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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS)
FOR THE 13TH JUDICIAL CIRCUIT)

ROBERT DAVIS SMITH, JR.)
SCDC #285136)
Applicant,)

Case No.:2019-CP-23-4401

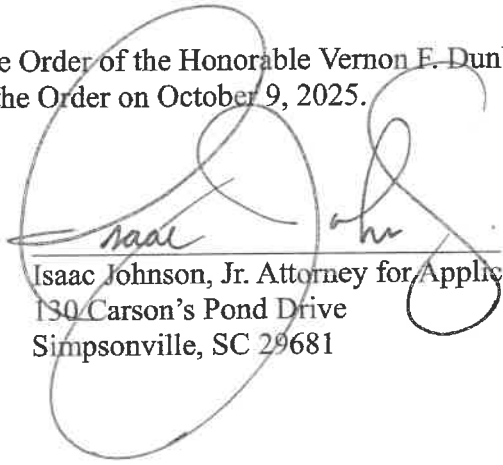
vs)

NOTICE OF APPEAL

STATE OF SOUTH CAROLINA,)
Respondent)

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Robert Davis Smith, Jr., appeals the Order of the Honorable Vernon F. Dunbar, dated September 30, 2025. I received a copy of the Order on October 9, 2025.



Isaac Johnson, Jr. Attorney for Applicant
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Simpsonville, SC 29681

Other Counsel of Record
Kaylee Kemp
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PROCEDURAL HISTORY

Applicant is presently incarcerated in the South Carolina Department of Corrections serving a 23-year sentence for first degree criminal sexual conduct (CSC). During its April of 2014 term, the Greenville County Grand Jury indicted Applicant for: Count I - first degree CSC, Count II – IV (3 counts) - kidnapping, Count V - first degree burglary, Count VI - first degree assault and battery, and Count VII - possession of a weapon during the commission of a violent crime (2013-GS-23-7305).

On March 2-4, 2016, Applicant proceeded to a jury trial on the CSC charge, the burglary charge, and the weapons charge with the Honorable Brian M. Gibbons presiding. Applicant was present and represented by Mr. Chambers. Kimberly B. Howard and Kathryn H. McCall prosecuted the case on behalf of the State. At the conclusion of trial, the jury convicted Applicant as indicted on the CSC charge and acquitted Applicant of the burglary charge and the weapons charge. Judge Gibbons sentenced Applicant to imprisonment for 23 years with credit for time served.

DIRECT APPEAL

Applicant, through counsel, filed a timely notice of appeal. Appellate Defender Susan B. Hackett the South Carolina Commission on Indigent Defense perfected the appeal on October 5, 2017, raising the following issue:

Did the trial judge err in admitting Appellant's statements to police and a photographic lineup identification where law enforcement violated Appellant's rights pursuant to the Fourth and Fourteenth Amendments to the United States Constitution by arresting Appellant without probable cause?

Respondent filed its Final Brief on September 20, 2017. The South Carolina Court of Appeals affirmed in an unpublished opinion. *State v. Smith*, Unpublished Op. No. 2018-UP-466

(S.C. Ct. App. filed December 19, 2018). On January 3, 2019, Applicant filed a Petition for Rehearing. On January 17, 2019, the Court of Appeals denied the rehearing request without requiring a response from Respondent. Subsequently, Applicant filed a Petition for Writ of Certiorari in the South Carolina Supreme Court on February 2, 2019. Respondent submitted the Return to the Petition on February 5, 2019. On June 28, 2019, the South Carolina Supreme Court denied certiorari review. The Remittitur was issued on July 2, 2019.

ALLEGATIONS RAISED & RELIEF SOUGHT

In his initial application for post-conviction relief, Applicant alleged he is being held in custody unlawfully due to the following allegations:

1. Ineffective Assistance of Trial Counsel
 - a. “Failure to object to the portions of the video in which the police insisted that I prove my innocence;”
 - b. “The other was that it sounded like I invoked my rights to counsel during the interrogation;”
 - c. “Failure to make contemporaneous objects [sic];”
 - d. “Failure to argument [sic];” and
 - e. “Counsel denied Applicant his rights to a speedy trial.”
2. Ineffective Assistance of Appellate Counsel;
 - a. “The appellate counsel’s failure to raise issue that denied of a directed verdict, motion for lack of independent evidence corroborating defendant’s extra-judicial.”;
 - b. “He has three arguments of great merit rendering his conviction fundamentally unfair;”
 - c. “The counsel in his first PCR Application was ineffective in failing to make those arguments.”; and
3. Prosecutorial Misconduct;
 - a. The State violated Brady rights.

On August 13, 2019, Susannah Ross, Esq. was appointed to represent Applicant. Applicant, through counsel, filed an amended application on March 13, 2020, raising the following allegations:

1. Ineffective assistance of trial counsel for failing to move to quash the indictment or investigate the grand jury proceeding;
2. Ineffective assistance of trial counsel for failing to object to investigator's bolstering comment that it was not very common to recover weapons in violent crimes; and
3. Due process violations stemming from irregularities in the grand jury proceeding.

Applicant moved to have Ms. Ross relieved, and the court granted his motion. Sarah Henry, Esq. was subsequently appointed to represent Applicant, however Ms. Henry moved to be relieved from representation considering she participated in his trial representation. The Court granted the motion. On August 30, 2022, Isaac Johnson, Esq. was appointed to represent Applicant. Applicant, through counsel, moved to obtain fees for the services of an investigator to locate a witness based on the following facts:

1. Applicant has filed an application for PCR, for his March 4, 2016, conviction for criminal sexual conduct, first degree. He was tried and sentenced to twenty-three years imprisonment.
2. Applicant states he has one witness, Sarina Brown, a nurse at Greenville Memorial Hospital who is material to his case because she might substantiate his contention that he did not commit a sexual battery upon the alleged victim.
3. PCR counsel states that an investigator might assist him in locating this witness.

Applicant's Motion for Expenses was granted, and the Order was filed on July 30, 2024.

SUMMARY OF FACTS ADDUCED FROM TRIAL¹

Around 11:00 AM on the morning of June 17, 2013, Melissa Fortner (“Victim”), an eight-month-long resident of the Regal Inn in Greenville, South Carolina, began cleaning the second-floor motel room she shared with her boyfriend, Walter Pope, and her two young children. At the time Pope was away at work and her two children were in the room with her. (ROA App. pp. 47-50, 56, 63, 66, 76, 80, 122-123, 130). During the cleaning process, Victim left the door open so she could easily put the bed sheets outside for the motel’s maid to collect. (ROA App. pp. 49-50). As she continued to clean, a man she did not know came by her room and asked for an individual called “Mike Mike” or “Mookie.” (ROA App. p. 50, 69, 76, 198). Victim responded she did not know the person the man was looking for, and the man walked off down the motel corridor. (ROA App. p. 50, 69-70). Victim then resumed cleaning her room. (ROA App. p. 50).

A short time later, the man returned to Victim’s room, came inside, pulled out a box cutter, told her to keep quiet, and shut the door behind him. (ROA App. pp. 51, 70). After that, the man advanced towards Victim and pushed her onto one of the beds in the room, and Victim responded by physically resisting the man. (ROA App. pp. 51, 73). During the ensuing struggle, the two fell off the bed onto the floor, and the man began choking Victim to such an extent that she could barely breathe. (ROA App. p. 51, 73-75). The man then pulled down his pants, shifted Victim’s underwear to the side, and proceeded to rape her. (ROA App. pp. 52, 74-75). After that, the man directed Victim to go into the bathroom, and she complied. (ROA App. pp. 52-53). The man then rapidly fled from the motel room. (ROA App. pp. 53-54).

As soon as the man was gone, Victim ran to the door and locked it. (ROA App. p. 53). She

¹ The transcript of record was initially divided into three volumes. The page numbers from the appendix from Applicant’s appeal challenging the affirmation of Applicant’s conviction and sentence on direct appeal is relied upon here.

then quickly called 911 and reported the sexual assault: (ROA App. p. 44, 55). Minutes later, law enforcement officers from the Greenville Police Department responded to the motel and began investigating the incident. (ROA App. pp. 56-57, 132-133, 144). As part of the investigation, the officers spoke with Victim about what occurred, and she advised them of the details of the sexual assault. (ROA App. pp. 57, 134, 142, 144). In recounting the incident, Victim described her assailant as a black male wearing a black three-button shirt with a white shirt underneath it and jeans. (ROA App. pp. 134-135, 142, 151, 197). Victim was then transported away from the scene and to Greenville Memorial Hospital. (ROA App. pp. 59, 82-83).

At the hospital, Dr. Alissa Manfredi, an emergency room doctor, provided treatment to Victim. (ROA App. pp. 59, 85-86, Volume I). During the course of that treatment, Victim reported she had been choked and sexually assaulted earlier that day, and Dr. Manfredi conducted a physical examination of Victim's body. (ROA App. pp. 87, 91-92, Volume I). Based on that examination, Dr. Manfredi concluded Victim appeared to be in pain and distress, had bruising and swelling evident on her neck, and had lacerations to her vagina. (ROA App. pp. 91-92, Volume I).

Meanwhile, officers continued their investigation into the sexual assault back at the Regal Inn. (ROA App. pp. 100, 146). In doing so, they spoke with Lisa Crowder, who was a housekeeper at the motel, and Crowder recounted she observed a man with a camouflage bag run down from the second floor and away from the motel "in a hurry" while trying to pull his pants up. She recounted that this occurred after her boyfriend had informed her earlier that morning that he had seen a camouflage bag on the ground just around the corner from Victim's room. (ROA App. pp. 97-102, 146, 151). Likewise, as part of the investigation, the officers searched Victim's motel room and during the search, located a cell phone they were advised did not belong to Victim or her boyfriend on the floor of the room in between the two beds. (ROA App. pp. 57-58, 148-149).

However, the officers were not able to obtain any information from the phone that day despite obtaining a search warrant for it, and they were ultimately unable to identify a suspect on the date of the incident. (ROA App. pp. 147-150).

Thereafter, on the following morning, the cell phone discovered in Victim's motel room rang, and Detective Tim Conroy of the Greenville Police Department answered the call. (ROA App. pp. 15-16, 111, 150). During the ensuing call, the caller indicated he had lost the phone, and the two arranged to meet with one another at Labor Smart-an "on-demand" staffing company located in close proximity to the motel where the phone was found-so the phone could be returned. (ROA App. pp. 16, 79, 105-106, 108, 115, 150-152). Detective Conroy then travelled to the Labor Smart office, and Applicant, who matched the description of and was wearing the exact same attire as Victim's assailant, came outside of the office along with his boss, Jim Sawyer. (ROA App. pp. 6, 15, 112; 152; 173-174, 180). Upon encountering Applicant, Detective Conroy briefly spoke with him before placing him in handcuffs, taking him into custody, and advising him he wanted to speak with him about something that occurred on the preceding day. (ROA App. pp. 6-7, 16-17, 112, 152, 176, 180). Detective Conroy then retrieved Applicant's camouflage backpack from the office and transported him to the police department. (ROA App. pp. 152-153). At the police department, the detective informed Applicant of his rights, and Applicant initialed and signed a form waiving those rights. (ROA App. pp. 7, 9, 155-157). Detective Conroy then spoke with Applicant about his activities on the day of the incident, and Applicant provided a variety of different accounts of what had occurred on that day. (ROA App. p. 158; State's Exhibit 9 (Recorded Statement)).

Initially, Applicant stated he went to the Labor Smart office on the morning of the incident, found there was no work for him that day, took a bus ride away from the area, ate lunch, went to

a friend's house, borrowed a U-Haul truck, realized his phone was missing, went back downtown, and had a man call his phone to help him find it. (State's Exhibit 9). The detective then advised Applicant he intended to show a photographic lineup to Victim, and Applicant claimed he had been working on cars with his father on the date of the incident, acknowledged he saw a lot of police activity at the motel that day, and admitted he asked a woman if she knew "Mike." (State's Exhibit 9). Eventually though, Applicant conceded he was actually both at the motel on the date of the incident and spoke with Victim, but he claimed he did not do anything and had no physical contact with her. (State's Exhibit 9). He further insisted someone else must have taken his cell phone into Victim's motel room. (State's Exhibit 9). However, after further questioning, Applicant shifted his story again and claimed Victim offered to have sexual intercourse with him in exchange for money needed for "baby milk" and diapers, he had consensual sexual intercourse with her in the motel room after giving her \$25, and he left after the intercourse. (State's Exhibit 9). Furthermore, Applicant acknowledged he left his camouflage backpack outside of the motel room during the sexual intercourse, insisted he did not leave his phone in the room, and offered to provide some unspecified information to the detective if he was allowed to "walk." (State's Exhibit 9). Following those remarks, Detective Conroy formally arrested Applicant in connection to the sexual assault at the conclusion of the interview. (ROA App. pp. 160, 167).

On the following day, Detective Conroy prepared a six-person photographic lineup that included Applicant's photograph, and he returned to the Regal Inn and presented it to Victim. (ROA App. pp. 59-60; p. 160). Upon seeing the lineup, Victim immediately selected Applicant's photograph as the photograph of her assailant without any hesitation or doubt. (ROA App. pp. 61, 160-161). Victim then circled Applicant's photograph on the lineup sheet and signed it. (ROA App. pp. 61-62, 161).

Subsequently, Applicant was indicted for numerous offenses, including first-degree CSC, first-degree burglary, and possession of a weapon during the commission of a violent crime, and he proceeded forward to trial on those three charges.

Victim, who was married by the time of trial, recounted to the jury the traumatic details of the sexual assault while also identifying Applicant in the courtroom as her assailant. (ROA App. pp. 47-80). In addition to Victim's testimony, Crowder testified about her observations at the motel on the morning of the incident and noted she observed a black male with a camouflage bag hurriedly fleeing from the motel's second floor at that time. (ROA App. pp. 97-100). Crowder further acknowledged drug activity was common at the motel, and it was possible acts of prostitution occurred there, but she indicated she was not aware of any issues occurring that involved Victim and her boyfriend while they lived at the motel. (ROA App. pp. 103-104).

Additionally, Walter Pope, who was Victim's boyfriend at the time of the incident and husband by the time of trial, testified about how Victim was distraught after the sexual assault, experienced behavioral changes, and began having difficulty sleeping. (ROA App. pp. 121-125). Pope further recounted that he had observed Applicant with a camouflage bag before when they were both working at Labor Smart, but he stated he had never actually spoke or interacted with Applicant during that time period. (ROA App. pp. 129-130). Furthermore, Sawyer recounted Applicant came into the Labor Smart office on the date of the sexual assault but left around 10:00 AM because there was no work available for him that day. (ROA App. p. 109). After that, Sawyer indicated Applicant came to the office the next morning, asked him if he had heard anything about the "commotion" that had taken place at the Regal Inn, and advised him he had lost his phone. (ROA App. pp. 110-111). Sawyer testified he then called Applicant's phone to help him locate it, someone answered, and Applicant was taken into custody by the police a short time later. (ROA

App. pp. 111-112).

Beyond that testimony, the law enforcement officers and other personnel who responded after the sexual assault was reported testified about Victim's statements following the incident, Victim's description of the assailant, Victim's injuries at that time, and the details of the ensuing investigation that culminated in Applicant's arrest. (ROA App. pp. 41-46, 81-83, 85-96, 132-198). At the conclusion of trial, Applicant was found guilty of first-degree criminal CSC and acquitted of first-degree burglary and the weapons charge. (ROA App. p. 259).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

At the outset of the evidentiary hearing, the parties clarified that Applicant intended to proceed on the sole allegation that trial counsel was ineffective for failing to call the nurse who administered the sexual assault kit of the victim to testify at trial. (PCR Tr. p. 5-7).

INEFFECTIVE ASSISTANCE CLAIMS

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 must apply 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). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). 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. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality

of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Ineffective Assistance of Counsel Claim

Failure to Call Nurse Brown

Applicant alleges that trial counsel was ineffective for failing to call Nurse Serena Brown, hereinafter, “Nurse Brown,” considering she was the nurse who performed the victim’s sexual assault examination and thereafter indicated her conclusions to the officer who retrieved the examination kit. At the evidentiary hearing, Mr. Chambers indicated that the supplemental incident report generated by the officer who spoke with Nurse Brown suggested that Nurse Brown relayed to him that it was her impression that the victim was not being truthful because she showed no emotion and that she did not believe there was penetration. (PCR Tr. p. 42).

Dr. Manfredi’s Testimony at Trial

At trial the State called Dr. Alissa Manfredi to testify to her report regarding the treatment of the victim after the incident. She testified that in these circumstances, the patient is triaged by a nurse in that part of the emergency department, a history is taken, the presenting problem is expressed and then the patient is brought to the appropriate part of the emergency department. (ROA App. pp. 86-87). In the victim’s case where the presenting problem expressed was that she had been sexually assaulted, the patient was then brought to a specific part of the emergency

department and evaluated by a nurse that took care of sexual assault victims. (ROA App. p. 87). Dr. Manfredi testified that if the patient is brought in by officers and 911 has been called, the officers bring a sexual assault kit that is performed by a specially trained nurse in that area. (ROA App. pp. 87-88). During that examination, the patient is interviewed and asked about the events surrounding the action, a “head-to-toe” examination is performed, and samples are taken from oral, vaginal and rectal swabs, as well as a pelvic exam of the speculum. (ROA App. pp. 88-89). Further, notes are taken by the nurse or doctor who is performing the examination. (ROA App. p. 89).

As to the specifics of the victim’s sexual assault examination, Dr. Manfredi indicated her notes showed that the victim was evaluated for sexual assault and evaluated for right side neck pain because the victim reported that the assailant choked her. (ROA App. p. 91). Dr. Manfredi then prescribed medication to help with inflammation and pain. (ROA App. p. 91). Dr. Manfredi noted that she recorded “right-sided neck tender, slight swelling and red marks and bruising” in relation to the neck exam. (ROA App. p. 91). She testified that there was physical examination findings based on the nursing assessment, which occurred prior to her examination, that are in bold which indicated that the bold information had to be entered. (ROA App. p. 91). The bolded information in the victim’s assessment was that “patient appears in pain and distress. Patient is oriented to person, oriented to time.” (ROA App. p. 92). Other bolded physical exam findings reflected that lacerations to the genital area and bloody vaginal discharge was present. (ROA App. p. 92).

On cross-examination, Dr. Manfredi confirmed that the findings of lacerations to the vagina were documented by the nurse and not her own observation to the best of her recollection. (App. p. 95). Dr. Manfredi confirmed that the notes indicated that the victim was on her menstrual cycle and that the bloody discharge could have resulted from that. (ROA App. p. 96).

Applicant's Testimony at the PCR Evidentiary Hearing

Applicant testified that Mr. Chambers visited him around two or three times prior to his trial. He testified that they had discussed the State's evidence against him, and he relayed to Mr. Chambers that the victim had lied, and that he was at the Regal Inn to get heroin and that he didn't know what happened after that. (PCR Tr. p. 11). As to Nurse Brown, Applicant testified that he and Mr. Chambers did not discuss calling Nurse Brown. (PCR App. 18). He also testified that the only place her name is mentioned is in the medical report. He testified that he had the supplemental incident report and that he asked Mr. Chambers to subpoena her and Mr. Chambers stated he didn't think they would need her to testify. (PCR App. pp. 19-20). Applicant confirmed that his defense at trial was that he had consensual intercourse with the victim because she had offered to have intercourse with him for money. (PCR Tr. p. 22). Applicant testified that he wanted Nurse Brown to testify because she could tell the truth about what happened, what she found on that date, and that hopefully she could clear him of that charge. (PCR Tr. p. 27).

Trial Counsel's Testimony at the PCR Evidentiary Hearing

The State called Mr. Chambers to testify, and on direct examination, Mr. Chambers stated that he had been practicing law for approximately 36 years and elaborated on his professional history. Mr. Chambers testified that he is currently a Public Defender at the Greenville County Public Defender's Office and handles a variety of cases from DUIs to murder charges. Mr. Chambers recalled that he was appointed to represent Mr. Smith while he was in private practice under the South Carolina Appellate Rule 608 contract. He testified that he was unable to locate Applicant's criminal case file, however he recalled their discussions when he met with him prior to trial. (PCR Tr. pp. 34-35).

In preparation of trial and discussing their defense strategy, Mr. Chambers testified that Applicant indicated that he had intercourse with the Victim. He recalled that the hotel where the crime occurred was a known place for transient living, prostitution and drug use. (PCR Tr. p. 36). He testified that Applicant indicated to him that he was staying at the hotel doing work for Labor Finders and that the victim was also staying there with her two kids. (PCR Tr. p. 37). Applicant told him that he knew the victim, and he had worked with her boyfriend at Labor Finders despite her testifying otherwise at trial. Mr. Chambers testified that at that time, Applicant relayed to him that the victim was a prostitute and that he paid to have sex with her. (PCR Tr. p. 37). Mr. Chambers testified that he did not recall much about Nurse Brown, however, he believed that Dr. Manfredi had indicated that there was some indication of force based on her trial testimony. Mr. Chambers added that an indication of force would not be consistent with consensual intercourse, but not necessarily inconsistent depending on a number of factors. (PCR Tr. p. 38). Mr. Chambers testified that if he had thought that Nurse Brown's testimony would have been any help to their case then he would have attempted to locate and call her. (PCR Tr. p. 38).

On cross-examination, Mr. Chambers testified that at the time of trial he would have been very familiar with the discovery of Applicant's case, however he could not remember any discussion about Nurse Brown. (PCR Tr. p. 39). Applicant's counsel attempted to refresh Mr. Chamber's recollection with the supplemental incident report that was generated by the officer that indicated Nurse Brown's impressions of the victim. Mr. Chambers testified that Nurse Brown's inference appeared to be that she did believe the victim was being completely truthful because she showed no emotion, and she didn't believe there had been any penetration. He added that whether there was penetration was not an issue considering Applicant's defense was that the intercourse was consensual. (PCR Tr. p. 42).

Discussion

As an initial matter, the supplemental incident report made by the officer retrieving the victim's sexual examination kit was not introduced into evidence, nor was Nurse Brown or the officer presented to testify to the report. Our Supreme Court has repeatedly held that the Applicant must present the testimony of the witness he argues is favorable or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 810 (1998). Even so, a portion of Nurse Brown's impressions of what she relayed to the officer were referenced through Mr. Chamber's testimony.² This Court finds that counsel was not deficient for omitting Nurse Brown's testimony at trial, and that her testimony did not provide for reasonable probability of a different outcome. *Strickland, supra*.

Applicant's defense at trial was that he and the victim had consensual sexual intercourse, and that he paid her for doing so. In contrast, the victim testified that the Applicant forcefully entered her room, choked and raped her. At the PCR evidentiary hearing, Applicant's counsel showed Mr. Chambers the supplemental incident report generated by the officer who retrieved the sexual assault kit and Mr. Chambers testified that based on the officer's summary, Nurse Brown's inference appeared to be that she did not believe the victim was being completely truthful because the victim showed no emotion, and she didn't believe there had been any penetration. (PCR Tr. p. 42).

² On re-direct examination, Applicant attempted to testify as to the contents of the supplemental incident report. Respondent objected on the basis that the report had not been introduced into the evidence and that the appropriate witnesses were not present to testify in regard to the report. This Court sustained Respondent's objection but allowed Applicant to proffer testimony in which he read the substance of the supplement incident report. At the conclusion of the hearing, this Court sustained Respondent's objection finding that the testimony constituted hearsay. (PCR App. pp. 28- 33).

When asked if the contents of the statement in the report could have been helpful to Applicant's defense, Mr. Chambers testified that the paragraph alone might have been helpful but that the officer's recollection in the report was hearsay and inadmissible at trial. He adds that there may have been other things that he looked into that led him to believe that it was not a good idea to call Nurse Brown or that it would not be necessary to call her as a witness. (PCR Tr. pp. 42-43, 45). He repeatedly notes that he cannot specifically recall why he did or did not call her as a witness. (PCR Tr. p. 43). Further, he correctly recalled that Dr. Manfredi testified at trial that there were indications of force such as bruising on the victim's neck and vaginal lacerations. (PCR Tr. 38). Dr. Manfredi also testified that her notes reflected that the victim appeared to be in pain and distress. (ROA App. p. 92).

Though counsel cannot specifically recall discussing Nurse Brown as a potential witness or why he did not call her as a witness, his omission does not automatically demonstrate deficiency. In fact, "[c]ounsel's performance is accorded a favorable presumption," and it must be initially assumed that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting *Strickland*, 466 U.S. at 690, 104 S.Ct. 2052). Applicant offered that Nurse Brown's indication to the officer was that the victim was not being truthful because she showed no emotion and that she did not believe there was penetration. (PCR Tr. p. 42). Mr. Chambers testified that the portion of the report regarding Nurse Brown's impression of the victim was a hearsay statement from the officer. (PCR Tr. p. 43). Nurse Brown did not testify at the evidentiary hearing to relay her own observations - whether that be to confirm or dispute the officer's report - and this Court has not had the opportunity to pass on her credibility. As such, in affording Mr. Chambers the favorable presumption that *Strickland* requires, and in light of Applicant's failure to

demonstrate otherwise, Mr. Chambers was not deficient in his representation for not calling Nurse Brown to testify.

Considering that Applicant's defense was that the intercourse was consensual, testimony discounting that penetration occurred is inconsistent with the defense's explanation of events. Further, the contention that the victim showed no emotion during the exam has no bearing on the evidence of which Applicant was convicted. Applicant was identified by the victim, as well as identified as being present by other witnesses at the Regal Inn during the period of time the assault occurred. Additionally, Applicant's phone was discovered in the victim's hotel room. After providing investigators with a variety of different stories and denying any involvement with the victim, Applicant acknowledged he left his camouflage backpack outside of the motel room during the sexual intercourse, insisted he did not leave his phone in the room, and offered to provide some unspecified information to the detective if he was allowed to "walk." (State's Exhibit 9).

As to the evidence before this Court, Nurse Brown's potential testimony is "mere speculation" considering she could dispute the officer's recollection as he indicated in the report. *See Glover v. State*, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995); *see also Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993) ("pure conjecture as to what a witness's testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different"). Based on the evidence presented at trial and at the evidentiary hearing, there is not a reasonable probability that the outcome would have been different had the jury heard the information which Applicant has presented that Nurse Brown would have testified to. Applicant has not demonstrated Mr. Chamber's omission of Nurse Brown's testimony "actually had an adverse effect on the defense." *Strickland*, 466 U.S. at 693, 104 S.Ct. 2067 (holding that even if

counsel's errors were unreasonable, the defendant must show that the reliability of the result of the proceeding was influenced, not just that there is some conceivable effect on the outcome).

Therefore, Applicant has failed to establish that counsel was deficient in his representation. Further, Applicant has failed to show that there is a reasonable probability the outcome of trial would have been different had counsel called Nurse Brown to testify as to the supplemental incident report. *Strickland, supra*. Accordingly, this allegation is **DENIED** and **DISMISSED**.

CONCLUSION


Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations during his plea hearing. Therefore, this PCR application must be **DENIED** and **DISMISSED** with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. Applicant's application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED THIS 30th DAY OF September, 2025.


THE HONORABLE VERNON F. DUNBAR
Presiding Judge, Thirteenth Judicial Circuit