

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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CERTIORARI TO AIKEN COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Robert J. Bonds, Circuit Court Judge

Appellate Case No. 2022-001088

Harold Cartwright,

Respondent,

v.

The State of South Carolina,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the PCR Court properly find Counsel ineffective based on the Court's specific findings of prejudice and the per se prejudice of Counsel's cumulative failure to subject the prosecution's case to meaningful adversarial testing?
2. Did the PCR Court properly find Counsel deficient for failing to object when the Trial Court applied an incorrect legal standard for qualifying the State's expert witness in the field of child sexual abuse dynamics?
3. Did the PCR Court properly find Counsel deficient for failing to object and move to strike Dr. Benedetto's statement that "abusers typically seek victims of a particular age" as beyond the scope of her expertise?
4. Did the PCR Court properly find Counsel deficient for failing to move for sequestration of witnesses where the State repeatedly referred to prior testimony when questioning witnesses during its case in chief?
5. Did the PCR Court properly find Counsel deficient for not moving to individually *voir dire* jurors who informed the Trial Court they had experienced sexual abuse and failed to put those jurors' information on the record?
6. Did the PCR Court properly find Counsel deficient for failing to preserve on the record juror no. 94's revelation that she had "a relative that was a victim"?
7. Did the PCR Court properly find Counsel deficient for failing to move for severance of Respondent's charges?
8. Did the PCR Court properly find Counsel deficient for not objecting to "truth-seeking" language in the Trial Court's preliminary instructions to the jury?
9. Did the PCR Court properly find Counsel deficient for presenting improper comments during opening statement?
10. Did the PCR Court properly find Counsel ineffective for failing to object when the DSS case worker testified that DSS only becomes involved in a case "if it meets the legal statute in the State of South Carolina, we take it as a report and go interview family"?
11. Did the PCR Court properly find Counsel deficient for failing to cross-examine the State's witnesses about alleged discrepancies regarding whose bedroom the semen-stained bedsheets were taken from for testing?

12. Did the PCR Court properly find Counsel ineffective for failing to object when the Trial Court *sua sponte* repeatedly stopped Respondent's testimony in the jury's presence, admonished Respondent, and instructed the Prosecutor to object, giving the improper appearance of partiality?
13. Did the PCR Court properly find Counsel deficient for not objecting to the Trial Court's instruction that the testimony of the victim need not be corroborated?

STATEMENT OF THE CASE

The Aiken County Grand Jury indicted Respondent for eight (8) counts of Criminal Sexual Conduct with a Minor (CSCM), First Degree; sixteen (16) counts of Lewd Act with a Minor; two counts (2) CSCM, Second Degree; one (1) count of Criminal Sexual Conduct (CSC), First Degree; and one (1) count of CSC, Third Degree.

On November 12, 2012, Respondent proceeded to trial before the Honorable Thomas A. Russo and a jury. Robert Harte represented Respondent, and the Court ultimately granted a mistrial due to a hung jury on November 14, 2012. (App. Vol. I, p. 1–196).

On April 15, 2013, Respondent proceeded to trial before the Honorable Doyet A. Early, III, and a jury. (App. Vol. I, p. 197 – Vol. II, p. 660). Michael Routzong and David Hayes represented Respondent, and Assistant Solicitor Kevin Molony prosecuted the case on behalf of the State. The jury returned guilty verdicts for all charges on April 18, 2013. The Trial Court sentenced Respondent to *concurrent* sentences of thirty (30) years imprisonment for CSC, First Degree, conviction and CSCM, First Degree, conviction; twenty (20) years imprisonment for the CSCM, Second Degree, conviction; and fifteen (15) years imprisonment for the Lewd Act convictions. However, the Trial Court also imposed a *consecutive* sentence of ten (10) years for the CSC, Third Degree, conviction.

On September 30, 2015, the South Carolina Court of Appeals affirmed Respondent's convictions and sentences. *State v. Harold Cartwright, III*, 2015-UP-466 (S.C. Ct. App. filed September 30, 2015) (App. Vol. II, p. 661 – Vol. III, p. 1180). Chief Appellate Defender Robert M. Dudek and Appellate Defender Susan Hackett represented Respondent, and Assistant Attorney General David Spencer represented the State on Direct Appeal.

On September 26, 2018, the South Carolina Supreme Court affirmed Respondent's

convictions and sentences. *State v. Harold Cartwright, III*, Op. No. 27842 (S.C. Sup. Ct. filed September 26, 2018). (App. Vol. III, p. 1180–1354).

On June 26, 2019, Respondent filed an application requesting post-conviction relief (PCR), alleging ineffective assistance of counsel. (App. Vol. III, p. 1355). Respondent also filed a motion for leave to obtain discovery on September 9, 2019. Respondent filed a Return and Motion for More Definite Statement on October 3, 2019. (App. Vol. III, p. 1490). The Honorable Courtney Clyburn Pope issued an order authorizing discovery on December 19, 2019.

On June 29, 2020, Respondent filed an amended PCR application, and subsequently filed a redacted amended application on July 9, 2020. (App. Vol. IV, p. 1506–1531).

On February 3–4, 2022, Respondent appeared before the PCR Court for a virtual evidentiary hearing. (App. Vol. IV, p. 1532 –1714). Dayne Phillips represented Respondent, and Assistant Attorney General Michael Neubauer represented the State. Chief Appellate Defender Robert Dudek, Public Defender David Hayes, Public Defender Michael Routzong, and Respondent testified at the hearing. However, Mr. Routzong was unable to complete his testimony on February 3 due to technical difficulties with internet connection at the Correctional Institution. The hearing was continued to the following day but ended prematurely due to technical issues with the Court Reporter’s internet connection.

On February 25, 2022, Mr. Routzong finished his testimony. (App. Vol. IV, p. 1715–1902). At the close of evidence and hearing arguments from counsel, the PCR Court requested that the parties submit proposed orders for the Court’s review and consideration.

On June 1, 2022, the PCR Court granted Respondent Post-Conviction Relief based on ineffective assistance of counsel after reviewing the proposed orders from the parties and weighing the evidence presented at the hearing. (App. Vol. IV, p. 1984).

On June 13, 2022, Petitioner filed a motion to alter or amend judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. (App. Vol. V, p. 2049–2091). The parties appeared before the PCR Court on June 24, 2022, for a hearing to address the motion to alter or amend. (App. Vol. V, p. 2092–2188).

On July 22, 2022, the PCR Court issued an Amended Order granting Respondent Post-Conviction Relief. (App. Vol. V, p. 2189–2253).

STANDARD OF REVIEW

This Court gives great deference to the factual findings of the PCR court and will uphold them if there is any evidence of probative value to support them. *See Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013). Questions of law are reviewed de novo, and we will reverse the PCR court's decision when it is controlled by an error of law. *See Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

ARGUMENT

1. THE PCR COURT PROPERLY FOUND COUNSEL INEFFECTIVE BASED ON THE COURT'S SPECIFIC FINDINGS OF PREJUDICE AND THE PER SE PREJUDICE OF COUNSEL'S CUMULATIVE FAILURE TO SUBJECT THE PROSECUTION'S CASE TO MEANINGFUL ADVERSARIAL TESTING.

The PCR Court properly found Trial Counsel ineffective “based on cumulative error and the prejudice suffered from the *individual allegations*”. (App. Vol. V, p. 2251) (emphasis added). Specifically, the PCR Court “identified eleven (11) errors that *individually* and cumulatively create prejudice against the [Respondent].” (App. Vol. V, p. 2251–2252) (emphasis added). The PCR Court held, “Respondent[']s first trial ending in a mistrial and the analysis of the evidence presented to this Court over the multi-day PCR hearing supports the Court’s finding of prejudice.” (App. Vol. V, p. 2252). Therefore, the PCR Court correctly held that “[t]hese errors have created a reasonable probability that but for counsel’s unprofessional error, the result would have been different.” (App. Vol. V, p. 2252).

Petitioner conceded in the petition that the PCR Court made specific findings of prejudice for “[a]llegations 34 and 45.” Notably, even if this Court agrees with Petitioner on the issue of the PCR Court’s application of the cumulative error doctrine, the PCR Court properly found Trial Counsel ineffective for (allegation 34) failing to object when the DSS case worker testified that DSS only becomes involved in a case “if it meets the legal statute in the State of South Carolina, we take it as a report and go interview family”; and (allegation 45) failing to object when the Trial Court *sua sponte* repeatedly stopped Respondent’s testimony in the jury’s presence, admonished Respondent, and instructed the Prosecutor to object, giving the improper appearance of partiality.

Accordingly, the PCR Court properly found Counsel ineffective based on the Court’s specific findings of prejudice and the per se prejudice of Counsel’s cumulative failure to subject the prosecution’s case to meaningful adversarial testing.

A. Trial Counsel provided ineffective assistance of counsel by failing to object when the DSS case worker testified that DSS only becomes involved in a case “if it meets the legal statute in the State of South Carolina, we take it as a report and go interview family.”

At the hearing, Trial Counsel admitted there was no strategic reason for failing to object when the DSS case worker testified that DSS only becomes involved in a case “if it meets the legal statute in the State of South Carolina, we take it as a report and go interview family.” (App. Vol. IV, p. 1803, line 19 – 1807, line 12).

Trial Counsel acknowledged the jury may have inferred that DSS had previously made a finding about Respondent’s guilt based on the Case Worker’s testimony but maintained it was not objectionable. (App. Vol. IV, p. 1805, line 21 – 1806, line 16). Accordingly, the PCR Court properly found “that Trial Counsel was deficient for failing to object [to] these comments as they amounted to a comment on a legal issue and was prejudicial to the [Respondent] because it lower[ed] the State’s burden in the eyes of the jury.” (App. Vol. V, p. 2030).

B. Trial Counsel provided ineffective assistance of counsel by failing to object when the Trial Court *sua sponte* repeatedly stopped Respondent’s testimony in the jury’s presence, admonished Respondent, and instructed the Prosecutor to object, giving the improper appearance of partiality.

The PCR Court correctly found that “Trial Counsel was deficient for failing to object [to] the Court’s comments and the only reason articulated to the Court to explain this deficiency was Counsel’s perception that if he objected[,] he would fall out of favor with the trial judge.” (App. Vol. V, p. 2038; 2043–2044). The PCR Court held that “[t]his fear of objecting to avoid what Counsel deemed as upsetting the trial judge was referenced multiple times in the PCR hearing and is not an objectively reasonable strategic choice to explain Counsel’s failure to object on behalf of his client.” (App. Vol. V, p. 2038).

Trial Counsel explained the Trial Court’s general demeanor during trials: “I think, if we’re all honest, everybody knows that Judge Early would make facial expressions during testimony that sometimes you would wish he would not”, and “I never objected to any of those, and I didn’t object this time.” (App. Vol. IV, p. 1734, line 9 – 1735, line 3). Trial Counsel noted that, although he did not remember what the Trial Court did in this case, he “would be amazed if Judge Early did not make faces during this trial[.]” (App. Vol. IV, p. 1820, lines 2-11). Notably, Trial Counsel conceded that it is improper for the Trial Court to *sua sponte* instruct the Prosecutor to object more and to make facial expressions in reaction to testimony. (App. Vol. IV, p. 1818, line 18 – 1820, line 11).

Accordingly, the PCR Court properly found that “Counsel’s abandonment of Applicant to the Court’s relentless unfairly prejudicial comments and actions cannot be deemed a valid trial strategy.” (App. Vol. V, p. 2038). *See Jones v. Barnes*, 463 U.S. 745, 758 (1983) (finding defense counsel must function as an advocate for the defendant, as opposed to a friend of the court); *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding “counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness”); *Stacy v. Solem*, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that “labeling counsel’s actions as “trial strategy” does not automatically immunize an attorney’s performance from sixth amendment challenges.”).

Additional Sustaining Grounds

C. Trial Counsel provided ineffective assistance of counsel for failing to move for severance of Respondent’s charges.

The PCR Court properly found Trial Counsel deficient for failing to move for severance of Respondent’s charges. Specifically, the three complaining witnesses alleged conduct that occurred

over three distinct and unspecified periods of time, which did not arise out of a single chain of circumstances and could not be proven by the same evidence (twenty-eight indictments, which covered a total period of over eighteen years). *See State v. Middleton*, 288 S.C. 21, 339 S.E.2d 692 (1986); *State v. Smith*, 322 S.C. 107, 470 S.E.2d 364 (1996).

On direct examination, Trial Counsel admitted that he does not remember considering whether to move for severance of the charges. Specifically, Trial Counsel stated the following in response to why he did not move for severance:

“I don't know that I ever -- I, *frankly, don't know that I ever considered doing it*. If I look back now on why I wouldn't have done it, there are reasons based on the somewhat unique nature of some of these instances to -- to explain to the Court there were -- one can only commit certain kinds of -- I mean, there's only a discrete number of possibilities that a person can commit sexual crimes against somebody else, I guess, there's just a few ways of doing it, but some of them involved specifically issues of maybe laying on the back and -- and just humping the person. I -- I believe that was the word they used. Humping. If somebody commits an -- or if somebody coerces or forces somebody to do oral sex, that's not particularly unique. It is what it is. There's not that many possibilities. I guess the issue I'm -- or the issue I'm getting to, would they have been able to Lyle in some of these as bad acts? I don't know the answer to that. That's a possibility. I don't -- frankly, *I do not remember actually considering severing these -- these cases*.

(App. Vol. IV, p. 1652, line 17 – 1653, line 19) (emphasis added).

On cross-examination, Trial Counsel conceded, “I probably would now [move for severance], but then I don't -- I don't recall -- recall all of my thought process.” (App. Vol. IV, p. 1777, line 7-25). Trial Counsel also admitted that he had “no strategic reason” for failing to move for severance and noted he should have moved to sever the charges:

I think that if -- *I think now I probably would want to sever them, yes, sir. There's always a danger that, you know, when you have an extensive amount of indictments like that, that somebody could -- well, a juror might conclude well something -- something had to*

happen, you've got all these indictments, and so it become -- I think what we were betting on, in part though, was that we could demonstrate to the Jury that these witnesses were not happy with their dad, or stepdad, and that they had reasons to lie.

(App. Vol. IV, p. 1778, line 20 – 1779, line 11) (emphasis added).

Accordingly, the PCR Court found “the State’s case was strengthened with the amount of victims presented to the jury at one time, especially when the credibility of the victims was a central issue of the Defense’s case.” (App. Vol. V, p. 2022). The PCR Court also noted the additional prejudice to Respondent, “the State’s case was potentially improperly bolstered by the testimony of these Victims together coupled with the State’s expert witness commenting that the offenders typically seek out victims in a particular age range.” (App. Vol. V, p. 2022).

D. The PCR Court incorrectly found Trial Counsel provided effective assistance of counsel despite failing to move to quash the twenty-eight indictments against Respondent as unconstitutionally overbroad and vague.

The PCR Court incorrectly found Trial Counsel effective despite failing to move to quash the twenty-eight indictments against Respondent as unconstitutionally overbroad and vague because each indictment for the alleged offenses occurred at *unspecified times over an entire year*, and the combined indictments covered a *total period of over eighteen years*. (App. Vol. V, p. 2217 –2219). *See State v. Baker*, 411 S.C. 583, 769 S.E.2d 860 (2015). Trial Counsel admitted that he had no strategic reason for failing to move to quash the indictments and that he would now make the motion to quash the indictment. (App. Vol. IV, p. 1775, line 19 – 1777, line 3).

E. Prejudice is presumed based on Trial Counsel’s cumulative failure to subject the prosecution’s case to meaningful adversarial testing.

Based on the significant number of allegations that the PCR Court properly found Trial Counsel provided deficient performance and incorrectly denied despite evidence supporting deficient performance, the prejudice to Respondent is presumed. *See United States v. Cronin*, 466

U.S. 648, 659 (1984) (finding “prejudice is presumed” when defense counsel “entirely fails to subject the prosecution’s case to meaningful adversarial testing.”).

Specifically, Trial Counsel failed to subject the prosecution’s case to meaningful adversarial testing. *See Nance v. Ozmint*, 367 S.C. 547, 548-52, 626 S.E.2d 878, 878-80 (2006) (holding that “per-se prejudice occurs if there has been a constructive denial of counsel,” which arises when defense counsel’s deficient performance constitutes “a classic example of a complete breakdown in the adversarial process”); *Green v. State*, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002) (holding that although an applicant “must ordinarily show actual prejudice, he may be relieved of that burden if counsel’s ineffectiveness is so pervasive as to render a particularized prejudice inquiry unnecessary”); *see also Herring v. New York*, 422 U.S. 853, 862 (provides that “[t]he very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free”).

However, even if this Court does not apply per se prejudice, the PCR Court properly found counsel ineffective “based on . . . the prejudice suffered from the *individual allegations*”. (App. Vol. V, p. 2251) (emphasis added). Therefore, the PCR Court properly found Trial Counsel provided effective assistance of counsel because “[t]hese errors have created a reasonable probability that but for counsel’s unprofessional error, the result would have been different.” (App. Vol. V, p. 2252).

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2. THE PCR COURT PROPERLY FOUND COUNSEL DEFICIENT FOR FAILING TO OBJECT WHEN THE TRIAL COURT APPLIED AN INCORRECT LEGAL STANDARD FOR QUALIFYING THE STATE’S EXPERT WITNESS IN THE FIELD OF CHILD SEXUAL ABUSE DYNAMICS.

The PCR Court properly found Trial Counsel’s performance deficient for failing to object when the Trial Court applied an incorrect legal standard for qualifying the State’s expert witness in the field of child sexual abuse dynamics. (App. Vol. V, p. 2219–2220). Specifically, the Trial Court (1) limited Counsel to *voir dire* of the witness regarding “qualifications,” (2) qualified the witness as an expert in the given field, and (3) only permitted questioning of the witness on the reliability and validity of field itself—after the witness was deemed “expert” by the Court and the State’s direct examination (all of which was held in the presence of the jury rather than in an *in camera* hearing). *See* Rule 702, SCRE.

3. THE PCR COURT PROPERLY FOUND COUNSEL DEFICIENT FOR FAILING TO OBJECT AND MOVE TO STRIKE DR. BENEDETTO’S STATEMENT THAT “ABUSERS TYPICALLY SEEK VICTIMS OF A PARTICULAR AGE” AS BEYOND THE SCOPE OF HER EXPERTISE.

The PCR Court properly found Trial Counsel’s performance deficient for failing to object and move to strike Dr. Benedetto’s statement that “abusers typically seek victims of a particular age” as beyond the scope of her expertise. (App. Vol. V, p. 2220). Specifically, the witness’s admitted area expertise focused on the perspective of a child experiencing abuse, yet the witness improperly testified as a psychological “ profiler” of the accused when the Prosecutor asked whether it was typical for an abuser to have a favorite age to sexually abuse, and the witness answered in the affirmative. *See* Rules 701 and 702, SCRE; *State v. Ellis*, 345 S.C. 175, 547 S.E.2d 490 (2001).

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4. THE PCR COURT PROPERLY FOUND COUNSEL DEFICIENT FOR FAILING TO MOVE FOR SEQUESTRATION OF WITNESSES WHERE THE STATE REPEATEDLY REFERRED TO PRIOR TESTIMONY WHEN QUESTIONING WITNESSES DURING ITS CASE IN CHIEF.

The PCR Court properly found Trial Counsel's performance deficient for failing to move to sequester witnesses where the State repeatedly referred to prior testimony when questioning witnesses during its case in chief. (App. Vol. V, p. 2224–2225). Specifically, the PCR held “sequestration during the second trial would have ensured that the witnesses did not have the ability to hear other witnesses, especially, in a trial where the Defense’s strategy was to attack the credibility of the State’s witnesses.” (App. Vol. V, p. 2225). See Rule 615, SCRE (“[A] court may order witnesses excluded so that they cannot hear the testimony of other witnesses . . .”).

Petitioner’s argument that the three complaining witnesses would not have been sequestered further supports the prejudice created by Trial Counsel’s failure to move for severance of the charges. This prejudice is enhanced when the State is able to bolster the credibility of their witnesses by asking witnesses to corroborate testimony that had been previously presented during trial.

5. THE PCR COURT PROPERLY FOUND COUNSEL DEFICIENT FOR NOT MOVING TO INDIVIDUALLY *VOIR DIRE* JURORS WHO INFORMED THE TRIAL COURT THEY HAD EXPERIENCED SEXUAL ABUSE AND FAILED TO PUT THOSE JURORS’ INFORMATION ON THE RECORD.

The PCR Court properly found Trial Counsel’s performance deficient for not moving to individually *voir dire* jurors who informed the Trial Court they had experienced sexual abuse and failed to put those jurors’ information on the record. (App. Vol. V, p. 2225). The PCR Court also found “Trial Counsel failed to preserve for appellate review the issue and any resulting prejudice because none of those conversations between the Trial Court and jurors was placed on the record, and none of those juror’s numbers were placed on the record with whom the judge spoke.” (App.

Vol. V, p. 2225).

The PCR Court held “it is the clear responsibility of Trial Counsel to ensure that all aspects of the trial on record for appellate review and it would be obvious if these portions of the trial went undocumented by the court reporter.” (App. Vol. V, p. 2225). The PCR Court further held “Trial Counsel was deficient for failing to ensure that conversations regarding juror fairness and impartiality were on the record to preserve the issue for appellate review.” (App. Vol. V, p. 2225–2226).

6. THE PCR COURT PROPERLY FOUND COUNSEL’S PERFORMANCE DEFICIENT FOR NOT PLACING ON THE RECORD JUROR NO. 94’S REVELATION THAT SHE HAD “A RELATIVE THAT WAS A VICTIM.”

The PCR Court properly found Trial Counsel’s performance deficient for not putting on the record juror no. 94’s revelation that she had “a relative that was a victim” because Counsel moved to have the juror stricken for cause and had to strategically use one of his preemptory strikes on this juror. (App. Vol. V, p. 2226).

7. THE PCR COURT PROPERLY FOUND COUNSEL DEFICIENT FOR NOT MOVING FOR SEVERANCE OF RESPONDENT’S CHARGES.

The PCR Court properly found Trial Counsel deficient for failing to move for severance of Respondent’s charges. (App. Vol. V, p. 2226–2227). Specifically, the three complaining witnesses’ alleged conduct that occurred over three distinct and unspecified periods of time, which did not arise out of a single chain of circumstances and were not proven by the same evidence (twenty-eight indictments, covering a total period of over eighteen years). *See State v. Middleton*, 288 S.C. 21, 339 S.E.2d 692 (1986); *State v. Smith*, 322 S.C. 107, 470 S.E.2d 364 (1996).

Respondent previously presented this argument as an additional sustaining ground in subsection (C) of issue one above. Based on the testimony presented at the hearing, Trial Counsel failed to provide a reasonable trial strategy regarding this allegation. *See Roseboro v. State*, 317

S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding “counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness”); *Stacy v. Solem*, 801 F.2d 1048; 1051 (8th Cir. 1986) (finding that “labeling counsel's actions as “trial strategy” does not automatically immunize an attorney's performance from sixth amendment challenges.”).

8. THE PCR COURT PROPERLY FOUND COUNSEL DEFICIENT FOR NOT OBJECTING TO “TRUTH-SEEKING” LANGUAGE IN THE TRIAL COURT’S PRELIMINARY INSTRUCTIONS TO THE JURY.

In *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 475 (2012), this Court ordered:

[T]rial judge[s] to remove any suggestion from [their] general sessions charges that a criminal jury's duty is to return a verdict that is “just” or “fair” to all parties. Such a charge could effectively alter the jury's perception of the burden of proof, substituting justice and fairness for the presumption of innocence and the State's burden to prove the defendant's guilt beyond a reasonable doubt. Moreover, to a lay person, the “all parties involved” in a criminal case may well extend beyond the defendant and the State, and include the victim. These inaccurate and misleading charges risk depriving a criminal defendant of his right to a fair trial.

Daniels, 401 S.C. at 256, 737 S.E.2d at 475. This Court also noted in *Daniels*:

Judicial instructions to the jury in a criminal case that “whatever verdict you reach will represent truth and justice for all parties,” that “we must see to it that the trial is fair and the verdict is just” and that you and I are “in it together,” may seem at first blush to be simply harmless phrases intended to put the jury at ease and portray the judge as a “regular guy.” However, the constitutional framework governing criminal trials is a highly technical body of law developed by the United States Supreme Court and by state courts operating under the Supreme Court's guidance. It is inappropriate to jeopardize the constitutionality of a trial by instructing the jury in this way.

Id., 401 S.C. at 264, 737 S.E.2d at 479.

In this case, the PCR Court properly found Trial Counsel deficient for not objecting to “truth-seeking” language in the trial court’s preliminary instructions to the jury. (App. Vol. V, p.

2227–2228). Specifically, the PCR Court found that Trial Counsel was deficient for failing to object to this language regarding ‘true’ and ‘just’ verdicts”, and “[a]t the time of this trial[,] the South Carolina Supreme Court issued clear language in *Daniels*, that any reference to the word ‘true’ must be removed from the Court’s comments to the jury.” (App. Vol. V, p. 2228).

9. THE PCR COURT PROPERLY FOUND COUNSEL DEFICIENT FOR PRESENTING IMPROPER COMMENTS DURING OPENING STATEMENT.

The PCR Court properly found Trial Counsel “deficient for the comments made to the jury and could not articulate any strategy for these comments.” (App. Vol. V, p. 2229). Trial Counsel improperly argued in his open statement that “[i]f they’re telling the truth, [the Respondent] can’t be innocent...,” and where the State used that same quote against the defense in its closing, saying, “As [Trial Counsel] said in his opening statement, if you believe the victims, the [Respondent’s] guilty,” and where use of such a statement could not be considered a reasonable trial strategy. Specifically, Trial Counsel misstated the law and improperly shifted the required burden of proof.

10. THE PCR COURT PROPERLY FOUND COUNSEL INEFFECTIVE FOR FAILING TO OBJECT WHEN THE DSS CASE WORKER TESTIFIED THAT DSS ONLY BECOMES INVOLVED IN A CASE “IF IT MEETS THE LEGAL STATUTE IN THE STATE OF SOUTH CAROLINA, WE TAKE IT AS A REPORT AND GO INTERVIEW FAMILY.”

The PCR Court properly found Trial Counsel ineffective for failing to object when the DSS case worker testified that DSS only becomes involved in a case “if it meets the legal statute in the State of South Carolina, we take it as a report and go interview family.” Specifically, the PCR Court found “Trial Counsel was deficient for failing to object these comments as they amounted to a comment on a legal issue and was prejudicial to the [Respondent] because it lowers the State’s burden in the eyes of the jury.” (App. Vol. V, p. 2235).

Respondent previously presented this argument as an additional sustaining ground in subsection (A) of issue one above.

11. THE PCR COURT PROPERLY FOUND COUNSEL DEFICIENT FOR FAILING TO CROSS-EXAMINE THE STATE'S WITNESSES ABOUT ALLEGED DISCREPANCIES REGARDING WHOSE BEDROOM THE SEMEN-STAINED BEDSHEETS WERE TAKEN FROM FOR TESTING.

The PCR Court properly found Trial Counsel deficient for failing to cross-examine the State's witnesses about alleged discrepancies regarding whose bedroom the semen-stained bed sheets were taken from that had Respondent's DNA on them. (App. Vol. V, p. 2242). Notably, Petitioner acknowledged in the petition that the inherent prejudice and theme of this case that "[t]he heart of the State's case was the testimony of the victims as corroborated by other witnesses, not the physical evidence like Respondent's semen on the bedsheets (for which Respondent was able to offer an innocent explanation).

12. THE PCR COURT PROPERLY FOUND COUNSEL INEFFECTIVE FOR FAILING TO OBJECT WHEN THE TRIAL COURT SUA SPONTE REPEATEDLY STOPPED RESPONDENT'S TESTIMONY IN THE JURY'S PRESENCE, ADMONISHED RESPONDENT, AND INSTRUCTED THE PROSECUTOR TO OBJECT, GIVING THE IMPROPER APPEARANCE OF PARTIALITY.

The PCR Court properly found Trial Counsel ineffective for failing to object when the Trial Court *sua sponte* repeatedly stopped Respondent's testimony in the jury's presence, admonished Respondent, and instructed the Prosecutor to object, giving the improper appearance of partiality. (App. Vol. V, p. 2243).

Respondent previously presented this argument as an additional sustaining ground in subsection (B) of issue one above.

13. PCR COURT INCORRECTLY FOUND COUNSEL DEFICIENT FOR NOT OBJECTING TO THE TRIAL COURT'S INSTRUCTION THAT THE TESTIMONY OF THE VICTIM NEED NOT BE CORROBORATED.

The PCR Court incorrectly found Trial Counsel deficient for not objecting to the Trial Court's instruction that the victim's testimony need not be corroborated. (App. Vol. V, p. 2245).

CONCLUSION

Based on the foregoing reasons, Respondent Harold Cartwright respectfully requests this Court deny the Petition for Writ of Certiorari and remand this case to the Aiken County Court of General Sessions for a New Trial.

Respectfully submitted,



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