

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

John C. Hayes, III, Circuit Court Judge

RECEIVED

DEC 31 2013

S.C. Supreme Court

ADAM LEE BERARD

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001351

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did trial counsel provide ineffective assistance in violation of Petitioner's rights pursuant to the Sixth and Fourth Amendments to the United States Constitution, when he opened the door to the admission of evidence regarding Petitioner's prior criminal record, including a conviction for gross sexual imposition, which was especially harmful during Petitioner's trial for criminal sexual conduct, where the prosecution failed to present evidence of penetration?

STATEMENT

On August 21, 2008 the York County grand jury indicted Petitioner for assault and battery with intent to kill and criminal sexual conduct in the first degree. App. 1017-1020. On September 17, 2009, the York County grand jury indicted Petitioner for burglary in the first degree and kidnapping. App. 1021-1024. Petitioner was tried before the Honorable John C. Few and a jury during the week of December 14, 2009. Mindy Lipinski prosecuted the matter, and Gary Lemel represented Petitioner. App. 1. The jury found Petitioner guilty as charged. App. 893, lines 1 – 13. Judge Few sentenced Petitioner to twenty years' imprisonment for assault and battery with intent to kill, thirty years' imprisonment for criminal sexual conduct in the first degree, thirty years' imprisonment for kidnapping, and life imprisonment for burglary in the first degree.¹ App. 899, line 17 – App. 900, line 4.

Petitioner filed a notice of appeal. Robert Pachak filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967) raising a directed verdict issue. App. 902 – 913. On May 30, 2012, and the Court of Appeals dismissed Petitioner's appeal in an unpublished opinion. App. 914 – 915; State v. Berard, Op. No. 2012 – UP – 320 (filed May 30, 2012).

On December 17, 2012, Petitioner filed an application for post-conviction relief (PCR). App. 917 – 947. The matter proceeded to a hearing on May 17, 2013 before the Honorable John C. Hayes, III. J. Rutledge Johnson represented the state, and Jennifer Creech represented Petitioner. App. 955. Judge Hayes denied Petitioner relief from his convictions and sentences by a written order filed on June 3, 2013. App. 1006 – 1016. This petition for writ of certiorari follows.

¹ Specifically, he ordered the sentences for assault and battery with intent to kill and criminal sexual conduct to run consecutively. Although he ordered the sentence for kidnapping to run concurrently with the sentence for criminal sexual conduct, he ordered the sentence for kidnapping to be served consecutively to the sentence for assault and battery with intent to kill. App. 899, line 17 – App. 900, line 2.

ARGUMENT

In violation of Petitioner's right to the effective assistance of counsel pursuant to the Sixth and Fourth Amendments to the United States Constitution, trial counsel opened the door to the admission of evidence regarding Petitioner's prior criminal record, including a conviction for gross sexual imposition, which was especially harmful during Petitioner's trial for criminal sexual conduct, where the prosecution failed to present evidence of penetration.

Relevant facts

Facts developed at trial

Prior to the start of trial, the solicitor placed a stipulation on the record. She stated that the prosecution would introduce evidence that Petitioner was wearing an electronic monitor at the time of the alleged offenses; the prosecution would explain the electronic monitor was part of his probation and parole for a misdemeanor offense; and the prosecution would not discuss the nature of the offense or "go into his prior record." App. 39, line 10 – App. 40, line 3.

Russell Berard, Petitioner's half-brother, claimed that when he arrived at his grandmother's house on June 7, 2008 he found Petitioner on the top of their grandmother, Loretta Moss, who was on the floor. Moss was not wearing any clothing and Petitioner was wearing only a shirt. Russell described the position as a sexual one, but stated that he could not remember if Petitioner was moving. Russell candidly admitted that the heads of Moss and Petitioner were toward him, indicating he could not see their lower bodies. App. 188, line 2 – App. 189, line 8. Shortly after Russell arrived, Petitioner left to get help. App. 189, line 13 – App. 191, line 8.

Meghan Hall, Russell's girlfriend, arrived at Moss's home around the same time as Russell. When she looked through the door, Hall saw Petitioner on top of Moss. App. 233, lines 11 – 13. Hall claimed Petitioner was wearing only a shirt, but Moss was completely nude. App. 233, lines

14 – 17. Like Russell, Hall described Petitioner’s position on top of Moss as sexual. App. 234, lines 1 – 14. However, on cross-examination, Hall admitted that she saw them from the top of their heads. She could not see below their waists. App. 257, lines 19-24.² Petitioner then left to get help. App. 235, lines 1 – 7.

Moss testified that on June 7, 2008, she and Petitioner, her grandson, were sitting on her porch talking after dinner. App. 681, lines 15 – 17. Moss claimed that Petitioner “made a pass” at her by trying to kiss her. App. 682, lines 15 – 20. Moss rebuffed Petitioner and told him to go home. Petitioner left, and Moss went inside her home. App. 682, line 21 – App. 683, line 1. Shortly thereafter, Moss heard someone knocking on her door. App. 683, lines 17 – 19. When she answered the door, Petitioner asked her to join him on the porch, and she did. App. 684, lines 3 – 8. Moss claimed she told Petitioner to go home because he was getting on her nerves. App. 685, lines 20 – 23. When Moss turned to go back into her house, she was hit in the back of her head. App. 686, line 24 – App. 687, line 1. Moss could not recall how she got into the house. App. 689, lines 20 – 25. She explained that Petitioner removed her clothes and hurt her by hitting her or stabbing her. App. 690, line 1 – App. 691, line 13. When asked if he was doing anything else, she responded “[h]e was trying to have or he was having sex with me.” App. 692, line 25 – App. 693, line 2.³ She did not recall pain “in that area” except that her legs were hurting. App. 693, lines 4-6.

² Hall’s statement to police, which she read during re-direct examination, stated that she saw Petitioner “raping” Moss. App. 261, lines 5-11.

³ On cross-examination, trial counsel questioned Moss regarding her testimony that Petitioner was either trying to or was having sex with her. Moss did not recall telling the detective that she did not know if Petitioner penetrated her vagina or anus. App. 704, line 12 – App. 705, line 11. On re-direct examination, Moss claimed she remembered telling the officer that she could not remember if Petitioner penetrated her. App. 706, line 22 – App. 707, line 2.

The prosecution presented no physical evidence to support the charge of criminal sexual conduct against Petitioner.⁴ The nurse who examined Moss found her genitalia to be normal - no tears, redness, abrasions or bleeding. App. 497, lines 7-16; App. 497, line 24 – App. 498, line 3. The nurse looked for semen with an alternate light source, but found none. App. 498, line 15 – App. 499, line 1. The SLED DNA analyst found no semen or sperm on the oral and rectal swabs from the sexual assault kit performed on Moss. App. 622, lines 2-7. However, the analyst found semen on the vaginal swab from Moss. App. 622, lines 8-10. The analyst developed a DNA profile from the sperm fraction on the vaginal swab. This showed a mixture of at least two individuals. The DNA profile of the major contributor was consistent with Moss. Petitioner was excluded as a possible minor contributor. App. 623, lines 11-24. Additionally, the analyst could not exclude Robert Louder, Moss’s husband, as a possible minor contributor to the mixture. App. 625, lines 9-23.

During a discussion on the jury charge, the prosecutor relied upon the testimony of Hall to support the charge of criminal sexual conduct. Specifically, she relied upon the witness’s statement to law enforcement that Petitioner was “raping” Moss. App. 721, lines 1-13. Judge Few challenged this by pointing to Hall’s testimony that based on the way Hall was looking, she could not tell whether there was penetration. The prosecutor agreed with this observation. App. 721, lines 17-24. Judge Few explained Hall had no “personal knowledge of whether or not there was penetration.” The prosecutor admitted she “danced around the question” and never asked “directly whether or not there was penetration.” App. 721, line 25 – App. 722, line 8. However, Judge Few recalled Moss testifying on cross-examination that Petitioner raped her. According to Judge Few, the intent of the

⁴ The prosecutor admitted the lack of medical testimony to support criminal sexual conduct. App. 723, lines 19-24.

question was to explore whether there was penetration, and the question was whether the answer that he was raping her supported a conclusion that there was penetration. App. 722, lines 9-20. The only evidence “that reasonably could support the inference that there was penetration” was the testimony of Russell and Hall that Petitioner was in a sexual position. App. 724, lines 1-10.

This issue was revisited when Petitioner moved for a directed verdict. Petitioner based on his motion for directed verdict concerning the criminal sexual conduct charge on the lack of evidence of penetration. In addition to the lack of physical evidence, Petitioner explained the witnesses were not in a position to view whether actual penetration occurred, and Moss testified that Petitioner was either having sex or trying to have sex with her. App. 741, line 8 – App. 742, line 7. Judge Few denied the motion. Based on his observations of the trial, he surmised that the defense and prosecution “made tactical strategic decisions not to specifically ask the question of whether or not there was penetration.” Judge Few determined that based upon the question on cross-examination focusing on whether there was penetration, although not directly asked, and the response being “he was raping me,” the jury could “infer from that testimony that there was penetration.” App. 742, line 8 – App. 743, line 16.

The discussion then turned to what convictions the prosecution would be allowed to introduce as impeachment if Petitioner decided to testify. The prosecutor explained Petitioner had been convicted of attempted burglary and assault and battery of a high and aggravated nature (ABHAN) in South Carolina. He had also been convicted of gross sexual imposition in Ohio. Judge Few held the state would not be permitted to impeach Petitioner on the prior offenses. He stated that “if this thing happened the way the state has presented it then there is something just really sort of unnatural and the sex conviction feeds into that in a way that is unfairly prejudicial.” App. 752, line 13 – App. 753, line 9. However, the judge allowed the prosecution to impeach

Petitioner on the burglary and ABHAN convictions, but agreed to provide a clear instruction on the limited purpose of the convictions. App. 753, line 10 – App. 754, line 15.

Petitioner then testified as to the events of June 7, 2008. He and Moss sat on the porch talking until Moss decided she was going to bed. App. 774, lines 16-22. Then, Petitioner hit Moss, and she fell to the floor on the porch. App. 774, line 23 – App. 775, line 10. He grabbed her legs and pulled her in the house. App. 775, lines 13-19. He did not recall removing her clothes. App. 776, lines 15-16. Although Petitioner's shorts were off, his underwear was still on. App. 776, lines 17-23. Petitioner was kneeling beside Moss, holding her arm, and stunned by what he had just done when Russell arrived. App. 776, line 24 – App. 77, line 4. Petitioner denied that he was "in any way between her legs." He further denied that he was in any sort of sexual position with her. App. 777, lines 16-19. Petitioner was unable to recall many of the events of that night due to a combination of Xanax and alcohol he had consumed throughout the evening. App. 778, lines 1-10. At the end of the direct examination, trial counsel asked Petitioner several questions concerning the allegations of criminal sexual conduct:

- Q. At any point in time did you try to commit any sort of sexual act with your grandmother?
A. Absolutely not.
Q. Did you do that?
A. Never.

App. 784, lines 4-8. After several more questions, trial counsel asked, "Are you guilty of trying to attempt or commit any sort of a criminal sexual conduct your grandmother?" and Petitioner responded, "Absolutely not." App. 785, lines 1-3.

Thereafter, the state renewed its motion to impeach Petitioner with his prior conviction for gross sexual imposition because he had "opened the door ... by stating that he would never do such a thing." The prosecutor claimed trial counsel "asked him very open ended questions and didn't

stop him just at the denial that he didn't do it." She continued to argue "[t]he question was would you ever do that kind of thing and the response was no." App. 785, lines 12-23. The trial judge explained the prosecutor was not seeking to impeach Petitioner, as she stated, but rather she was arguing that Petitioner had placed his character in evidence and she should be permitted to introduce contrary evidence under Rule 404(A), SCRE. App. 785, line 24 – App. 786, line 4.

Trial counsel argued that "one comment" did not open the door to his character. The judge chastised trial counsel that although he had months to prepare his questions, trial counsel had asked Petitioner "would you do that." The judge explained that Petitioner could not answer the question without putting his character at issue. The judge found it was "indisputable that he has introduced evidence of a trait of character." As a result, the prosecution was allowed to rebut the character evidence. The judge then analyzed the danger of unfair prejudice against the probative value of the evidence. He explained that when Petitioner denied the sexual allegations, he did so "with emphasis." Based upon the "word choice, the word [inflection], the body language," the judge believed Petitioner conveyed that he was "not the kind of person who would do that." Although he had "no doubt" the prior conviction was prejudicial, he found it was no longer unfair prejudice because Petitioner "and his counsel chose to introduce a trait of character that he is not the type of person that would do this." App. 786, line 6 – App. 789, line 2.

On cross-examination, the prosecutor asked Petitioner if he had been convicted of attempted burglary, ABHAN, and gross sexual imposition. Petitioner admitted to having been convicted of all three. App. 819, lines 6-13.

During deliberations, the jury sent a note asking of the prosecution was required to present physical evidence of penetration and what type of evidence was necessary for the charge of criminal

sexual conduct in the first degree. App. 880, lines 17-20. Clearly, the jury was concerned about the lack of evidence to support the criminal sexual conduct allegation.

Facts developed at PCR hearing

Trial counsel testified that he moved to exclude evidence of Petitioner's prior convictions. App. 961, lines 18-25. In trial counsel's experience, "juries weight that very heavily against defendants when they found out that they have prior convictions." App. 962, lines 1-8. He recalled the trial judge excluded the use of the prior offenses. App. 962, lines 9-20. Additionally, trial counsel testified that Judge Few ruled he "opened the door to those prior convictions." Trial counsel "asked a bad question." App. 963, line 22 – App. 965, line 23. He admitted on cross-examination that having the jury find out about the prior conviction "certainly was prejudicial." He had "no question ... that opening that door and having that sort of thing in front of the jury [was] prejudicial." He described the evidence as "highly prejudicial." App. 974, lines 1-11. Trial counsel explained that the evidence was very prejudicial and had an impact on the jury's verdict. He stated that he played that incident in his mind over and over. App. 985, line 18 – App. 986, line 19.

Order denying PCR

The PCR judge recognized that trial counsel "made it clear that he thought he made a mistake in asking [Petitioner] a question that opened the door for the state to introduce [Petitioner]'s prior Ohio offense of gross sexual imposition." App. 1014. Additionally, the PCR judge explained that the trial judge allowed the prosecution to ask Petitioner about his prior conviction based upon Petitioner having put his character in issue – trial counsel had opened the door to Petitioner's character. Nevertheless, the PCR judge found, "in spite of the ruling by the trial judge, that trial counsel asked no question which 'opened the door.'" The PCR court found only one exchange in the trial transcript, which may have supported the trial judge's finding: when trial counsel asked

Petitioner if he “at any point in time” tried to commit any sort of sexual act with his grandmother, Petitioner responded, “absolutely not,” and trial counsel followed up with “did you do that?” to which petitioner responded, “never.” After finding the question proper and arguably necessary, the PCR court held that Petitioner’s choice of answer – “never” instead of “no” – could not be “laid at trial counsel’s feet.” The PCR judge found Petitioner’s character was an issue due to Petitioner’s “own doing and not trial counsel’s.” App. 1014-1015.

Discussion

In order to obtain relief based upon a claim of ineffective assistance of counsel, a defendant must show that counsel’s performance was deficient and such deficiency prejudiced the defendant. Strickland v. Washington, 466 U.S. 668, 687 (1984). An attorney whose representation fell below an objective standard of reasonableness provided deficient performance. Id. at 688. An attorney’s performance is measured against prevailing professional norms. Id. at 688.

“Evidence of a person’s character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion.” Rule 404(a), SCRE. However, character evidence is admissible when offered by an accused or by the prosecution to rebut the same. Rule 404(a)(1), SCRE.⁵ In State v. Major, 301 S.C. 181, 185, 391 S.E.2d 235, 238 (1990), this Court explained “[w]hen the accused offers evidence of his good character regarding specific character traits relevant to the crime charged, the solicitor has the right to cross-examine him as to

⁵ A defendant “opened the door” to otherwise inadmissible character evidence when he offers evidence of his good character. For example, a defendant places his good character and general reputation in issue when he presented character witnesses. He also places a specific character trait in issue when he submitted evidence of his criminal past to establish his propensity for nonviolence. State v. Allen, 266 S.C. 468, 481-482, 224 S.E.2d 881, 886 (1976), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

particular bad acts or conduct.” The prosecution is restricted “to showing bad character only for the traits initially focused on by the accused.” Id. When Major denied having ever used crack cocaine, the prosecutor was permitted to introduce evidence of a prior conviction for simple possession of cocaine. This Court found Major had made a “clear attempt ... to communicate to the jury that he [was] not the sort of individual who would become involved in the drug trade.” Id. at 185-186, 391 S.E.2d at 238.

In State v. Stroman, 281 S.C. 508, 316 S.E.2d 395 (1984), this Court found a defendant had opened the door to his previous participation in two armed robberies because he had questioned an accomplice regarding prior housebreakings. The accomplice had been charged with the same crimes for which Stroman stood trial. However, the accomplice had entered guilty pleas and agreed to testify for the state. After Stroman questioned the accomplice about prior housebreakings, the prosecutor was permitted to question the accomplice about two robberies in which Stroman was an accomplice. Id. at 512-513, 316 S.E.2d at 398-399. This Court held “[w]here one party introduces evidence as to a particular fact or transaction, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even though [the] latter evidence would be incompetent or irrelevant had it been offered initially.” Id. at 513, 316 S.E.2d at 399 (quoting State v. Albert, 277 S.E.2d 439 (N.C. 1981)).

In Vaughn v. State, 362 S.C. 163, 171, 607 S.E.2d 72, 76 (2004), this Court held a defendant was entitled to a new trial based upon the solicitor’s improper closing argument where the defendant’s attorney had opened the door to invited reply during the defense’s closing argument. The defendant’s attorney asked the jury to remember that only one officer testified on behalf of the prosecution concerning observing drugs despite the fact that another officer and civilians were present. Id. at 167, 607 S.E.2d at 74. The solicitor then informed the jury she did not present

additional witnesses because she did not want to waste the jurors' time. She also stated that the rules of evidence did not permit the presentation of duplicative testimony. She told the jury that if any of the potential witnesses listed by the defendant's attorney would have testified differently than the testifying witness, then the defendant had the ability to subpoena those witnesses to testify. She also stated she did not call the other witnesses because they would have said "the very same thing" that the officer presented said. Id. at 168, 607 S.E.2d at 74.

This Court recognized that improper argument includes vouching for witnesses and initiating argument about the testimony of absent witnesses. Id. at 169, 607 S.E.2d at 75. Additionally, this Court recognized that the defendant "'opened the door' to some response from the solicitor" based on his closing argument concerning the absence of witnesses. Id. at 170, 607 S.E.2d at 75. This Court held that the solicitor's response was unfair and prejudicial in light of the lack of evidence of the defendant's guilt. Id. at 170, 607 S.E.2d at 75-76. Thus, this Court found trial counsel was ineffective for failing to object to the solicitor's closing argument. Id. at 171, 607 S.E.2d at 76.

The Texas Court of Appeals found defense counsel rendered ineffective assistance by opening the door to otherwise inadmissible extraneous offense or bad act evidence. Defense counsel asked if the defendant had ever sexually assaulted anybody, whether he had ever been accused of sexually assaulting anybody, and whether he had been arrested for sexually assaulting anybody. The defendant responded negatively to all three questions. The prosecution then presented a witness who testified that the defendant sexually assaulted her when she was a child. Despite the objection, the trial court ruled the evidence was admissible based upon defense counsel opening the door. Additionally, defense counsel questioned the defendant about a prior arrest for driving while intoxicated and possession of handguns. This allowed the prosecutor to question the

defendant about a shooting in his home, two additional arrests for driving while intoxicated, and a statement he made to a doctor about having been arrested seven times for public intoxication. Garcia v. State, 308 S.W.3d 62, 66-67 (Tx. Ct. App. 2009). The Texas Court found that “[g]iven the inherently prejudicial nature of extraneous offense evidence, the fact that the evidence would not have been otherwise admissible by the state during guilt/innocence, and the fact that [the] defense rested almost entirely on [the defendant’s] credibility, there could have been no reasonable trial strategy” for opening the door to the inadmissible evidence. Id. at 68.

In People v. Cyrus, 848 N.Y.S.2d 67 (N.Y. App. Div. 2007), the New York Supreme Court found defense counsel provided ineffective assistance to Cyrus by inadvertently opening the door to a police officer’s damaging testimony about the contents of a videotape showing Cyrus leaving the scene of the alleged armed robbery. At trial, Cyrus admitted to committing a larceny, but denied robbing the store clerk with a box cutter. Id. at 71. Two eyewitnesses testified that Cyrus had a box cutter, a box cutter was found on the street, and Cyrus admitted in a statement to having a box cutter. Id. Although the prosecution did not question the officer about the videotape and defense counsel did not investigate the contents of the videotape prior to trial, defense counsel still questioned the officer about the tape. This questioning permitted the prosecutor to ask the officer about the contents of the tape on re-direct. The officer claimed he saw the person in the video raise his right hand, which contained “like sort of a metallic object.” Id. at 71-72. The video was not available for trial because the tape in evidence was blank; the officer “guess[ed] the copy was copied wrong.” Id. at 72. Subsequently, a second officer testified that the video showed the defendant with a silver object that the officer later knew to be a knife. Id.

The Court found there was no rational justification for failing to investigate the videotape. Defense counsel’s failure to investigate the tape “was compounded by counsel’s even worse

decision to ask [the first officer] about it.” “Opening the door to the admission of damaging testimony against the accused, especially when due to a lack of investigation of the facts, has often led to a finding of ineffective assistance of counsel.” Id. at 73. The testimony of two officers to having seen a metal object in the defendant’s hand on the video provided objective corroboration of the store clerks’ testimony. Additionally, the testimony of the officers was “virtually unimpeachable” due to the destruction of the tape. Due to trial counsel’s “one misguided line of questioning,” the defense was “obliterated.” Id.

In the current matter, the prosecutor was required to prove beyond a reasonable doubt that Petitioner engaged in sexual battery with Moss. See S.C. Code Ann. § 16-3-652(1). In order to prove sexual battery, the prosecutor was required to show Petitioner engaged in “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body.” See S.C. Code Ann. § 16-3-651(h). As there were no allegations of cunnilingus, fellatio, anal intercourse, or the use of an object, the prosecutor was required to show an intrusion by Petitioner of his body into the genital openings of Moss’s body. The prosecution presented no direct evidence that Petitioner engaged in sexual intercourse or used his body or an object to intrude upon the body of Moss. The only evidence presented on this point was Moss’s testimony that he was having sex with her or trying to do so and Hall’s statement to police, which was read into the record, that he was raping her.

The prosecution’s questioning of Petitioner regarding a prior conviction for gross sexual imposition allowed the jury to use “bad character” evidence to prove character in conformity therewith, which the jury would not have been permitted to do absent counsel’s error. As Judge Few indicated, trial counsel had months to prepare his questioning and months to prepare Petitioner

to testify. Counsel readily admitted he asked a “bad question” that allowed the prosecution to present character evidence that was prejudicial to his claim. The entire defense theory was that although Petitioner hit Moss, he did not commit criminal sexual conduct with Moss. The prejudice flowing from counsel’s error is evident in the lack of direct evidence concerning the element of sexual battery and the jury’s recognition of this lack in its note to the judge.

CONCLUSION

Petitioner respectfully requests this Court reverse the decision of the lower court, reverse his convictions and sentences

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 31st day of December, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
John C. Hayes, III, Circuit Court Judge

ADAM LEE BERARD

PETITIONER,

V.

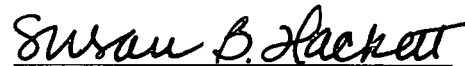
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001351

CERTIFICATE OF SERVICE


I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Adam Lee Berard #310249, McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 31st day of December, 2013.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 31st day
of December, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.