

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jan 26 2024

Certiorari to Horry County

S.C. SUPREME COURT

Honorable Debra R. McCaslin, Circuit Court Judge

DAVID JAMES WELCH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000811

APPENDIX

BREEN RICHARD STEVENS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MARK R. FARHITNG
Senior Assistant Deputy Attorney General
Rembert C. Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29211
(803) 734-3372

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

APPLICANT’S EXHIBIT NO. 1 (AUDIO RECORDING)

1 wasn't being honest and truthful.

2 So, in this situation, I don't consider it
3 bolstering, but I think he is still not telling the
4 complete truth about what the alleged victim is
5 saying.

6 **Q** Let me zero you in on Lines 19 and 20.

7 **A** Yes.

8 **Q** "So the explanation for her state of mind
9 here, in your opinion, is what? "

10 And then he answers that she's a victim of
11 sexual assault. Zeroing in on that, do you have
12 concerns about him expressly asking the detective
13 about what his opinion of her state of mind was?

14 **A** No, because they arrested him for it.

15 **Q** So, again, not to belabor, you don't think
16 there is a valid objection to that?

17 **A** On what basis?

18 **Q** I'm asking you.

19 **A** Are you saying on the basis of bolstering?

20 **Q** Or vouching.

21 **A** No. No. No. Because, again, I'm going to
22 ask the same questions.

23 **Q** So your intention was to elicit the same
24 information?

25 **A** No. My intention was to elicit any

1 information about why it is that he was on the
2 stand saying one thing and knew that Ms. Jerica
3 said something else, okay.

4 Q Okay.

5 A Contradictions.

6 Q Jump to Page 259, at the top, Line 1.

7 "Question: Okay. All right. And you
8 actually" --

9 For purposes of the record, this is referring
10 to Ms. Nelson's mother.

11 A Which line?

12 Q Line 1, Page 259.

13 Do you recall Ms. Nelson, the victim, there
14 was some audio of her speaking with her mother?

15 A Vaguely, but not really, no. No.

16 Q The question is, "All right. And you
17 actually let her speak on this interview?"

18 "Her," being the mother.

19 "Answer: I did, yes, sir.

20 "Question: Is that something you typically
21 do and record?

22 "Answer: Sometimes we'll do that,
23 especially dealing with young -- young adults.
24 Sometimes a parent can elicit responses or get to
25 the truth or it just helps to make sure we're on the

1 same page."

2 Do you have any professional opinion as to
3 whether there is an objection to that?

4 **A** I wouldn't have objected to it. And in
5 retrospect, I would not have objected to it.

6 **Q** Jump to Page 264, Line 17.

7 "Question: And, of course, the jury is
8 going to have this recording back there so they can
9 listen to it about what changes and what doesn't
10 change, right?

11 "Answer: Correct.

12 "Question: Can we agree that some points
13 never change?

14 "Answer: It is my understanding that, you
15 know, you can split hairs and say, you know, certain
16 times, details, were said or weren't, but the story
17 did not change, in my opinion."

18 Same question, do you have concerns about
19 that?

20 **A** I think it's a lie, false statement. But,
21 again, I don't think it is bolstering.

22 **Q** Lastly, as to this ground, if you could jump
23 to 265?

24 **A** Yes, sir.

25 **Q** This is the last portion I'll read from

1 Beam's testimony. Line 15 of Page 265.

2 "Question: Even when pressed -- with her
3 mom -- by you multiple times, she stuck to that
4 story?

5 "Answer: And a lot of times, in our
6 experience, pressing, you get -- sometimes you're
7 able to break them, whether it be a rape allegation
8 or any other kind of investigation. That's why we
9 go over it again and again and see if we get --
10 we're able to get them to recant.

11 "Question: No question you were skeptical
12 at first?

13 "Answer: Always -- not always, but, you
14 know, we have a lot of sexual assaults. I mean,
15 it's just the nature of Myrtle Beach, unfortunately,
16 and Horry County. Some of it did not make sense to
17 me initially."

18 Top of 266.

19 "Question: Did you do a further
20 investigation after that interview?

21 "Answer: I did, yes, sir.

22 "Question: And did Myrtle Beach Police
23 Department choose to charge this defendant with
24 criminal sexual conduct and kidnapping, armed
25 robbery, and possession of a weapon during the

1 commission of a violent crime?

2 "Answer: Yes, sir, we did."

3 Same question as to --

4 **A** Same answer.

5 **Q** In your opinion, that's not bolstering or
6 vouching?

7 **A** No.

8 **Q** All right. That is all I have as to that
9 ground.

10 If we can, go to the other issue that we are
11 alleging. We are alleging that there is improper
12 remarks made during closing argument. Were you
13 able to hear Mr. Welch's testimony in that regard?

14 **A** I did, yes, sir.

15 **Q** If you wouldn't mind, jumping forward to Page
16 330 of the transcript. At the end of Line 1,
17 beginning with "I like." This is during closing
18 argument of the State.

19 "I would like to think that if someone comes
20 at me with a gun, that I'd be the person that would
21 react quickly, snatch the gun from his hand, maybe
22 scream, maybe run, maybe take the appropriate
23 action. I've never been a 22-year-old female faced
24 with that situation."

25 If you jump to Lines 18 and 19 where the

1 prosecutor says, "I'm not a 22-year-old female.
2 I've never been put in that situation."

3 And then jumping down to Line 23, "The
4 comments about how she could have done this or done
5 that, what she should have said, how she should
6 have acted possibly, does those change the facts of
7 this case? No. I've never been raped before. I
8 would like to think that I would be strong and be
9 courageous. I would stand up and tell what
10 happened. I know as a prosecutor that doesn't
11 happen."

12 Stop there. You have heard Mr. Welch's
13 remarks about those?

14 **A** Yes.

15 **Q** And do you have an opinion as to whether
16 those are valid remarks by a prosecutor?

17 **A** I mean, my opinion is there is no objection
18 needed.

19 **Q** Was there one available?

20 **A** No. Not in my opinion, no.

21 **Q** If you could, jump forward to Page 332, on
22 Line 16 of Page 332.

23 "What did she add when pressed again? A
24 sexual assault occurs.

25 "Why didn't she talk about the sexual assault

1 at first? I don't know. Was she traumatized? Was
2 she embarrassed? Was she ashamed? I can't tell
3 you. I've not been in that situation, but I can
4 tell you that it's true."

5 Do you have any opinion as to whether there
6 is a valid objection to that?

7 **A** No. I would not have objected and still
8 would not.

9 **Q** Let me ask the question directly: Do you see
10 this as a prosecutor offering his opinion as to the
11 truth of this case?

12 **A** I see it as a prosecutor doing what
13 prosecutors do all the time in closing arguments,
14 which is give their side of the case and events.
15 Again, it is not evidence. The judge gives an
16 instruction to the jury that my comments, the
17 prosecutor's comments are not evidence. Again, he
18 has a right to say that.

19 When I got up, I was very clear what I
20 believed my client didn't do, and that's what we
21 do.

22 **Q** So just to clarify, you feel that the
23 prosecutor is entitled to say, I can tell you that
24 it's true, that they can tell the jury what is true
25 and not true?

1 **A** I think the prosecutor is entitled to give
2 his side of the events every time, and that is what
3 adversarial means. If I'm allowed to say what is
4 not true, he is allowed to say what is true.

5 **Q** What about his personal opinion as to what is
6 true?

7 **A** I don't believe this is based on his personal
8 opinion. I think when you look at the facts in
9 total, when you look at the facts, this young lady
10 gave multiple different statements, which we used
11 to our advantage. We used it for lies, as well as
12 I used them to get rid of evidence in this case.

13 The prosecutor came in and said, look, you
14 know, this is what I believe happened. That is
15 what we do. Even in opening and closing
16 statements, we do the same thing. We give what we
17 believe to be our interpretation of what came
18 across that stand. Not everything that came across
19 that stand was good for my client, and not
20 everything that came across the stand was good for
21 the State, which is why they lost half the case.

22 We wanted to win. My entire focus was to
23 find -- have the jury find him not guilty on all of
24 the charges. Again, we won half the case. I
25 wanted to win the other half, we just didn't.

1 Q Understood.

2 Again, just to fine point, in your view, the
3 prosecutor is allowed to express his opinion as to
4 what is true and not?

5 A Again, I'll say this, in reading this, this
6 is not his opinion. This is him telling you what
7 he believes is his side of the case. That is what
8 he is saying. He is not saying "it's my opinion."

9 Q Let me clarify. I'm not asking if that is
10 what he is doing, I'm asking whether they are
11 allowed to do that in general? Are prosecutors
12 allowed to offer their personal opinion during
13 closing arguments?

14 A They are not allowed to say, I think he's a
15 bad person; that would be an opinion. If he is
16 saying, Look, I believe he committed this assault,
17 he's been saying that the entire trial, he believes
18 those facts are true based on the evidence that
19 came across.

20 I told the jury I think she's a liar. That's
21 my right. He has a right to say that he believes
22 the State has a case for what the victim alleged in
23 this case. I still believe there were falsehoods
24 told, and I told the jury that in the end. I think
25 he's allowed to say, Look, this is what we believe

1 to be true. I don't find it objectionable. It
2 happens all the time in trials, and I try a lot.

3 Q To make sure we have a clear record, if we
4 can pivot back to 264?

5 A 264?

6 Q Yes, sir. Did you hear Mr. Welch's
7 statements -- he indicated during his testimony, if
8 I recall, that in his view, on Page 264, there was
9 testimony that was inadmissible as hearsay,
10 corroborated the victim's statement. Were you
11 present during that portion of Mr. Welch's
12 testimony?

13 A I don't actually recall it, but if you will
14 refresh my memory, I can address it.

15 Q For purposes of the record, obviously,
16 Mr. Welch's statement will speak for themselves,
17 but he indicated his belief was that testimony on
18 Page 264 was inadmissible under Rule 801 to the
19 extent it corroborated the victim's testimony in a
20 CSC case. Do you have any opinion as to this
21 portion of Beam's testimony on that?

22 A Can you point me to which line?

23 Q I believe -- just a moment.

24 (A brief pause in the proceedings.)

25 Q (MR. GEEL) Read from 264, Lines 21 through

1 the next page, Line 14. If you could, take a
2 moment and read those.

3 **A** Yes, sir. How far now?

4 **Q** 14.

5 **A** 14, okay.

6 (A brief pause in the proceedings.)

7 **A** Yes, sir.

8 **Q** (MR. GEEL) Do you have an opinion whether
9 this was improper under Rule 801?

10 **A** No. What I believe is the prosecutor was
11 doing -- and, again, the reason I didn't object is
12 that he is getting his detective, which also
13 happens at every trial that I've ever done, to tell
14 him what he believes occurred in this case, what
15 the evidence showed, or what his investigation
16 revealed.

17 So, no, I don't find it to be improper
18 questioning or answers. Again, he is allowed to
19 question him on the stand about whether or not he
20 found this to be true, whether or not he believed
21 that these things were happening. He has that
22 right.

23 Again, the detective's whole purpose, as the
24 lead investigator is to come to trial prepared to
25 talk about what they found during their

1 investigation, and I think that is what they were
2 doing.

3 Again, I wanted this stuff to come out
4 because I wanted to talk to him about it. So it is
5 important to understand that.

6 Q I'm sorry, I didn't mean to cut you off
7 there.

8 MR. GEEL: Nothing further. Thank you,
9 Judge.

10 THE COURT: Thank you.

11 **CROSS-EXAMINATION**

12 **BY MS. MARTO:**

13 Q You had a Jackson v. Denno hearing?

14 A Yes, ma'am.

15 Q You fought for that statement to be excluded?

16 A Yes, ma'am.

17 Q Is it fair to say that the argument you
18 advanced there you thought had a higher likelihood
19 of success than the argument here today?

20 A Yes. Absolutely.

21 Q And you didn't see anything in any of the
22 passages highlighted that, in your opinion,
23 constituted improper bolstering, correct?

24 A No. No.

25 Q In fact, you were the one asking the

1 questions on 257 and 259, correct?

2 **A** That's correct.

3 **Q** Do you make it a practice to object to your
4 own question?

5 **A** I typically do not, and I don't think the
6 judge would appreciate it.

7 **Q** Do you think that anything in the closing
8 statement offered by the State indicated a personal
9 opinion that was not backed by the evidence?

10 **A** No. No. This happens all the time in cases,
11 in trials. We're giving our side of the events.
12 Again, I said they were false, he said they were
13 true. That happens. Every trial I ever tried from
14 magistrate's court all the way up to murder cases
15 in federal court; it doesn't change.

16 **Q** So there was nothing outside of the scope of
17 that when it was prented at trial?

18 **A** No. No. Absolutely not.

19 MS. MARTO: Nothing further.

20 MR. GEEL: Nothing, Your Honor.

21 THE COURT: Okay.

22 THE WITNESS: One correction, I was brought
23 on, Judge -- and I apologize, I wanted to correct
24 this -- 12/12/2016. Judge Hyman ordered that I
25 begin to assist, I think it was, Tom Floyd because

1 they were having problems. I just wanted to put
2 that out there. We were on the case before then,
3 and then I believe Judge Hyman took Tom Floyd off
4 -- I believe it was Tom Floyd -- and replaced me as
5 lead counsel.

6 THE COURT: Okay. Thank you. You are
7 excused.

8 MR. GEEL: That is all I have as far as
9 evidence. We rest.

10 THE COURT: Anything from the State?

11 MS. MARTO: Yes. Given your request for
12 response to the argument that Mr. Welch raised, I
13 will call Josh Holford.

14 (JOSHUA HOLFORD, having been duly sworn,
15 testified as follows:)

16 THE WITNESS: Joshua, H-O-L-F-O-R-D.

17 **DIRECT EXAMINATION**

18 **BY MS. MARTO:**

19 **Q** You prosecuted the trial?

20 **A** I did.

21 **Q** You were present in the courtroom during the
22 recitation of the trial transcript?

23 **A** Correct.

24 **Q** So you heard the portion highlighted by
25 Mr. Geel concerning what he thought was improper

1 bolstering?

2 **A** Correct.

3 **Q** Was there anything, in your opinion, that
4 constituted improper bolstering?

5 **A** I was not attempting to -- in my questions of
6 the detective, in that case -- I will say that on
7 the video and audio that is actually Hugh Jones,
8 but I think Beam is in the recording as well, but
9 Beam is the one that is testifying at the time.

10 My intention was not to have him say whether
11 he thought the victim was telling the truth or not,
12 but credibility was certainly an issue in this
13 trial, so I had to elicit to the jury whether the
14 police department found credible evidence in
15 addition to what she had been telling them, that a
16 crime had occurred, and that was the reason for the
17 arrest, and that was the reason for the
18 prosecution.

19 **Q** Do you recall the closing argument you gave
20 at trial?

21 **A** Uh-huh, I do.

22 **Q** And you were present in the courtroom when
23 the transcript pages were recited, correct?

24 **A** Yes.

25 **Q** Is there anything you would have constituted

1 as being outside the scope of evidence presented?

2 **A** No. And correct me if I'm wrong, but I
3 believe the argument was that when I tried to draw
4 the link between pointing a gun and an armed
5 robbery at a Burger King, and then the sexual
6 assault that occurred in front of the townhouse,
7 that based on the evidence that was presented at
8 trial, and based on the victim's testimony, it was
9 a reasonable inference that there was a gun that
10 was used from one location, and a kidnapping
11 occurred to take that person, to another location.
12 Whether the gun was held the entire time while
13 driving the vehicle or not, is not necessarily what
14 I was saying.

15 So I wasn't speaking beyond the scope of the
16 evidence presented at trial, merely an inference
17 that could have been drawn that a gun was used at
18 one location, she was taken against her will
19 certainly to another location, and then sexually
20 assaulted at that location.

21 **Q** Were you offering your personal opinion
22 outside the scope of your rules as a prosecutor?

23 **A** No. I was offering what I believed the
24 evidence and the testimony at trial showed, and
25 that we had proved beyond a reasonable doubt that

1 Mr. Welch, in fact, committed the crimes for which
2 he had been charged.

3 I will say, too, that at no point was I
4 saying to the jury that I did not believe he
5 committed an armed robbery. I still believe that
6 the evidence and testimony support the fact that he
7 committed an armed robbery as well.

8 Now, he was found not guilty of that, but I
9 was not telling the jury that I did not believe the
10 evidence supported that as well.

11 Q Would you have brought the armed robbery
12 charge to trial if you felt the evidence didn't
13 support it?

14 A Absolutely not.

15 Q Do you recall anything in your closing
16 argument you thought constituted the Golden Rule
17 argument?

18 A From what I heard from the trial transcript,
19 and what I'm trying to remember as well, I do not
20 believe I ever asked the jury to place themselves
21 in the position or the shoes of the victim and what
22 they would do in that situation, so I do not
23 believe so.

24 MS. MARTO: No further questions, Your Honor.

25 THE COURT: Any cross?

1 that says I'm not permitted to make personal
2 opinions about it.

3 Q To offer your personal opinion expressly
4 about the case, what is true and what is not?

5 A Correct. Correct.

6 MR. GEEL: Thank you.

7 **EXAMINATION**

8 **BY THE COURT:**

9 Q You agree that you have a right to make a
10 reasonable inference from the evidence that is
11 presented? It is not that you strictly -- you are
12 not bound strictly to the evidence itself, but what
13 one can reasonably infer?

14 A Yes. Yes, Your Honor. And what I'm offering
15 is not my personal opinion on it.

16 Q Right. Just what you reasonably infer from
17 the evidence?

18 A It is a reasonable inference based on the
19 evidence, what the State is saying happened based
20 on what the victim is saying happened, and what the
21 police said happened, and based on what the
22 evidence is showing.

23 Q And nine times out of ten, your story is
24 different than the defense?

25 A It is, and it was, Your Honor.

1 MR. WELCH: Excuse me, Your Honor. Can I
2 voice something?

3 THE COURT: Speak with your lawyer first.

4 MR. WELCH: Yes, ma'am.

5 THE COURT: Can I let this witness be
6 excused?

7 MR. GEEL: Just one moment, Your Honor.

8 (A brief pause in the proceedings while
9 Mr. Geel and Mr. Welch confer.)

10 **RECROSS EXAMINATION**

11 **BY MR. GEEL:**

12 **Q** As a prosecutor, if you are authorized to
13 offer your opinion, same question, but with regard
14 to mischaracterizing the evidence. Would you agree
15 that is not appropriate for a prosecutor to say one
16 thing was presented at trial when that is not
17 accurate in terms of what is presented?

18 **A** That is correct. I do not believe that I'm
19 allowed to mischaracterize or -- evidence or
20 testimony, that's correct, and I don't believe I
21 did in this case.

22 MR. GEEL: Nothing further, Your Honor.

23 THE COURT: May I now excuse the prosecutor?

24 MS. MARTO: Yes.

25 THE COURT: Thank you. I think this is two

1 late days I kept you.

2 MR. HOLFORD: Thank you.

3 THE COURT: Any closings from the defense?
4 If you want to make closings -- I have all of your
5 arguments outlined. I can tell both of you that
6 I'll take it under advisement, and I'll ask for a
7 proposed order from both sides due by
8 January 27th.

9 MR. GEEL: May I add one thing for the
10 record?

11 THE COURT: Yes.

12 MR. GEEL: Obviously, I'll defer to the
13 Court, but additional grounds that Mr. Welch
14 covered during his testimony -- I want to be sure
15 we're all on the same page -- it seems to me that
16 he touched on the fact that the closing argument
17 contained the prosecutor's personal opinion as to
18 guilt. I believe that was covered in our amended
19 Ground 3, and we did cite Tappeiner,
20 T-A-P-P-E-I-N-E-R. We cite that in our amended
21 motions, and I believe that was adequately covered.

22 What I think Mr. Welch raised that was not
23 covered is the argument, that under 801 that the
24 testimony being corroborated --

25 THE COURT: Improper corroboration on page...

1 MR. GEEL: 264 through 265.

2 THE COURT: I have 257, is what I wrote down.
3 I might be wrong. It might have started on 257,
4 but he talked about improper corroboration, as my
5 notes say.

6 MR. GEEL: I don't believe there is anything
7 else that wasn't covered, but I will submit a
8 proposed order that contains that as a separate
9 ground.

10 THE COURT: That will be fine.

11 You don't have any objections to those
12 grounds being raised today, do you?

13 MS. MARTO: No, Your Honor.

14 THE COURT: Because, usually, you have to
15 give her notice. If I can cover it all in one and
16 have his day in court, I want to do that.
17 Sometimes at the last moments people think of
18 something, and usually I'm a judge that that is
19 okay with.

20 MR. GEEL: Proposed orders by January 27?

21 THE COURT: January 27.

22 If you would, please, e-mail them to my law
23 clerk in Word, because I'm notorious for changing
24 things. All right.

25 Court is adjourned.

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(Whereupon, the proceedings concluded.)

CERTIFICATE OF REPORTER

State of South Carolina)

County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 5th day of January, 2023.

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

August 20, 2023



Natalie Dahl
Registered Professional Reporter
State of South Carolina Official Court Reporter



Myrtle Beach Police Department
 1101 N. Oak Street, Myrtle Beach SC 29577
 Telephone: 843-918-1382
 Fax: 843-918-1320

Approved *OBC*

Crime Scene Unit

Incident #: 15-000445
Date: 01-08-2015
Incident Type: Criminal Sexual Conduct
Incident Location: 2391 Coastal Grand Cir/1211 Pidgeon Road
Victim: Jerrica Nelson
Suspect: David Welch
Officer/Supervisor/Detective: Sououd/Bland/Beam
Crime Scene Specialist: Humes



Original Report

SCANNED

On 01-08-2015 I (CSS Humes) was requested to respond to Coastal Grand Mall, parking lot area outside of Belk by Corporal Bland. I was briefly advised a vehicle needed to be processed from a CSC/robbery incident. I advised Corporal Bland I was completing processing from a different incident and would respond to the location shortly. Upon my arrival at approximately 2215 hours to the location I observed the officers were located on the north side of the Belk department store. I spoke with Detective Beam whom was on scene. I was advised the vehicle belongs to the victim, and that she was initially in the driver's seat and the suspect was in the passenger seat. I was advised that the CSC incident had taken place in the back seat of the vehicle. I was provided with a consent to search form to process the vehicle for potential evidence.

I was advised the victim was being transported to Grand Strand Hospital to have a CSC evidence kit completed. I spoke with the victim and requested to obtain DNA standards from her. The victim advised she would consent to providing the standards. I used two sterile cotton swabs and I swabbed the interior cheek/gum line of the victim's mouth. I placed the obtained swabs into an evidence envelope marked as such. I asked the victim if any items inside the vehicle may belong to a suspect such as drink bottles etc. The victim advised the suspect didn't bring or leave anything in the vehicle. The victim then went to the hospital.

I took photographs on the area where the vehicle was parked. I observed the vehicle was in the Belk's parking lot area on the North side of the building. The vehicle was facing pulled through the parking space, making the front of the vehicle at the isle way. The vehicle is



Myrtle Beach Police Department
 1101 N. Oak Street, Myrtle Beach SC 29577
 Telephone: 843-918-1382
 Fax: 843-918-1320

SCANNED

described as a Hyundai Tucson 4 door sport utility vehicle, red in color bearing South Carolina registration of IQK-794. I took photographs of the vehicles exterior and interior.

I observed the rear seat was made of leather type material. The seat had an area of cloth in the center of the seat on the seat located behind the driver and passenger seats. The center seat area was all leather. I took photographs of the back seat area. I used an Alternate Light Source (ALS) 455NM range with yellow barrier filter goggles and observed the rear back seat area. I was unable to locate any areas of visible biological/semen stains on the seat or floor area. I processed the rear seat area for possible DNA. I used two sterile cotton swabs with 2 drops of distilled water applied to each swabs and processed the seat area located behind the driver's seat, by swabbing the leather area of the seat. I placed the obtained swabs into an evidence envelope marked as such. I used two sterile cotton swabs with 2 drops of distilled water on each swab and swabbed the center of the rear seat. I placed the obtained swabs into an evidence envelope marked as such. I used two sterile cotton swabs with 2 drops of distilled water applied to each swab and swabbed the leather area of the rear seat located behind the passenger seat. I placed the obtained swabs into an evidence envelope marked as such. I used two sterile cotton swabs with 2 drops of distilled water applied to each swab and swabbed the rear passenger side interior door handle for possible touch DNA. I placed the swabs into an evidence envelope marked as such. I observed on passenger side rear door trim, located at the bottom of the floor/door area was a partial shoe print. I took photographs of the shoe with and without a forensic scale. I applied black magnetic powder to the area at the print but wasn't able to observe any further area/detail of the print. Once the magnetic powder was applied it damaged the area of the shoe print due to it being a dirt/dust substance and not being adhered to the plastic molding. I wasn't able to lift the area of shoe print due to it being damaged by the magnetic powder.

I processed the exterior of the vehicle on the passenger side. I used black silk powder and processed the front and rear door of the vehicle. I was able to observe finger outlines on the front passenger side door. The finger outlines were located above the left side of the door handle. I was unable to observe any detail within the finger outlines. I took a photograph of the finger outlines. I went inside the vehicle and processed the front passenger side interior door handle for possible touch DNA. I used two sterile cotton swabs with 2 drops of distilled water and swabbed the door handle. I placed the obtained swabs into an evidence envelope marked as such. I opened the rear hatch/cargo area door. I didn't over any items in the rear of the vehicle. I didn't observe any other items of evidence at the vehicle. I secured the vehicle.

Upon arrival to the crime scene lab I downloaded the obtained unaltered digital photographs directly from my cameras memory card to a CD-R disc. I also placed a copy of the obtained unaltered photographs into the investigations network. I placed the obtained items of evidence into secured storage. I was then requested to respond to the suspect's residence in reference to a search warrant. I was advised the suspect was apprehended after fleeing from the residence.

Information contained herein relates to an active investigation & is, therefore, confidential.

**SCANNED**

Myrtle Beach Police Department
1101 N. Oak Street, Myrtle Beach SC 29577
Telephone: 843-918-1382
Fax: 843-918-1320

I arrived at the suspect's residence at approximately 01:30 hours (01-09-2015). I took photographs of the exterior of the front of the residence to establish the location. I went inside the residence and took photographs of the interior of the residence. I was advised the suspect's room was located on the right of the residence (from the front door) at the back of the residence. I observed on the right side of the residence there are 3 bedrooms. The suspect's bedroom was on the right side of the hallway. There was a bedroom across from the suspect's and a bedroom located behind the suspects at the end of the residence. Officers located loose ammunition in the suspect's bedroom. The ammunition was located inside a small box with a lid. The box was located on a purple in color dresser with a mirror. I took photographs of the ammunition inside the box. There were 10 38sp unfired bullets located inside the box, and 1 small caliber unfired bullet. No other items of evidence were located within the residence. The ammunition was collected and a copy of the search warrant was left with the residents of the house.

I responded to the jail after clearing the residence. Upon arrival at the jail I spoke with Detention Officer Boyle. I was advised Detention Officers had collected the suspects clothing and underwear and placed them into paper bags. I obtained the paper bags containing the suspects clothing and returned to the crime scene office. I downloaded the obtained unaltered digital photographs from the search warrant of the residence directly from my cameras memory card to a CD-R disc. I also placed a copy of the obtained unaltered photographs into the investigations network. I was then requested to respond to Grand Strand Hospital to pick up the completed CSC kit that was completed on the victim.

Upon arrival to the hospital the nurse whom was completing the paperwork portion of the CSC kit: The nurse requested the case number for the incident. I advised her I thought the case number was 15-000446 but was not certain (actual case number is (15-000445). While the nurse was completing the paperwork I went to the room where the victim was. I returned the keys of the vehicle to the victim. I returned back to the nurse to obtain the CSC kit. Once completed I obtained the CSC kit from the nurse as well as a white paper bag labeled to contain Debris, and a second white paper bag labeled to contain outer clothing. I responded to the main police department and placed the CSC kit and two white paper bags of items into property and evidence.

Upon arrival to the crime scene lab I took photographs of the obtained suspect clothing collected from the jail. I observed in the first paper bag was a pair of tan short, black dress socks, gray fleece zippered jackets and black t-shirt. I took photographs of the items. I placed the items into an evidence bag. I observed in the second paper bag were a pair of white/gray/black Nike tennis shoes. I took photographs of the shoes. I took a photograph of the tread area of the shoes with and without a forensic scale. I observed the tread area of these tennis shoes didn't appear to match the partial shoe print observed in the victim's vehicle. I placed the shoes into an evidence bag. I observed in the third bag was the suspects underwear. I took a photograph of the underwear. I observed the gray in color underwear with an ALS light source (455NM) range and

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yellow barrier goggles. I was able to observe a faint glow of an area of possible biological fluid. I placed the underwear into an evidence bag. I downloaded the obtained unaltered digital photographs from the search warrant of the residence directly from my cameras memory card to a CD-R disc. I also placed a copy of the obtained unaltered photographs into the investigations network. I placed the obtained clothing items and CD of photographs into secured storage.

On 01-14-2015 I completed a Sled request to have the obtained CSC kit processed. At this time suspect standards will not be sent as they were not obtained. No consent was given to obtain the DNA standards as the suspect requested a lawyer before proceeding with any questions from detectives during the interview/serving of the arrest warrants. Once the kit is completed being processed I will send the obtained swabs and other evidence items to be processed. Detective Beam completed a search warrant return for the residence and returned it to the clerk of court.

SCANNED

MR. Ralph Wilson, Jr.

3-14-17

Hello,

I'm now writing you because I really need to see you & talk about a few things.

I've only talked to you once since you've been on my case & seeing as in you said that we're going to trial in April makes me worried!!!

I need you to please update me on where we are with these charges & update me on what you have done with my case & also fill me in on what your planning on doing.

My life is on the line & I really need to talk to you & let you know what I need you to do & I'd also like to let you know what I will plea out to.

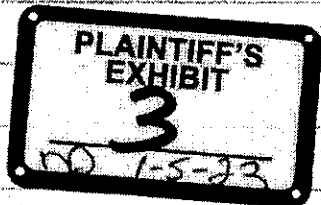
Seeing as in I have a new solicitor, you may be able to get me a plea for a lesser charge but like I said before, I'd like you to get with me to go over that.

I also would like to inform you of a few key things in my case that you do not know of!

With this being said, please come see me ASA.p ...

Also please send me a copy of my discovery because I do not have a copy!

Thank you & have a blessed day.



D. Weller

MR. Ralph Wilson, Jr

3-21-79

Hello, im now writing you because I need to see you. I've heard great things about you & in my opinion I believe you can be a good lawyer if you want to be.

However my problem is the lack of communication between you & me. As you know my trial is in April & you & me have very little time to prepare which is a problem for me!

I've got my own witnesses that I need you to contact so they can assist me in trial.

I've also got to inform you of a few things that will help me in my situation & there is still evidence that I need you to gather up before trial.

I do not wish to go to trial if I feel as if everything is not prepared.

You as my lawyer should have my best interest at hand & im now asking for us to get together & get are duck in a row for this trial or lets work out a plea deal that ill be willing to take!

We have went over my case once since you have been on my case so please get with me a.s.a.p!

Thank you & have a blessed day!

D. Welch

Dear, MR. Ralph Wilson, Jr.

April, 5, 2017

From my understanding, my case will be going before the Jury this month. I've been told that I am the second person on the list for trial & i've been told that I should be in court for trial sometime on the week of the 17th.

If this is true... then as of today I should have about 12 days to get ready for trial.

With that being said... Why aren't you keeping me informed on what is going on & what your planning to do to help me in my situation! I've yet to see you since I went to court for my home detention violation & this is a problem to me because my case is going before the Jury this month & i've still not been able to go over my case with you!

There are details in my case that I need to go over with you... So please bring my discovery & come visit me sir.

I would also like you to contact my solicitor Mr. Joshua Holford & see if he will drop all of my charges to a lesser offense & let me plea out to one of the plea deals that i've listed in this letter. Also, i've listed a few phone numbers in this letter that I need you to call & let them know when my trial is so they can come & speak as my witnesses.

As you already know... I do not want to plea out to a sex offense, so with that being said i've also listed a few charges that I am willing to plea to!

I will plea out to one or more of these charges only if my solicitor will agree to the time that i'm requesting!

Next Page



↓ Charges I will accept on my Record ↓

Assault & Battery 1st degree
Larceny
Common law robbery
unlawful possession of a fire arm
Simple Assault & More

↓ Plea Deals I will accept ↓

Y.O.A Sentencing
Drug Court
Life Recovery
90 Day Shock
Rehab / Mental Health placement
5 to 6 years straight time

↓ Witnesses Phone numbers ↓

MoM → Teresa Welch - 843-457-8053
Grandmother → Edna Blackmon - 843-946-6230
Friend → Micheal Tripe - 803-524-8557

Thank you for your time & please write me back &
Come see me a.s.a.p!

Have a blessed day...

D. Welch

P.S. I do not mean to bug you, I'm just worried about my future!

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTEENTH JUDICIAL CIRCUIT)

David James Welch, #372246,)
Applicant,)

Case No.: 2019-CP-0035)

v.)

ORDER OF DISMISSAL)

State of South Carolina,)
Respondent.)

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HORRY COUNTY, SC

This matter comes before the Court by way of Applicant's post-conviction relief application filed February 21, 2019. Respondent made their return on May 29, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held at the Horry County Courthouse on January 5, 2023. Christopher R. Geel, Esquire represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial Counsel Ralph J. Wilson Jr., Esquire and Senior Assistant Solicitor Joshua Holford also testified. After reviewing all records and evidence this Court finds Applicant cannot meet his requisite burden of proof establishing that he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted in Horry County for kidnapping (2015-GS-26-00969), armed robbery (2015-GS-26-00970), first degree criminal sexual conduct (2015-GS-26-00971) and possession of a weapon during the commission of a violent crime (20015-GS-26-00972). On April 17, 2017, Applicant proceeded to trial before the Honorable Steven H. John. The jury found Applicant guilty of kidnapping and criminal sexual

conduct, and acquitted Applicant on the remaining charges. The court sentenced Applicant to twenty-four years' imprisonment for each count, to run concurrently.

Applicant filed a timely notice of appeal. Katherine H. Hudgins, Esquire perfected the appeal, filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The issue offered was:

Did the trial judge err in refusing to grant a mistrial when a detective testified that he knew the Appellant as the individual identified on Facebook as David Royal, implying the detective knew Appellant because of prior criminal activity?

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Welch*, Op. No.2018-UP-451 (S.C. Ct. App. Dec. 12, 2018). Remittitur was issued on December 28, 2018.

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Welch subsequently filed a PCR application in Horry County on February 21, 2019. That application was amended on January 5, 2023. The matter was convened for an evidentiary hearing on January 5, 2023. At that evidentiary hearing, Welch asserted the following grounds for relief:

In his original PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel for the following reasons:

1. "Trial counsel failed to conduct independent DNA testing on evidence."
2. "Trial counsel failed to subpoena a key witness to the defendant's trial."
3. "Trial counsel failed to adequately advise Defendant regarding his right to testify at trial."

In Applicant's amended application, filed January 5, 2023, he alleged:

1. "Trial Counsel was constitutionally ineffective pursuant to *Strickland v. Washington*, when he failed to object to improper corroboration of the victim's statements, improper vouching, and improper bolstering testimony. (Tr. 240-41, 247-48, 257, 259, 264-66)."
2. "Trial Counsel was constitutionally ineffective pursuant to *Strickland v. Washington* when he failed to object to and/or move to exclude audio of the Applicant's custodial interview based upon his pre-trial invocation of his right to counsel."
3. "Trial Counsel was constitutionally ineffective pursuant to *Strickland v. Washington* when he failed to object to improper remarks and arguments by the State during opening and closing arguments, including impermissible "golden rule" arguments. (Tr. 65, 330-32, 333, 334). *Tappeiner v. State*, 416 S.C. 239, 785 S.E.2d 471 (2016)."

At the PCR hearing, Applicant proceeded forward on all allegations raised in his amended application as well as the allegation of ineffective assistance of counsel for failure to object to the prosecutor's closing statement on the grounds that his argument extended past the scope of the evidence presented at trial and that the prosecutor impermissibly offered his own opinion regarding the evidence offered. All other allegations raised in his initial application and amendments are deemed waived and abandoned and accordingly, will not be addressed in this order.

At the evidentiary hearing, Welch testified on his own behalf, and the State presented the testimony of trial counsel as well as the trial-level prosecutor. Having heard the evidence presented in this matter, Welch's application is hereby DENIED for the reasons set forth below.

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Synopsis of Trial Evidence

This case arises from an alleged kidnapping and sexual assault in the Myrtle Beach area of Horry County. On January 8, 2015, the alleged victim Jerrica Nelson contacted police and stated that she had been robbed by someone at the Burger King restaurant in Myrtle Beach. Nelson was interviewed by investigators and she ultimately accused the Applicant of luring her to an apartment complex and sexually assaulting her at gunpoint. The primary evidence at trial was the alleged victim's testimony – the physical and forensic evidence collected and presented at trial was inconclusive and did not inculcate the Applicant.

The victim, Jerrica Nelson, testified at trial. (Tr. 76). She stated that days before the incident, on approximately January 6, 2015, she received a Facebook message from Welch. (Tr. 117). Nelson had been posting messages on Facebook saying that she was interested in meeting new people. (Tr. 115). She did not know Welch when they first began exchanging messages. (Tr. 116-17). Nelson became acquainted with Applicant over the internet after Facebook suggested him as a friend but never met him in person. (R. 79-80). Nelson initiated the first conversation on

January 6, 2015. (R. 116-17).

Nelson stated that on January 8, 2015, when she got off of work and was on her way home, she received repeated messages from Applicant on Facebook. (R. 76-81). Nelson did not answer Applicant's messages because she was driving, but then her phone rang when Applicant called. (R. 78, ll. 4-6; R. 85-86).

Applicant continuously suggested they hang out and cuddle, to which Nelson replied "I know what guys mean when they say that." (R. 118, ll. 9-20). Applicant requested sex with Nelson, but Nelson neither agreed nor refused. (R. 83-84; R. 126-27). Applicant wanted to meet Nelson in person, but Nelson delayed until she received a voicemail from Applicant amid a flurry of eight phone calls. (R. 86-87). In the voicemail, Applicant claimed he was waiting for Nelson, and that he had been waiting for her all day after they made plans. (R. 87, ll. 13-15). Nelson messaged Applicant back asserting she had never made plans with him, but ultimately relented and agreed to meet him at the Burger King "[i]n front of Coastal Grand Mall by Sticky Fingers." (R. 86-89). Nelson called Applicant while waiting at the Burger King to "see if he was actually gonna show up." (R. 86-87).

After Nelson waited for ten to fifteen minutes, Applicant appeared wearing khaki-colored jeans, a dark colored sweatshirt, and a "small like beanie type" hat. (R. 89-90). Applicant knocked on the window of Nelson's Hyundai Tucson and she let him into the SUV, where Applicant asked Nelson how her day was. (R. 90, ll. 22-24). Nelson resisted Applicant's efforts to pursue intimate relations. (R. 90-91). Applicant finally relented and asked her to take him home. (R. 91, ll. 8-12). Nelson drove him to the Town Square Apartments and pulled into the parking lot. (R. 92-96).

After Applicant pointed out an open window, Nelson turned off her headlights and Applicant asked her to have sex with him. (R. 96, ll. 8-12). Applicant "rubbed the gun on my hand"

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before pocketing it again, then began to unbutton Nelson’s pants over her objections, stating that he would shoot her. (R. 96, ll. 12-17). Applicant then ordered Nelson into the back seat where he raped her. (R. 96, ll. 17-24). Nelson told Applicant she was not on birth control in the hopes of dissuading him, but he responded by putting on a condom. (R. 96-97). After Applicant finished with Nelson, he grabbed her purse. (R. 97, ll. 2-4). Nelson refused to let go until he threatened to shoot her, at which point she released, and Applicant ran out of the SUV to a nearby gas station. (R. 97, ll. 4-8). Nelson shouted after him to return the purse, but Applicant paid her no attention. (R. 97, ll. 8-12). Deprived of her purse and iPhone, Nelson knocked on doors at the apartment complex to borrow a phone to no avail, then drove to a Belk to call her mother and the police. (R. 97-99; R. 102-03). Nelson did not see her purse, its contents, or Applicant again until trial (R. 101). Nelson denied ever agreeing to have sex with Applicant, and asserted she was afraid for her life. (R. 114, ll. 1-9).

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Nelson initially did not tell her mother or the police about the sexual assault “[b]ecause [she] didn’t want to think it happened.” (R. 102-03; R. 128-29). Instead, Nelson only reported that she was robbed at gunpoint at the Burger King, prompting officers to respond. (R. 107-09; R. 129-30; State’s Trial Exhibit #21). Nelson also reported that she did not recognize her attacker, explaining at trial that she “wasn’t thinking about it clearly.” (R. 110-111). Nelson admitted that the story she told to 911 dispatch was a lie, and that she left things out because she “didn’t want to think it had actually happened.” (R. 130, ll. 1-15). Nelson agreed that law enforcement’s questioning of her was “rough.” (R. 112, ll. 15-21). Officer Sououd went so far as to warn Nelson that she could be charged with filing a false police report if she lied to police, which prompted Nelson to disclose the sexual assault. (R. 133-34; R. 142, ll. 3-12).

Officer Michael Dame, of the Myrtle Beach Police Department, assisted in Applicant’s

arrest. (R. 204-06). Multiple law enforcement officers positioned at the front and rear of the house around midnight between January 8 and 9, 2015, with Dame situated "to the back of the house to the right." (R. 206-07; R. 211, ll. 1-5). An officer knocked on the front door; "the back door flew open, and the subject exited very quickly out of the back of the house." (R. 207, ll. 4-1) While other officers pursued through yards and over fences, Dame took a wider route down the street and "saw the same subject that left the house going underneath a vehicle, cowering underneath a vehicle." (R. 207-08). Applicant was apprehended. (R. 208, ll. 6-16).

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Detective Jeremiah Beam, of the Myrtle Beach Police Department, responded to the Belk's at Coastal Grand Mall on January 8, 2015. (R. 232-35). Det. Beam acknowledged he was tough on Nelson to vet her complaint, and affirmed that Nelson never denied being sexually assaulted or being robbed at gunpoint. (R. 240-41). Det. Beam interviewed Applicant on January 9, 2015, after his arrest. (R. 242-45). Applicant was Mirandized and initialed the form utilized by the detective. (R. 243-45). Applicant asked for a lawyer after a couple of brief statements. (R. 252-54).

Vanessa Lynn Thompson, a resident of Myrtle Beach, decided one day in February 2015 to go check out a foreclosed, abandoned house that her sister had previously lived in. (R. 183-86; R. 190-91). While exploring the utility room, Thompson found a purse and "stuff scattered like it had been thrown out of the purse." (R. 186-87). Thompson's sister found more identification cards on the air conditioning unit. (R. 187, ll. 10-11). Thompson found a name tag for where the purse's owner worked and called the company try and alert the owner that she had found her pocketbook. (R. 187, ll. 12-22). Law enforcement returned the phone call, and Officer Brittany Southerland responded to the scene. (R. 188, ll. 5-13; R. 190-93; R. 237, ll. 9-13). At trial, Detective Beam noted that the house where the purse was found was along the direction of Applicant's flight from the scene after assaulting Nelson. (R. 239, ll. 9-25).

Counsel called expert witness Jessica Stowe, a forensic serologist with the South Carolina Law Enforcement Division. (R. 284-85). Stowe screened the sexual assault kit submitted to SLED and found neither pubic hair, spermatozoa, nor seminal components. (R. 286-296; Defendant's Trial Exhibit #16). Buccal swabs were taken from Norris, but no analysis was performed on them. (R. 294, ll. 22-25).

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Summary of Testimony from PCR Hearing

Applicant Testimony

Applicant testified that he met once with Counsel before trial. He stated that the meeting was the day before trial. Applicant stated he discussed the evidence against him and the elements of the charges with Counsel.

Applicant told the Court that he wrote three letters to Counsel beginning March 21, 2017. Applicant testified that in the second letter he told Counsel that he had a possible witness for his case, and he did not "positively know [when] he was going to Court." Applicant testified that in his last letter, dated April 5, 2017, he stated he lost the discovery he was given initially and wanted Counsel to provide more copies of it.

Applicant testified that his rights were violated when he asked for a lawyer on the day he was arrested and then the next day he was subject to a police interview after being Mirandized. Applicant asserted that he was promised a phone call and a reasonable bond in exchange for Applicant giving a DNA sample and answering some questions. On cross-examination, Applicant admitted that he had reviewed all discovery with Counsel and the *Jackson v. Denno*¹ hearing was fully explained to him.

¹ *Jackson v. Denno*, 378 U.S. 368 (1964).

Applicant stated that he did not believe Solicitors can make statements that suggest guilt over innocence in front of a jury during the State's closing argument. He insisted that it was a violation of his constitutional rights when facts were presented at his trial that pointed to his guilt because it indicated the prosecutor was using his authority unfairly to prejudice the jury. Additionally, Applicant claims the prosecutor's argument that Applicant is guilty is an impermissible expression of an opinion. Applicant believed the prosecutor bolstered the victim's testimony. Applicant ended his testimony by stating that he "didn't have a problem with the prosecutor saying he was not a twenty-two-year-old girl" during his closing statements.

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Counsel Testimony

Counsel testified he was aware of Applicant's allegations of ineffective assistance of counsel. Regarding the police interview, Counsel stated that there was most likely no *Miranda* violation because of the large difference in time between when Applicant claims he invoked his right to an attorney and when he was Mirandized and subsequently interviewed. Counsel testified that he watched the video of the interview which was only around six minutes long. Counsel stated he did not think this argument was worth pursuing because it rested on Applicant's telling of what happened and he said nothing incriminating in the interview. Further, Counsel explained that even if he had tried to raise that issue, he did not believe it would have any chance of being successful due to the evidence required to prove the violation occurred therefore would not have changed the overall outcome. Additionally, nothing from that interview was used at trial. Counsel also testified that he saw in the video of the interview that the detective told him he had the option not to talk.

Counsel testified that he reviewed the passages which Applicant claims constitute bolstering and stated that he did not believe they did. Counsel testified that his strategy was prepared two weeks before trial, but he was worried about the credibility of the victim and the

detective assigned this case. Counsel testified that he did a mock trial at the jail with Applicant as part of his strategy and preparation for this trial.

Counsel testified that many of the objections Applicant now asserts should have been made were purposefully not made because he wanted use to impeach in cross-examination. Counsel also noted that he didn't object to some questions by prosecution because he was going to ask the witness the same types of questions. Counsel recalled he did not object to the question to witness Detective Jeramiah Beam "are omissions lies in your book?" because he was going to ask the same thing. Counsel testified that he didn't make objections of "bolstering or vouching" because he didn't find them to have a valid legal basis. Counsel recognized that there were statements made that were false but not "bolstering". Counsel stated that he did not think there was anything impermissible in the State's opening and closing arguments.

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Prosecutor Testimony

Prosecutor testified that he was the lead prosecutor in the case. Prosecutor stated he believed that the credit at issue was whether the police department found credible evidence. Prosecutor testified that he did not believe he exceeded the scope of the evidence. Prosecutor asserted that it was acceptable to make a reasonable inference as to the gun's presence throughout this incident, as he did not proffer that the gun was held up to the victim's person the whole time. Prosecutor concluded his direct examination by stating that he never asked the jury to put themselves in the victim's shoes. On cross-examination, Prosecutor clarified that he did not believe a prosecutor may insert their own opinion, but he can argue what the evidence shows. Lastly, Solicitor clarified that it is prohibited to mischaracterize evidence and he did not do that.

Findings of Fact and Conclusions of Law

In a PCR action, Applicant bears the burden of proving the allegations in his application.

Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984). *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Improper Bolstering

“Improper bolstering is ‘testimony that indicates the witness believes the victim but does not serve some other valid purpose.’” *Chappell v. State*, 429 S.C. 68, 75, 837 S.E.2d 496, 499-500 (Ct. App. 2019) (quoting *Briggs v. State*, 421 S.C. 316, 325, 806 S.E.2d 713, 718 (2017)). “Improper bolstering also occurs when a witness testifies for the purpose of informing the jury that

the witness believes the victim, or when there is no other way to interpret the testimony other than to mean the witness believes the victim is telling the truth.” *Id.* “However, an expert’s testimony is not improper bolstering ‘when the expert witness gives no indication about the victim’s veracity[.]’” *Id.* (quoting *State v. Perry*, 420 S.C. 643, 663, 803 S.E.2d 899, 910 (Ct. App. 2017)).

“In an ineffective assistance case, ‘trial counsel’s failure to object to [improper bolstering] testimony does not remove a [] [PCR] applicant’s burden to prove prejudice.’” *Chappell*, 429 S.C. at 80, 837 S.E.2d at 502 (quoting *Thompson*, 423 S.C. at 246, 814 S.E.2d at 492). “The determination of whether a bolstering error is harmless depends on whether the case turns on the credibility of the victim.” *State v. Chavis*, 412 S.C. 101, 110, 771 S.E.2d 336, 341 (2015). “The outcome of a trial turns on the credibility of the victim when the State presents no physical evidence or ‘relie[s] solely upon the victim’s testimony to establish the details of the crime.’” *Chappell*, 429 S.C. at 80, 837 S.E.2d at 502 (quoting *Thompson*, 423 S.C. at 246, 814 S.E.2d at 494).

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HARRIS COUNTY
2022 APR 28 PM 3:43
JENNIFER E. CHAVIS
CLERK OF COURT
HARRIS COUNTY, SC

Applicant has not met his burden of proof concerning this allegation. This Court concurs with Counsel and Prosecutor in their assertions that none of the portions highlighted constituted improper bolstering. Additionally, several of the highlighted portions included questions Counsel intended to ask himself, which this Court finds are not appropriate for Counsel to object to. Further, this Court finds that none of the highlighted portions were so crucial as to undermine the results of the proceedings. Accordingly, because Applicant has not met either prong of the *Strickland* analysis, relief is denied on this ground.

Custodial Interview

Applicant claims Counsel was ineffective for failure to object to the custodial interview or move to suppress the interview on the grounds that Applicant invoked his right to counsel the day

before the police interview. Whether failure to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. *Strickland*, 466 U.S. at 680. If there is only one line of defense, counsel must conduct a “reasonably substantial investigation” into that line of defense. *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1252). However, if there are several lines of defense, counsel may still be effective even if every single line is not explored. *Id.* “[W]hen counsel’s assumptions are reasonable given the totality of the circumstances and when counsel’s strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial.” *Id.* at 681 *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1255). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 522 (citing *Strickland*, 466 U.S. at 690).

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Regarding failure to alert the applicant of a defense specifically, Counsel will not be found ineffective if there was inadequate evidence to support the defense, if the defense did not exist at the time of trial, or another avenue of defense existed. *See McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995) (stating that failure to state an entrapment defense was not ineffective when the applicant denied any wrongdoing); *Arnette v. State*, 306 S.C. 556, 413 S.E.2d 803 (1992) (stating that failing to inform of a defense was not ineffective when there was no evidence at trial that supported the defense); *Robinson v. State*, 308 S.C. 361, 417 S.E.2d 361, 417 S.E.2d 88 (1992) (stating that Counsel was not ineffective when failing to state a defense that was not recognized by the Court until six years later and was just recently acknowledged by the scientific community).

Counsel credibly testified that he did not think this was a winnable argument, in part because it was based upon Applicant’s word alone. He stated that he thought the argument chosen

during the *Jackson v. Denno* hearing was the most compelling argument regarding the statement and stood by that at the PCR hearing. This Court agrees. This Court finds Counsel made a reasonable decision and Applicant's chosen argument would not have been successful. Further Counsel stated that the Applicant said nothing incriminating in the interview, nor was it used in the trial in this case. Accordingly, because there is no deficiency, there can be no prejudice. Thus, relief is denied on this ground.

Prosecutor Opening/Closing – Golden Rule

Applicant claims Counsel was ineffective for failure to object to the State's opening and closing statements on the grounds that the arguments implicated the golden rule argument. To find whether a prosecutor's comments in closing argument violated a defendant's due process rights, the Court must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial. *Fortune State*, 428 S.E.2d 545, 549, 837 S.E.2d 37, 39 (2019).

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CLERK OF COURT
HENRY COUNTY, SC

"It is undisputed that closing argument is not merely a time for recitation of uncontroverted facts, but rather the prosecution may make fair inferences from the evidence." *United States v. Francisco*, 35 F.3d 116, 120 (4th Cir. 1994); *see also State v. New*, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) ("Undoubtedly, a Solicitor may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony."). A prosecutor should "prosecute with earnestness and vigor" and "may strike hard blows, [but] is not at liberty to strike foul ones." *Berger v. United States*, 295 U.S. 78, 88 (1935). "If a Solicitor's closing argument remains within the record evidence and the reasonable inferences therefrom, no error occurs." *New*, 338 S.C. at 319, 526 S.E.2d at 240. "On the other hand, a closing argument may be held improper where it appeals to personal bias or arouses the jury's passions or prejudice."

Id. “[I]mproper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none.” *Berger* at 88.

“Improper comments do not automatically require reversal if they are not prejudicial to the defendant.” *Id.*, 428 S.C. at 550, 837 S.E.2d at 40 (quoting *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). A PCR court must view the alleged impropriety of the prosecutor’s argument in the context of the entire record, and the applicant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *Id.*

Golden Rule arguments made in closing are generally not permissible because they generally ask the juror to depart from neutrality and to decide based upon personal bias, not the evidence itself. *See e.g. Brown v. State*, 383 S.C. 506, 516-17, 680 S.E.2d 909, 911 (2009) (finding that Counsel was deficient for failure to object to the prosecutor asking the jury to “speak up” for the three-year-old victim).

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CLERK OF COURT
DORR COUNTY, SC

Applicant has not met his burden of proof concerning this allegation. This Court has carefully reviewed the transcript and concurs with Counsel and Prosecutor in their assertions that the opening and closing arguments were not improper or objectionable. Further, this Court finds that none of the highlighted portions were so crucial as to undermine the results of the proceedings. Accordingly, because Applicant has not met either prong of the *Strickland* analysis, relief is denied on this ground.

Prosecutor Closing – Outside Scope of Evidence

Applicant claims both ineffective assistance of counsel for failure to object to the prosecutor’s closing, as well as prosecutorial misconduct, because the prosecutor allegedly his closing argument outside of the scope of the evidence. This Court finds this allegation is without

merit and that the conclusion consisted of evidence in the record and reasonable inferences derived therefrom. The statement was not objectionable, Counsel was not deficient for failing to launch frivolous objections during the closing, and no prejudice derives therefrom. Accordingly, relief is denied on this ground.

Prosecutor Closing – Personal Opinion

Applicant claims both ineffective assistance of counsel for failure to object to the prosecutor’s closing, as well as prosecutorial misconduct, because the prosecutor allegedly his closing argument around his opinion. This Court finds this allegation is without merit and that what Applicant described is a prosecutor’s closing, built around the State’s theory of the case. The statement was not objectionable, Counsel was not deficient for failing to launch frivolous objections during the closing, and no prejudice derives therefrom. Accordingly, relief is denied on this ground.

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BENJAMIN N. ELYS
CLERK OF COURT
FORRY COUNTY, SC

Conclusion


Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

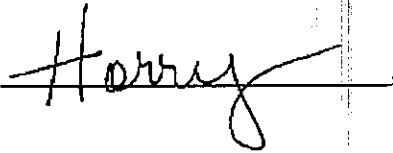
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry’s written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel’s assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant’s behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 21 day of February, 2023.


 DEBRA R. MCCASLIN
 Chief Administrative Judge
 Fourth Judicial Circuit


 _____, South Carolina

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 Horry County
 2023 APR 28 P 3:43
 RENEE N. ELVIS
 CLERK OF COURT
 Horry County, SC

DOCKET NO. 2015-GS-26- 00969

WITNESSES

J Beam Myrtle Beach Police Department

ARREST WARRANT NUMBER

2015A2620600106
CDR: 0095 16-03-0910
DOA: 1/9/2015

ACTION OF GRAND JURY

TRUE BILL

B. Harris
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

The State of South Carolina

County of Horry

Martin D. Spratlin 15H00330

COURT OF GENERAL SESSIONS

MARCH, 2015 TERM

THE STATE

VS.

David James Welch
W/M
[REDACTED] Oak Drive
Myrtle Beach, SC 29577
DOB: 1995 [REDACTED]
SSN: [REDACTED]

Ralph Wilson Jr.
ATTORNEY: ~~W. Thomas Floyd~~

**Indictment for
KIDNAPPING**

Jimmy A. Richardson, II, Solicitor

ORIGINAL

**FILED
HORRY COUNTY**

2015 MAR 27 PM 4:28

**MELANIE HUGGINS-WARD
CLERK OF COURT**

**DATE RECEIVED FROM
GRAND JURY**

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on March 26, 2015, the Grand Jurors of Horry County present upon their oath:


KIDNAPPING

CDR: 0095 16-03-0910

17:00
Date
CANCELLED
2015

That David James Welch did in Horry County on or about January 8, 2015, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Jerrica N., without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

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MAR 27 2015
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STATE OF SOUTH CAROLINA

COUNTY OF Horry VS. David James Welch

AKA: _____
Race: WHITE Sex: M Age: 21
DOB: 1995 SS#: _____
Address: Oak Drive
City, State, Zip: Myrtle Beach, SC 29577
DL#: _____ SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping (0-30 years)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2600969
A/W#: 2015A2620600106
Date of Offense: 1/8/2015
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or 2nd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____ SCB80071 _____
Holford, Joshua D. SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 24 ~~years~~ years or under the Youthful Offender Act not to exceed 18 years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: 2015-5526-977

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40, to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. 2 years of in detention time. No credit for time to multiple victims
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 250 beginning 5/20/2017
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.75

TOTAL \$ 128.75 + 40.00 = 168.75

Clerk of Court/ Deputy Clerk Renee N. Ellis
Court Reporter: Dixie Eubank
SCCA/217 (07/2016)

Presiding Judge _____
Judge Code: _____
Sentence Date: 4/20/17

WITNESSES

J Beam Myrtle Beach Police Department

The State of South Carolina
County of Horry.

Martin D. Spratt III

15H00330

COURT OF GENERAL SESSIONS

MARCH, 2015 TERM

FILED
HORRY COUNTY
2015 MAR 27 PM 4:20
MELANIE HUGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

ARREST WARRANT NUMBER

2015A2620600109

CDR: 0160 16-03-0652

DOA: 1/9/2015

THE STATE

vs.

David James Welch
W/M
[REDACTED] Oak Drive
Myrtle Beach, SC 29577
DOB: 1995 [REDACTED]
SSN: [REDACTED]

Ralph Wilson Jr.
ATTORNEY: ~~W. Thomas Floyd~~

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: MAR 26 2015

VERDICT

Indictment for

CRIMINAL SEXUAL CONDUCT, FIRST DEGREE

Jimmy A. Richardson, II, Solicitor

ORIGINAL

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT


At a Court of General Sessions, convened on March 26, 2015, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SEXUAL CONDUCT, FIRST DEGREE

CDR: 0160 16-03-0652

That David James Welch did in Horry on or about January 8, 2015, engage in sexual battery with Jerrica N. (victim), using aggravated force and/or said Defendant did engage in a sexual battery with the victim while the victim was also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act, all in violation of Section 16-03-0652(1)(a) and/or (b), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

65:0049 U.S. MAR 31 2015

