your Honor, I believe that evidence would have led to a
24 reasonable probability of a different result.

25 As far as the suppression hearing goes, trial

1 counsel raised the lack of RAS to stop the defendant but
2 didn't specifically raise the problems with the
3 pat-down. The officer claimed consent. I believe the
4 defense attorney could have made a reasonable argument
5 this was mere acquiescence to authority, based on the
6 video which Your Honor will be able to view in this
7 case. And for that reason, I believe to the extent that
8 trial counsel didn't raise those issues, he was
9 ineffective. For these reasons, Your Honor, I believe
10 that a new trial should be granted in this case and I
11 ask this Court to grant it.

12 THE COURT: All right, Mr. Bibler.

13 MR. BIBLER: Thank you. Well, we
14 skipped over -- we went sort of back and forth
15 between ineffective assistance and insufficiency of
16 the evidence. The Court is aware of the standards
17 of both. For insufficiency of the evidence it's
18 whether a reasonable trier of fact could have found
19 the defendant guilty, which 12 people did do that
20 based on the evidence that was submitted.

21 The motion on the stop was heard by the Court. And
22 Officer Rountree testified, I believe it was also on
23 video, which Judge Nunn saw, that he saw this defendant
24 about ten minutes after the shooting, and he had a bulge
25 in his pocket, and he matched the description of someone

1 they were looking for. The bulge turned out to be the
2 gun. The gun was stolen. The reason that somebody
3 else's fingerprints were on there is because the gun was
4 stolen from somebody else.

5 The Court ruled, and it's in the record, that the
6 stop was valid based on him being in the vicinity of the
7 shooting, him having the bulge and the gun on him. The
8 GSR is really not an issue. Now, like I said, we've
9 been back and forth between sufficiency and ineffective.
10 Mr. Davis testified that he reviewed everything that was
11 provided to him in discovery, including these reports.
12 Whether or not he chose to introduce evidence of
13 arguably lack of gunshot residue, he chose not to. That
14 was a decision on his part as trial counsel. His
15 performance is presumed to be reasonable unless it's
16 shown to be deficient.

17 The introduction or lack of introduction of any GSR
18 evidence, it has not been shown today that that would
19 have affected the outcome of the case. So you don't
20 have deficient performance on that issue and you don't
21 have prejudice, so you don't have ineffective assistance
22 of counsel.

23 With regard to the demurrers, Mr. Davis testified he
24 was an experienced trial attorney. Member of the bar in
25 good standing. Not only has he tried criminal cases,

1 but he's also tried domestic cases, personal injury
2 cases. He knows what he's doing in front of a jury. He
3 knows what he's doing before trial. He testified that
4 he went through all this discovery with his client,
5 presented options to his client, referring to Mr. Moss.
6 Met with him on several occasions. There's no
7 indication based on Mr. Davis's testimony that his
8 performance was deficient. He did what a capable,
9 qualified defense attorney would do. And the case law
10 is clear that when we're talking about ineffective
11 assistance, we don't -- the Court doesn't look at things
12 in hindsight and say what if. You have to consider the
13 trial counsel's decisions made at the time of the trial
14 to whether they were reasonable. In this case, they
15 were reasonable.

16 With regards to the content of the indictment, as to
17 the aggravated battery, I don't think you could -- well,
18 I shouldn't say that because they'll say -- you can
19 always find one that's going to say something different
20 than what you think, but most medical professionals are
21 going to come in here and say the abdomen is a member of
22 the body. So I don't think the aggravated battery count
23 is deficient. Let me make sure I got the other issues
24 here.

25 As Mr. Hartwig said, and I know he'll argue later,

1 that aggravated assault is certainly sufficient. Felony
2 murder based on aggravated assault, and I would argue
3 that felony murder based on the aggravated battery is
4 sufficient as it's worded in the indictment. That being
5 said, whether or not Mr. Davis chose or chose not to
6 file a demurrer was a decision on his part regarding
7 trial strategy. It was not done out of ignorance. It
8 was not done out of laziness. It was not done out of
9 anything other than an experienced trial attorney
10 reviewing the indictment and thinking, okay, looks good
11 to me. I don't think we can succeed on these demurrers,
12 so there's no need to file them.

13 Whether or not Counts One and Two, which the
14 State -- we've been through that issue, you know what
15 our position is on that -- whether or not that was
16 ineffective assistance of counsel by failing to file a
17 demurrer on those points is now moot. We cannot use
18 that, we can't bootstrap the fact that those two counts,
19 a demurrer was not filed, therefore constitutes gross
20 ineffective assistance of counsel.

21 Finally, Judge, and I know the record is clear, I
22 know you have the transcripts, I know you've reviewed
23 them, I know you're familiar with what happened in this
24 case, but what happened in this case is the State and
25 Mr. Davis met, talked, discovery was provided.

1 Mr. Davis and Mr. Moss met, talked several times, went
2 through the discovery. Mr. Davis explained all the
3 options to him about here's what can happen, here's what
4 they're offering. If you go to trial, you could face
5 this. If you plead guilty, it might be different for
6 you. But he explained everything to him.

7 You have an experienced attorney doing his job,
8 doing it well. His performance is reasonable. There's
9 no showing at all that anything could have been done
10 that would have affected the outcome of this case,
11 including filing demurrers. Because then again, we're
12 looking in hindsight. We're saying, well, we didn't
13 really challenge this initially. And I've read the
14 *Henderson* case. I'm very, very familiar with it. And
15 I'm not challenging the law in the *Henderson* case. But
16 I think the counts that survive are sufficiently worded
17 in the indictment. It puts the defendant on notice.
18 Mr. Davis did his job, did it well. The jury decided.
19 So as far as the grounds for a new trial based on
20 ineffective assistance of counsel, I don't think is
21 there, so I would ask you to deny the motion for new
22 trial. Thank you.

23 THE COURT: Thank you.

24 MR. FLEISCHMAN: So I want to talk a
25 little bit about demurrers again. It's really --

1 listen, if trial counsel said, I looked at them, I
2 didn't think there was a problem, and he was wrong,
3 let's say that was his reason, that would be a
4 mistake of law, and mistakes of law don't get you
5 deference under the ineffectiveness standard.

6 So there's a case called *Hinton v. Alabama*, which
7 I'm sorry I didn't bring a copy with me here today, but
8 it's a 2014 U.S. Supreme Court case. It dealt with a
9 guy who thought that he couldn't get any more money for
10 an expert than the \$500 the state had given him. So in
11 an important murder case he brought in a ballistics
12 expert who got an engineering degree in 1936 and had one
13 eye. And this ballistics expert did his very best to
14 testify for the defendant, but the State found some
15 problems with his testimony.

16 The U.S. Supreme Court says, well, listen, if you
17 picked the expert, if you said he was the best expert
18 for you, we would defer you. That's strategic. But
19 because you didn't know you could get more money to get
20 a younger expert, somebody who knew a little bit more,
21 then at that point it's ineffective assistance of
22 counsel. And when it comes to demurrers, that's really
23 it. Typically if a lawyer spots the issue, he'll raise
24 it at least at trial because it gives you a benefit and
25 no real down side. So for that reason I think that a

1 failure to file a demurrer is almost per se
2 ineffectiveness, at least as far as general demurrers
3 go.

4 I want to talk a little bit -- I'm not saying that
5 trial counsel was grossly ineffective. We're just
6 talking about specific errors and how they affected the
7 case. But I will note that one thing trial counsel
8 didn't catch here was that the armed robbery count
9 hadn't been proven. That in Georgia to prove armed
10 robbery you have to establish that somebody took
11 something. And for trial counsel to have missed that
12 suggests to me that maybe something in his preparation
13 or something about that day just wasn't clicking for him
14 because he raised the theft by receiving as an issue for
15 sufficiency. It's not like he raised no issues. He
16 just missed that one. For whatever reason, he just
17 maybe didn't look closely at this indictment or think
18 that through. I think that's where those errors come
19 from.

20 I'm not raising sufficiency of the evidence today.
21 I want to be clear about that. You can safely say I've
22 waived sufficiency here at the trial level on all
23 counts. So when I'm talking about the evidence in the
24 case, I'm not talking about it under a *Jackson v.*
25 *Virginia* standard. I'm talking about it as was there a

1 reasonable probability that some juror in the world
2 might hang this jury if they had this additional piece
3 of evidence. And that's really all the reasonable
4 probability standard is under *Strickland*.

5 And yes, I think with this evidence, there is some
6 juror in the world, some reasonable person who would
7 say, gosh, I'm not sure whether the defendant shot the
8 person himself or whether someone else handed him the
9 gun after doing it as part of this overall sort of gang
10 theory the State had. And that, I would argue, would be
11 the reason to grant the new trial. Thank you.

12 THE COURT: Well, obviously with
13 regard to the motion for new trial, I know I need to
14 issue an order in writing, making certain findings,
15 especially in light of the claim of ineffective
16 assistance, so I'll do that and submit an order with
17 regard to the defendant's motion for new trial, so
18 that will be coming from me.

19 And I know y'all want to address the sentencing
20 issue now, so y'all ready to proceed at this point for
21 that?

22 MR. FLEISCHMAN: Yes, Your Honor. Before
23 we begin, there's one issue that hasn't been
24 resolved under Georgia law, and it kind of
25 determines who goes first, which is who bears the

1 burden for incorrigibility and what's the standard.

2 THE COURT: Well, that's the question
3 as I was thinking who I'm going to ask to talk first
4 on that. I don't know with the sentencing issue.
5 To me, logically it doesn't seem like there's any
6 further burden on the Defense for that, so I would
7 kind of proceed with regard to the State, you know,
8 having you arguing sentencing. I don't know that it
9 matters one way or the other. I'll hear from
10 everybody. But with regard to sentencing, I know
11 you want to present evidence. Isn't that what I
12 heard, Mr. Hartwig?

13 MR. HARTWIG: Sure, Your Honor.

14 THE COURT: Do you wish to make an
15 opening or just present?

16 MR. HARTWIG: I can go ahead and just
17 present. I will say that the sentencing hearing was
18 held before Judge Nunn after this trial. Of course,
19 he heard the evidence at trial. The State presented
20 additional evidence. The State presented additional
21 evidence at the sentencing hearing. There were
22 three victim impact statements. There were two law
23 enforcement witnesses. Those are all in the
24 transcripts that Your Honor has, and we would rest
25 on those.

1 I will tell the Court that both my law enforcement
2 witnesses, Agent Lee Weathersby with the GBI and
3 Sergeant Mark Wright with the Warner Robins P.D. are
4 both here today. They've testified already in front of
5 Judge Nunn. Unless the Court has more questions for
6 them and wants something in addition to what's already
7 in the transcripts, I would just as soon ride on the
8 transcripts and what we've already done.

9 THE COURT: Right.

10 MR. HARTWIG: What we did also at the
11 sentencing hearing was we -- I guess I would say
12 this, Your Honor. What this Court basically has to
13 determine is, is this defendant, who was 17 at the
14 time he commits a couple of violent acts, two nights
15 in a row, 24 hours apart, the first night shoots
16 somebody in the abdomen with the same stolen gun.
17 That individual was in the hospital about a month,
18 nearly died; fortunately survived and testified at
19 the trial. His testimony is there for the Court to
20 read.

21 The ballistics from the first night's shooting match
22 the gun found on the defendant the next night. That
23 witness victim, Neftally Corado, testified at trial that
24 this defendant's face was burned into his memory and
25 identified this defendant as the shooter the first

1 night.

2 The next night he goes out about the same time at
3 night, about 9:00 o'clock, 24 hours exactly, same M.O.,
4 same neighborhood, it's about a quarter mile away from
5 the first night, pulls the gun on Jose Marin, demands
6 money and shoots him in the abdomen like he did
7 Mr. Corado the night before. Mr. Marin died as a result
8 of being shot by this defendant. Ten minutes after
9 that -- and there's an eyewitness to that shooting,
10 Javier Moreno, who sits in court today and who also gave
11 a victim impact statement and testified at this murder
12 trial. And he was present, he saw the defendant
13 approach, he saw him shoot Mr. Marin. He's the one that
14 called 911. He is the one that gave the clothing
15 description.

16 And I'll tell the Court, and it's in the transcript,
17 the clothing description didn't match to a T. It was
18 very close. But part of that is because, and this came
19 out at trial, is that Mr. Moreno was calling 911 and was
20 talking in broken English. So as he's trying to
21 describe the sport pants or the stretch pants or
22 whatever it was that the defendant had on, the shooter
23 had on, the 911 dispatchers were putting out -- there
24 was a little bit of a disconnect with the language. But
25 ultimately there's a description that is pretty darn

1 sufficient.

2 He's spotted mere minutes, 10 or 12 minutes after,
3 in the same neighborhood. It's a rainy night, so
4 there's not many people out walking around. And he's
5 spotted. The officer stops him. He sees the bulge down
6 in his pants in his crotch area, waits for backup to get
7 there, and then reaches down and grabs the gun in his
8 pants. The gun matches the -- the night before, when he
9 shoots Corado, the gun matches the shooting that just
10 happened.

11 The evidence in this case was overwhelming. And
12 what we presented to Judge Nunn after hearing about both
13 of these violent incidents is we presented to Judge Nunn
14 the defendant's juvenile history, which is fairly
15 significant. He didn't get in trouble once. He didn't
16 get in trouble twice. He got in trouble quite a bit as
17 a juvenile. That was given to Judge Nunn, and I see
18 from my reading of the transcript that Judge Nunn did
19 not take that juvenile history and make it part of the
20 Superior Court file. And I think the reason that that
21 was done at the sentencing hearing was because it would
22 then become public record in the Superior Court clerk's
23 office downstairs. And so Judge Nunn did review it. He
24 looked at his history as a juvenile and returned that I
25 believe to the State to be held by us.

1 So for Your Honor's consideration, at this point I
2 have a certified copy for you of his juvenile history,
3 and we would certainly ask that you review it and see
4 not only the frequency of crime, but the severity of
5 crime that this defendant was involved in.

6 MR. FLEISCHMAN: I'm so sorry. I haven't
7 seen this before. I don't want to take up too much
8 of the Court's time, but I would like an opportunity
9 at some point to take a look at this.

10 THE COURT: We can. We'll make
11 arrangements for that. That's fine.

12 MR. FLEISCHMAN: Okay. I'm going to
13 withhold my objection until I actually look at this
14 if that's okay.

15 THE COURT: That's fine. Sure.

16 MR. FLEISCHMAN: So we'll come back to
17 this later if that's okay?

18 MR. HARTWIG: That's fine.

19 MR. FLEISCHMAN: Thank you very much.

20 MR. HARTWIG: We also tendered in for
21 the Court -- we also presented to Judge Nunn
22 documents, indictments for three other crimes that
23 were currently pending in our office at the time he
24 was convicted and sentenced. One of those Your
25 Honor has heard about, and that was the shooting of

1 Mr. Corado the night before. The defendant had been
2 indicted for that crime. That crime was still
3 pending when we went to trial on the murder case,
4 and so when he was convicted and sentenced in the
5 murder, there was still a pending indictment for the
6 home invasion shooting of Mr. Corado the very night
7 before. That to update this Court and provide this
8 to you.

9 The defendant, after his conviction and sentence in
10 the murder case, was brought back and he entered a
11 guilty plea in the separate indictment that involves the
12 shooting the night before he shot and killed Mr. Marin.
13 It involves the shooting of Neftally Corado.

14 So at this point, Judge, I have a certified copy
15 that I would like to tender into the record as State's
16 Exhibit, for the purposes of this hearing we'll do
17 State's Exhibit 1. And this is the indictment, I
18 believe the guilty plea, and the sentence that was given
19 to him for attempted murder of Mr. Neftally Corado the
20 night before the case that we're here about today. So
21 now he's been convicted of that crime at the time Judge
22 Nunn heard about his criminal history and his
23 criminality. He had not been convicted of that crime.
24 Now he stands convicted.

25 I will tell the Court, and we presented this to

1 Judge Nunn, at the time of his -- at the time he
2 committed this murder, or at the time he went to trial
3 and was convicted of this murder, he had two other
4 pending indictments in the D.A.'s office, and both of
5 these indictments were for residential burglary. And
6 those were, in fact, pending prosecutions when convicted
7 and sentenced in this case. So those were given to
8 Judge Nunn. He took them into consideration. And in
9 those two burglary indictments, Judge, and I've got the
10 nol-prosess attached to the back of them, and those are
11 State's 2 and 3, but those were nol-prossed by the State
12 because he was convicted of murder in this case and
13 sentenced to life without the possibility of parole,
14 so --

15 THE COURT: Let me get you --

16 MR. HARTWIG: -- those cases don't -- I
17 don't have convictions on them because the State
18 chose not to go forward and prosecute him for
19 burglaries when he's in prison for murder doing life
20 without.

21 THE COURT: Let me do this for the
22 record. State's Exhibit 1, the guilty plea, any
23 objection to that?

24 MR. FLEISCHMAN: No objection, Your Honor.

25 THE COURT: And then you've seen

1 State's Exhibits 2 and 3. Any objection to those
2 indictments, Mr. Fleischman?

3 MR. FLEISCHMAN: No, Your Honor.

4 THE COURT: Thank you. All right,
5 Mr. Hartwig.

6 MR. HARTWIG: So we not only have a
7 juvenile record of criminality, and I think the
8 Court will see that in those records that his
9 violence or his, the severity of the crimes he's
10 committing is increasing. And then he turned 17
11 years old. And he starts pretty young. I don't
12 remember the exact dates, but it's very young. And
13 then he turns 17 years old, and it is not just doing
14 the juvenile court stuff anymore. I think there was
15 a burglary in there though. But he starts
16 committing residential burglaries. One of those
17 indicted burglaries, the one involving an Ansel Peck
18 as the victim, he was in the house with a
19 codefendant. Ansel Peck actually arrived home and
20 came in the house and confronted the burglars.

21 Again, that case was nol-prossed. He goes to two
22 residential burglaries. Those residential burglaries,
23 and the dates are on those two indictments, but those
24 are like in a period of four to six weeks before the
25 crime that we're here about. I think those were in

1 August of 2011, and this murder happened in late
2 September, I believe around the 22nd of September of
3 2011. So this is like a month he's doing residential
4 burglaries.

5 And then, as this Court has heard, he goes out the
6 night before he commits this crime. He's in the same
7 neighborhood with the same stolen gun. He's doing a
8 home invasion on Mr. Corado. He shoots him in the
9 belly. He survives that -- by the grace of God he
10 survives and isn't a murder. And then the very next
11 night, 24 hours later, he goes out in the same
12 neighborhood with the same gun with his red bandanna,
13 and while Mr. Moreno and Mr. Marin are behind
14 Mr. Moreno's store near Watson Boulevard, unloading a
15 truck behind the store, a food truck, he tries to rob
16 and shoots Mr. Marin and kills him.

17 The night before he had shot Corado down the street,
18 literally down the street. And while Mr. Corado is in
19 the hospital in Macon fighting for his life, and this
20 defendant doesn't know whether the first victim is dead
21 or alive, he goes out 24 hours later and does the exact
22 same thing to another victim and kills them.

23 So not only is his criminality and the severity of
24 the crimes he's committing increasing from his early
25 juvenile years up through his residential burglaries,

1 but then these two incidents, two nights in a row, two
2 consecutive nights he does two almost identical acts to
3 two Hispanic victims in the same neighborhood with the
4 same gun and doesn't bat an eye or think anything about
5 it.

6 What he did the first night to Mr. Corado had
7 absolutely no impact, no effect on him whatsoever when
8 he turned around and went out the next night and did it
9 to Mr. Marin and killed him. This Court does not have a
10 crystal ball where we can look into it and we can say,
11 well, is this 17-year-old, is he irreparably corrupt, is
12 he irredeemable, is he beyond hope, can he be
13 rehabilitated, might he be rehabilitated, might he
14 straighten out, might he live a decent life? We don't
15 have a crystal ball. We cannot look into the future and
16 determine that. But yet that's really what this Court
17 is asked to do in making the findings it has to make
18 under *Veal* and in considering a sentence of life without
19 parole on this defendant.

20 And I'll concede, Your Honor, that the cases say
21 life without the possibility of parole for minors or for
22 people 17 years old, it should be uncommon. It should
23 be used and imposed only in the limited worst cases.
24 There's a presumption. There's a presumption that young
25 people should get -- the presumption is life without

1 parole is too harsh, but it doesn't say that it's never
2 proper. What it says is it can be used but it shall
3 only be used in very rare and select cases.

4 Your Honor, I'll submit to you, just like I
5 submitted to Judge Nunn, this is one of those rare,
6 select, serious, violent, repetitive cases and
7 defendants that life without the possibility of parole
8 is absolutely appropriate. In fact, this case, and the
9 crimes committed by this defendant leading up to this
10 case, to this murder, cries out for life without parole.
11 In fact, I remember standing right here and telling
12 Judge Nunn about seven years ago, Judge, if you give
13 this defendant life with the possibility of parole for a
14 crime he committed at 17, and he got arrested that
15 night, so he's been in jail since he committed it, then
16 what you are doing is you are putting, potentially
17 putting a 47-year-old Jermontae Moss out walking the
18 streets of this community. And that is something that
19 this Court should not do, that I'm asking this Court not
20 to do, because this man is dangerous. He is a killer.
21 He is very close to being a double killer, but for the
22 grace of God and Mr. Corado surviving his bullet wound
23 to the belly.

24 And again, I think, Judge, I think you got to try to
25 look ahead and say is he irreparably corrupt, is there

1 any hope for him, can he be rehabilitated, I think the
2 best way for the Court to make that decision, to look at
3 his potential future conduct and see whether he can ever
4 be there, whether he can ever be rehabilitated, the best
5 way for this Court to do that I think is to look at his
6 past conduct. His past conduct that we know about,
7 that's documented, that we've given you, Your Honor,
8 that we've given this Court, his past conduct is the
9 best, the best predictor, the best determiner that you
10 have got to determine whether or not he's going to
11 change his ways and whether he can be rehabilitated and
12 should be given that hope or that chance of parole one
13 day.

14 And I submit to you, based on this juvenile record,
15 based on the -- he's 17 when this happens, and he's
16 already got -- there are four serious felony indictments
17 as a 17-year-old; two residential burglaries, an
18 attempted murder on Mr. Corado and then the murder of
19 Mr. Marin. And that is in like a six-week time period.
20 That, Your Honor, that is something that I think screams
21 out this person is irreparably corrupt, this person is
22 irredeemable, this person is going to go out night after
23 night after night and commit violent crime in this
24 community, given the opportunity. That's what that says
25 to me and I hope what that says to this Court.

1 This is one of those few cases, it's one of those
2 rare cases, it's one of those uncommon cases that life
3 without parole is absolutely warranted. It's absolutely
4 justified. It's absolutely necessary. Judge Nunn heard
5 it. He didn't go through the steps according to Veal,
6 he didn't make the findings according to Veal, but he
7 heard this case and he heard the sim trans for Mr.
8 Corado and he heard about the other indictments and he
9 heard about his juvenile history and he heard it all,
10 and he gave him life without parole. And, Your Honor,
11 I'm asking you to do the exact same thing that Judge
12 Nunn did because he deserves it.

13 The other thing, Judge, real quick, and this is in
14 the record so I almost forgot it, but the two law
15 enforcement witnesses that are here, Mark Wright and Lee
16 Weathersby from GBI, what the main thing they testified
17 about at the sentencing hearing was this defendant's
18 admitted acknowledged membership in the Blood criminal
19 gang. In fact, Special Agent Weathersby talked about
20 almost a year, about a year before this murder the
21 defendant was out here at the fairgrounds in Perry and
22 got into it with three police officers, this officer and
23 another GBI agent and a Perry police officer, and he
24 fought those officers. After being arrested, fighting
25 with three officers, they take him in and he tells them,

1 I am a Blood gang member. He's carrying the red scarf.
2 They ask him about it and he says proudly, I'm a Blood
3 gang member. That's a year before this murder, Judge.

4 When he's arrested for this murder and for the
5 shooting of Mr. Corado the night before, when he's being
6 interviewed by Sergeant Mark Wright with the Warner
7 Robins P.D., after committing these two violent crimes,
8 he also tells Detective Wright, Yeah, I'm a Blood. I'm
9 in a gang. I'm a Blood gang member. This is a 16,
10 17-year-old who's out shooting people, killing people,
11 and bragging to law enforcement and telling law
12 enforcement without batting an eye, I am a Blood gang
13 member. And that came out also at the first sentencing
14 hearing in front of Judge Nunn. It's important for this
15 Court to know this is not an individual who deserves or
16 should be given the benefit of hope, the benefit of
17 parole. It is not an individual that needs to be out
18 walking the streets of our community. He's dangerous,
19 he's a gang member, and I'm asking this Court to give
20 him life without parole.

21 THE COURT: Mr. Fleischman.

22 MR. FLEISCHMAN: Is this opening or -- I
23 have some evidence I'd like to present.

24 THE COURT: Okay. I would
25 assume there's -- there's no other evidence you're

1 bringing out? You've got these exhibits and --

2 MR. HARTWIG: Well, I was talking and
3 giving you evidence and updating you on some stuff,
4 Judge, but --

5 THE COURT: Right. But you're not
6 expecting --

7 MR. HARTWIG: I mean, you told me to go
8 first so I went first. That's my presentation to
9 you.

10 MR. FLEISCHMAN: And no objection, by the
11 way. I've had a chance to review this.

12 THE COURT: Okay. All right.

13 MR. BIBLER: Judge, I'm going to hand
14 you State's 4, which is the juvenile history.

15 MR. HARTWIG: And we've given a copy to
16 appellate counsel.

17 MR. BIBLER: I'm not sure how you want
18 to handle that once you make a decision. I'll leave
19 that up to you.

20 THE COURT: Okay, all right. I
21 understand.

22 MR. HARTWIG: And I guess, Judge, if
23 you do what Judge Nunn did and you look at it and
24 you factor it in, but then you give it back to us,
25 the Supreme Court, when it gets there, is not going

1 to have the benefit of it, so I don't know whether
2 the Court wants to seal it and put it with the
3 Superior Court file as a sealed record. I'm not
4 sure how juvenile records ought to be treated, but I
5 think it is certainly something that this Court
6 needs to look at it, and if the Supreme Court wants
7 to look at it, that's fine too. I just had concerns
8 and did not want it to become public record --

9 THE COURT: Right.

10 MR. HARTWIG: -- since it is stuff that
11 he did when he was very young.

12 MR. FLEISCHMAN: Your Honor, you can order
13 something sealed sent to the Supreme Court and they
14 will seal it and just have the judges look at it.
15 There's a procedure for that if you need any -- I'll
16 help with that if need be.

17 THE COURT: That's fine. That's what
18 I'll do then. I'll seal it for that reason, that
19 purpose. Okay.

20 MR. HARTWIG: And I believe at the time
21 of this killing, Judge, I think he was still under
22 active probation. He was actually on active
23 probation through the juvenile court for some of the
24 stuff he had done that was being handled out at
25 juvenile court, so that came out I believe as well

1 at the first hearing.

2 THE COURT: Mr. Fleischman, I'll let
3 you present everything you want me to consider as
4 far as that issue goes.

5 MR. FLEISCHMAN: I'd like to call
6 Ms. Robinson.

7 LINDA ROBINSON,
8 having been first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. FLEISCHMAN:

12 Q How do you know Mr. Moss?

13 A He's my son. He's my youngest son.

14 THE COURT: I missed it to begin
15 with, so tell me your name, please.

16 THE WITNESS: Linda Robinson.

17 THE COURT: Linda Robinson?

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay.

20 Q (By Mr. Fleischman) And could you please tell me a
21 little bit about your relationship with Mr. Robinson's father?
22 Sorry, Mr. Moss's father.

23 A It was a very rocky, violent relationship.

24 Q When you say rocky and violent, what do you mean?

25 A A lot of disputes and it became very violent. His

1 dad almost killed me. He violently stabbed me five times, and
2 Jermontae was about five years old and he witnessed it.

3 Q What did he stab you with when he stabbed you?

4 A He stabbed me with a kitchen knife.

5 Q And what did little Jermontae do at the time when he
6 saw that?

7 A Went ballistic. Just lost it.

8 Q After that happened was your son any different?

9 A He was.

10 Q How was he different?

11 A He was more reserved, more kind of laid back. Kind
12 of quiet and jittery. Nervous. Just was never hisself again
13 after that.

14 Q How did Mr. Moss do while he was in school?

15 A He had some issues, he had some problems. He did
16 pretty good as far as academics when he was in elementary
17 school.

18 Q But after that?

19 A He started having some major issues.

20 Q What kind of issues?

21 A Outbreaks, anger, and some disciplinary issues.

22 Q Did you ever try to get him any help?

23 A I did.

24 Q What kind of help?

25 A He went two different counselors. We got some

1 counseling for him. Right after the incident happened he was
2 in counseling, and then as things started getting a little bit
3 worse when he was a little bit bigger, we got him some more
4 counseling. I got him some more counseling.

5 Q So we've heard a lot about your son acting out, and
6 we have his juvenile history. Have you ever known him to do
7 anything kind?

8 A Yes. He was never a bad person as far as I'm
9 concerning. And of course I'm his mom, but in all honesty, he
10 wasn't bad. He wasn't a bad person. I think the most kindest
11 thing he did was he took to his niece that was very, very
12 young. My daughter had a child when she was very, very young,
13 and he took to her as a father figure and --

14 Q What would he do with her?

15 A Everything that a father would do. Bathe her,
16 clothe her, comfort her, get up at night with her, change her
17 diapers, feed her, comfort her any kind of way he could. He
18 was closer, to me, to my granddaughter than the mom was.

19 Q Was that unusual? Had you ever seen him interact
20 with kids before?

21 A Yes. And he loves kids. And yes, I've seen him
22 interact with other children, and he's very gentle with them
23 and very good with them.

24 Q Is there anything else you want the Court to know
25 here today?

1 A He's not a monster. He's not a monster. I know
2 he's had some issues. And any child that would witness
3 something as violent as what he witnessed, I'm sure it would
4 bother them. I'm sure. And I'm sure it would cause some
5 issues, but he's not a monster. I love him dearly, of course.
6 I don't believe that he was guilty of all of this stuff that
7 was brought out. I don't believe that. Perhaps some of it he
8 was caught up in, I'm not sure. The evidence points to some
9 of it that he was caught up in. But he's not a monster.

10 MR. FLEISCHMAN: Thank you. No further
11 questions.

12 CROSS-EXAMINATION

13 BY MR. HARTWIG:

14 Q Hey, Ms. Robinson. How are you doing?

15 A I'm good.

16 Q I'm George Hartwig. I'm the D.A. here.

17 A I recognize you.

18 Q I don't believe you and I have ever met.

19 A Yes, we have.

20 Q We have met?

21 A Yes.

22 Q Okay. Maybe back around the time of the trial?

23 A Yes.

24 Q Okay. Let me ask you just a couple of quick
25 questions. You remember the incident where he got in a fight

1 with the police officers at the fairgrounds?

2 A I'm not aware of a fight. I don't see how a
3 16-year-old could fight with three officers. I'm not aware of
4 a fight. I know there was something that happened on the
5 fairground. As a matter of fact, I went to pick him up that
6 night.

7 Q All right. But you were called and said that he had
8 gotten in trouble at the fairgrounds?

9 A Correct.

10 Q And obviously you weren't there so you didn't see
11 the fight?

12 A I did not.

13 Q But the officers said that he fought with them? Did
14 they tell you that?

15 A I've never heard that before today, no.

16 Q Oh, okay. Do you remember telling the officers when
17 you, either on the phone or when you got down there, that you
18 didn't want to take him back?

19 A No.

20 Q Do you remember telling the officers that you were
21 at the end of your rope, that you had basically tried
22 everything with him and he was still causing you problems and
23 you didn't want to take him home back to your house?

24 A No.

25 Q You didn't tell the officers that?

1 A No.

2 Q Okay.

3 A I do not remember ever saying that.

4 Q All right. At the time of that incident at the
5 fairgrounds here in Perry, he was 16 years old, right?

6 A Yeah, around about that age.

7 Q Now, at the time of the killing that we're here
8 having this hearing about that he was tried for, he was 17
9 years old then, right?

10 A Correct.

11 Q And at the time of the killing that you've been
12 hearing us talk about, he was not living with you at that
13 time, was he?

14 A For about a week or so. He had moved in with my
15 daughter.

16 Q Right. He had moved in with I guess it's his
17 sister?

18 A Yes.

19 Q And she lived down here in Warner Robins right -- in
20 an apartment right by the trailer park where he was caught?

21 A Correct.

22 Q You're aware of that?

23 A Yes.

24 Q And so he was living with -- she's older than he is?

25 A Yes.

1 Q Had you put him out of your house because he was
2 causing you problems in Macon?

3 A Well, we had to move off of the premises, so.

4 Q You had to move off the premises you were at?

5 A Yes.

6 Q And was that because of problems that he was
7 causing?

8 A So the landlord said, yes.

9 Q Okay. So the landlord said basically you need to go
10 because your son's causing too much trouble?

11 A Well, she didn't say that I needed to go because of
12 him.

13 Q Or he needed to go?

14 A She said he needed to go, and I decided to move
15 myself.

16 Q Okay. So at 17, then, he -- a couple of weeks
17 before this murder happened, he -- a week or two he moved out
18 of your house and he moved in with his sister in Warner
19 Robins?

20 A Yes.

21 Q Because he was causing trouble in Macon, right?

22 A Causing trouble where?

23 Q In Macon. Weren't you and he living in Macon at the
24 time?

25 A No.

1 Q Where were you living at?
2 A I was in Warner Robins.
3 Q You were in Warner Robins?
4 A Uh-huh (affirmatively).
5 Q Okay. Had he lived in Macon prior to --
6 A As a child.
7 Q -- moving in with the sister?
8 A No. As a child we lived in Macon, but no, not -- I
9 hadn't lived in Macon since, like, 2002.
10 Q So you were living in Warner Robins, but he left
11 your house and went to a different place in Warner Robins?
12 A Correct.
13 Q Was he going up to Macon pretty regular?
14 A I'm not aware of that. I'm not sure.
15 Q Were you aware that he was claiming to be a gang
16 member?
17 A No.
18 Q A Blood gang member?
19 A I heard about it when I came to court.
20 Q Okay. You had never heard about it before that at
21 the house?
22 A No. Of course, they won't admit it to parents
23 anyway, most of the time they won't, but no.
24 MR. HARTWIG: Okay, ma'am. Thank you.
25 MR. FLEISCHMAN: No further questions of

1 Ms. Robinson.

2 THE COURT: Thank you, Ms. Robinson.
3 You can step down now.

4 MR. FLEISCHMAN: I'd like to talk for a
5 little bit. So I think the focus of Mr. Hartwig's
6 argument was about future dangerousness; we don't
7 have a crystal ball, we can't know who he's going to
8 be. And on that I agree with him. And so the real
9 question here is do we trust our parole board to
10 look at that in 30 or 35 years' time? The sentence
11 we're asking for here today would be life plus five
12 years consecutive on the firearm count. In 30
13 years' time, will the parole board be able to talk
14 to family members of the victim, talk to law
15 enforcement, look back at this file and make an
16 intelligent decision about whether Mr. Moss is
17 capable of being released out into the world?

18 And while we heard a lot about who Jermontae was
19 when he was 16 and 17, that trial was seven years ago.
20 I haven't heard anything about what's happened in these
21 past seven years. Has he been violent in prison? Has
22 he been hurting people? Are there incidents that they
23 can point to? No. And in their burden to prove that he
24 can't be redeemed, that he cannot follow a set of rules,
25 that he cannot be an adult in society, they haven't

1 referenced the last seven years. That's an important
2 absence, Your Honor.

3 Let's talk about these *Veal* factors. The first is
4 age and immaturity. And I think it's so interesting
5 that Mr. Moss, he talks to police, brags about being a
6 Blood. Doesn't hide it, doesn't conceal it. It's
7 basically the only thing about himself he's proud of at
8 this point, if you believe these police. Because he's
9 young and it's his only identity. And kids cling to all
10 kinds of identities when they're 16 and 17 years old
11 that they might drop later in life. And they're proud
12 of all kinds of identities that later on they might not
13 be so proud of.

14 We talk about the age and the immaturity of
15 children. So I have here, Your Honor, an amicus
16 brief -- and you have a copy there on your desk -- from
17 the Juvenile Court Judges of America. They submit it to
18 the U.S. Supreme Court in *Miller v. State*. I'm going to
19 approach and deliver that.

20 THE COURT: Yes.

21 MR. FLEISCHMAN: And what these few dozen
22 judges talk about is how rarely they were able to
23 predict whether somebody who messed up as a kid
24 could later go on to do something good. My personal
25 favorite example and one of my personal heros is man

1 named Shon Hopwood. Shon Hopwood was convicted of
2 several federal bank felonies. Federal armed
3 robberies. He was sentenced by a judge, Judge
4 Richard Kopf out of Nebraska, said he was
5 irredeemable and he would never be better. What
6 Mr. Hopwood did while he was in prison, he won two
7 U.S. Supreme Court arguments as a jailhouse lawyer,
8 and now he's a professor at Georgetown.

9 Which isn't to say that everybody in the world
10 rehabilitates, that everybody gets better. But there
11 are very few people in this world, we can be sure, don't
12 get better. Mr. Hartwig said that Mr. Moss doesn't
13 deserve mercy. Neither do any of us. All of us have
14 done wrong in our lives. And the central point of many
15 things is that none of us deserve mercy, but we give it
16 to others not because of what it says about them but
17 because of what it says about us and who we are.

18 A juvenile who is sentenced to life without parole
19 gets a longer sentence than anybody else in this system.
20 A 50-year-old man on his 30th murder cannot give up
21 more years of his life than he has to life. Juvenile
22 given life without parole, Mr. Moss would be expected to
23 serve around 60 years in prison. That would be if he
24 had unusually high life expectancy in prison. Longer
25 than for any other murderer. And we simply don't know,

1 we don't, who are you going to be in 30 years.

2 We talk about his environment. He was raised by a
3 single mother because his father tried to kill her in
4 front of him. Now, that doesn't excuse what he did, but
5 it can explain a lot of the anger, the acting out, the
6 inability to function in school. It can explain why he
7 would do things like lash out at a police officer or
8 seek membership in a Blood gang, because he wasn't able
9 to function in school. Once again, it doesn't excuse
10 what he did. Asking for 30 years in prison isn't asking
11 for a handout. It does explain, it does suggest that a
12 different environment could produce a different result,
13 and given that these past seven years have not produced
14 any new crimes, a different environment has produced a
15 different result.

16 We talk about his circumstances, similarly. We talk
17 about somebody who's in a member of a gang that I think
18 Mr. Hartwig would fairly call evil. A group that feeds
19 on the young, grabs them into membership and gets them
20 to do terrible things that they're so wrapped up in
21 their identity they won't go looking elsewhere for work
22 or for things to do. That's how the Bloods gang work.
23 That's how the Crips work or the Latin Kings. Like a
24 cult. Forcing somebody to give something up so
25 important to them at the beginning that they can't back

1 out later. And I've represented all kinds of folks who
2 ended up as lieutenants or higher-ups in the Bloods, and
3 they typically end up using young people as pawns to do
4 these things.

5 Mr. Moss, whose only identity, the only thing he
6 could say he was proud of when he talked to cops was
7 that he was a Blood, yeah, he fell prey to that. But we
8 can hope for better in a different environment, under
9 different circumstances. Not because you or I say he is
10 rehabilitated now, but because somebody might say the
11 same thing in 30 years.

12 We look to his competency. Here Mr. Moss has
13 basically shown competency. He has not, for instance,
14 shown that he does not understand what's happening here
15 in the case. But you can look at the incompetence of
16 the way he, according to the State, pulled off these
17 crimes. Walking away from the scene of a pointless
18 shooting with a gun in his hip, even though he thought
19 get rid of the bandanna, because he didn't think he
20 could afford another gun. Talking to police immediately
21 and claiming nobody else had never had it, maybe as a
22 cover for other Blood members. This is not somebody who
23 was good at crimes. The State pointed to his history of
24 residential burglaries, and what you see is somebody who
25 is getting caught every time he goes out to do

1 something.

2 Finally we look at whether he can be rehabilitated.
3 I don't know. I don't have that crystal ball. I do
4 know that the people, the men and woman who serve on the
5 parole board, will have the input of everybody here who
6 wants to talk to them when the time comes, in 30 years
7 minimum. Probably 35. I apologize. When he's eligible
8 for parole. They'll have a chance to say this young man
9 has gotten his GED, or I guess this old man has gotten
10 his GED. This man has shown some progress. Or they
11 might say we need another ten years, we need some more
12 time to consider it. If Your Honor feels that 47 is too
13 young, you can make the theft by receiving stolen
14 property a consecutive ten years. That would mean he
15 would not be released until he was a 57-year-old man.

16 Statistics show reliably that when people get older,
17 they commit fewer violent crimes. Not just because they
18 stop wanting to, but because they stop being able to.
19 It's relatively rare to find a 57-year-old man
20 committing these sorts of crimes. And while it would be
21 terrible to see him released to the community at 57 to
22 commit new crimes, there's also something terrible about
23 wasting a whole life, about throwing somebody away who
24 maybe had a shot at being better.

25 You know, you look at the Old Testament, you find

1 probably the most New Testament thing in it is Micah
2 6:8. What does God want us to do? To do justice, to
3 love mercy, to walk humbly with thy Lord, right? Why is
4 this the message to these Jews who have to follow all
5 these rabbinical laws, really complicated Talmudic laws
6 that if you take time to take a look at them, make your
7 head spin? You know Deuteronomy and Exodus and all this
8 stuff, why is that? Because justice and mercy are
9 different. We have to try to do the right thing and
10 then go a little bit beyond that. That's what mercy is.
11 That's what the value is.

12 A sentence of life plus five or life plus 15 years
13 serves the purposes that punishment is meant to serve.
14 It is a deterrent. While Mr. Moss is in prison, he
15 cannot commit new crimes, and it does not seem he is
16 doing so while he is there. General deterrents.
17 Certainly nobody going out to commit murder is making a
18 distinction between life with and without parole when
19 they think of what's going to happen next. It serves
20 the purpose of retribution. It takes seriously what he
21 did. He took 30 years from a man's life that he could
22 have spent with his wife and family. Thirty years. And
23 we take that from him. An eye for an eye and a tooth
24 for a tooth.

25 It serves the purpose of rehabilitation because we

1 give him an opportunity to join in those programs that
2 people who have a life without parole sentence can't
3 join. Programs that will allow him to get an education,
4 learn a trade. Maybe at some point contribute
5 something. There's good in that. I ask this Court to
6 give a sentence of life plus five years. Though, in
7 your discretion, to also do as much as life plus 15,
8 because I believe that serves the purposes of
9 punishment.

10 And I have to add on top of this, because we also
11 are not clear what the standard of proof is here or how
12 a court is going to end up looking at these factors on
13 appeal. There's no Georgia Supreme Court case dealing
14 with this. I don't know whether we have to go by a
15 reasonable probability, by a certain preponderance like
16 you typically do with sentencing. Do we do what
17 juvenile courts typically do and go for a reasonable
18 doubt for juvenile adjudication? Do we say clear and
19 convincing evidence like we did if we were looking at
20 whether a parent should keep their kid? I'm not clear
21 on any of that.

22 A life plus 15 sentence isn't only a good deterrent
23 because it ends this case here, but because it's a final
24 result. It offers the victim finality. And that's not
25 something you might get with a life without parole

1 sentence. There's a real chance that a life without
2 parole the standard could be wrong. We could end up
3 coming back here and force the victim to go through this
4 again. Even her interests are best served with a life
5 plus five or life plus 15. And for those reasons, Your
6 Honor, I believe that is the appropriate sentence here.

7 It is exceedingly rare, that's *Montgomery*, that's
8 *Veal*, that's *Miller*, that anybody should be put in
9 prison. What Mr. Hartwig said in his closing in this
10 case was a killer is a killer is a killer. I don't care
11 why he did it. That was his view. And we need people
12 like Mr. Hartwig who take crimes seriously, who make
13 sure that retribution is had and that the victims get
14 their solace. But we also need a measure of mercy and
15 to look beyond just a killer is a killer is a killer, to
16 who Mr. Moss is and who he could be. For that reason,
17 Your Honor, I would ask for a sentence of life plus five
18 years.

19 MR. HARTWIG: Can I just quickly
20 respond to a couple of things that counsel said,
21 Judge? Counsel -- I wasn't going to bring this up,
22 frankly, but he said, well, we haven't said anything
23 about the last seven years since he's been in
24 prison, which I guess is asking this Court to just
25 assume or infer that he's been a model prisoner.

1 And I will tell the Court, I didn't think of it till
2 about two days ago, over the weekend, and I did not get
3 his prison record or his prison file. I should have.
4 And I think had I, I would have probably been able to
5 use it here today. I didn't get it. But I do know,
6 just from the little bit of research that I did do, he
7 has not been a model prisoner. In fact, he's been in
8 some trouble in the prison. He has had inappropriate
9 sexual encounters with a prison guard. He's been caught
10 or taken into restricted areas of the prison to carry
11 out the sexual encounters with the guard. The guard was
12 prosecuted and terminated by the prison.

13 MR. FLEISCHMAN: Your Honor, I do have to
14 object here to the State using evidence that
15 Mr. Moss was the victim of a crime of rape, the
16 crime of sexual assault by a corrections officer, as
17 evidence that somehow shows that he's a bad person
18 unbefitting of mercy. That our prison system does a
19 poor job with its guards, that put someone in charge
20 who used her authority to sexually assault him is
21 not a fact that this Court should consider in
22 determining whether he should get life without
23 parole.

24 THE COURT: Well, I don't know
25 exactly what that says. I just heard what the

1 attorney has mentioned. At sentencing I think you
2 can argue that, and I'll obviously hear from you,
3 Mr. Fleischman, too, after Mr. Hartwig is done.

4 MR. HARTWIG: And again, Judge, I
5 wasn't going to bring it up. But then to come in
6 and say, well, he hasn't done anything inappropriate
7 or bad for the last seven years since he's been in
8 prison is just not true. So he brought it up and
9 opened the door.

10 THE COURT: Well, I don't know that
11 he said that. He just said there hasn't been proof
12 otherwise. But I understand.

13 MR. HARTWIG: Whether the law, because
14 he's the one in custody and the other person is
15 working there and has some correctional authority
16 over him, classify him as a victim, I don't think
17 there's any indication that he was forced or raped
18 or sexually assaulted by this female corrections
19 officer. But that being said what it is, even if he
20 didn't commit a crime in that, which I think he
21 probably did, it's still violations of prison rules.
22 There should not -- you shouldn't be in restricted
23 areas, you shouldn't be having sexual contact with
24 prison guards, regardless. So to come here and say,
25 well, point the finger at me and say I didn't say

1 anything about the last seven years, now I'm saying
2 it, for whatever the Court wants to consider it.

3 The other thing --

4 THE COURT: In fairness to
5 Mr. Fleischman, you had your chance to present
6 evidence, and you didn't present it.

7 MR. HARTWIG: And I wasn't going to get
8 into it, Judge, because --

9 THE COURT: So I don't think he's
10 wrong to comment on the lack of evidence presented.
11 I'm hearing from you and I'll let him tell me, but I
12 don't fault Mr. Fleischman for saying that when
13 nothing's been presented up to that point.

14 MR. HARTWIG: I don't fault him either,
15 Judge. I just want this Court to know I'm not going
16 to sit by silently and say, well, he's been a model
17 prisoner and hasn't been in any trouble, because I
18 think he has been. And frankly, next time I'm going
19 to get the prison record and we're going to go
20 through it and see what kind of prison violations
21 and disciplinary actions the person's had in prison,
22 and I learned my lesson on this one.

23 The other thing he said is, you know, wants to imply
24 or suggest that this Court is throwing his life away,
25 and that is absolutely not the case. Mr. Moss, by his

1 violent crimes, threw his own life away. This Court is
2 not throwing his life away; he threw it away.

3 And the final thing I want to comment on, Judge, is
4 he said do we trust our parole board to do the right
5 thing in 30 years? Well, frankly, as a district
6 attorney in this county, I don't. I do not have the
7 confidence and the faith in our parole board today,
8 tomorrow, or in 30 years that they are going to keep
9 this violent offender locked up. And if they let him
10 out and he's back on the streets of our community, that
11 is putting me, my family, and every other person in this
12 community at risk, and that is a risk that we should not
13 have to take.

14 THE COURT: All right.
15 Mr. Fleischman.

16 MR. FLEISCHMAN: I kind of said it before,
17 but there's a reason why it's a crime for guards to
18 have sex with inmates. They are armed. They have
19 authority over you. They can hurt you if you don't
20 go along. Just because it's a woman on a man
21 doesn't mean it's not sexual assault, both in
22 figurative speech and under Georgia law. It's not a
23 crime to be sexually assaulted.

24 And if Mr. Hartwig really thinks that we can't trust
25 some aspects of our justice system, the parole board is

1 broken, how can we trust that life without parole in
2 this prison system is the right result either? How can
3 we trust that that, that his judgment, the judgment of
4 the D.A.'s office, is the right judgment if we can't
5 even trust the people, mostly former prosecutors and
6 police officers that we put on the parole board? We
7 have to have some trust at some point that we can offer
8 a measure of mercy. Not because of who Mr. Moss is now,
9 but because of who he might be. For that reason, Your
10 Honor, I request a sentence of life plus five years.

11 THE COURT: All right. Thank you.
12 While y'all are here, let me look at one thing if
13 y'all will bear with me before we get finished.

14 MR. FLEISCHMAN: I apologize, Your Honor,
15 there's one other point I wanted to make. I
16 apologize. I'm so sorry. The last point I wanted
17 to make was that this was a felony murder, not a
18 malice murder. The State chose to go forward
19 without the theory that the defendant intended to
20 kill. Now, maybe they couldn't prove it likely, but
21 they chose to not have the jury consider that.
22 There's a case called *Tisdale* that dealt with the
23 felony murder rule and whether felony murder could
24 lead to a death penalty. I'm going to go ahead and
25 get to that case in just a minute. But in that case

1 the U.S. Supreme Court said we have to have, at the
2 very least, reckless indifference of a life. And
3 it's sounds like the remaining count we're going to
4 go forward on here is the aggravated assault, which
5 is a general intent crime in Georgia. You can
6 commit an aggravated assault if you cause
7 apprehension of immediate harm, even if you don't
8 mean to do it.

9 In a case called *Patterson*, the Supreme Court of
10 Georgia compares it to shifting lanes in traffic. Your
11 car is a deadly weapon. You cause apprehension to
12 somebody else. You've completed the crime though you
13 might not mean to. So there is potentially an Eighth
14 Amendment problem with giving a life without parole
15 sentence to a juvenile in a felony murder that does not
16 require intent to kill or intent to harm. And for that
17 reason, Your Honor, I would also say life with parole
18 sentence would be appropriate. Here it is, Your Honor.
19 I'm just going to approach.

20 THE COURT: Yes. I got it.
21 Actually, I got what I was going to ask y'all, so
22 I'm fine. Nothing else from either side then?

23 MR. FLEISCHMAN: That's right.

24 THE COURT: That being the case, I'll
25 look at that. I know obviously I need to issue a

1 ruling in writing as far as the whole, the fact of
2 his being 17 years of age at the time of the
3 offense. You know, the sentencing, just apart from
4 the juvenile aspect of it, the resentencing in light
5 of the concessions I guess by the State, obviously I
6 need to rule on that as well. But I can -- I'm just
7 wondering does he need to be brought back I guess
8 for resentencing? It's a critical stage, and I
9 was just --

10 MR. HARTWIG: He needs to be there when
11 he's sentenced, Judge.

12 THE COURT: No matter what, with the
13 juvenile, with the *Miller* factors and *Veal*, he needs
14 to be brought back regardless. So we can just do it
15 all at that time then. I just didn't know if I
16 needed to address one thing while we were all here,
17 but it's going to require everybody being here
18 again, so we'll just do that. I'll look at
19 everything that's been provided to me and issue a
20 ruling on the motion for new trial, the sentencing
21 issue, and then the juvenile issue as well, all
22 right?

23 MR. FLEISCHMAN: Thank you, Your Honor.

24 THE COURT: Thank y'all.

25 MR. HARTWIG: Thank you, Judge.

(END OF PROCEEDINGS)

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Operator TLC
D.A. Init GHH
C.R. Init JM

IN THE SUPERIOR COURT OF HOUSTON COUNTY, STATE OF GEORGIA

STATE OF GEORGIA versus

JERMONTAE ARTEZ MOSS

CRIMINAL ACTION #:

2012 C 45757JANUARY Term, 2017Clerk to complete if
incomplete:OTN(s): 0000000000DOB: 4/30/1994

Ga. ID#:

FILED IN OFFICE SUPERIOR COURT OF
HOUSTON COUNTY

JAN 31 2017

Beth Anderson Deputy ClerkFinal Disposition:
FELONY CONFINEMENT

under O.C.G.A 42-8-60

as imposed below

Defender waived

PLEA:

VERDICT:

☒ Negotiated ☐ Non-negotiated ☐ Jury ☒ Non-jury

The Court enters the following judgment:

Count	Charge (as indicted or accused)	Disposition (Guilty, Not Guilty, Guilty-Alford, Guilty-Lesser Incl, Nolo, Not Pros, Dead Docket)	Sentence	Fine	Concurrent/ Consecutive/ Merged, Suspended
01	CRIMINAL ATTEMPT (MURDER)	GUILTY,	12 YEARS DOC		
02	AGGRAVATED BATTERY	NOL PROS			
03	AGGRAVATED ASSAULT	NOL PROS			
04	AGGRAVATED ASSAULT	NOL PROS			
05	CRIMINAL ATTEMPT (ARMED ROBBER Y)	NOL PROS			
06	BURGLARY - 1ST DEGREE	NOL PROS			

The Defendant is adjudged guilty or sentenced under First Offender for the above-stated offense(s); the Court sentences the Defendant to confinement in such institution as the Commissioner of the State Department of Community Supervision may direct, with the period of confinement to be computed as provided by law.

Sentence Summary: The Defendant is sentenced for a total of 12 YEARS

The Defendant is to receive credit for time served in custody: ☒ from 9-22-2011 ; or
☐ as determined by the custodian.

☐ The Court sentences the Defendant as a recidivist under O.C.G.A.:☐ 17-10-7(a); ☐ 17-10-7(c); ☐ 16-7-1(b); ☐ 16-8-14(b); ☐ _____

☐ The Defendant shall pay restitution in the amount of \$ _____ through the Clerk of Court for the benefit of the victim(s), _____

FIRST OFFENDER
(If designated by the Court)

The Defendant consenting hereto, it is the judgment of the Court that no judgment of guilt be imposed at this time but that further proceedings are deferred and the Defendant is hereby sentenced to confinement at such institution as the Commissioner of the State Department of Community Supervision or the Court may direct, with the period of confinement to be computed as provided by law.

Upon the Court's determination that the Defendant is or was not eligible for sentencing under the First Offender Act, the Court may enter an adjudication of guilt and proceed to sentence the Defendant to the maximum sentence as provided by law.

For Court's Use:

The Hon. MEGAN ALLEN, Attorney at Law, represented the Defendant by:
(~~KNOWLEDGE~~ Appointment).

SO ORDERED this 27TH day of JANUARY 2017


Judge of Superior Court

HOUSTON Judicial Circuit

~~GEORGE E. NUNN~~ G.E. Bo Adams
(print or stamp Judge's name)

FIREARMS - If you are convicted of a crime punishable by imprisonment for a term exceeding one year, or of a misdemeanor crime of domestic violence where you are or were a spouse, intimate partner, parent, or guardian of the victim, or are or were involved in another similar relationship with the victim, it is unlawful for you to possess or purchase a firearm including a rifle, pistol, or revolver, or ammunition, pursuant to federal law under 18 U.S.C. 922(g)(9) and/or applicable state law.

Acknowledgment: I have read the terms of this sentence or had them read or explained to me.


Defendant

A Reed CSO II

State of Georgia v. JERMONTAE ARTEZ MOSS
Criminal Action # 2012 C 45757

INVENTORY OF SPECIAL CONDITIONS OF PROBATION

These conditions are hereby incorporated into the Defendant's sentence by reference. The Defendant is advised that violation of any Special Condition of Probation may subject the Defendant to a revocation of the balance of the period of probation and the Defendant may be required to serve up to the balance of the sentence in confinement.

(Judge to designate conditions to be applied)

1. **The Court finds that the Defendant shall pay restitution** in the amount of \$ _____ through the Probation Office for the benefit of the victim(s) _____, at a rate to be approved by the Court or the Probation Officer.
2. **The Defendant shall report to the Probation Office at** _____, Georgia by no later than _____.
3. **The Defendant shall perform** _____ hours of community service at the direction of the Probation Officer, to be completed within _____ days of this date, with transportation to be provided by the Defendant.
4. The Defendant is sentenced under the provisions of the **Probation Management Act Sentencing Options System** with a: ☐ sanction cap of Probation Detention Center or Regional Substance Abuse Treatment Facility: or ☐ Court designated sanction cap of _____.
5. **Accountability Court referral.** The Defendant shall enter and complete the _____ Accountability Court and comply with all terms and conditions of that program.
6. **Intensive Probation Supervision.** The Defendant is subject to Intensive Probation Supervision: ☐ with a curfew set by the Probation Officer; ☐ with home confinement; ☐ without home confinement; until released by the proper authority. The Defendant will be provided with a copy of all rules and regulations, and those rules and regulations will be fully explained.
7. **Detention Center, Division Center, or Boot Camp.** The Defendant shall serve _____ days in a: ☐ Detention Center ☐ County Diversion Center ☐ Boot Camp or ☐ _____. The Defendant shall be subject to the rules and regulations of the facility.
☐ The Defendant is to be sentenced to _____ in confinement, with that time suspended upon acceptance into the facility.
☐ Time spent in confinement awaiting acceptance into the facility shall be credited toward the time to be served at the facility.
☐ The Defendant may be at liberty until the date of acceptance into the facility.
8. **Regional Substance Abuse Treatment (RSAT) Facility.** The Defendant shall enter and complete a Regional Substance Abuse Treatment Program.
☐ The Defendant is sentenced to _____ in confinement, with that time suspended upon acceptance into the facility.
9. **Day Reporting Center.** The Defendant shall be assigned to a Day Reporting Center and shall be subject to all the rules and regulations of the facility.
☐ The Defendant is sentenced to _____ in confinement, with that time suspended upon acceptance into the facility.
10. **Fourth Amendment Waiver.** The Defendant shall submit to a search of person, residence, papers, vehicle, and /or effects at any time of day or night without a search warrant, whenever requested to do so by a Probation Officer or other law enforcement officer upon a reasonable cause to believe that the Defendant is in violation of probation or otherwise acting in violation of the law, and the Defendant shall specifically consent to the use of anything seized as evidence in any judicial proceedings or trial.


State of Georgia v. JERMONTAE ARTEZ MOSS
 Criminal Action # 2012 C

11. **Specimen; admissibility.** The Defendant shall produce from time to time upon oral or written request by a Probation Officer, a law enforcement officer, or official of a Georgia DHS-approved substance abuse or mental health provider personnel a breath, saliva, urine, and/or blood specimen for analysis for the presence of drugs including alcohol.
☐ The Defendant shall waive evidentiary foundation for admissibility of the laboratory results.
12. **Limited or no contact.** The Defendant shall: ☐ stay _____ yards away from ☐ have no violent contact with ☐ have no contact of any kind, in person, or by telephone, mail, or otherwise, with _____ ☐ or with his/her family members ☐ and the Defendant shall not enter the premises of _____
13. **Harassment, threats.** The Defendant shall not harass, threaten, intimidate, physically or verbally abuse, or harm the following person(s): _____
14. **Family Violence Intervention Program (FVIP).** The Defendant has been convicted of a crime involving family violence and required to participate in a Family Violence Intervention Program certified by the State.
15. **Records release.** The Defendant shall provide a release which allows the Probation Officer to have access to all medical, clinical, treatment, attendance or work records, and for driving and criminal history.
16. **Evaluation and treatment.** The Defendant shall provide verification of evaluation and/or treatment for;
☐ mental health ☐ substance abuse ☐ clinical evaluation ☐ anger management
☐ cognitive skills training ☐ educational training or ☐ _____ at a State or Court-approved provider at his/her own expense and shall cooperate and comply with all rules and regulations of the treatment or program, including any aftercare deemed necessary.
17. **12-step meetings.** The Defendant shall provide verification of attendance at _____ 12-step meetings or an equivalent per week for _____ consecutive ☐ weeks ☐ months ☐ years
18. **Diploma, GED, or training certificate.** The Defendant shall provide verification of completion of a high school diploma, GED, or vocational training certificate. In the event he/she does not have one, the Defendant shall attend all classes and work successfully toward obtaining a diploma, GED, or certificate during the period of probation ☐ and the Defendant shall provide verification of attendance.
19. **Curfew.** The Defendant shall abide by any curfew established by the Probation Officer.
20. **Bar order.** The Defendant shall not enter the confines of; ☐ _____ County or ☐ the _____ Judicial Circuit during the period of probation for any reason whatsoever.
21. **Surrender drivers's license.** The Defendant shall surrender any motor vehicle operator's license or permit to the Clerk pursuant to O.C.G.A. 40-5-75.
22. **Ignition interlock.** The Defendant shall have installed and maintain an ignition interlock device for six months in each motor vehicle registered or used by the Defendant. This period will begin when the Defendant has shown to the Court or to the Probation Officer certification that the Defendant's risk reduction program has been completed and that the ignition interlock system(s) has been installed. This provision shall not allow a defendant to drive whose license is under suspension.
23. **Electronic monitoring device.** The Defendant shall submit to: ☐ an alcohol monitoring device ☐ voice verification monitoring ☐ an electronic monitoring device ☐ a GPS monitoring device ☐ a SCRAM monitoring device for a period of : _____ ☐ weeks ☐ months ☐ years ☐ The Defendant is required to have the device installed prior to release from custody.
24. **Administrative or terminated probation.** The Defendant's probation sentence shall ; ☐ become administrative ☐ terminate upon full and timely payment of all sums due hereunder and compliance with all Conditions of Probation, including Special Conditions of Probation.

State of Georgia v. JERMONTAE ARTEZ MOSS
 Criminal Action # 2012 C 45757

25. **DNA sample.** The Defendant has been convicted of a felony offense. In accordance with O.C.G.A. 35-3-160, the Defendant shall provide a DNA sample.
26. **Sex offender special conditions.** The Defendant is subject to Special Conditions of Probation as a sex offender. These conditions are described more fully on separate pages which are incorporated into this sentence by reference.
27. **Offense against a minor or dangerous sexual offense special conditions.** The Defendant is subject to Special Conditions of Probation under O.C.G.A. 42-8-35(b), as a person who has been convicted of a criminal offense against a minor or a dangerous sexual offense as defined in O.C.G.A. 42-1-12. These conditions are described more fully on a separate page which is incorporated into this sentence by reference.
28. **Stalking or aggravated stalking special conditions.** The Defendant is subject to Special Conditions of Probation under O.C.G.A. 16-5-90 or 16-5-91. These special conditions are described more fully on a separate page which is incorporated into this sentence by reference.
29. **Street gang activity.** The Defendant has been convicted of a violation of the Georgia Street Gang Terrorism and Prevention Act and shall not knowingly have contact of any kind or character with any other member or associate of a criminal street gang, shall not participate in any criminal gang activity, and, if this case involved a victim, shall not knowingly have contact of any kind or character with any such victim or any member of any such victim's family or household.
30. **Special probation for drug offense.** The Defendant has been convicted of a drug offense in violation of O.C.G.A. 16-13-31(b), 16-13-31(d) or 16-13-31 and is subject to a special term of probation of three years in addition to the term of imprisonment imposed by the Court. If this is a second violation, the special term of probation shall be six years in addition to the term of imprisonment.
31. **Testify truthfully.** The Defendant shall not refuse to testify, but shall testify fully and truthfully as to all circumstances of this case and any related matters.
32. **Avoid alcohol, drug use.** The Defendant shall ☐ not consume alcoholic beverages, and not use narcotics or dangerous drugs unless lawfully prescribed ☐ not associate with anyone who uses or possesses illegal drugs ☐ not occupy any residence or vehicle where alcohol or illegal drugs are present ☐ not consume alcohol and operate a motor vehicle ☐ not go to establishments that serve alcohol.
33. **Contagious disease.** The Defendant shall submit to evaluation and provide proof of treatment as required by any governmental unit for any contagious communicable disease constituting a public health risk.
- 34.X **Other special condition(s).** The Defendant shall abide by the following additional special condition(s):
CONCURRENT WITH ANY OTHER SENTENCE

SO ORDERED this 27TH day of JANUARY 2017


 Judge of Superior Court

HOUSTON Judicial Circuit

GEORGE F. NUNN G.E. BoAdams
 (print or stamp Judge's name)

Acknowledgment: I have read the terms of this document or had them read and explained to me. I understand that violation of a special condition of probation could result in revocation of all time remaining on the period of probation.

State of Georgia v. JERMONTAE ARTEZ MOSS
 Criminal Action # 2012 C 45757


 Defendant

A Reed CSO II

INDICTMENT

INDICTMENT NUMBER 2012-C-45757-N

GEORGIA, HOUSTON COUNTY

THE GRAND JURORS SELECTED, CHOSEN AND SWORN FOR THE COUNTY AFORESAID, TO WIT:

~~JENNIFER T. MASHBURN~~
KRISTOPHER WILLIAMSON
LAZARUS CARTER
PAMELA J R WATSON
JACK C. TUTHEROW
KRISTOPHER R. PRINCE
MICHELLE D. GARRETT
D SHAWN MECK
BRUCE L. HARTLEY
CHARLES F. MALONE
REGINA COBB CARR
RICKY T. JOHNSON

PAUL HARTMAN
VINH TOM TRAN
DENNIS STUBBS
JAMES D. CLEGHORN, Clerk
~~ANDREW BLACK~~
SHAVINE MATHIS
MARK DOUGLAS PETERS
DARYL S. LESLIE
ROBERT CARSWELL
RODOLFO CEJA CHAVEZ, Alternate
KATHY ROGERS ROWLANDS
~~ANDREA N. CROFUTT, Alternate~~

BRIAN D. GRAHAM, Foreperson

IN THE NAME AND BEHALF OF THE CITIZENS OF GEORGIA, CHARGE AND ACCUSE

JERMONTAE ARTEZ MOSS

WITH THE OFFENSES OF:

COUNT 1

CRIMINAL ATTEMPT TO COMMIT MURDER

for that the said accused, in the State of Georgia and County of Houston, on or about September 21, 2011, did, with intent to commit a specific crime, to wit: MURDER, perform an act which constitutes a substantial step toward the commission of that crime, to wit: shot Nectally Corado in the torso with a .45 caliber handgun, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 2

AGGRAVATED BATTERY

for that the said accused, in the State of Georgia and County of Houston, on or about September 21, 2011, did maliciously cause bodily harm to the person of Nectally Corado by seriously disfiguring his body, to wit: did shoot him with a .45 caliber pistol causing permanent scarring, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 3

AGGRAVATED ASSAULT WITH INTENT TO ROB

for that the said accused, in the State of Georgia and County of Houston, on or about September 21, 2011, did unlawfully make an assault upon the person of Nectally Corado with intent to rob him, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 4

AGGRAVATED ASSAULT WITH A FIREARM

for that the said accused, in the State of Georgia and County of Houston, on or about September 21, 2011, did unlawfully make an assault upon the person of Nectally Corado with a .45 caliber firearm, a deadly weapon, which when used offensively against a person is likely to result in serious bodily injury, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 5

CRIMINAL ATTEMPT TO COMMIT ARMED ROBBERY

for that the said accused, in the State of Georgia and County of Houston, on or about September 21, 2011, did perform any act which constitutes a substantial step toward the commission of the crime of ARMED ROBBERY by knowingly and intentionally and with intent to commit theft, attempt to take money from the person or immediate presence of Nectally Corado by use of force, to wit: pointed a firearm at Mr. Corado, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 6

BURGLARY - RESIDENTIAL

for that the said accused, in the State of Georgia and County of Houston, on or about September 21, 2011, did unlawfully and without authority enter the dwelling house of another, located at 411 King Arthur Drive, the dwelling of Nectally Corado, with the intent to commit therein the crime of armed robbery, a felony, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 7

THEFT BY RECEIVING STOLEN PROPERTY - FIREARM

for that the said accused, in the State of Georgia and County of Houston, on or about September 21, 2011, did possess a stolen Taurus .45 caliber pistol, serial number NBM53693, a firearm, the property of Daryl Welch, with the intention of depriving said owner of the possession of said firearm, when the accused should have known that said firearm was stolen, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 8

POSSESSION OF A FIREARM DURING A CRIME

for that the said accused, in the State of Georgia and County of Houston, on or about September 21, 2011, did unlawfully possess a .45 caliber firearm during the commission of the crime of Criminal Attempt to Commit Murder, which crime is a felony, said crime being against the person of Nectally Corado, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 9

POSSESSION OF A FIREARM DURING A CRIME

for that the said accused, in the State of Georgia and County of Houston, on or about September 21, 2011, did unlawfully possess a .45 caliber firearm during the commission of the crime of Aggravated Assault, which crime is a felony, said crime being against the person of Nectally Corado, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 10

POSSESSION OF A FIREARM DURING A CRIME

for that the said accused, in the State of Georgia and County of Houston, on or about September 21, 2011, did unlawfully possess a .45 caliber firearm during the commission of the crime of Burglary, which crime is a felony, and involves the unlawful entry into a residential building with intent to commit a robbery therein, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT 11

POSSESSION OF A FIREARM DURING A CRIME

for that the said accused, in the State of Georgia and County of Houston, on or about September 21, 2011, did unlawfully possess a .45 caliber firearm during the commission of the crime of Criminal Attempt to Commit Armed Robbery, which crime is a felony, said crime being against the person of Nectally Corado, contrary to the laws of said State, the good order, peace and dignity thereof.

JANUARY TERM, 2012
HOUSTON SUPERIOR COURT
GEORGE H. HARTWIG, III
DISTRICT ATTORNEY

DET. TOM WILLIAMS
PROSECUTING WITNESS

TRUE BILL

Page 4 of 6

NO BILL

THIS 28th DAY OF February, 2012

B. J. [Signature]

Foreperson

In addition to the prosecutor shown, these witnesses testified before the grand jury:

PLEA

THIS DEFENDANT, JERMONTAE ARTEZ MOSS, WAIVES BEING FORMALLY ARRAIGNED AND PLEADS () GUILTY (☒) NOT GUILTY, THIS 22 DAY OF February, 2013.

Entered by KKL 2/21/13
DEFENDANT

SSN: _____

DOB: _____

DEFENDANT'S ATTORNEY

ASSISTANT DISTRICT ATTORNEY

CHANGE OF PLEA

THIS DEFENDANT, JERMONTAE ARTEZ MOSS, HAVING PREVIOUSLY ENTERED A PLEA OF NOT GUILTY TO THE CHARGE(S) IN THIS INDICTMENT, HEREBY ENTERS THE FOLLOWING CHANGE OF PLEA TO GUILTY, AFTER HAVING BEEN INFORMED OF HIS/HER CONSTITUTIONAL RIGHTS THIS 27 DAY OF January, 2017.

Jermontae Moss
DEFENDANT

SSN: 5879

DOB: 04/30/94

Megan All
DEFENDANT'S ATTORNEY

ASSISTANT DISTRICT ATTORNEY

CIRCUMSTANCES OF THE PLEA

DEFENDANT'S PLEA OF GUILTY PERTAINS TO COUNT(S) 1 OF THE INDICTMENT AS FOLLOWS:

Plea Guilty to Ct. 1
12 years to serve concurrent with
any other sentence Defendant is currently
serving
- Dismiss remaining counts
- CTS back to org. arrest date

INDICTMENT NUMBER 2012-C-45757-N

JERMONTAE ARTEZ MOSS

**COUNT 1
CRIMINAL ATTEMPT TO COMMIT MURDER
SPECIAL PRESENTMENT**

**COUNT 2
AGGRAVATED BATTERY
SPECIAL PRESENTMENT**

**COUNT 3
AGGRAVATED ASSAULT WITH INTENT TO ROB
SPECIAL PRESENTMENT**

**COUNT 4
AGGRAVATED ASSAULT WITH A FIREARM
SPECIAL PRESENTMENT**

**COUNT 5
CRIMINAL ATTEMPT TO COMMIT ARMED ROBBERY
SPECIAL PRESENTMENT**

**COUNT 6
BURGLARY - RESIDENTIAL
SPECIAL PRESENTMENT**

**COUNT 7
THEFT BY RECEIVING STOLEN PROPERTY - FIREARM
SPECIAL PRESENTMENT**

**COUNTS 8, 9, 10, 11
POSSESSION OF A FIREARM DURING A CRIME
SPECIAL PRESENTMENT**

Prosecutor: George H. Hartwig III, District Attorney
Defendant: Moss, Jermontae Artez
206 Woodland Trail #C
Warner Robins, GA 31088
DOB: April 30, 1994

FILED IN OFFICE, SUPERIOR COURT OF
HOUSTON COUNTY

FEB 28 2012

Sandra L. Gensberg Deputy Clerk

IN THE SUPERIOR COURT OF HOUSTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

INDICTMENT/ACCUSATION NO.:

VS.

2012-C-45757-N

Jermontae Moss

DEFENDANT

WAIVER OF POST-CONVICTION RIGHTS

This waiver is executed by the DEFENDANT as part of a negotiated plea agreement in the above styled case.

DEFENDANT understands that he/she is under indictment/accusation for the counts as set forth in the above styled case, and that the State of Georgia has announced a willingness to resolve the matter with a negotiated plea that is acceptable to both parties.

DEFENDANT has discussed his/her case with his/her counsel and DEFENDANT acknowledges his/her satisfaction with his/her counsel and avers that counsel has fully informed him/her of all of his/her rights and options.

DEFENDANT is aware that if he/she were to go to trial and were found guilty of the crimes alleged, his/her sentence could be significantly higher, and further, that a jury could find him/her guilty of the offenses alleged in the indictment/accusation whether he/she is pleading to those charges today or not.

Being of sound and clear mind and having discussed the alternatives with counsel, DEFENDANT has decided to plead guilty to the charges as set out in the negotiated plea. He/She realizes the seriousness of his/her acts.

In consideration of the State's agreement to waive more enhanced penalties, DEFENDANT agrees that:

- (1) he/she will never apply, orally or in writing, for commutation of his/her sentence, reprieve or any other form of relief from his/her convictions and sentences;
- (2) he/she will never apply, orally or in writing, for a direct or an out-of-time appeal from his/her convictions and sentences;
- (3) he/she will never apply, orally or in writing, for habeas corpus relief under the Constitution and/or statutes of the United States of America, under the Constitution and/or statutes of the State of Georgia, or seek any other form of post-conviction relief from his/her convictions or sentences;
- (4) he/she will never file a motion to withdraw his/her guilty plea after sentence has been entered;
- (5) he/she will never file for any sentence modification through the Sentence Review Panel or any successor organization which may take place of the Sentence Review Panel. He/She hereby states that the sentences for his/her criminal acts are not excessive.

DEFENDANT understands that by entering into this waiver, he/she is knowingly and intentionally waiving any state and federal constitutional and statutory rights to post-conviction review of his/her convictions and sentences.

DEFENDANT understands that entering into this waiver means he/she is forsaking his/her right to a trial by jury, to post-conviction appeals, and to argue sentencing.

DEFENDANT agrees that George H. Hartwig, District Attorney of the Houston Judicial Circuit, and his successors in office and assignees shall have the right to enforce this waiver by specific performance or injunctive relief at any time during the lifetime of DEFENDANT, and he/she waives any reliance on any contention that George H. Hartwig, District Attorney of the Houston Judicial Circuit, and his successors in office and assignees are without standing or are incompetent to sue. DEFENDANT enters into this agreement with full awareness of what he/she is doing, and he/she will not later attempt to rescind, void or revoke it.

Pursuant to this waiver, the DEFENDANT is not prohibited from filing an ineffective assistance of counsel claim in any manner or form, including a motion to set aside judgment, motion for new trial, appeal, habeas or bar complaint.

I understand that I can always sue my lawyer for not representing me effectively in the above styled case.

I understand that I can always file a bar complaint against my lawyer for not assisting me effectively in the above styled case.

I understand that I can always appeal to a court that my lawyer did an inadequate job of representing me in the above styled case.

The foregoing waiver is executed and acknowledged on this 27 day of January, 2017.

Witness

Megan Al
Counsel for Defendant

Jermontae Moss
Defendant

Revised on: June 8, 2011

952

SUPERIOR COURT OF HOUSTON COUNTY, STATE OF GEORGIA

STATE OF GEORGIA vs. Jermontae Moss; Case Number 2012-C-45757-N

Plea of Guilty: Acknowledgment and Waiver of Rights

The Defendant, after having read or had read to him/her the following questions, answers, to wit:

- | | | |
|--------------------------------------|-------------------------------------|---|
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | 1. Are you able to hear and understand my statements and questions? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | 2. Are you able to read and write the English language? |
| <input type="radio"/> YES | <input checked="" type="radio"/> NO | 3. Are you now under the influence of alcohol, drugs, narcotics or pills of any kind? |
| <input type="radio"/> YES | <input checked="" type="radio"/> NO | 4. Have you ever been a patient in a mental institution or under the care of a psychiatrist or psychologist? If yes, is your mind clear and your actions knowing and voluntary? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | 5. Are you represented by an attorney (private / appointed)? |
| <u>22</u> | | 6. How old are you? |
| <u>10th</u> | | 7. How far did you go in school? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | 8. Have you seen a copy of the Indictment/Accusation and read it or had it read to you? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | 9. Do you understand what you are charged with? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | 10. Do you understand that you may plead GUILTY or NOT GUILTY to these charges? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | 11. Do you understand should you plead NOT GUILTY , you have the right to: |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | - Remain silent at trial? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | - Hire an attorney or have counsel appointed if you qualify? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | - A speedy and public trial by jury? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | - A presumption of innocence? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | - Have burden placed on the State to prove alleged guilt beyond a reasonable doubt? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | - Cross-examine witnesses called against you? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | - Subpoena witnesses in your favor? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | - Appeal any conviction to a higher court? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | 12. Do you understand that if you plead GUILTY , you are giving up your rights to contest these charges as is explained in number 11? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | 13. Do you understand that upon a plea or verdict of guilty, the maximum imprisonment you could receive is <u>165</u> years and/or _____ months? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | 14. Do you wish to give up the rights explained in number 11 and enter a plea of GUILTY on this case? |
| <input checked="" type="radio"/> YES | <input type="radio"/> NO | 15. Is your plea of GUILTY your free and voluntary decision? |

FILED IN OFFICE, SUPERIOR COURT OF
HOUSTON COUNTY

JAN 27 2017

Jane A. Chambers Deputy Clerk

YES NO

YES NO

YES NO

YES NO

YES NO

YES NO

YES NO

YES NO

YES NO

YES NO

YES NO

YES NO

YES NO

YES NO

N/A

16. Has anyone threatened or forced you to plead **GUILTY**?

17. Have any promises been made to you, other than a possible State plea offer, that have resulted in your plea of **GUILTY**?

18. Are you pleading **GUILTY** because you are in fact guilty?

19. Do you understand this **GUILTY** plea will become a part of your record and can be used against you should you ever plead guilty or be found guilty of a crime in the future?

20. Do you understand this **GUILTY** plea could subject you to automatic deportation if you are not a United States citizen?

- Even if you are a legal resident of the United States?

- No matter how long you have been living in the United States?

21. Is there a joint sentence recommendation between you and the State?

22. Do you understand the Court is not obligated to accept any joint recommendation, but should it reject the same, you have a right to withdraw your **GUILTY** plea?

23. Do you understand that should the State not make a plea offer or you reject the same, you may have a sentencing hearing where you, your witnesses and/or your attorney may recommend to the Court any sentence allowed by law on your case?

24. Do you understand that should the Court reject your recommendation at a sentencing hearing, you do not have a right to withdraw your plea of **GUILTY**?

25. Have you had enough time to consider and discuss with your attorney the facts of your case, the law governing your case and your options?

26. Are you satisfied with your private or court appointed attorney on this case?

27. Have you read or had explained to you the conditions of any probation you may receive as part of your sentence?

So entered, this 27 day of

January, 2017.

Premetha Men
Defendant

CERTIFICATE OF COUNSEL

The undersigned Attorney of Record on the above date hereby certifies that the foregoing waiver was reviewed with the Defendant, he/she understood the contents of this waiver and the same was freely and voluntarily signed.

Megha
Attorney for Defendant

CERTIFICATE OF COURT

The undersigned Judge of the Superior Court certifies that the Defendant entered his/her plea of **GUILTY** under oath and in open court and that the same was freely and voluntarily made this the 27 day of January

2017.

JE B. A.
Judge, Superior Court of Houston Judicial Circuit

STATE OF GEORGIA COUNTY OF HOUSTON

I HEREBY CERTIFY that above and foregoing is
a true and correct copy of an instrument recorded in
the official records of HOUSTON SUPERIOR COURT,
WITNESS my hand and seal of office this

5 day of February, 2019

CAROLYN V. SULLIVAN
Clerk of SUPERIOR COURT
by Carmel Moneyperony
DEPUTY CLERK

INDICTMENT

INDICTMENT NUMBER 2011-C-45426-L

GEORGIA, HOUSTON COUNTY

THE GRAND JURORS SELECTED, CHOSEN AND SWORN FOR THE COUNTY AFORESAID, TO WIT:

CEDRIC D. NELSON	JANET WILLIAMSON
ERIC R. ROBERTS	CAROLYN E. BRINKLEY, Clerk
OSCAR KENDRICK	PATRICIA M. HOWARD
CHARLESTON THOMAS	ANN MILLS
DENNIS BARRETT	OTIS JAMES
LORI HARDY	HEATHER HART
JOCELYN T. CLARK	ANGELA D. ALLEN
EVELYN JACKSON	MARY A. MONTANO
LINDA D. STOKES	HAYLEY COLE
ALAN D. WILBANKS, Asst. Foreperson	CHARLES BRUNSON
RODERICK K. SCOTT	DAVID ANDERSON
SCOTT D. CROSS	HELEN G. STARLING

~~CHANCE STROZIEK, Foreperson~~

IN THE NAME AND BEHALF OF THE CITIZENS OF GEORGIA, CHARGE AND ACCUSE

JERMONTAE ARTEZ MOSS AND HERONTA CARTEZ SHANNON

WITH THE OFFENSE OF:

COUNT 1

BURGLARY - RESIDENTIAL

for that the said accused, in the State of Georgia and County of Houston, on or about September 11, 2011, did, without authority, enter the dwelling house of another located at 109 Latham Drive, Apt.#64, Warner Robins, the residence of Ansel Peck, with the intent to commit a theft therein, contrary to the laws of said State, the good order, peace and dignity thereof.

OCTOBER TERM, 2011
HOUSTON SUPERIOR COURT
GEORGE H. HARTWIG, III
DISTRICT ATTORNEY

INV. TOM WILLIAMS
PROSECUTING WITNESS



TRUE BILL

NO BILL

THIS 29 DAY OF Novembe, 2011

Joe Wray

Foreperson

In addition to the prosecutor shown, these witnesses testified before the grand jury:

PLEA

THIS DEFENDANT, **JERMONTAE ARTEZ MOSS**, WAIVES BEING FORMALLY ARRAIGNED AND PLEADS () GUILTY () NOT GUILTY, THIS _____ DAY OF _____, 20____.

DEFENDANT _____

DEFENDANT'S ATTORNEY _____

SSN: _____

DOB: _____

ASSISTANT DISTRICT ATTORNEY _____

CHANGE OF PLEA

THIS DEFENDANT, **JERMONTAE ARTEZ MOSS**, HAVING PREVIOUSLY ENTERED A PLEA OF NOT GUILTY TO THE CHARGE(S) IN THIS INDICTMENT, HEREBY ENTERS THE FOLLOWING CHANGE OF PLEA TO GUILTY, AFTER HAVING BEEN INFORMED OF HIS/HER CONSTITUTIONAL RIGHTS THIS _____ DAY OF _____, 20____.

DEFENDANT _____

DEFENDANT'S ATTORNEY _____

SSN: _____

DOB: _____

ASSISTANT DISTRICT ATTORNEY _____

CIRCUMSTANCES OF THE PLEA

DEFENDANT'S PLEA OF GUILTY PERTAINS TO COUNT(S) _____ OF THE INDICTMENT AS FOLLOWS:

PLEA

THIS DEFENDANT, **HERONTA CARTEZ SHANNON**, WAIVES BEING FORMALLY ARRAIGNED AND PLEADS () GUILTY () NOT GUILTY, THIS _____ DAY OF _____, 20_____.

DEFENDANT

DEFENDANT'S ATTORNEY

SSN: _____

DOB: _____

ASSISTANT DISTRICT ATTORNEY

CHANGE OF PLEA

THIS DEFENDANT, **HERONTA CARTEZ SHANNON**, HAVING PREVIOUSLY ENTERED A PLEA OF NOT GUILTY TO THE CHARGE(S) IN THIS INDICTMENT, HEREBY ENTERS THE FOLLOWING CHANGE OF PLEA TO GUILTY, AFTER HAVING BEEN INFORMED OF HIS/HER CONSTITUTIONAL RIGHTS THIS _____ DAY OF _____, 20_____.

DEFENDANT

DEFENDANT'S ATTORNEY

SSN: _____

DOB: _____

ASSISTANT DISTRICT ATTORNEY

CIRCUMSTANCES OF THE PLEA

DEFENDANT'S PLEA OF GUILTY PERTAINS TO COUNT(S) _____ OF THE INDICTMENT AS FOLLOWS:

INDICTMENT NUMBER 2011-C-45426-L

JERMONTAE ARTEZ MOSS

COUNT 1

BURGLARY - RESIDENTIAL

2011 MP 088399

HERONTA CARTEZ SHANNON

COUNT 1

BURGLARY - RESIDENTIAL

2011 MP 088400

FILED IN OFFICE, SUPERIOR COURT OF
HOUSTON COUNTY

NOV 29 2011

Sandra L. O'Quinn ⁵⁶ Deputy Clerk

Prosecutor: George H. Hartwig III, District Attorney

Defendants: Moss, Jermontae Artez
206 C Woodland Trail
Warner Robins, GA 31088
DOB: April 30, 1994

Shannon, Heronta Cartez
159 Landings Drive
Warner Robins, GA 31088
DOB: September 1, 1989

IN THE SUPERIOR COURT OF HOUSTON COUNTY,
STATE OF GEORGIA

STATE OF GEORGIA

Case No: 2011-C-45426-L

VS

Charges: BURGLARY

JERMONTAE ARTEZ MOSS
Defendant

NOLLE PROSEQUI

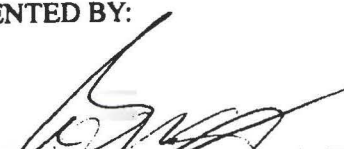
On motion of George H. Hartwig, III, District Attorney for the Houston Judicial Circuit, State of Georgia, after examination of the case in open court and before this indictment has been submitted to the jury, the above referenced indictment is hereby dismissed due to:

Defendant is currently serving LIFE without parole for murder on Indictment 2011-C-45448-N

Entered this 20th day of November, 2013.


JUDGE, S.C.H.J.C.

PRESENTED BY:


GEORGE H. HARTWIG, III
DISTRICT ATTORNEY
HOUSTON JUDICIAL CIRCUIT
STATE BAR NUMBER 334970

Defense Attorney: Nicholas White

FILED IN OFFICE, SUPERIOR COURT OF
HOUSTON COUNTY

NOV 20 2013


Alice Rawley, Deputy Clerk

INDICTMENT

INDICTMENT NUMBER 2011-C-45447-N

GEORGIA, HOUSTON COUNTY

THE GRAND JURORS SELECTED, CHOSEN AND SWORN FOR THE COUNTY AFORESAID, TO WIT:

CEDRIC D. NELSON
ERIC R. ROBERTS
OSCAR KENDRICK
CHARLESTON THOMAS
DENNIS BARRETT
~~LORI HARDY~~
JOCELYN T. CLARK
EVELYN JACKSON
LINDA D. STOKES
ALAN D. WILBANKS, Asst. Foreperson
RODERICK K. SCOTT
~~SCOTT D. CROSS~~

JANET WILLIAMSON
CAROLYN E. BRINKLEY, Clerk
PATRICIA M. HOWARD
~~ANN MILLS~~
OTIS JAMES
HEATHER HART
~~ANGELA D. ALLEN~~
MARY A. MONTANO
HAYLEY COLE
CHARLES BRUNSON
DAVID ANDERSON
HELEN G. STARLING

CHANCE STROZIER, Foreperson

IN THE NAME AND BEHALF OF THE CITIZENS OF GEORGIA, CHARGE AND ACCUSE

JERMONTAE ARTEZ MOSS

WITH THE OFFENSES OF:

COUNT 1

BURGLARY - RESIDENTIAL

for that the said accused, in the State of Georgia and County of Houston, on or about August 24, 2011, did, without authority, enter the dwelling house of another located at 109 Latham Drive, Apt.#82, Warner Robins, the residence of Rachel Lopez, with the intent to commit a theft therein, contrary to the laws of said State, the good order, peace and dignity thereof., contrary to the laws of said State, the good order, peace and dignity thereof.

OCTOBER TERM, 2011
HOUSTON SUPERIOR COURT
GEORGE H. HARTWIG, III
DISTRICT ATTORNEY

INV. TOM WILLIAMS
PROSECUTING WITNESS



TRUE BILL

NO BILL

THIS 29 DAY OF November, 2011

Joe L. King

Foreperson

In addition to the prosecutor shown, these witnesses testified before the grand jury:

PLEA

THIS DEFENDANT, **JERMONTAE ARTEZ MOSS**, WAIVES BEING FORMALLY ARRAIGNED AND PLEADS () GUILTY () NOT GUILTY, THIS _____ DAY OF _____, 20_____.

DEFENDANT _____

DEFENDANT'S ATTORNEY _____

SSN: _____

DOB: _____

ASSISTANT DISTRICT ATTORNEY _____

CHANGE OF PLEA

THIS DEFENDANT, **JERMONTAE ARTEZ MOSS**, HAVING PREVIOUSLY ENTERED A PLEA OF NOT GUILTY TO THE CHARGE(S) IN THIS INDICTMENT, HEREBY ENTERS THE FOLLOWING CHANGE OF PLEA TO GUILTY, AFTER HAVING BEEN INFORMED OF HIS/HER CONSTITUTIONAL RIGHTS THIS _____ DAY OF _____, 20_____.

DEFENDANT _____

DEFENDANT'S ATTORNEY _____

SSN: _____

DOB: _____

ASSISTANT DISTRICT ATTORNEY _____

CIRCUMSTANCES OF THE PLEA

DEFENDANT'S PLEA OF GUILTY PERTAINS TO COUNT(S) _____ OF THE INDICTMENT AS FOLLOWS:

INDICTMENT NUMBER 2011-C-45447-N

JERMONTAE ARTEZ MOSS

COUNT 1

BURGLARY - RESIDENTIAL

2011 MP 88039

FILED IN OFFICE, SUPERIOR COURT OF
HOUSTON COUNTY

NOV 29 2011

Sandra L. Gentry ^{LB} Deputy Clerk

Prosecutor: George H. Hartwig III, District Attorney

Defendant: Moss, Jermontae Artez
206 Woodland Trail #C
Warner Robins, GA 31088

DOB: April 30, 1994

IN THE SUPERIOR COURT OF HOUSTON COUNTY,
STATE OF GEORGIA

STATE OF GEORGIA

Case No: 2011-C-45447-N

VS

Charges: BURGLARY

JERMONTAE ARTEZ MOSS
Defendant

NOLLE PROSEQUI

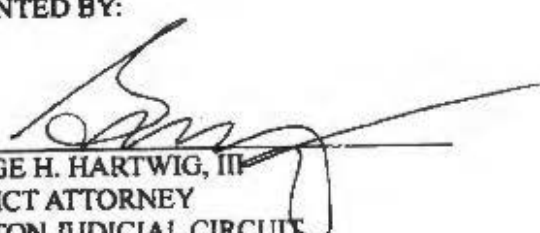
On motion of George H. Hartwig, III, District Attorney for the Houston Judicial Circuit, State of Georgia, after examination of the case in open court and before this indictment has been submitted to the jury, the above referenced indictment is hereby dismissed due to:

Defendant is currently serving LIFE without parole for murder on Indictment 2011-C-45448-N

Entered this 20th day of November, 2013.


JUDGE, S.C.H.J.C.

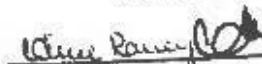
PRESENTED BY:


GEORGE H. HARTWIG, III
DISTRICT ATTORNEY
HOUSTON JUDICIAL CIRCUIT
STATE BAR NUMBER 334970

Defense Attorney: Nicholas White

FILED IN OFFICE, SUPERIOR COURT OF
HOUSTON COUNTY

NOV 20 2013

 Deputy Clerk

Official Report



Division of Forensic Sciences
Georgia Bureau of Investigation
State of Georgia

George Herrin, Jr., Ph.D.
Deputy Director

Headquarters
DOFS Case #: 2011-4004322
Report Date: 10/13/2011



Requested Service: LP Processing

Agency: Warner Robins Police Department
Agency Ref#: 201114065
Requested by: M. Wright

Case Individuals:

Subject: Christian Daniel
Subject: Javier Lara-Moreno
Subject: Jermontae Artez Moss
Victim: Jose L. Marin



Evidence:

On 09/23/2011, the laboratory received the following evidence from the Warner Robins Police Department via Lockbox.

- 001 Sealed package containing Taurus .45 ACP pistol serial #NBM53693
- 002 Sealed package containing magazine and seven .45 ACP cartridges *excluded*
- 003 Sealed package containing projectile
- 004 Sealed package containing one .45 ACP cartridge case

On 10/11/2011, the laboratory received the following via Latent Print Examiner Albert W. Rowland :

- 010 Sealed package containing a fingerprint card bearing the name Jermontae Artez Moss

Results and Conclusions:

The evidence submitted, item 1, has been physically and chemically processed for the presence of latent prints with positive results. The developed latent prints have been photographed using the DCS 4 QD. The latent prints have been visually examined and no latent prints were found to be of value for comparison purposes.

The evidence submitted, item 2, has been physically and chemically processed for the presence of latent prints with positive results on the magazine only. The developed latent prints have been photographed using the DCS 4 QD. The latent prints have been visually examined and one latent print was found to be of value for comparison purposes but not AFIS 21 quality. The latent print has been visually compared to item 10, and Moss has been excluded.

The evidence submitted, item 4, has been physically and chemically processed for the presence of latent print with negative results.

Please submit fully rolled fingerprints of any victims or persons handling the evidence for comparison purposes.

Only those items discussed in the results above were analyzed for this report. The above represents the interpretations/opinions of the undersigned analyst. Evidence analyzed in this report will be returned to the submitting agency. Biological evidence (body fluids and tissues) and fire debris extracts will be destroyed after one year. This report may not be reproduced except in full without written permission of the laboratory.

Technical notes and data supporting the conclusions and findings in this report are maintained within the laboratory case records.

This case may contain evidence that must be preserved in accordance with O.C.G.A. § 17-5-56.

Official Report



Division of Forensic Sciences
Georgia Bureau of Investigation
State of Georgia

Headquarters
DOFS Case #: 2011-4004322
Report Date: 10/20/2011

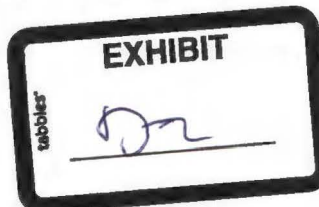
George Herrin, Jr., Ph.D.
Deputy Director

ASCLD/LAB-International
* Accredited *



Requested Service: Gunshot Residue

Agency: Warner Robins Police Department
Agency Ref#: 201114065
Requested by: M. Wright



Case Individuals:

Subject: Jermontae Artez Moss
Victim: Jose L. Marin

Evidence:

On 09/23/2011, the laboratory received the following evidence from the Warner Robins Police Department via Lockbox.

006 Sealed collection kit identified as containing hand wipings of "Moss, Jermontae"

Results and Conclusions:

Item 006 was analyzed for the presence of particles characteristic of and associated with gunshot primer residue (GSR).

Particles that are characteristic of GSR contain the three elements lead, barium, and antimony. The presence of particles characteristic of GSR on an individual's hands may be the result of activities such as discharging a firearm, being in close proximity to a firearm during discharge, or coming into contact with an item whose surface bears GSR.

Particles that are associated with GSR contain two of the three elements lead, barium, and antimony. While these particles are often associated with GSR, other sources cannot be eliminated.

Examination of item 006 failed to reveal particles associated with or characteristic of GSR. This does not eliminate the possibility that the subject discharged a firearm, was in close proximity to a firearm during discharge, or came into contact with an item bearing GSR.

Examination was performed by scanning electron microscopy/energy dispersive X-ray spectroscopy (SEM/EDS).

Only those items discussed in the results above were analyzed for this report. The above represents the interpretations/opinions of the undersigned analyst. Evidence analyzed in this report will be returned to the submitting agency. Biological evidence (body fluids and tissues) and fire debris extracts will be destroyed after one year. This report may not be reproduced except in full without written permission of the laboratory.

Technical notes and data supporting the conclusions and findings in this report are maintained within the laboratory case records.

This case may contain evidence that must be preserved in accordance with O.C.G.A. § 17-5-66.

A handwritten signature in black ink, reading "Kristin Dedrick".

Kristin Dedrick
Microanalyst
404-270-8269

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STATE OF GEORGIA
COUNTY OF HOUSTON

I, Joy L. Malone, Certified Court Reporter,
Certificate Number B-1576, in and for the State of
Georgia at large, do hereby CERTIFY that I
personally reported said proceedings on May 29,
2019, and that the preceding pages represent a true,
correct, and complete transcript of the above
proceeding to the best of my knowledge and skill.

I further CERTIFY that I am not interested in the outcome of said case; nor am I employed on a regular basis by any of said parties; nor am I related to any of said parties.

WITNESS my hand and official seal as Certified Court Reporter, Certificate Number B-1576, this 2nd day of March, 2020, in the city of Perry, Houston County, Georgia.

Off. Malone

JOY L. MALONE, CCR
Certified Court Reporter B-1576
State of Georgia



APPENDIX E

IN THE SUPERIOR COURT OF HOUSTON COUNTY

STATE OF GEORGIA

THE STATE	:	
	:	2011-C-45448-N
VS	:	
	:	RESENTENCING HEARING
JERMONTAE MOSS	:	

SEPTEMBER 13, 2019

THE HONORABLE G.E. "BO" ADAMS
HOUSTON COUNTY SUPERIOR COURT
PERRY, GEORGIA

APPEARANCES:

FOR THE STATE:

MR. GEORGE HARTWIG
DISTRICT ATTORNEY
HOUSTON COUNTY DISTRICT
ATTORNEY'S OFFICE
201 PERRY PARKWAY
PERRY, GEORGIA 31069

FOR THE DEFENDANT:

MR. ANDREW FLEISCHMAN
ATTORNEY AT LAW
ROSS & PINES, LLC
5555 GLENRIDGE CONNECTOR, SUITE 435
ATLANTA, GEORGIA 30342

JOY L. MALONE
OFFICIAL COURT REPORTER
HOUSTON SUPERIOR COURT
PERRY, GEORGIA 31069
(478) 218-4843

1 THE COURT: We'll go ahead and put on
2 the record this is the State of Georgia v. Jermonae
3 Artez Moss. This is 2011-C-45448-N. Of course, we
4 have Mr. Moss in the courtroom and the attorneys in
5 this case.

6 We had a hearing, and I will invite y'all to say
7 whatever you want to, but just I guess to provide a
8 backdrop for this, we had a hearing really on the motion
9 for new trial that the defendant had filed after the,
10 obviously the jury trial and his conviction. At the
11 same time, or right after that, we had the resentencing
12 hearing with regard to the necessity of the Court's
13 findings under the Supreme Court rulings due to the age
14 of Mr. Moss at the time of the incident.

15 I guess when it comes to that, what I did, as
16 counsel knows, but to put it on the record now, we had
17 the hearings on May 29th. As far as the need for
18 resentencing, I know Mr. Moss obviously needs to be
19 present at the time of the resentencing, but I think
20 really at the request of the attorneys I prepared an
21 order for each on defendant's motion for new trial and
22 as to the issue of resentencing. But just so everybody
23 is on the same page and not caught off guard, and I
24 think really by the request of the attorneys, I just
25 sent a copy of the order unsigned, and they're still

1 unsigned, but I can sign it today because I know the
2 time issue is obviously important. But as far as the
3 resentencing goes, obviously we need to have the
4 sentencing sheet reflect my ruling in that regard. I'm
5 not going to read the order because I know you guys have
6 received a copy of it, but I'll sign and date it today,
7 but may be more for the clerk who's going to revise the
8 sentencing sheet.

9 Let me say this; so after trial the defendant was
10 convicted of ten separate counts, and there were three
11 counts of felony murder. Obviously we have the same
12 victim, so they would merge together, but due to his age
13 at the time of the offenses, I needed to make certain
14 findings as far as sentencing goes. And again for the
15 record, which the record will reflect this from
16 May 29th, but the district attorney and defense
17 counsel really advised the Court that as far as Count
18 One goes, which was the felony murder based on the
19 predicate felony of armed robbery, that by agreement
20 that they acknowledge that that really should be vacated
21 because there's actually no theft that occurred. So as
22 it stands, Count One would be vacated.

23 As far as Count Two, I understand the State didn't
24 necessarily concede that there couldn't be a count for
25 attempted armed robbery, but by agreement y'all had

1 already reached that Count Two would be vacated as well.
2 And Count Three charged the defendant with possession of
3 a firearm during a crime, and the crime charged in Count
4 Three was the attempted armed robbery. And since that
5 was vacated by agreement of counsel, I felt that it was
6 appropriate that that count should be vacated also. So
7 really Counts One, Two, and Three are vacated by the
8 Court.

9 Going to Count Four that charged Mr. Moss with
10 felony murder with the predicate felony being aggravated
11 battery, I resentenced Mr. Moss to life imprisonment.
12 Count Five, which charged the underlying aggravated
13 battery, of course, by law is merged into Count Four.
14 Count Six, possession of a firearm during the commission
15 of a crime, and that crime being the aggravated battery,
16 I resentenced Mr. Moss to five years to serve under the
17 law, that's to be consecutive, of course, to the life
18 sentence on Count Four.

19 And then Count Seven, which is the felony murder
20 with the predicate felony being aggravated assault,
21 because of his conviction of Count Four, that will be
22 vacated by operation of law. And then Count Eight, the
23 underlying felony of aggravated assault, I know really
24 at the hearing I think you guys -- this wasn't agreed
25 to, and I don't think the State necessarily conceded

1 this, but I believe that under the law that the
2 aggravated assault ought to be merged as a lesser
3 included of the offense of aggravated battery. And in
4 my order I cite the *Evans* case, which I think is kind of
5 similar in that regard.

6 Count Nine, possession of a firearm during a crime,
7 of course, that's going to be -- I guess that crime was
8 based on the aggravated assault, so I merged that with
9 the aggravated -- or the count -- I guess I'm not making
10 it clear for the clerk. That's merged with defendant's
11 conviction of the same offense of the crime of
12 aggravated battery on the same victim as alleged in
13 Count Six.

14 And then Count Ten, theft by receiving stolen
15 property, I resentenced Mr. Moss to ten years,
16 concurrent with his life sentence. And I believe prior
17 to trial, or I don't know if it was during the trial,
18 but Count Eleven was withdrawn by the State. So at the
19 end of the day, the entire sentence was -- that I
20 imposed on Mr. Moss was a life sentence plus five years.

21 Counsel argued the whole issue with regard to his
22 life sentence, should it be with or without parole, or
23 the possibility of parole, based on *the Miller v.*
24 *Alabama* case and the *Montgomery v. Louisiana* case, and
25 of course the Georgia case of *Veal v. The State*. And

1 again, I'm not going to read the order because I have
2 articulated it really in my order that I'll sign today,
3 but I know Mr. Moss needed to be present for the
4 resentencing.

5 And after going through in my order the analysis
6 that I went through after reading the trial transcript,
7 the transcript from the sentencing hearing, and looking
8 at the exhibits that were tendered at trial, and
9 obviously doing research on this, the whole issue is
10 whether or not -- or the Court had to consider whether
11 Mr. Moss's crime reflects irreparable corruption, which,
12 you know, using synonymous terms I guess the Court
13 referred to that as whether he's exhibiting, or his
14 actions exhibit irretrievable depravity or permanent
15 incorrigibility and things of the like.

16 Following the Georgia Superior Court's requirement
17 in *Veal* of how the Court is to analyze the factual
18 scenario and the background of the defendant, Mr. Moss,
19 as you guys know, at the end of the day, I did find that
20 his actions do exhibit irreparable corruption and,
21 again, went into his intensifying criminal behavior, the
22 record in juvenile court, which again -- well, I'll come
23 back to that in a minute, the record itself.

24 And then his affiliation, or at least his claimed
25 affiliation with gang activity, and then the actual

1 incidents for which he was charged. Actually, the
2 first -- yeah, he was charged with the first attempted
3 murder, but ultimately pled guilty to that in a separate
4 case obviously. But at the end of it all, I find that
5 his behavior does exhibit irretrievable depravity, which
6 appears to foreclose any reasonable prospect of
7 rehabilitation, and then under the Veal analysis, in
8 considering the unique characteristics of juveniles in
9 general as it relates to sentencing, I impose a sentence
10 on the defendant of life without the possibility of
11 parole.

12 I'll sign and date that today. And for the record
13 now, Mr. Moss -- and you got Mr. Fleischman who's here
14 representing you, and he'll continue to represent you,
15 right, for purposes of appeal, Mr. Fleischman?

16 MR. FLEISCHMAN: That's correct, Your
17 Honor.

18 THE COURT: So Mr. Moss, as
19 Mr. Fleischman can advise you, you have 30 days from
20 today's date to file any notice of appeal. You have
21 appellate counsel for that. The transcript's
22 already been filed. And so the main thing is that
23 time period; the 30 days starts running from today.

24 There is also -- again, Mr. Fleischman can advise
25 you of this -- but there's a statute of limitations for

1 habeas corpus actions. Typically it's four years for
2 felonies. It's different for murder. But anyway, they
3 have that statute of limitations of four years.

4 As far as the juvenile court record goes, I'm doing
5 an order to seal that, except for appellate purposes.
6 And I'm going to sign that today, and I know,
7 Mr. Fleischman, obviously when you file a notice of
8 appeal it's a supersedeas and I can't really sign any
9 orders and I don't know when you were anticipating
10 filing the notice of appeal. But regardless, today I'll
11 sign that seal for the juvenile court records. Do you
12 understand? Is that an issue for any reason, Mr.
13 Fleischman?

14 MR. FLEISCHMAN: No, Your Honor. That
15 should be fine.

16 THE COURT: Okay. Except -- it will
17 be sealed except for appellate purposes. I don't
18 know if there's anything to add. From the State,
19 anything to state as far as any of this goes?

20 MR. HARTWIG: I don't believe so, Your
21 Honor. I think you've covered it in the two orders
22 that you've signed already, or that you are going to
23 sign.

24 THE COURT: And I didn't put this on
25 the record. I guess I should. As far as the motion

1 for new trial, I have signed a separate, or I will
2 sign a separate order on that. Again, it will be
3 dated today, which I guess that's the magic time for
4 the 30-day notice of appeal. That will be signed
5 and dated today. Again, I sent both proposed, or
6 both orders that I had drafted to counsel just
7 unsigned. Mr. Fleischman, anything you need to put
8 on the record?

9 MR. FLEISCHMAN: Yes, Your Honor, just
10 briefly. One issue I didn't address, but which is
11 apparently coming up in these cases around the
12 country, is whether or not it's required for a judge
13 or jury to be the person to make the incorrigibility
14 determination. Because this is being argued in
15 Georgia, I want to put on the record my argument or
16 my claim that I think this should have been decided
17 by a jury under *Apprendi v. New Jersey*.

18 THE COURT: Okay. Anything else?

19 MR. FLEISCHMAN: That's it, Your Honor.

20 THE COURT: Okay. Well --

21 MR. HARTWIG: And I guess, Judge, just
22 to clarify, based on what you just said a moment
23 ago, but obviously the Court is resentencing him,
24 and so just to put on the record, you are going to
25 sign the order today, but that the Court has denied

1 his motion for new trial in all respects and on all
2 grounds that he had asked for a new trial, and it's
3 based upon that denial of the new trial that the
4 Court is then resentencing him to the sentence that
5 you just imposed, so --

6 THE COURT: Right.

7 MR. HARTWIG: -- that is set forth in
8 the order, but just for somebody reading this
9 transcript, yeah, his motion for new trial got
10 denied in all respects and on all grounds and he's
11 been resentenced.

12 THE COURT: Right. It has been
13 denied. I think some grounds you guys agree to that
14 made it moot as far as counts, so there's no new
15 trial on Count One or Two or Three or anything like
16 that, but it's true that the motion overall is
17 denied and it will be signed and dated today then,
18 okay?

19 MR. HARTWIG: Yes, sir.

20 THE COURT: Anything else from either
21 side that we need to address this morning?

22 MR. FLEISCHMAN: I'm so sorry. I said
23 *Apprendi v. New Jersey*, but I also meant to object
24 under the Georgia constitution, specifically the
25 Georgia constitution provision that the jury should

1 be the finders of the law of the facts in Georgia.

2 THE COURT: Right. Okay.

3 MR. FLEISCHMAN: Thank you, Your Honor. I
4 appreciate it.

5 THE COURT: That will be the order of
6 the Court. I'll sign, obviously, a new sentence as
7 well. Thank you all. We'll be adjourned, okay?

8 (END OF PROCEEDINGS)

1
2 CERTIFICATE OF COURT REPORTER
3

4 STATE OF GEORGIA
5 COUNTY OF HOUSTON

6 I, Joy L. Malone, Certified Court Reporter,
7 Certificate Number B-1576, in and for the State of
8 Georgia at large, do hereby CERTIFY that I personally
9 reported said proceedings on September 13, 2019, and
10 that the preceding pages represent a true, correct, and
11 complete transcript of the above proceeding to the best
12 of my knowledge and skill.

13 I further CERTIFY that I am not interested in the
14 outcome of said case; nor am I employed on a regular
15 basis by any of said parties; nor am I related to any of
16 said parties.

17 WITNESS my hand and official seal as Certified Court
18 Reporter, Certificate Number B-1576, this 18th day of
19 February, 2020, in the city of Perry, Houston County,
20 Georgia.

21 *Joy L. Malone*
22

23 JOY L. MALONE, CCR
24 Certified Court Reporter B-1576
25 State of Georgia



APPENDIX F

IN THE SUPERIOR COURT OF HOUSTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

CASE NO. 2011-C-45448-N

v.

JERMONTAE ARTEZ MOSS,

Defendant.

ORDER ON RESENTENCING

After being tried by jury the above Defendant was convicted of ten separate counts, including three counts of Felony Murder on the same victim, with different predicate felonies. The Defendant was seventeen years of age at the time of the offenses, seven months' short of his eighteenth birthday. On October 25, 2012 he was sentenced to life without the possibility of parole by the Trial Court, the Honorable George F. Nunn, Jr., who has since retired. The sentence was issued the same year as the U.S. Supreme Court's decision in Miller v. Alabama, 567 U.S. 460 (2012). No explicit findings were made as to whether Defendant's crimes reflect "irreparable corruption" or "permanent incorrigibility" so as to warrant said sentence. Pursuant to the requirements of Veal v. State, 298 Ga. 691 (2016), and Montgomery v. Louisiana, 577 U.S. ___, 136 S.Ct. 718 (2016), this Court conducted a resentencing hearing to address this issue.

At the beginning of the resentencing hearing, the District Attorney and defense counsel advised the Court that they agreed Defendant's conviction on Count One, alleging Felony Murder based on the underlying felony of Armed Robbery, should be

vacated in light of the fact that no theft actually occurred. See Prater v. State, 273 Ga. 477 (2001). Although the State did not necessarily concede Count Two (Attempted Armed Robbery) was deficiently charged in any way, by previous agreement with defense counsel the State consented to that count being vacated as well.

As counsel also agreed, because Defendant was convicted of two other counts of Felony Murder which were merged into his conviction of Count One, he will need to be resentenced. Counsel argued to this Court their respective positions on proper sentencing. Based on the argument of counsel, this Court's review of the transcripts from the trial and sentencing hearings, and the relevant law in this matter, this Court resentsences Defendant as follows:

This Court hereby vacates Defendant's convictions and corresponding sentences as to Counts One and Two, as agreed by counsel.

Count Three charges Defendant with Possession of a Firearm During a Crime. Because the underlying crime charged in this Count is "Felony Murder based upon Attempted Armed Robbery," which was vacated by agreement of counsel, this Court finds that Defendant's conviction and corresponding sentence resulting from this count should likewise be vacated.

Count Four –Felony Murder with the predicate felony being Aggravated Battery– this Court hereby resentsences Defendant to Life Imprisonment. The issue of whether this is with or without the possibility of parole will be addressed in the second part of this Order.

Count Five, the underlying felony of Aggravated Battery, is merged into Count Four.

As to Count Six – Possession of a Firearm During a Crime, that being Aggravated Battery – Defendant is hereby resentenced to five (5) years to serve, consecutive to his Life Sentence on Count Four.

Count Seven – Felony Murder with the predicate felony being Aggravated Assault – is vacated by operation of law due to Defendant's conviction of Felony Murder on the same victim as alleged in Count Four.

Count Eight, the underlying felony of Aggravated Assault, is merged into Count Four as being a lesser included offense of Aggravated Battery under the "required evidence" test. See Evans v. State, 344 Ga. App. 283 (2018).

Count Nine – Possession of a Firearm During a Crime – is merged with Defendant's conviction of the same offense during the crime of Aggravated Battery on the same victim as alleged in Count Six.

As to Count Ten – Theft by Receiving Stolen Property – Defendant is hereby resentenced to ten (10) years, concurrent with his Life Sentence on Count Four.

Count Eleven was previously withdrawn by the State.

As a result of the above findings, the overall sentence this Court imposes on Defendant is life plus five (5) years.

LIFE WITH OR WITHOUT THE POSSIBILITY OF PAROLE

Defendant's resentencing hearing was held immediately after the hearing on his Motion for New Trial. The State and defense provided the Court evidence and argument as to whether this Defendant's sentence should include the possibility of parole, in light of the recent cases of Miller v. Alabama, 567 U.S. 460 (2012); Montgomery v. Louisiana, 577 U.S. ___, 136 S.Ct. 718 (2016); and Veal v. State, 298 Ga. 691 (2016).

The standard for determining whether this Defendant falls within that rare case where life without parole may be appropriate is whether his crime “reflects irreparable corruption.” Miller, 567 U.S. at 480, citing Roper v. Simmons, 543 U.S. 551, 573 (2005), and Graham v. Florida, 560 U.S. 48, 68 (2010). This term is further explained as crimes which “reflect permanent incorrigibility” (rather than crimes which reflect “unfortunate yet transient immaturity”) and whose perpetrators exhibit “irretrievable depravity.” Montgomery, 136 S.Ct. at 733-734. The U.S. Supreme Court further elaborated in Montgomery that “Miller requires that before sentencing a juvenile to life without parole, the sentencing judge take into account ‘how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.’” Id. at 733.

In making this determination, the Georgia Supreme Court stated in Veal:

[I]t is important that the sentencing court explicitly consider the “three primary ways” that these characteristics of children are relevant to sentencing, as explained in Miller and Montgomery: First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child’s character is not as well formed as an adult’s; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity.

[Cit.] Veal, 298 Ga. at 703 (fn. 6).

In its consideration of the factors set forth hereinabove by the U.S. Supreme Court and the Georgia Supreme Court, this Court notes the following which was established by the evidence in this case. On September 21, 2011 at around 10:00 p.m.,

Neftally Corado, a Hispanic male, was sitting in his home watching television. His neighbor, his girlfriend, and a child were all in another room. Defendant, who was already on probation at the time, entered into Mr. Corado's house alone, pointed a gun at the back of his head, and demanded money. When Mr. Corado tried to get up, Defendant shot him twice. Defendant then fled the residence, apparently leaving Mr. Corado for dead, without getting any money or taking anything.

The very next night just prior to 10:00 p.m., Jose Marin, another Hispanic male, was unloading a truck with an employee at his Mexican food store. Defendant approached with a gun and demanded money. When Mr. Marin responded that he did not have any money and went to put down a case of tortillas, Defendant shot him. Mr. Marin fell to the ground, and was able to return fire at Defendant who fled. Mr. Marin died from the gunshot wound he received from Defendant. Again, Defendant fled without getting any money or taking anything.

Defendant's shooting of Mr. Corado on the previous night was introduced as a similar transaction in Defendant's murder trial of Mr. Marin. Defendant ultimately pleaded guilty in that case to Criminal Attempt to Commit Murder and received a sentence of twelve (12) years to serve.

During the sentencing hearing, State produced evidence that Defendant was indicted for a residential burglary occurring on or about September 11, 2011, just ten days prior to Defendant's shooting of Mr. Corado. Defendant was also indicted for another residential burglary alleged to have occurred less than three weeks prior, on August 24, 2011, at the home of Rachel Lopez. The State ultimately dismissed these Indictments in light of Defendant's previous sentence of life without parole.

The State also produced Defendant's juvenile history. While his history has been sealed by the Court other than for appellate purposes, it reflects circumstances for this Court to consider in its determination of whether Defendant exhibits "irretrievable depravity." His juvenile history reflects that less than a year prior to the above incidents Defendant was arrested for unlawfully entering the house of another and stealing money and other items, which was reduced to Theft by Taking. He was placed on probation in February of 2011, and was on this probation at the time of the previously-described shootings. A month prior to that incident, Defendant was arrested for obstruction and using profanity and abusive language against a GBI agent. Eight months prior to that, Defendant was found in possession of certain drugs at his school. Four months prior to that, Defendant was picked up after an altercation with his mother when holes were punched in the wall and a cell phone broken.

There was also testimony by two different law enforcement officers that Defendant claimed to be a member of the "bloods" gang. In October of 2010, when he was arrested after his altercation with the GBI agent as reflected in his juvenile history, he was found with a red bandana in his pocket. He told the GBI agent he was a member of the bloods gang. After his arrest for the underlying murder during which he was identified as wearing a red bandana on his face, he also told the investigating detective that he was a member of the bloods gang. Further, this Court cannot help but note that when the surviving shooting victim made an in-court identification of Defendant at trial, he described him as wearing "a red shirt," which is the well-known gang color of the bloods gang (T. 107.)

The State also introduced evidence that in May of 2015, while Defendant was in prison, he was found engaging in sexual activity with a prison officer in a restricted area where Defendant was not allowed to be. The prison officer ultimately pleaded guilty to violation of oath by a public officer.

At the resentencing hearing, the defense presented the testimony of Defendant's mother. She testified that she had a very rocky and violent relationship with the Defendant's father. The father stabbed her with a kitchen knife five times in their living room in the presence of Defendant when he was five years old. Defendant purportedly was not the same after that. He had problems in school, which developed into "major issues." However, he could be kind and became a father-figure to his niece. On cross examination she admitted that she left a previous residence because her landlord would not allow Defendant to remain on the premises.

In summary, Defendant's criminal behavior has escalated during the last several years. He has moved from breaking into people's homes to steal, to now shooting others on their own property. And the rationale behind shooting Mr. Corado and killing Mr. Marin is inexplicable, as there was no real effort to steal anything. Defendant appeared to be shooting just for the sake of killing. He shot Mr. Corado twice, and appears to have left him for dead. Showing no hesitation, remorse, or reflection whatsoever, the very next night at the same approximate time, he shot another Hispanic male, and was this time successful in killing him.

This Court is to consider Defendant's "youth and its attendant characteristics, along with the nature of his crime." Miller, 132 S.Ct. at 2460. Defendant's behavior does not reflect an immature youth who merely makes impulsive and reckless decisions on

occasion, or has an "underdeveloped sense of responsibility;" rather, it betrays one who is deliberate, malevolent, and exhibits a depraved heart. In considering his criminal activities over the last years prior to his commission of murder, this Court does not find his crimes to reflect "unfortunate yet transient immaturity." To the contrary, they are progressively more malicious and violent. He has considerable history in juvenile court, and all efforts there to rehabilitate him then proved futile. His actions and antisocial behavior have grown worse. His "prospect for reform" appears to be nonexistent.

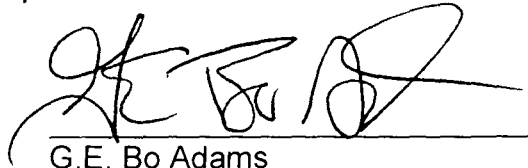
It very well may be true that Defendant had a rough upbringing and was permanently scarred by observing the violent act committed by his own father against his own mother. However, instead of being a mitigating factor in sentencing, an argument could be made that this is further indication that Defendant is now irretrievably corrupt. While the Court would not like to think in these terms, Miller and Montgomery require this consideration. Has Defendant's upbringing, the disadvantages he experienced, the violence he observed, the negative influences he has had in his life, the searing of his conscience, have all these things carried him beyond restoration?

This Court cannot find, in this case or in any other, that the Defendant himself is "irretrievably corrupt" or "permanently incorrigible." And it is this Court's firm opinion that no court at any level is ever able to make such a determination; it is beyond human capacity. Only a Divine Judge could look into a person and determine that he is permanently and irretrievably corrupt; that he has reached a state from which there is no return, no hope of redemption, no hope of any restoration.

However, this Court does find that Defendant's actions reflect irreparable corruption, that being his intensifying criminal behavior: from his history of breaking into

the homes of others, to his affiliation with gangs and gang activity, to his shooting a man in his own home and leaving him for dead one night, to his shooting and killing another man the very next night, without any pause, concern, or hesitation, and all while already on probation. His behavior exhibits an irretrievable depravity which appears to foreclose any reasonable prospects for rehabilitation. His conduct indicates a heart that has moved beyond redemption. He thus falls into that "rarest of juvenile offenders ... whose crimes reflect *permanent incorrigibility*; whose crimes reflect *irreparable corruption*.... [Cit.]" Veal, 298 Ga. at 702 (emphasis in original). As such, and after considering the unique characteristics of juveniles in general as it relates to sentencing, this Court hereby sentences Defendant to life without the possibility of parole.

SO ORDERED, this 13th day of September, 2019.



G.E. Bo Adams
Superior Court Judge,
Houston Judicial Circuit