IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2002-KA-00267-COA

MELVIN DARNELL RANSOM **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

DATE OF TRIAL COURT JUDGMENT:	8/15/2000
TRIAL JUDGE:	HON. L. BRELAND HILBURN
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	WEAVER E. GORE, JR.
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART
DISTRICT ATTORNEY:	ELEANOR FAYE PETERSON
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	STRONG ARM ROBBERY - SENTENCED TO SERVE A TERM OF FIFTEEN YEARS IN THE CUSTODY OF MDOC.
DISPOSITION:	AFFIRMED - 05/20/2003
MOTION FOR REHEARING FILED:	06/05/2003 - GRANTED; REVERSED AND REMANDED 10/12/2004
CERTIORARI FILED:	
MANDATE ISSUED:	

MODIFIED OPINION ON MOTION FOR REHEARING

EN BANC.

GRIFFIS, J., FOR THE COURT:

¶1. The Appellant's motion for rehearing is granted. The original opinion is withdrawn and this opinion is substituted.

¶2. A Hinds County Circuit Court jury found Melvin Darnell Ransom guilty of strong-arm robbery. The trial judge sentenced Ransom to fifteen years in the custody of the Mississippi Department of

Corrections and denied Ransom's post-trial motion for a judgment notwithstanding the verdict or in the alternative for a new trial. Feeling aggrieved, Ransom has appealed and argues that the trial court erred in refusing to allow the testimony of certain alibi witnesses and that the assistance of counsel that was accorded him was ineffective.

¶3. Finding reversible error, this Court reverses the trial court's judgment and remands for a new trial.

FACTS

¶4. Leigh White went into a post office where she was confronted by a person who snatched her handbag and ran away. White yelled at the robber and ran after him. The robber then turned around, came back toward White, hit her in the face, and knocked her down.

¶5. White's boss, Lou Morlino, came outside when he saw White lying against the glass door of the post office. Morlino chased the robber and got as close as the driver's side of the robber's vehicle but was unable to detain him. Both White and Morlino witnessed the robber getting into the get-away vehicle. Each gave a physical description of the robber to the police. White was able to provide a description of the vehicle, while both White and Morlino were able to recall the license plate number. Morlino indicated that when he ran alongside of the robber's vehicle, there was no other person in the vehicle but the robber.

¶6. Detective Al Taylor testified that when he ran the tag number that was given to him by White and Morlino he learned that the vehicle was registered to Melvin Darnell Ransom. The description of the vehicle given by White also matched Ransom's vehicle. Taylor later contacted White and presented her with a photographic line-up of the potential suspects. White identified Ransom as the person who had robbed her. During the trial, White and Morlino both identified Ransom as the person who attacked and robbed White.

¶7. Ransom denied that he committed the robbery and stated that he had an alibi. Ransom alleged that his cousin, Vincent McGrew, committed the robbery. When McGrew took the stand, he asserted his Fifth Amendment right against self-incrimination and refused to answer any further questions posed by Ransom's trial attorney. Ransom was not allowed to present any other alibi witnesses.

¶8. Other pertinent facts will be related during the discussion of the issues.

ANALYSIS AND DISCUSSION OF THE ISSUES

1. Refusal to Allow Testimony from Alibi Witnesses

¶9. Ransom's attorney did not give his witness list to the State until the morning of the trial. The list included Ransom's girlfriend, his sister and his mother. The State moved to exclude the testimony of these witnesses on the basis of unfair surprise. The court gave the State an opportunity to interview the witnesses. After the interviews, the State still insisted that the witnesses not be allowed to testify. The State explained that it had not had time to investigate certain things that had been disclosed by the witnesses. However, the State did not request a continuance, and based on the State's objection, the trial court refused to allow the witnesses to testify.

¶10. Ransom made no proffer of the excluded witnesses's testimony. However, we glean from the representations made by the State at trial, that each of the witnesses would have given alibi testimony had they been allowed to testify.

¶11. The record does not indicate that the State ever sought to discover whether Ransom would use an alibi defense. Our perusal of the record did not locate a written demand by the prosecution under Rule 9.05 of the Uniform Rules of Circuit and County Court Practice. Had such a demand been made, Ransom would have been obligated to serve a notice of alibi defense on the prosecution within ten days of the demand by the prosecutor. URCCC 9.05. Indeed, during the hearing on Ransom's motion for a new trial,

the State and counsel for Ransom stipulated that the State did not serve a written demand of alibi defense on Ransom. Therefore, it appears that Ransom violated the general discovery rule which requires reciprocal discovery rather than the specific rule requiring disclosure of the alibi defense.

¶12. Ransom argues that the trial court erred and abused its discretion in excluding the testimony of his defense witnesses and that this exclusion denied to him his constitutional right to compulsory process which consists of his right to call witnesses to aid in his defense. The State counters that Ransom's constitutional argument of denial of compulsory process is procedurally barred because it is being raised for the first time on appeal. The State also contends that the trial judge followed the rules and imposed a remedy available to him under the rules and thus did not abuse his discretion.

¶13. "[T]he standard of review when a trial court institutes sanctions for discovery abuses is 'whether the trial court abused its discretion in its decision.'" *Gray v. State,* 799 So. 2d 53, 60 (¶26) (Miss. 2001) (citing *Kinard v. Morgan,* 679 So. 2d 623, 625 (Miss. 1996)). "The trial court has considerable discretion in matters pertaining to discovery, and its exercise of discretion will not be set aside in the absence of an abuse of that discretion." *Id.* This Court must decide whether the trial court could have properly made the decision which it made. *Caracci v. Int'l Paper Co.,* 699 So. 2d 546, 556 (¶16) (Miss. 1997). Under this standard, an appellate court will affirm unless there is a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of relevant factors. *Id.*

¶14. Discovery is properly done prior to the commencement of a trial. *Robinson v. State,* 508 So. 2d 1067, 1070 (Miss.1987). Here, Ransom's attorney made no effort to comply with the discovery rules before Ransom's trial commenced. "[P]rosecuting attorneys, as well as defense attorneys, must recognize

the obligation to abide by discovery rules. A rule which is not enforced is no rule." *Gray,* 799 So. 2d at 61 (¶ 28). Ransom's attorney failed to comply with the discovery rules.

¶15. Rule 9.04 of the Uniform Rules of Circuit and County Court allows the trial court, under certain circumstances, to exclude evidence as a sanction for discovery violations. The pertinent portion of subsection I of Rule 9.04 reads as follows:

> If during the course of the trial, the prosecution attempts to introduce evidence which has not been timely disclosed to the defense as required by these rules, and the defense objects to the introduction for that reason, the court shall act as follows:
>
> 1. Grant the defense a reasonable opportunity to interview the newly discovered witness, to examine the newly produced documents, photographs or other evidence; and
>
> 2. If, after such opportunity, the defense claims unfair surprise or undue prejudice and seeks a continuance or mistrial, the court shall, in the interest of justice and absent unusual circumstances, exclude the evidence or grant a continuance for a period of time reasonably necessary for the defense to meet the non-disclosed evidence or grant a mistrial.

The trial court is required to follow the same procedure for discovery violations by the defense. URCCC 9.04 (I)(3).

¶16. Here, the State, after interviewing the witnesses, did not seek a continuance or a mistrial as contemplated by the rule, although it did claim prejudice and unfair surprise. The rule does not address the situation where, as here, a claim of prejudice and unfair surprise is made, but a mistrial or continuance is not requested.

¶17. Ransom contends that this discovery sanction was too harsh and that the trial judge abused his discretion in not allowing the testimony of Ransom's alibi witnesses since this disallowance violated his Sixth Amendment right to compulsory process for the benefit of his defense. Ransom cites to the Supreme Court repudiation of exclusion of substantial portions of a defendant's evidence in *Taylor v. Illinois*, 484 U.S. 400, 414-15 (1988). As set forth below, because we find that this case must be reversed and remanded

due to the ineffective assistance of Ransom's counsel, we do not address Ransom's claim that his Sixth Amendment right was violated.

2. Ineffective Assistance of Counsel

¶18. The next error that Ransom cites is the ineffectiveness of his trial attorney. "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). To successfully claim ineffective assistance of counsel, Ransom must meet the two-pronged test set forth in *Strickland* and adopted by the Mississippi Supreme Court. *Stringer v. State,* 454 So. 2d 468, 476 (Miss. 1984). Under the *Strickland* test, Ransom must prove under the totality of the circumstances, that (1) his attorney's performance was defective and (2) such deficiency deprived the defendant of a fair trial. *Id.* at 476-77. Such alleged deficiencies must be presented with "specificity and detail." *Perkins v. State,* 487 So. 2d 791, 793 (Miss. 1986). This Court's review begins with a strong, but rebuttable presumption that the attorney's conduct fell within the wide range of reasonable professional assistance. *Hiter v. State,* 660 So. 2d 961, 965 (Miss. 1995).

¶19. Ransom must show that there is a reasonable probability that but for his attorney's errors, he would have received a different result in the trial court. *Stringer v. State,* 627 So. 2d 326, 329 (Miss. 1993). With respect to the overall performance of the attorney, "counsel's failure to file certain motions, call certain witnesses, ask certain questions, or make certain objections falls within the ambit of trial strategy" and does not give rise to an ineffective assistance of counsel claim. *Cole v. State*, 666 So. 2d 767, 777 (Miss. 1995). In order to find for Ransom on the issue of ineffective assistance of counsel, this Court will have to conclude that his trial attorney's performance as a whole fell below the standard of reasonableness and

that the mistakes made were serious enough to erode confidence in the outcome of the trial below. *Coleman v. State*, 749 So. 2d 1003, 1012 (¶ 27) (Miss. 1999).

¶20. To support his assignment of error, Ransom points out that his trial attorney failed to follow the elementary rules of the court by making reciprocal discovery and furnishing the State with the names of his witnesses. Ransom insists that his trial attorney was negligent in waiting until the morning of the trial to supply the State with a complete witness list. To differentiate trial strategy from serious or fundamental error, Ransom points to the fact that his counsel clearly failed to investigate his alibi, *i.e.,* the whereabouts of McGrew on the date of the criminal act, thereby denying Ransom the benefit of an alibi defense at trial.

¶21. In *Payton v. State*, 708 So. 2d 559 (¶ 8) (1998), the Mississippi Supreme Court held:

> It is true that this Court should give deference to an attorney's judgment in what investigation should be conducted. However, there are limits. "'[A]t a minimum, counsel has a duty to interview potential witnesses and to make *independent* investigation of the facts and circumstances of the case."' *Ferguson v. State*, 507 So. 2d [94], 96 (Miss. 1987) (emphasis in original) (*quoting Nealy v. Cabana,* 764 F. 2d 1173, 1177 (5th Cir.1985)).

Here, just as in *Payton*, the independent investigation by Ransom's attorney appears non-existent.

¶22. To arrive at this conclusion, we examine the alleged deficiency by his counsel, *i.e.,* the reasons why Ransom's attorney provided the witness list to the State on the day of the trial. The record establishes that Ransom's attorney had not planned to call these witnesses *because of his mistaken belief* that McGrew was in jail on the day of the robbery. Ransom's attorney never confirmed this fact, and indeed, McGrew was not in jail. This information was readily available to Ransom's counsel.

¶23. Despite this, the judge sanctioned the discovery violation when he refused to allow Ransom's alibi witnesses to testify. This type of discovery sanction has only been upheld when it was done willfully or with the intent to gain some tactical advantage over the prosecution. *See Coleman v. State*, 749 So. 2d 1003,

1009 (¶15) (Miss. 1999); *Taylor v. Illinois*, 484 U.S. 400, 415 (1988). Here, the record indicates that the discovery violation by Ransom's attorney was neither willful nor made with the intent to gain a tactical advantage. The attorney's failure evidences his insufficient investigation of his client's principal defense to the charges. Thus, we find that Ransom has met the first prong of the *Strickland* test, his attorney's performance was defective.

¶24. Now, we must consider the second prong of the *Strickland* test, whether such deficiency deprived Ransom of a fair trial.

¶25. Prior to trial, Ransom informed his attorney that McGrew, his cousin, had borrowed his car on the day in question and committed the robbery. In the pretrial hearing, Ransom's attorney stated that he was aware that, immediately after his arrest, Ransom reported to police that McGrew had committed the crime. Ransom's attorney admitted that he was aware of Ransom's alibi defense several months prior to trial, yet he argued that he did not discover the validity of Ransom's alibi until the day before the trial.

¶26. Ransom established that the testimony from his girlfriend (Marcy Thurman), his mother (Mattie Ransom) and his sister (Charlene Ransom) was available to support his alibi. Each of these witnesses were prepared to testify that Ransom was at home on the day in question, supporting his claim that McGrew had borrowed his car on the day in question. Ransom presented an affidavit from his girlfriend claiming that, on the day in question, McGrew borrowed Ransom's car and took her to work.

¶27. We find that, under a *Strickland* analysis, there is a sufficient basis to conclude that Ransom's attorney's performance was deficient and that with the alibi witnesses' testimony there is a reasonable probability that the outcome of the trial would have been different if some minimal pretrial investigation had been performed. Here, just as in *Strickland* and *Payton*, Ransom's trial attorney's conduct so undermined

the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.

¶28. The dissent has weighed the evidence and determined that a jury will agree with his interpretation of the evidence, reaching the same conclusion. That may well be the case. However, this Court may not usurp the jury's role. We do not decide Ransom's ultimate guilt or innocence. Instead, we have determined that there is a reasonable probability that but for his attorney's errors, Ransom would have received a different result in the trial court. *Stringer,* 627 So. 2d at 329. We reverse and remand for a new trial because we conclude that Ransom's attorney's performance fell below the standard of reasonableness and that the mistakes made were serious enough to erode confidence in the outcome of the trial below. *Coleman*, 749 So. 2d at 1012 (¶ 27). On remand, the jury may well reject Ransom's alibi.

¶29. Accordingly, we reverse and remand this case for a new trial.

¶30. **THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY OF CONVICTION OF STRONG-ARM ROBBERY AND SENTENCE OF FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS REVERSED AND REMANDED FOR A NEW TRIAL. ALL COSTS OF THIS APPEAL ARE ASSESSED TO HINDS COUNTY.**

BRIDGES, P.J., MYERS, AND CHANDLER, JJ., CONCUR. IRVING, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KING, C.J., AND LEE, P.J. BARNES AND ISHEE, JJ., NOT PARTICIPATING.

IRVING, J., DISSENTING:

¶31. The Court reverses Ransom's robbery conviction because it finds that Ransom's trial attorney was ineffective. The alleged ineffectiveness stems from trial counsel's failure to provide reciprocal discovery which resulted in three defense alibi witnesses being precluded from testifying. The three witnesses were

Ransom's mother, girlfriend, and sister, each of whom allegedly would have corroborated Ransom’s assertion that on the day that the robbery was committed Ransom's cousin, Vincent McGrew, was using Ransom's car while Ransom was at home mowing his mother's yard.

¶32. Given the fact that Ransom's defense was that his cousin, McGrew, committed the robbery, the majority concludes that the testimony of these three witnesses likely would have changed the outcome of the case. I disagree; therefore, I respectfully dissent, and begin by reciting some facts that are not mentioned in the Court's opinion.

¶33. The robbery occurred on September 15, 1997. Ransom was not arrested until February 1998, approximately six months after the robbery occurred. He turned himself in after seeing himself listed in a "Most Wanted" photograph published in the local newspaper. Prior to seeing himself in the newspaper in February 1998, he had not kept a record of his daily activities. He had no reason to do so; yet, after he was arrested, he was able to recall exactly what he was doing six months earlier on September 15, 1997. He said that he was at his mother's house mowing the lawn. He was not able to cite a single event or occurrence which caused his whereabouts on that particular day to be memorialized for later recall. In the absence of some memorable event which aided Ransom's ability to recall his precise activity six months earlier, I do not think a jury would embrace his statement that he was mowing his mother's lawn.

¶34. When Ransom was arrested in February 1998, he told Detective Al Taylor of the Jackson Police Department that the perpetrator of the crime "possibly could have been" Ransom's cousin, Vincent McGrew, because McGrew had borrowed his car from time to time. He did not state, as the majority asserts, that McGrew had in fact borrowed his car on September 15, 1997, the date of the robbery.

¶35. During the trial, Ransom's counsel did not make a proffer as to the substance of what the testimony of the three witnesses would be. The State, however, advised the court of the substance of what the State

had learned regarding the sister's and mother's testimony. The record reflects that Ransom’s sister, Charlene Ransom, told the State’s investigator "that she was, in fact, at home with the defendant." No date or time line was specified. The record further reflects that Ransom’s mother, Mattie Ransom, would testify to substantially the same thing as her daughter, and additionally, would testify that the “car [used in the robbery] had been missing for some time.” The State did not say what Marcy Thurman, Ransom’s girlfriend, would testify to. However, the State did advise the court that it was the State’s understanding that Marcy “was working at the time of the incident on September 15 of 1997."

¶36. While no suggestion was offered during the trial as to what Marcy’s testimony would have been, Marcy did testify during the hearing on Ransom’s motion for a new trial. In fact, she was the only witness to testify during the hearing. There, she testified that on September 15, 1997, Vincent McGrew, using Ransom's car, took her to work around 10:00 a.m. and picked her back up around 4:30 p.m. She offered no insight as to whether McGrew kept the car the entire time during the interim. Neither did she have any specific recollection of that day. She based her testimony on what her work schedule showed for that day. She testified that Ransom was at home mowing his mother's yard on the day of the robbery, that his mother had a big yard, and that it took all day to cut the grass. However, it is clear that she had no way of knowing what Ransom did on the day in question because, based on her testimony, she worked from 10:00 a.m. until 4:30 p.m. at her place of employment, a Subway restaurant on Terry Road in south Jackson. Ransom's mother's house was located on Pine Grove Road near Pocahontas. She later acknowledged during redirect examination that the source of her information as to Ransom’s whereabouts on the day in question was Ransom himself.

¶37. According to Detective Taylor, Leigh White, the victim of the robbery, immediately identified Ransom when she was shown a photo lineup the day after the robbery. She did not hesitate in identifying

Ransom. Six months later when Lou Morlino, White's boss, was shown the same photo lineup, with the pictures arranged in a different order, he immediately identified Ransom. Both White and Morlino had ample time to observe the attacker.

¶38. According to White, she went into the post office where she was confronted by a person who snatched her handbag and ran away. She yelled at the robber and ran after him. The robber then turned around, came back toward her, hit her in the face, and knocked her down. White's boss, Lou Morlino, came outside when he saw White lying against the glass door of the post office. Morlino chased the robber and got as close as the driver's side of the robber's vehicle but was unable to detain him. Both White and Morlino witnessed the robber getting into the get-away vehicle. Each gave a physical description of the robber to the police. White was able to provide a description of the vehicle, while both White and Morlino were able to recall the license plate number. Morlino indicated that when he ran alongside of the robber's vehicle, there was no other person in the vehicle but the robber.

¶39. Assuming arguendo that Ransom's trial counsel was derelict in not discovering until the day prior to the trial that McGrew was not in jail on the day of the robbery, the ultimate question is can we say that the trial court abused its discretion in not finding that the outcome of the case would have been different, given the fact that Ransom testified to exactly what the witnesses presumably would have testified to. What additional testimony would have been received?

¶40. Ransom's mother and sister presumably would have testified that Ransom was at home all day, mowing the mother's yard all day. But, the mother would have also testified that the car used in the robbery had been missing for some time, thus contradicting Ransom's testimony that he had loaned his car to McGrew on the day in question. As already noted, the girlfriend likewise would have testified that Ransom was at home all day, mowing his mother's yard. But the source of that information was Ransom

himself. The jury heard Ransom say he was at home all day, mowing his mother's yard. McGrew was subpoenaed instanter. He appeared and refused to testify on the basis of his Fifth Amendment right against self incrimination. So, where is the persuasive and compelling evidence that, more than likely, would have changed the outcome of the case? Now that I have reviewed the evidence, as well as the disallowed evidence, I turn to a discussion of the issue.

¶41. First, I point out that under our standard of review, our task is not to determine whether the disallowed witnesses's testimony likely would have made a difference in the result of the trial had the witnesses been allowed to testify, but to determine whether the trial judge abused his discretion in disallowing the testimony and in refusing to grant Ransom a new trial. There is a substantial difference in making the initial decision and in reviewing that decision for an abuse of discretion once it has been made by the proper judicial officer. It is well settled law that the admission of evidence at trial is within the sole discretion of the trial judge. While this court may have decided differently if it was the entity making the initial decision, it is not to conduct its review as if it were the initial decision maker.

¶42. With the proper standard of review in mind, it is mystifying to me how the majority can find that "there is a reasonable probability that the outcome of the trial would have been different if some minimal pretrial investigation had been performed." Presumably, what the majority means by this statement is that defense counsel would have learned earlier that McGrew was not in jail on the day that the robbery was committed. I assume the assumption is that, armed with that knowledge, defense counsel would have then realized the importance of calling Ransom's mother, girlfriend, and sister to corroborate Ransom's story that his cousin, McGrew, had Ransom's car on the day in question. Consequently, defense counsel would have made a timely disclosure of these witnesses so that they would have been allowed to testify. I assume the argument continues that, once these witnesses were put on the witness stand, the jury would have been

more likely to have believed them and Ransom rather than to have believed the victims and Detective Taylor. With respect for my colleagues, I must say that I find this supposition not only unpersuasive — when weighed against the eyewitness testimony of the two witnesses, White, the victim, and Morlino, who saw the perpetrator of the strong-armed robbery and gave chase — but contrary to reason and dismissive of the common recognition that juries are not likely to give greater weight to the testimony of the defendant and his loved ones than they are to the unimpeached testimony of victims and police officers. I am confident, however, that this recognition was not lost on the trial judge. Therefore, this is why, in my opinion, it is more than a permissible indulgence for the majority, as a part of a reviewing court, to implicitly say that the trial judge abused his discretion when he did not allow the very tenuous testimony of Ransom's loved ones.

¶43. The majority suggests that this writer is usurping the role of the jury. That is not the case. I simply disagree with the majority's finding "that with the alibi witnesses's testimony there is a reasonable probability that the outcome of the trial would have been different." It seems to me that the majority cannot make that finding without engaging in the same type analysis that I have. We both have analyzed the potential evidence which was placed before the trial judge but have reached different conclusions to be drawn from the trial judge's treatment of that evidence. I do not believe for one nanosecond that the disallowed evidence was so probative of Ransom's innocence that it can be said by a reviewing court that the refusal of the trial court to allow it constitutes an abuse of discretion.

¶44. Therefore, I, unlike the majority, do not believe that the trial court erred when it necessarily determined that Ransom failed to carry his burden with respect to the *Strickland* test for finding ineffective assistance of counsel. While trial counsel was certainly derelict in not making timely disclosure of the alibi

witnesses, I do not find that his performance, or lack thereof, was so deficient as to warrant a finding that Ransom was denied the effective assistance of counsel.

¶45. Since Ransom had accused McGrew of being the person who committed the robbery, I think if the jury was disposed to accepting Ransom's version that it was McGrew and not he who committed the robbery, McGrew's refusal to testify on the basis that he did not want to incriminate himself would have been sufficient to help them get there. I fail to see how the attenuated testimony of Ransom's loved ones probably would have made a difference in the outcome of the case. In light of the posture taken by McGrew, it may be that the jury reasoned that both he and Ransom were involved. Obviously, I do not know what influenced this jury's decision, but I do not think that the refusal of the trial judge to allow the additional testimony likely would have made any difference. That being the case, as I have already observed, I cannot find any abuse of discretion on the part of the trial judge in not permitting the additional testimony.

¶46. I close with this warning to my colleagues in the majority: you shall rue this day that you lowered the evidentiary bar for a criminal defendant's obtainment of a new trial on the basis of ineffective assistance of counsel. I foresee the day — if your decision is allowed to stand — when the judicial system will be flooded with cases in which a defendant claims entitlement to a new trial because his attorney did not put a family member on the witness stand to vouch for the veracity of the defendant's story that he was at home watching a movie when the crime occurred. Try as you may, but it will be exceedingly difficult, if not impossible, to explain why that defendant should not be treated as generous as you have treated Ransom.

¶47. For the reasons stated, I respectfully dissent. I would affirm the judgment and sentence of the trial court.

KING, C.J., AND LEE, P.J., JOIN THIS SEPARATE WRITTEN OPINION.