

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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FEB 21 2014

S.C. Supreme Court

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Certiorari to Greenville County

R. Markley Dennis, Jr., Circuit Court Judge  
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MARK ANTHONY MARTUCCI,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000178  
\_\_\_\_\_

REPLY TO THE RETURN TO THE  
PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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ATTORNEY FOR PETITIONER

INDEX

INDEX .....1  
ARGUMENT IN REPLY .....2  
CONCLUSION .....4

## ARGUMENT IN REPLY

The State would like the Court to believe that this PCR case is about an alibi. This case is about impeachment. Respectfully, the Court should disregard the State's attempt to move the battleground to its more favorable terrain of alibi and away from the prejudicial impact of petitioner's evidence that impeached the credibility of the State's key witness at trial.

This PCR is about evidence that John Parker ("Parker") lied. Parker was the State's key witness against petitioner and was awaiting sentencing after his guilty plea at the time of his testimony. App. 375, ll. 3 – 8. Parker recounted several incidents for the jury during which petitioner abused the child. App. 358, l. 18 – 359, l. 10. App. 359, l. 17 – 22. Parker described the events leading up to taking the child to the hospital on the morning of his death. App. 368, l. 4 – 388, l. 16. Parker led the jury to believe that petitioner was home the entire morning. Parker's testimony was highly prejudicial.

What the jury never heard was that Parker lied about petitioner's whereabouts the morning of the incident. Ann Pruit's testimony would have shown that petitioner was not at home the morning of the child's death. App. 766, l. 23 – 767, l. 25. Petitioner's brother's testimony showed that trial counsel likely lost key documentary evidence that would have shown that petitioner left the residence that morning and that Parker lied. App. 773, ll. 12 – 24. Trial counsel was clearly aware of petitioner's brother and failed to call him as a witness. App. 773, l. 25 – 762, l. 2.

While the State analogizes the evidence at PCR to an alibi, this analogy misses the point. The evidence presented at the PCR hearing would have impeached Parker's version of events. Had the jury heard evidence that Parker lied about petitioner's activities the morning of the

child's death—likely in an attempt to deflect blame away from himself or Holder—then the jury would have had reason to doubt all of Parker's testimony. The centrality of Parker's testimony makes any evidence that impeached his credibility and his version of events vital to the case.

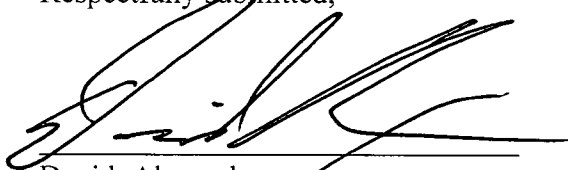
Failure to impeach the credibility of a key prosecution witness has long been recognized as satisfying the prejudice requirement in a PCR. For example, one of the categories of evidence that satisfies a Brady claim is impeachment evidence. Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S. 419, 432-42 (1995). In Driscoll v. Delo, 71 F.3d 701, 710-11 (8<sup>th</sup> Cir. 1995), defense counsel's failure to impeach an eyewitness with prior inconsistent statements was held prejudicial. Id. The defendant was sentenced to death for stabbing a prison guard. Trial counsel failed to impeach a prosecution witness who claimed at trial that the defendant confessed to the murder with a prior statement omitting the confession. Id. at 709-12. The centrality of the witness's testimony was an important factor in the court's consideration. Id.

Here, Parker was the central witness in the trial. The failure to use Pruitt and petitioner's brother to impeach his testimony could not have been more prejudicial. Therefore, the Court should disregard the State's attempt to lure it away from the key point that the evidence produced at the PCR hearing impeached Parker's testimony. Had the jury heard the evidence produced at PCR and disbelieved Parker, petitioner would not have been convicted.

CONCLUSION

For the foregoing reasons, this Court should grant the petition with the ultimate relief reversing petitioner's conviction and remanding for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Alexander", written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of February, 2014.

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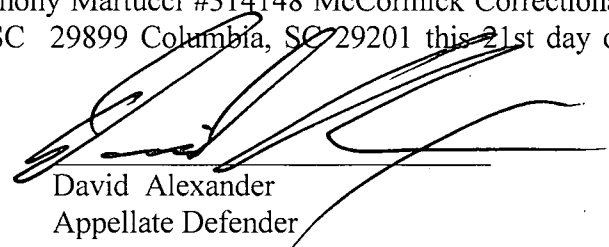
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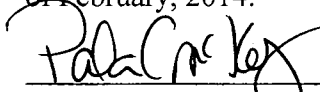
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CERTIFICATE OF SERVICE  
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I certify that a true copy of the reply to the return to the petition for writ of certiorari in this case have been served on Karen Ratigan, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, and also upon Mr. Mark Anthony Martucci #314148 McCormick Correctional Institution 386 Redemption Way McCormick, SC 29899 Columbia, SC 29201 this 21st day of February, 2014.

  
\_\_\_\_\_  
David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 21st day  
of February, 2014.

 \_\_\_\_\_ (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.