

This is on the last day of my trial

GUILTY: McGee attacks prosecutor

CONTINUED FROM PAGE 1A

me and choked me until the deputies Tased him."

Assistant Sheriff Carter Weaver said it is his understanding McGee only had to be Tased once before coming into compliance.

Assistant Solicitor Dorie Biagiatti was hit with a piece of furniture during the struggle.

Bryan said he is OK, and no one from his office was seriously injured.

Steve Neese, who was in the courtroom when the attack occurred, said he was in shock when he saw Bryan being assaulted.

He said the jury also looked amazed and shocked as members watched the events unfold a few feet in front of them.

McGee was quickly removed from the courtroom and after a brief pause, the sentencing portion of the trial took place in his absence.

His attorney, Stuart Axelrod, asked for a mistrial but that motion was denied by Judge Roger Couch of Spartanburg.

Axelrod said he was just as surprised as anyone by his client's violent actions.

"He maintained he never (molested the girl). My client had been offered a certain amount of years if he wanted to plead guilty but he chose not to go that route," Axelrod said.

"Why he did what he did, I have no idea. I did not expect it. He's been a gentleman to me throughout this. I saw Tasers flashing and I walked away and



SCOTT HARPER/TIMES

Shannon McGee knocked over this chair and a table Wednesday when he attacked Deputy Solicitor Robert "Bo" Bryan after a jury found McGee guilty on several sexual assault charges. Bryan was not injured.

there were many deputies on him immediately.

Sheriff's Office spokesman Sgt. Neil Johnson said — even though it is impossible for McGee to receive any addition-

al jail time — it would send the wrong message if he were not charged.

McGee is charged with assault and battery with intent to kill for the attack on Bryan

and assault and battery of a high and aggravated nature because of the furniture hitting Biagiatti. He is also charged with damage to property because of the broken furniture.

Prosecutorial misconduct deserves serious attention

S.C. Supreme Court Justice Donald Beatty has taken a lot of criticism for bringing up the subject of prosecutorial misconduct in our state. Apparently, that is not something you bring up in public as he did during a speech at a state solicitors' convention in Myrtle Beach recently.

Solicitor Scarlett Wilson of Charleston took offense when the judge cited two of her assistants who were disciplined.

Outside of our state, prosecutorial misconduct is a much discussed topic these days.

The Innocence Project has won exonerations of many people through DNA testing. For example, it proved that Ken Anderson, former prosecutor and later judge in Texas, withheld evidence that would have proven the innocence of Michael Morton, who instead spent 25 years in prison.



Anderson is the first prosecutor to be punished for misconduct. All other cases are overturned while the prosecutor is given immunity for misconduct. Anderson received disbarment and 10 days in jail. (Do you think there is justice in 10 days for 9-125 days?)

If you think it can't happen here, I direct you to the book *Anatomy of Injustice* by Raymond Bonner (2012) with the story of Edward Elmore's conviction for murder in South Carolina in 1982. The reader can follow injustice at work all the way up through the state Supreme Court.

Due to prosecutorial misconduct, Mr. Elmore spent 11,000 days (30 years) in incarceration. He was freed a year ago. Mind you, Elmore had to plead guilty to get out of prison. The solicitor in his case died in 1998.

Solicitor Wilson has formed a posse (13 of the state's 16 solicitors) to bar Justice Beatty from hearing their cases, claiming that he is prejudiced against prosecutors. I think he was thoughtful to tell them that he is no longer going to turn a blind eye to the fact that the defense lawyers have been at a disadvantage for so long that it embarrasses the judge.

Is Attorney General Alan Wilson unaware of what Justice Beatty has observed?

Giving everyone on trial a fair break should be welcomed by all solicitors and defense lawyers.

GEORGE F. WARREN
Isle of Palms

EVERYONE
Should READ this!!!

PLEASE!!

JANUARY 9, 2014

STATE PAPER

6A Tuesday, August 26, 2008

20-20 hindsight

Shannon McGee didn't get locked up for good until after he sexually molested a child younger than 11 years old in late 2005.

McGee, then 39, had been on a trail of violent crime since 1987, starting out with an armed robbery conviction. But each time he committed an offense, he was paroled or placed on probation.

The Georgetown County man was sentenced to life in prison two years ago for violating the state's two-strikes law by committing at least two serious offenses. Even then, he was charged with assault and battery with intent to kill for attempting to strangle the prosecutor in the courtroom.

Deputy Solicitor Robert Bryan for Georgetown and Horry counties says he was not physically hurt in the attack, but says it illustrated McGee's dangerous nature. "Hindsight is 20-20," Bryan said. "Shannon should not have been free on probation at the time of the sexual assault," he says. "Shannon McGee is a dangerous person and he's where he belongs now."

That was the only violent charge I ever had go back and look Sir, and I plead Guilty because I was, I was paroled In 1993 and got lock up in Nov 2005 on this charge. And because I wouldn't plea, Bryan seeked life on me for 2 strike's Sir. He went back 20 yrs, that not right Sir. When He got lock-up for Drunk Driving that used my name in the Georgetown Times to take the attention off of him. Go back and look in the records Sir.

This was two days after

0

LOCAL & STATE

Attorney seeks mistrial for McGee in sexual assault

Man attacked Deputy Solicitor in courtroom.

By Scott Harper
sharper@towntimes.com

The attorney for the man who attacked Deputy Solicitor Robert "Bo" Bryan in court is seeking a mistrial for his client because, he claims, the state withheld information.

Attorney Stuart Axelrod appeared before Judge Roger Couch Friday without his client, Shannon McGee. On Wednesday, McGee was found guilty of sexually assaulting a teenage girl for two years.

When the verdict was announced — knowing he was going to prison for life because of previous convictions — McGee flipped over a table and then started choking Bryan until deputies shot him with a Taser and he was handcuffed.

Axelrod told the judge the state did not give him needed information about a witness.

Erin Kinloch, an inmate at the Georgetown County Detention Center, testified on behalf of the state about conversations he had with McGee.

Axelrod said he found out after the trial concluded that Kinloch had sent the solicitor's office a letter saying he needed their help. He claims he should have been given a copy of that letter. Axelrod also said Kinloch had a charge against him dismissed in July.

McGee has been in jail since his arrest in February.

"The solicitor's office has a responsibility to reveal these things," Axelrod said.

Bryan told the judge that Axelrod failed to ask any questions about any pending warrants.

"He was so blinded by his desire to keep ten-year-old convictions out of the case" that he overlooked these things," Bryan said.

He also told the judge Axelrod has a history of accusing the solicitor's office of unethical behavior.

Axelrod also claimed he did not know the McGee case was going to trial until Friday, Sept. 15, four days before it began.

Judge Couch asked for a transcript of Kinloch's testimony and ordered Axelrod to present his motion in writing within two weeks. Sometime after that he will make a decision on the motion.

#1

Steward

This is Tonya Mc Gee
Shannon's wife. This is a
letter from Shannon to
you to read. Also these
are some statements from
the guys at the Detention
Center that wrote to you
concerning Shannon's case. I
thank you so much for
working on Shannon's behalf
I know God is gonna see
us through and Shannon
is gonna go free. If you
need to talk to me the
number is 558-9003. I tried
to call you Monday morning
but you wasn't in that's
why I'm mailing this information
out. One of the jury members
live in Pee Dee right down
from my mother's house
also his name is James
Davis, I know you wasn't

Joe M. Lewis

843-820-972

9-23-06

I Joe Lewis am writing a statement on behalf of Shannon Mc Gee. That I was incarcerated with him and Eric Kinloch from March to September. Mr. Kinloch told me on several occasions that he need a way to get his 1st degree burglary drop and he said that if it means for him to lie he would. Mr. Kinloch also told me INU Godell Sparkman had more charges on him and that he needing to do something. He also told me that he had HIV and that he did not want to die in prison. He would come to my room alot just to talk about these things. I am writing this statement because I know that he did it to get out from under his charges and the state let him and fell for it. Kinloch came to me one day and told me that he heard a rumor. The rumor was that Mc Gee had touch his child. What really happen was Mc Gee got Micheal Jones to help him with some law work. And someone started that rumor and Kinloch picked up on that. Like I stated before me or Kinloch talk everyday he never told me that Mc Gee told him that if he did I would have known.

David T. Crenshaw
(843) 546-9571

208 Glendale
Georgetown
SC 29440 #11

On 9.19.06 I was walking in the Court area of B. Block, when a state inmate approach me. He started his conversation by saying, where are you from I replied Greenwood.

Then he said I was brought back to Festy, on a case where this guy I know, was suppose to have sex with his 14 year daughter.

When he said that I change the conversation by saying what's the sentence for Burglary 2nd degree. He said about 10 to 15. He went on to say that was one of my charges but it was dropped to possession of stolen goods.

I later heard him talking through the wall saying he had talk to the prosecutor about some type of deal for Mike Jones, Joe Lewis saying how he had left them straight.

David T. Crenshaw
9.23-06

24 Sep 06

I Corey & Delaney spent a lot of time talk-
ing and playing cards sometime with both
Michael Jones and Aaron Kinloch during
these times. Michael would talk about
several inmates and that he spoke with
about them and what information he
then and give them legal advice. He would
tell us that that person had this or that
person did that, often times making us
about their alleged crimes.

On several of these occasions, I recall
of Mr. McLoon that after making what was
saying that Mr. McLoon was a laborer. On
one of the occasions he had met Joe Smith
and Mr. Kinloch that Shannon had been with
his daughter, but he did not actually ever
interact with her, just used his phone. It
he-line he had met Shannon at this
- this, but later indicated that Shannon
said he got this information from a warrant
from Shannon at the time. At no time at
all did Mr. Kinloch ever reveal that he
self had a conversation with Shannon, but
he often reported what Michael Jones had
said.

✓ Corey Delaney

Please read the next page Sir.

This Lawyer Is one From the 9th Circuit of Charleston, I told me even if I was right I would never win. Because of what happen at my Trial.

William L. Runyon, Jr.

Attorney At Law

#3 Gamecock Avenue, Suite 303

Charleston, SC 29407

Telephone: (843) 571-3515 Facsimile: (843) 766-5085

November 19, 2013

Mr. Shannon D. McGee, Sr. #147120
Lieber Correctional Institution
Cooper A – Side Rm. #48
P. O. Box 205
Ridgeville, SC 29472

RE: PCR

Dear Mr. McGee:

Thank you for your correspondence. I will point out that you hampered this matter and my contacting you by your Complaint to Columbia. Now that that has been resolved we can move forward. I have scheduled a meeting with you for December 9, 2013. As you well know visiting at SCDC is not as simple as it is in a County Jail.

As it relates to you "Talking to the Judge" you can say anything you want to the Court. Please let me briefly recap where we are at the present time.

1. Your criminal case will not be retried.
2. This is about effectiveness of Counsel and effectiveness of your defense. That is not judged on the basis of the Jury Verdict.
3. The PCR Judge cannot "cut your time." He can set aside the prior proceeding and order a new trial.
4. If the Court decides for you the State will appeal. If the Court decides against you then we will appeal.
5. I have spoken to Mr. Axelrod and he will be testifying favorable about aspects of the procedure in your case.

6. I am not subpoenaing the Trial Judge. He made decisions and I am not agreeing to try to "put him on the stand" as you have demanded. This might be something you want to take up with the PCR Judge.
7. You filed a Complaint in Columbia which was an impediment to my having contact with you.

Mr. McGee we will discuss at length your case on the 9th and be in Court ten (10) days later but please understand you need to be mindful of how your conduct affects your situation. Strangling Solicitors is frowned upon in most of this State. Judges are very patient and will give you all the Time you want. On the other hand they do not extend Court time for foolishness.

I will see you on the 9th. I will give you the benefit of my advice even if you do not like my advice even if you do not like my advice and we will get through this matter.

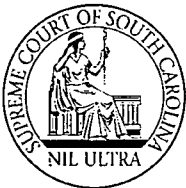
Sincerely,



William L. Runyon, Jr.

WLR, JR. / bb





The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

C. Tex Davis Jr.
Senior Assistant Disciplinary Counsel

Telephone: (803) 734-2038
Fax: (803) 734-1964

October 23, 2013

PERSONAL AND CONFIDENTIAL

Mr. Shannon D. McGee #147120
Lieber Correctional Institution
Post Office Box 205
Ridgeville, SC 29472

RE: Lawyer: William L. Runyon, Jr., Esquire
Matter Number: 13-DE-L-1448

Dear Mr. McGee:

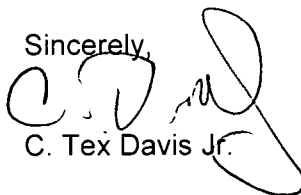
We have received your complaint against William L. Runyon, Jr., Esquire. We will conduct an investigation into the matters you have reported. You will not necessarily be contacted prior to a decision regarding your complaint; therefore, you should submit any additional information or documentation to support your allegations at this time.

The authority of this office and the jurisdiction of the Commission on Lawyer Conduct are limited to issues of whether a lawyer is subject to discipline pursuant to the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR. Where misconduct is found, sanctions may be imposed ranging from a confidential letter of caution or admonition, public reprimand, suspension, or disbarment. If our investigation does not reveal evidence of lawyer misconduct, your complaint will be dismissed.

We take this opportunity to advise you of the limited role of this office and the Commission so that you will be aware that we cannot provide you with assistance or advice. You should promptly seek assistance or advice that you might need from legal counsel or other sources. If you do not have an attorney and believe that you need one, you should contact the South Carolina Bar Lawyer Referral Service at 1(800) 868-2284.

You will be notified of the final disposition of your complaint. It is often many months after receipt of a complaint before a final decision is made. Feel free to contact me if you have any questions or concerns.

Sincerely,



C. Tex Davis Jr.

CTD/clg

December 28, 2011

Shannon McGee SCDC # 147120
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, SC 29472

RE: PCR

Dear Shannon:

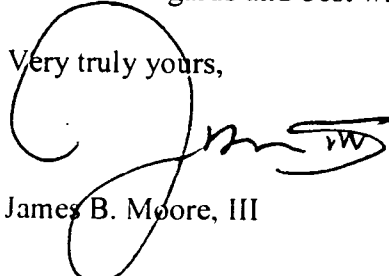
Enclosed you will find the affidavit of Mike Jones. I met with Mr. Jones today and I believe he will be helpful to your case. Additionally he promised to testify when your case goes to trial.

After looking through Aaron Kinloch's warrants and arrest information, I see that on August 1, 2006 he was served a warrant for receiving stolen goods and/or burglary 1st. He thereafter wrote Bo Bryan the letter on August 4, 2006. Mr. Kinloch testified against you on September 19, 2006, and thereafter pled guilty to receiving stolen goods on September 21, 2006. I now feel comfortable with the timeline regarding Mr. Kinloch.

I will continue to work on your PCR and keep you updated. I wish you a Happy New year and will be in touch soon.

With kind regards and best wishes,

Very truly yours,


James B. Moore, III

B BELL
LEGAL
GROUP

A Leading National Civil Litigation Firm

232 King Street
Georgetown, SC 29440
PH 843-546-2406
FAX 843-546-9604

434 C North Guignard Drive
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Sumter, SC 29151
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FAX 803-773-3693

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Bad lawyer

#3 Gamecock Avenue

Suite 303

Charleston, South Carolina 29407

Telephone: (843) 571-3515

Facsimile: (843) 766-5085

William L. Runyon, Jr.
Attorney At Law

February 4, 2014

Mr. Shannon McGee, Sr. #147120

L.C.I. Cooper A Side Room # 48

P.O. Box 205

Ridgeville, SC 29472

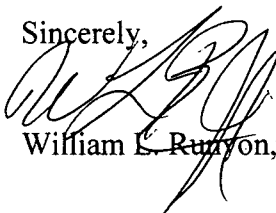
In Re: Notice of Appeal

Dear Mr. McGee:

Please find enclosed copy of Notice of Intent to Appeal in your case.

Thanking you, I remain

Sincerely,



William L. Runyon, Jr.

WLRJr/paw

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case No. 2011-CP-22--0195

SHANNON D. McGEE, #147120,)
Applicant,)

Vs.)

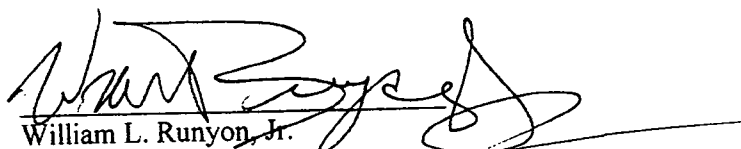
STATE OF SOUTH CAROLINA,)
RESPONDENT.)

NOTICE OF INTENT TO APPEAL

TO THE Honorable Attorney General of the Sovereign State of South Carolina:

Please take Notice that the Applicant above named does hereby serve Notice of his Intention to Appeal the Decision of the Honorable Steven H. John signed January 23, 2014 denying him relief in the above-referenced matter which decision was received by Counsel for the Applicant on the 4th day of February, 2014 and the undersigned does hereby certify that the applicants Appeal has a meritorious issue for the Courts consideration.

Respectfully, Submitted,



William L. Runyon, Jr.
#3 Gamecock Avenue, Suite 303
Charleston, SC 29407
(843) 571-3515
(843) 766-5085 FAX

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Shannon D. McGee, # 147120,)

Case No. 2011-CP-22-0195

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
GEORGETOWN COUNTY, S.C.
2014 JAN 23 AM 11:23
ALMA Y. WHITE
CLERK OF COURT

Honorable Steven H. John, didn't read this Order of Dismissal, he just signed it!! I went for my P.C.R. hearing on December 19, 2013 not the 15th that is a Sunday. This Order is no good at all Justice Donald Beatty.

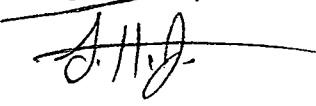
This matter comes before the Court by way of an Application for Post-Conviction Relief

(PCR) filed February 14, 2011. Respondent made its Return on or about March 18, 2011. The Court convened an evidentiary hearing into the matter on ^{This is Sunday} December 15, 2013, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by William L. Runyon, Jr., Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Mr. Mike Jones also testified on Applicant's behalf. Applicant's plea counsel, Stuart M. Axelrod, Esquire, testified. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, the appellate records, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Georgetown County Clerk of Court. In June 2006, the

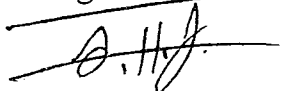


Georgetown County Grand Jury indicted Applicant for second-degree criminal sexual conduct (“CSC”) with a minor (2006-GS-22-580), lewd act upon a minor (2006-GS-22-581), and assault with intent to commit CSC with a minor (2006-GS-22-582). Stuart M. Axelrod, Esquire, (“trial counsel”) represented Applicant. On September 18-20, 2006, Applicant was tried before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to life without parole, pursuant to S.C. Code Ann. section 17-25-45, for second-degree CSC with a minor, twenty (20) years for assault with intent to commit CSC with a minor, and fifteen (15) years for lewd act upon a minor.

The day after trial ended, on September 21, 2006, trial counsel filed a motion for new trial. Judge Couch convened a hearing on the motion on September 22, 2006. Trial counsel contended Applicant was entitled to a new trial based upon a Brady¹ violation by the solicitor and upon evidence discovered after the trial. On November 9, 2006, Judge Couch issued an order denying the motion for new trial. Judge Couch found that, although the solicitor committed a Brady violation, Applicant was not prejudiced and still received a fair trial.

Applicant filed a timely notice of appeal, and Kathrine H. Hudgins, Esquire, of the Office of Appellate Defense perfected the appeal on Applicant’s behalf. On appeal, Applicant argued Judge Couch should have granted a new trial based upon the Brady violation. On November 19, 2009, the South Carolina Court of Appeals affirmed the convictions. State v. McGee, Op. No. 2009-UP-539 (S.C. Ct. App. filed Nov. 19, 2009). The Court of Appeals denied Applicant’s petition for rehearing on January 20, 2010. Applicant appealed to the South Carolina Supreme

¹ 373 U.S. 83 (1963)

A handwritten signature in black ink, appearing to be "S.H.J.", is written over a horizontal line. The signature is slanted and somewhat stylized.

Court, but the Supreme Court denied certiorari on January 20, 2011. The matter was remitted to the circuit court on February 7, 2011.

II. ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
2. "Prosecutorial Misconduct"
3. "Violation of 5th; 6th; 14th Amendment U.S. Constitution"
4. "Ineffective Assistance Appellate Defender"

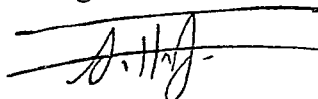
In an amendment filed March 7, 2011, Applicant further alleged the following grounds for relief:

1. Ineffective assistance of trial counsel for failing to object to the solicitor's closing argument that impermissibly bolstered and vouched for the credibility of the victim.
2. Ineffective assistance of trial counsel for failing to object to the solicitor's closing argument that violated the "golden rule."
3. Ineffective assistance of trial counsel for failing to conduct a pre-trial investigation.
4. Prosecutorial misconduct for failing to disclose evidence relating to the testimony of Aaron Kinloch.
5. Ineffective assistance of trial counsel for failing to object to jury instructions.
6. Ineffective assistance of appellate counsel for failing to present certain issues on appeal.
7. Ineffective assistance of trial counsel for failing to object to the solicitor's closing argument that commented on facts not in evidence.

At the PCR hearing, Applicant proceeded on the allegations in his amendment. He also proceeded on an allegation that the solicitor's calling of the case for trial violated the South Carolina Supreme Court's ruling in State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and



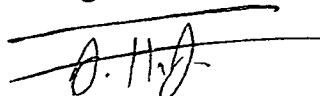
arguments presented at the PCR hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Trial counsel testified he has been a practicing attorney since 1997. After being appointed on Applicant's case, he met with Applicant, investigated the case, and discussed the case with the solicitor. On cross-examination, trial counsel testified he met with Applicant on several occasions and discussed the State's response to trial counsel's discovery motions. He further testified he discussed with Applicant the elements of the charges, Applicant's maximum exposure, and Applicant's version of events. Trial counsel testified his defense theory was Applicant was innocent and the victim was lying to get back at Applicant.

Trial counsel further testified the solicitor's office, at the time of this trial, published a trial docket and emailed it to defense attorneys. Georgetown County had a single term of general sessions each month, and the solicitor's office distributed the list of cases that may be called to trial one (1) to two (2) weeks beforehand. Trial counsel admitted he received the roster including this case in advance of the term of court, but testified he was not notified the case would be called to trial until the Friday before the term began. Trial counsel testified he made a motion for continuance to allow more time to prepare for trial. However, trial counsel was not sure what further investigation he could have performed had the case been continued.

Trial counsel testified Aaron Kinloch ("Kinloch") was a jailhouse snitch who testified Applicant confessed to the crime. Trial counsel claimed he was not aware of the substance of



Kinloch's testimony until the day of trial. He further testified he was given a copy of Kinloch's criminal record, but the record was not accurate. Trial counsel discovered the day after trial Kinloch had a pending charge in Georgetown County that did not appear on the criminal record. Trial counsel also discovered Kinloch had written a letter to the solicitor which was not turned over in discovery. Trial counsel filed a motion for a new trial once he discovered the evidence. He testified ^{Please listen to P.C.R. hearing Audio Tape} he believed the pending charge and letter could have been used to further impeach Kinloch.

Michael Jones ("Jones") testified he was detained in the Georgetown County jail in 2006 with Applicant and Kinloch. Jones and Applicant were being prosecuted by the same solicitor. Jones testified the solicitor asked him if he had any information about Applicant. However, Jones admitted the solicitor never asked him to lie about Applicant. Jones informed Applicant the solicitor ^{Lies please listen to the Audio tape} asked about him.

Applicant testified he never discussed his case with Kinloch and never confessed to the crime. He further testified the solicitor lied about Kinloch being a witness. Applicant also testified he was not aware the case would go to trial until the Friday before it began. On cross-examination, he admitted he met with trial counsel two (2) or three (3) times and reviewed the discovery response and his version of events. He testified he gave trial counsel ^{Lies please go back and listen to the Audio tape} leads to investigate, including the information regarding the solicitor looking for people to testify against him. Applicant asked trial counsel to call Jones as a witness, but he also recalled trial counsel advising Applicant to not testify.

Applicant also testified trial counsel was ineffective for failing to object to the solicitor telling the jury the witnesses were credible and believable. He alleged trial counsel should have

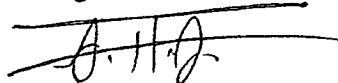
~~A.H.J.~~

objected to the solicitor asking the jury to consider what they would have done if they were the victim. Applicant stated trial counsel did not adequately investigate the case because the case was called on short notice. He also accused the solicitor of committing misconduct by lying to Judge Couch about the nature of Kinloch's testimony. Applicant testified trial counsel should have objected to the Judge Couch's charges on direct evidence, the burden of proof, and the testimony of CSC victims. Applicant testified appellate counsel was ineffective for failing to argue Judge Couch erred in ruling on Applicant's motion for a continuance, for a directed verdict, and for a mistrial. He also stated trial counsel should not have allowed the solicitor to comment on facts not in evidence.

B. Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The

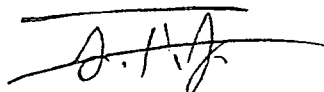


applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to appellate counsel, the applicant must prove prejudice by showing "there is a reasonable probability he would have prevailed on appeal." Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003) (citations omitted).

1. Solicitor's Arguments

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to object to various portions of the solicitor's opening and closing arguments. Applicant alleged the solicitor improperly vouched of the witnesses credibility when he stated they "were credible and believable [,] and they told the truth. (Trial Tr. 152:10-11). The court finds this statement does not rise to the level of improper vouching. A solicitor improperly vouches for a witness' credibility when he "places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity" or "by indicating information not presented to the jury supports the testimony." State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001) (citing State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001); 75A Am.Jur. Trial § 700 (1991)). Here, the solicitor did not make a personal assurance the witnesses were telling the

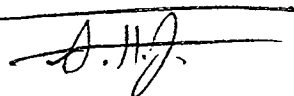
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and nor did he indicate he had personal knowledge of the witnesses' truthfulness. Id. Rather, he indicated the manner in which the jurors testified lent credibility to their testimony. This argument is not improper because "[a] solicitor has the right to state his version of the testimony and to comment on the weight to be given such testimony." State v. Caldwell, 300 S.C. 494, 505, 388 S.E.2d 816, 822 (1990) (citing State v. Allen, 266 S.C. 468, 224 S.E.2d 881 (1976)), overruled on other grounds by State v. Evans, 371 S.C. 27, 637 S.E.2d 313 (2006). Therefore, trial counsel was not ineffective because the solicitor's statement was not objectionable.

Trial counsel was not ineffective for failing to object to the solicitor's statement urging the jury to "ask yourself, is it reasonable for her to do what she did, given who she is." (Trial Tr. 48:2-3). It is improper for a solicitor to ask jurors to abandon their impartiality and view the evidence from the victim's standpoint State v. Reese, 370 S.C. 31, 38, 633 S.E.2d 898, 902 (2006), overruled on other grounds by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). However, the solicitor's comments here do not ask the jurors to view the evidence from the victim's standpoint. Rather, the solicitor is asking the jurors to consider the victim's motives for testifying against Applicant. Again, this is permissible argument relating to the "credibility and common sense biases of the witness[.]" Caldwell, 300 S.C. at 505, 388 S.E.2d at 822. Because it is not objectionable argument, trial counsel was not required to object.²

Applicant's allegation trial counsel should have objected to the solicitor commenting on facts not in evidence is likewise without merit. Applicant challenges the following statement by the solicitor in referring to the State's expert:

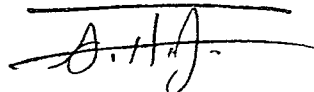
²The Court notes trial counsel did successfully object to the solicitor's closing argument to consider "if some of this stuff happened probably any of y'all - well, the first thing you would do is, well, hopefully report it ... to the law[.]" (Trial Tr. 148:22-25). Thus, trial counsel was clearly aware of the line which the solicitor was not allowed to cross.



"I thought what she also testified to, as an expert, was even maybe as interesting, or more informative for you, which is delayed reporting. I think, what, ninety-nine percent of the time why it's – at least in Georgetown and Horry Counties – that's consistent with what happened here, recantation is part of the known cycle that goes on; it happens in a substantial number of cases."

(Trial Tr. 155:7-13). Applicant points out that the expert testified that recantation happens between twenty-five (25%) and seventy-five (75%) of the time. (Trial Tr. 125:6-9). However, a careful reading of the challenged argument indicates the solicitor is actually referring to delayed reporting by CSC victims. In fact, the expert did testify only two (2) of one hundred and eighty (180) CSC victims she interviewed the prior year did not exhibit delayed disclosure. (Trial Tr. 124:5-9). Therefore, the argument does not present facts not in evidence and was not objectionable.

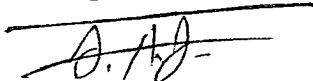
Regardless, Applicant cannot show he was prejudice by any of the solicitor's opening or closing arguments. The propriety of a closing argument must be reviewed "in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt." Brown v. State, 383 S.C. 506, 516, 680 S.E.2d 909, 914-15 (2009) (citing Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). Here, Judge Couch's charged the jury that the solicitor's arguments were not to be considered in determining Applicant's guilt. (Trial Tr. 41:7-24). Judge Couch also charged the jury it was ultimately tasked with determining witness credibility (Trial Tr. 180:7-181:8) and weighing the expert's testimony (Trial Tr. 185:1-17). Furthermore, the arguments Applicant challenges are not repeatedly made and are "limited in duration." Id., 680 S.E.2d at 915. Therefore, the Court finds Applicant has not proven prejudice because the solicitor's comments did not "so infect[] the trial with unfairness as to make the resulting



conviction a denial of due process.” Id. (citing Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002); State v. Hornsby, 326 S.C. 121, 484 S.E.2d 869 (1997)).

2. Jury Charges

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to object to Judge Couch’s jury instructions. Applicant challenges the charge that “[d]irect evidence is testimony from an individual, or a person who claims to have direct knowledge concerning some material fact in this case.” (Trial Tr. 178:21-23). The Court fails to discern how this is not a proper charge on direct evidence. See State v. Salisbury, 343 S.C. 520 n.1, 524, 541 S.E.2d 247, 249 n.1 (2001) (“Direct evidence is evidence based on actual knowledge and proves a fact without inference or presumption. Direct evidence immediately establishes the main fact to be proved.” (citations omitted)). The Court also cannot discern any objectionable material in the charge that “[t]he Defendant is not required to prove himself innocent of any charge” and that “[t]he burden of proof ... is upon the State to prove the Defendant guilty beyond a reasonable doubt.” See State v. Hill, 382 S.C. 360, 370, 675 S.E.2d 764, 769 (S.C. Ct. App. 2009) (holding similarly worded charge cured any improper comments regarding defendant’s exercise of his Fifth Amendment rights). Judge Couch’s instruction that testimony of a CSC victim need not be corroborated was also not objectionable. See State v. Rayfield, 369 S.C. 106, 117, 631 S.E.2d 244, 250 (2006); State v. Orozco, 392 S.C. 212, 222, 708 S.E.2d 227, 232 (Ct. App. 2011); State v. Hill, 382 S.C. 360, 370, 675 S.E.2d 764, 769 (S.C. Ct. App. 2009). The Court also finds Applicant cannot show he was prejudiced by this instruction because it was not unduly emphasized and Judge Couch’s charge as a whole



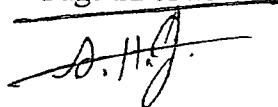
comports with the law. Rayfield, 369 S.C. at 118, 631 S.E.2d at 250. Therefore, trial counsel was not ineffective.

3. Pre-trial Investigation

The Court finds Applicant failed to meet his burden of proving trial counsel was ineffective in failing to conduct a pre-trial investigation. Regarding this allegation, the Court finds trial counsel's testimony to be credible, and Applicant's to be not credible. Specifically, the Court finds trial counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. Furthermore, failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Applicant failed to articulate any information that could have been uncovered with a further investigation. The testimony revealed trial counsel interviewed witnesses and investigated the case to the extent Applicant provided leads to investigate. Trial counsel's trial notebook, entered into evidence as Applicant's Exhibit Number 1, shows trial counsel was thoroughly prepared for trial. Therefore, Applicant has not presented evidence trial counsel did not investigate the case or that further investigation "would have led to a different result." Id.

4. Appellate Counsel

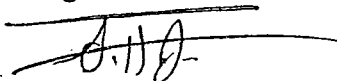
The Court finds Applicant failed to meet his burden to show appellate counsel ineffective. Though Applicant argued appellate counsel should have briefed additional issues, he failed to present any testimony from appellate counsel on that issue. As such, the Court cannot speculate as to why certain issues were not briefed. Cf. Dempsey v. State, 363 S.C. 365, 370,

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610 S.E.2d 812, 815 (2005) (finding that, without a witness's testimony, "any finding of prejudice is merely speculative").

Regardless, the Court finds the Applicant failed to demonstrate appellate counsel failed to exercise sound judgment in choosing which issues to present on appeal. See Jones v. Barnes, 463 U.S. 745, 103 S. Ct. 3308 (1983) (holding appellate counsel must be allowed to exercise reasonable professional judgment in determining which non-frivolous issues to raise on appeal). Applicant's allegation appellate counsel should have argued Judge Couch erred in denying the motion for a continuance is without merit. See Bozeman v. State, 307 S.C. 172, 175, 414 S.E.2d 144, 146 (1992) ("The denial of a motion for a continuance is within the sound discretion of the trial judge and his ruling will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the appellant." (citing State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989); State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977))). The allegation appellate counsel should have raised a directed verdict issue on appeal is likewise without merit because there was direct evidence of Applicant's guilt in the form of the victim's testimony. See State v. Frazier, 386 S.C. 526, 531, 689 S.E.2d 610, 613 (2010) ("If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." (citing State v. Weston, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006))).

Finally, Applicant's allegation appellate counsel should have argued Judge Couch erred in denying the motion for a mistrial is also without merit. Trial counsel's mistrial motion was based on several grounds. The first ground was there was insufficient evidence to support a conviction. As discussed above, evidence in the record supports Judge Couch's decision to

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submit the case to a jury. Frazier, 386 S.C. at 531, 689 S.E.2d at 613 (citing Weston, 367 S.C. at 292-93, 625 S.E.2d at 648). The second ground was Judge Couch erred in submitting the written charge to the jury. Submission of a written copy of the jury charge is left to the trial judge's discretion. State v. Turner, 373 S.C. 121, 129, 644 S.E.2d 693, 697 (2007) (citing Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000)). Here, Judge Couch did not abuse his discretion in submitting a written charge.³ The third ground for mistrial was Judge Couch erred in not allowing trial counsel to impeach Kinloch with convictions older than ten (10) years because the "probative value would not outweigh its prejudicial effect." (Trial Tr. 92:22-25). The Court finds no error in Judge Couch's ruling that would have been a viable appellate issue. See State v. Black, 400 S.C. 10, 27, 732 S.E.2d 880, 889 (2012) (stating it is a heavy burden to demonstrate the prejudicial effect of a remote conviction is substantially outweighed by its probative value). Finally, trial counsel re-raised his objection to the case being called on short notice. Again, as discussed above, Judge Couch's decision on the continuance motion was not a viable appellate issue. Bozeman, 307 S.C. at 175, 414 S.E.2d at 146 (citing Babb, 299 S.C. at 451, 385 S.E.2d at 827; Pendergrass, 270 S.C. at 1, 239 S.E.2d at 750). Because Applicant's suggested appellate issues are not viable, he was not prejudiced by appellate counsel's decision to not brief them. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (no ineffective assistance of appellate counsel where applicant's alleged issues are not meritorious).

C. Prosecutorial Misconduct

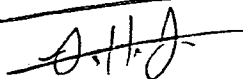
Please go back and read everything on Solicitor Robert "Bo" Bryan

³ The Court notes trial counsel initially consented to submission of the written charge (Trial Tr. 200:12-16), so this issue was likely not preserved for appellate review. See State v. Stanko, 402 S.C. 252, 270, 741 S.E.2d 708, 717 (2013) ("Appellant cannot argue now on direct appeal that the trial court erred in acquiescing to his express and informed desire.").

A. H. D.

The Court finds Applicant failed to meet his burden of proving prosecutorial misconduct from the solicitor's presentation of evidence relating to Kinloch. The Court finds this issue was raised and decided in Applicant's direct appeal. Applicant's amended application alleges the solicitor made false representations to Judge Couch about the solicitor's prior contact with Kinloch. This allegation is part and parcel of the Brady violation Applicant alleged at trial and on appeal based on the solicitor's failure to disclose a letter written by Kinloch. This allegation of a Brady violation was raised on appeal from Applicant's conviction. See State v. McGee, Op. No. 2009-UP-539 (S.C. Ct. App. filed Nov. 19, 2009) ("On appeal, he argues the trial court erred in denying his motion for a new trial based on the State's Brady v. Maryland violation."). Because the issue was ruled upon by the Court of Appeals, Applicant cannot now challenge it on collateral review. Humbert v. State, 345 S.C. 332, 338, 548 S.E.2d 862, 866 (2001) ("PCR is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal." (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993))).

Regardless, Applicant has not shown any conduct by the solicitor prejudiced his right to a fair trial. Riddle v. Ozmint, 369 S.C. 39, 45, 631 S.E.2d 70, 73 (2006). Trial counsel extensively attacked Kinloch's credibility. The jury was aware of Kinloch's prior conviction and pending charges. Because trial counsel effectively called Kinloch's credibility into question with his prior crimes, the impeachment evidence of Kinloch's desire to assist the State did not deprive Applicant of a fair trial. State v. Cheeseboro, 346 S.C. 526, 554, 552 S.E.2d 300, 314-15 (2001) ("Where there is an abundance of evidence detailing the witness's unabashed disrespect for the law, the nondisclosure of other impeaching evidence does not deprive the defendant of a fair trial." (citing State v. Gunn, 313 S.C. 124, 437 S.E.2d 75 (1993))). Therefore, the solicitor's

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actions “do not rise to the level of bring[ing] the trustworthiness of the verdict into question[.]” (Order of Judge Couch at p. 5, Nov. 9, 2006).

D. State v. Langford

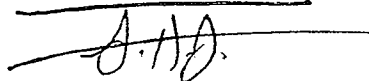
Applicant’s final allegation is that the State’s calling of his case for trial violates the South Carolina Constitution as outlined in the South Carolina Supreme Court’s decision in State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012). This Court finds that Langford cannot be retroactively applied to Applicant’s case, that the State complied with the law as it existed at the time of Applicant’s trial, and that Applicant was not prejudiced by having his case called to trial.

Prior to the Supreme Court’s decision in Langford, exclusive control of the criminal docket was vested in the circuit solicitor. See S.C. Code § 1-7-33.⁴ The Supreme Court declared in Langford this exclusive control violated the separation of powers principle of Article 1, Section 8⁵ of the South Carolina Constitution. Langford, 400 S.C. at 428-29, 735 S.E.2d at 475. There can be no doubt, and the testimony and arguments at this hearing demonstrate, that this decision announced a new rule of law that is a deviation from the existing practice in General Sessions courts across the state. See Talley v. State, 371 S.C. 535, 541, 640 S.E.2d 878, 881 (2007) (“[A] case announces a new rule when it breaks new ground or imposes a new obligation

⁴ Section 1-7-33 provides that:

“The solicitors shall attend the courts of general sessions for their respective circuits. Preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial. Provided, however, that no later than seven days prior to the beginning of each term of general sessions court, the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term.”

⁵ S.C. Const. art I, § 8 provides that:

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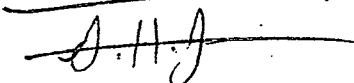
on the States or the Federal Government. To put it differently, a case announces a new rule if the result was not dictated by precedent existing at the time the defendant's conviction became final.” (citing Teague v. Lane, 489 U.S. 288 (1989))). This Court is thus required to determine if this new rule is to be applied retroactively on collateral review. “Generally, new procedural rules should be not applied retroactively to cases on collateral review[.]” Id. at 543, 640 S.E.2d at 882 (citing Teague, 489 U.S. at 305). A new rule should not be applied retroactively when it is “a clear break with the past[.]” United States v. Johnson, 457 U.S. 537, 549 (1982) (quoting Desist v. United States, 394 U.S. 244 (1969)). Because Langford announced a new rule constituting a clear break from past procedure, the Court finds it cannot be applied retroactively on collateral review.⁶

The record is clear the solicitor complied with the law at the time of Applicant’s trial. Trial counsel was provided a copy of the trial docket well in advance of trial and had the opportunity to make a motion for continuance when he felt the trial should not go forward. Thus, the State complied with section 1-7-33 in calling Applicant’s case for trial.

Regardless, Applicant had not shown he was prejudiced by the solicitor exercising his authority under section 1-7-33. See Langford, 400 S.C.at 446, 735 S.E.2d at 484 (requiring the defendant to show he was prejudiced by the solicitor’s exclusive docket control, and finding he was not prejudiced). Applicant’s only argument for prejudice was counsel did not have adequate

“In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.”

⁶ The Court also notes that, were Langford to apply retroactively, every conviction resulting from solicitor’s exclusive docket control would be subject to collateral attack. See Teague, 489 U.S. at 316 (“We therefore hold that, implicit in the retroactivity approach we adopt today, is the principle that *habeas corpus* cannot be used as a vehicle to create new constitutional rules of criminal procedure unless those rules would be applied retroactively to all



time to prepare for trial. This argument is not supported by the record. As discussed above, trial counsel interviewed witnesses and investigated the case to the extent Applicant provided leads to investigate. Applicant's Exhibit Number 1, trial counsel's trial notebook, shows trial counsel was thoroughly prepared for trial despite the short notice. The trial transcript reveals trial counsel subjected the State's case to a "meaningful adversarial testing[.]" United States v. Cronic, 466 U.S. 648, 659 (1984). Furthermore, Applicant failed to articulate any information that could have been uncovered had a continuance been granted. Thus, the short notice did not render trial counsel's performance so lacking as to make the result of the trial unreliable. Id. (citing Davis v. Alaska, 415 U.S. 308 (1974)); see also Avery v. Alabama, 308 U.S. 444, 450 (1940) (finding no prejudice where counsel was appointed in a capital case only three days before trial and the trial court denied counsel's request for additional time to prepare). Because Applicant was zealously represented by trial counsel at his trial, the Court finds he was not prejudiced by the solicitor's exclusive control of the docket.

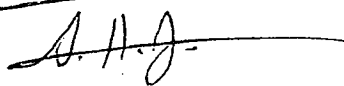
E. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application.

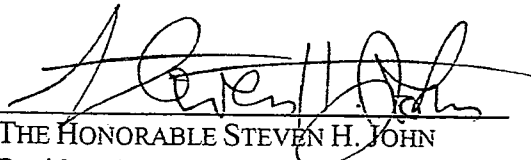
defendants on collateral review[.]"). Certainly such an extreme result was not intended by the Supreme Court in



Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

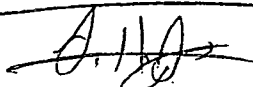
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal. It is therefore

ORDERED that the Application for Post-Conviction Relief is denied and dismissed with prejudice and Applicant is remanded to the custody of the Respondent.


THE HONORABLE STEVEN H. JOHN
Resident Judge
Fifteenth Judicial Circuit

January 22, 2014
Conway, South Carolina

Seagetown,



Good Lawyer

June 1, 2011

Via First Class Mail
Shannon McGee #147120
Leiber Correctional Institution - C/A #48
PO Box 205
Ridgeville SC 29472

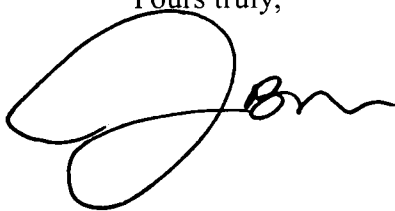
RE: PCR

Dear Mr. McGee

I would like to discuss your pending PCR at your earliest convenience. Please contact my office at (843) 546-2408. If you are unable to contact me, please let me know and I will set up a telephone call.

With warmest personal regards,

Yours truly,

A handwritten signature in black ink, appearing to read "JB", with a large, stylized loop at the beginning.

James Bernice Moore III

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Jessica L. Cassick
jessicacassick@me.com

July 25, 2012

Shannon McGee #147120
Leiber Correctional Institution
Cooper S-Side Rm. #48
P.O. Box 205
Ridgeville S.C. 29472

Mr. McGee,

Enclosed please find a letter with information regarding the scheduling of your upcoming PCR case. Our office will be in touch with a final date when we receive it. If you have any questions please do not hesitate to let us know.

Very truly yours,

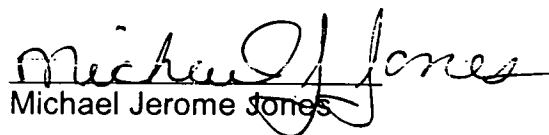

Ashley E. Ameika

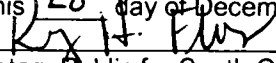
Affidavit of Michael Jerome Jones

The undersigned, upon being duly sworn, deposes and states the following:

1. I am Mike Jones and I was detained at the Georgetown County Detention Center during around April to November of 2006. I reside at 661 Council Road, Salters, South Carolina.
2. In July of 2006, Solicitor Bo Bryan met with me in the holding cell at the old Georgetown County Courthouse regarding Mr. Shannon McGee. Mr. Bryan explained the allegations made against Mr. McGee and requested that I testify on behalf of the State against Mr. McGee. I refused as I had no information that would assist the State with its case.
3. After I met with Mr. Bryan, I advised Mr. Aaron Kinloch of the conversation. Mr. Kinloch was facing serious time on a pending charge and mentioned that he was going to contact Mr. Bryan. He further stated that he was willing to lie about Mr. McGee in order to work out a deal with the State.
4. I have had the opportunity to review the transcript from the September 18, 2006 trial. I am aware that Mr. Kinloch testified that Shannon McGee spoke with me about his case and told me that he had a sexual relationship with his stepdaughter. While I had many conversations with Mr. McGee, he never spoke of this. In fact, he denied any wrongdoing whatsoever.
5. I advised Mr. McGee before his trial date that I would be willing to testify on his behalf. I was never called as a witness, but if I had, I would have testified consistent with the testimony contained in this affidavit.

FURTHER AFFIANT SAYETH NOT.


Michael Jerome Jones

Sworn To and Subscribed Before Me
This 28 day of December, 2011
 (L.S.)
Notary Public for South Carolina
My Commission Expires: 5/24/20

Shannon D. McGee, # 147120
Lieber Conn. Inst. C-A-48
P.O. Box 205
Ridgeville, S.C. 29442

Petitioner's Copy

February 28, 2011

Georgetown County Clerk of Court
Court of Common Pleas
Attn: Ms. Alma Y. White, Clerk
P.O. Box 479
Georgetown, S.C. 29442

RE: PCR Pending / ⁽¹⁾Amendment to Original Application for P.C.R.
Pursuant to Rule 15 SCRCiv.P; with ⁽²⁾Fortior Exhibits; Motion to address
all issues Pursuant to S.C. Code Ann § 17-27-80; ⁽³⁾Motion to
invoke Full Discovery Pursuant to S.C. Code Ann § 17-27-150(A);
⁽⁴⁾certificate of service. 2011-CP-22-00195

Dear Ms. White,

Please find here an Original courts copy and 1 copy for
my files. Please clock-stamp and file the above referenced
hereto attached documents and return a clocked-stamp
copy to me in the envelope provided. I thank you for
all your time and help with this matter. May God
Bless You Abundantly.

sincerely yours,
1x Shannon D. McGee
Shannon D. McGee

Verbatim Copy / File
Ms. Christina Catoe, Assit. Attorney General

ARGUMENT 1

1.) Was Counsel Ineffective for failing to Object to the Solicitor's improper closing Argument that impermissibly Bolstered and Vouched for Credibility of victim and state's witness in a violation of Petitioner's Sixth Amendment to the United States Constitution for failing to properly Object and to preserve the issue for Appeal; and a violation of Petitioner's Due Process under the 14th Amendment?

FACTS

The Solicitor repeatedly Bolstered and Vouched for the credibility of the victim and State's witness and placed their personal opinions before the jury, as will be seen in the following: Colloquy / Trial Transcript.

Going through the witnesses that the State presented, I submit to you that they were credible and believable today, and they told the truth, and they told you in a way that was believable because it was true, and everybody was -- it's a little easier to keep your story straight on the truth than a lie, and I would submit to you that -- well, I'm going to come back to Sharina last

see: TR page 152 lines 9-15

He didn't seem to be telling a lie. He seemed to be just telling the truth, which is, this guy, Shannon McGee

TR. page 153 lines 5-6

And I'll tell you what, when the Judge talks to you about general demeanor, credibility, and (unintelligible) they say, but how they say it, I submit to you that's true. It rings true, sounds true, because it is true...

TR. page 153 lines 23 - lines 1 page 154

Dr. Rahter didn't come in here and say a bunch of things that were outside of her ability to say. she didn't try to have every answer, and never has been wrong, as maybe was implied.

TR. page 154 lines 20 - 22

me back, but I was lying when I said it didn't happen. And she came into court and she told the truth.

TR. page 155 lines 19-20

... , and so if you find that
the factual is that she was telling the truth when she said.

TR. page 157 lines 24 - 25

how you know she's telling the truth, I think, is largely in
the details of her story. She didn't get up there and yeah,
he did -- you know, he did it to me, and she didn't look like
the lying child. There was just a lot of very specific
details, on and on and on about what happened the first time,

TR. page 159 lines 21 - 25

Does that sound something she made up, or does that sound like
the sad, cold, tragic truth of what happened, out of her
mouth, and -- into her ear, and out of her mouth to you.

TR. page 161 lines 8 - 10

don't -- and I just ask you again -- I know I'm trying to
repeat myself, but the point is, she's telling the truth. You

TR. page 161 lines 20 - 21

answer is, you dont make it up; it's true, and it's hard to
TR. page 162 line 1

DISCUSSION

The South Carolina Supreme Court has previously held that because
“ a jury must make its own assessment on the credibility of
witnesses, it is inappropriate for the State to assure the
jury of a government witness's credibility. State v. Kelly, 343
S.C. 350, 540 S.E. 2d 851 (2001), reversed on other grounds, Kelly v.
South Carolina, 534 U.S. 246, 122 S.Ct. 726 (2002)

The record clearly supports Counsel was ineffective for failing to
object to these statements because they improperly bolstered the credibility
of the government's witnesses. Gilchrist v. State, 350 S.C. 221,
565 S.E. 2d 281 (2002) (petitioner was prejudiced by counsel's
failure to object to state's vouching for witness's credibility);
Matthews v. State, 350 S.C. 272, 565 S.E. 2d 766 (2002) (counsel
rendered ineffective assistance by failing to object to solicitor's comments
vouching for the credibility of state's witness).

The fact that the bolstering by the prosecution of the government's
witnesses was pervasive and not limited to one occurrence or any one
witness demonstrates that prejudice resulted, and there is a reasonable
probability that the outcome at trial would have been different. Id.

There is good discussion on this issue in State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001), reversed on other grounds, Kelly v. S.C., 534 U.S. 246, 122 S.Ct. 726 (2002) wherein Kelly relied on a third Circuit's discussion on vouching. see: U.S. v. Walker, 155 F.3d 180 (3rd Cir. 1998); see also: U.S. v. Lawn, 355 U.S. 339, 359 n.15, 78 S.Ct. 311, 323 n.15, 2 L.Ed. 2d 321 (1958).

The sixth Amendment to the U.S. Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of counsel for his defense." U.S. Const. Amend. VI. The right to the effective Assistance of Counsel means the right to "effective assistance of Counsel".

It's clear that there's no Trial strategy for Counsel failing to object herein this argument. Strickland v. Washington 466 U.S. 668 (1984)

And it's also clear that these errors complained of is in a violation of Petitioners Due Process under the 14th Amendment to the U.S. Constitution.

Petitioner respectfully ask for the Grant of a New Trial.

ARGUMENT 2

2.) Was Counsel Ineffective for failing to Object to the Solicitor's improper closing Argument that impermissibly violated the "Golden Rule" in a violation of petitioner's sixth Amendment to the United States Constitution for failing to properly object and to preserve the issue for Appeal ? And a violation of Petitioner's Due Process under the 14th Amendment?

FACTS

The Solicitor repeatedly violated the "Golden Rule" in his closing and opening Arguments to the jury, as will be seen in the following: Colloquy / Trial Transcript.

Well, ask yourself what you would have done if you were twelve year old Shakira Hicks, living with your mother and your stepdad, who you may have some fear of if you are twelve year old Shakira Hicks. So try to ask yourself, is it reasonable for her to do what she did, given who she is. It's called empathy...

TR. page 47 lines 24-25 And page 48 lines 1-4

... You are the only people who can do justice for her today, and so I ask of you, don't just (unintelligible) but watch her.

Tr. page 49 lines 10-12

... little more wise than I gave her credit for when saying you should put yourself in her position ...

Tr. page 150 lines 4-5

... You

know, you are in there and you are locked up, and you are not really sure what's going to happen to you, want to talk to somebody about it, so you see somebody familiar and you figure, well, you know, he's a criminal too, right; he's been around the block, he knows the rules of the yard, as he said, and you know, he isn't approaching anybody, you can tell that guy, he's a criminal. The interesting thing about him is, you know, you can say how bad he is, or what a crook he is, and he admitted, you know, he's -- he's a criminal, right; he's committed some criminal offenses, but he's a man just like the rest of us.

Tr. T. page 153 lines 8-14

... It's possible that, you know, it made her feel like she was getting some attention, or she may have been utterly disgusted by it, but in any event, it was, you know

Tr. T. page 154 3-5

... to tell Shannon, and you know that mom is going to take Shannon's side, so now it's going to be Shannon, you know, mad at me, and we can maybe understand why Shakira didn't want Shannon mad at her, probably a reasonable thing.

Tr. T. page 156 lines 9-12

... You

Know...

Tr. T. page 156 lines 14-15

... So I don't mean to insult your intelligence, but that's actually important to tell you that there was intent to commit C.S.C., and I don't know what better evidence of intent to commit C.S.C. other than you put a condom on, lay on top of somebody, you are touching them

Tr. T. page 157 lines 10-14

... If she's making this story up, how do you come up with what you heard today? How do you, as a twelve year old, recite this progression that goes along with what you've heard about grooming, that at...

Tr. T. page 160 lines 6-9

... you know, in the room when mom was at work, and then, you know, it stopped. And I'll tell you something else about the details. She could have come in here -- and you would think if she were trying to bury the guy, if you wanted revenge, you would come in -- the prosecutor asked, well did he hold you down, didn't -- no, he didn't hold me down -- she pushed him off -- and clearly, you know ...

Tr. T. page 160 lines 16-23

... What did he say when he threatened you.

Tr. T. page 161 lines 3-4

Does that sound something she made up, or does that sound like the sad, cold, tragic truth of what happened, out of her mouth, and -- into her ear, and out of her mouth to you.

Tr. T. page 161 lines 8-10

... You don't make that up. You don't make -- how does she make up

Tr. T. page 161 lines 21-22

... answer is, you don't make it up; it's true, and it's hard to know what's more tragic for her, you know, the fact that she's

Tr. T. page 162 lines 1-2

So, it's not an easy thing that you have got to do, but I ask you to do the right thing, and I just hope you will have the conviction, no matter how many people may be on the other side, or want to take the easy way out (unintelligible). stay

Tr. T. page 162 lines 7-10

DISCUSSION

It's clear by the record that the Solicitor's argument indisputably asked jurors to abandon their impartiality and view the evidence from Shakira was a violation of the ["Golden Rule"], the South Carolina Supreme Court has ~~repeatedly~~ forbidden closing arguments of this sort. A solicitor's closing argument must be carefully tailored not to appeal to the personal biases of the jury. Von Dohlen v. State, 360 S.C. 598, 602 S.E. 2d 738 (2004), cert denied, 544 U.S. 943, 125 S. Ct. 1645, 161 L. Ed. 2d 511 (2005).

The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn there. Id.

Jurors are sworn to be governed by the evidence, and it is their duty to consider the facts of the case impartially. Id. A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice. Id.

As will be shown herein of all the [You]; [You know]; [Yourself]; and asking juror to place themselves in the victim's shoes/place; that the opening and closing argument so infected the trial with unfairness as to make the resulting convictions a Denial of Due Process, as the only evidence that was solely relied on was the victim who said petitioner did things to her; then went and gave a statement to petitioners ^{Lawyer} in the presence of her mom that she lied on petitioner, but ultimately testified herein and the solicitor most defently caused the conviction by asking the jury in the form of [you]; [yourself]; [You know] a total of about 50 times in closing Argument that's 5 more times than the case of: State v. McDaniel 330 S.C. 33, 462 S.E. 2d 882 (Ct. App. 1995) (reversing conviction and remanding for new trial in sexual assault/robbery case where solicitor used "you" or a form of "you" some forty-five times asking the jury to put themselves

in place of the victim); State v. Reese, 370 S.C. 31 (2006).
reversed on other grounds. State v. Reese, 359 S.C. 260 (App. 2004)
see: Donnelly v. DeChristoforo, 416 U.S. 637, 94
S.Ct. 1868, 40 L.Ed. 2d 431 (1974);
State v. White, 246 S.C. 502, 144 S.E. 2d 481 (1965)
Gilstrap, 205 S.C. 412, 32 S.E. 2d 163 (1944)
Darden v. Wainwright; 477 U.S. 168, 106 S.Ct. 2464,
91 L.Ed. 2d 144 (1986)

Other Courts in other Circuits including our own
S.C. Supreme Court & Court of Appeals, uniformly
have condemned and prohibited golden Rule Arguments
in criminal and civil settings. The Prejudicial impact
in a case like this for Counsel's failure to object
to the "Golden Rule" even though he did object once
and the judge told the jury to strike the comment
it was so severe after that coupled with a jury
charge that the victims testimony not be corroborated
definitely caused the convictions in petitioner's case
and Trial Counsel's has clearly fell below an Objective
standard under Strickland v. Washington, 466 U.S. 668
(1984) when his attorney failed to object in violation
of petitioner's ~~6th~~; 6th; 14th Amendment to the U.S.
Constitution. Petitioner respectfully ask for a New Trial.

ARGUMENT 3

3.) Was Counsel Ineffective for failing to conduct any pretrial investigation, both factual and Legal and as a result of Counsel's inactions, Petitioner was denied his Sixth Amendment right to the Effective Assistance of Counsel and his 14th Amendment right to a fair trial?

FACTS

Petitioner's Trial Counsel was Ineffective for failing to conduct any pretrial Investigation, both factual and Legal as will be seen through the following: Colloquy / Trial Transcript.
pages 14 lines 15 through page 21 lines 18

15. MR. AXELROD: Yes, sir, Your Honor. I would make a ~~motion~~
16. motion at this time for a continuance, and I would like to
17. tell the Court why, if I may.

18. THE COURT: Yes sir

19. MR. AXELROD: Your Honor, and I want to preface it that
20. it's -- there is no -- no disrespect to this Court today.

21. THE COURT: Oh, absolutely. I understand. Go ahead.

22. MR. AXELROD: I make a motion for a continuance because
23. I do not -- I believe my client will not get a fair trial. He
24. is unable to get a fair trial based on the state giving me

25. notice on Friday at noon that my case would be tried this

1. week, first or second trial this week.

2. Your Honor, the stakes are high in this case. It's life

3. without parole, I'm aware that. I have had the case for -- I'm

4. not sure, but I'll say better part of the year. I've met with

5. my client, I've met with some witnesses. Your Honor, in

6. preparing a case like this, as the Court is aware, they had

7. the Children's Recovery Center come down today to bring the

8. tape for me to watch. I'll probably watch it at approximately

9. five o'clock this afternoon, for an hour or so, go back to my

10. office and prepare all night for this trial.

11. Your Honor, I just think that -- and no disrespect to

12. the Solicitor, but in a way I call it trial by ambush. In

13. Harry County, part of the same Circuit, the Fifteenth Circuit,

14. I have trials lined up all the way to December. The Solicitor

15. will call me and say we are going to try this case. I have

16. seven hundred criminal clients at this point, in three

17. different counties. I cannot be prepared with each case as if

18. it's going to trial any given week. I just can't do that.

19. I have been unable to -- my subpoenas have been typed.

20. They are at my office right now. They have not been served.

21. I have been unable to reach my client's wife. She is a

22. witness. These are matters that, with subpoenas, are done --

23. I usually do them three weeks in advance. I have a trial with
24. the Solicitor that's possibly going to go in October. I have
25. issued forty subpoenas, thirty days in advance, for the next
1. three months. To protect myself, to protect the record, I say
2. I want to do this. What I consider to be absurd, Your Honor
3. is the state's position that I should be ready for any trial
4. on any given week. If that was the case, then what I'm
5. learning here today, Your Honor, is that I need to issue
6. subpoenas on every case I have that's on the trial roster all
7. the time, a standing subpoena that on every term of court they
8. have to be there because they might try the case. I believe
9. that's absurd. I believe that puts the community not at a
10. disadvantage, but at an inconvenience, to say the least, that
11. any police officer, or any person, or any witness is -- I'm
12. going to issue subpoenas on every case I ever have on a trial
13. roster.

14. Sometimes, Your Honor, a client will say, you know, I
15. don't want the offer, I want a trial. We put it on the trial
16. roster. And as the Court is aware many times they will plead
17. out. Sometimes it has to get to the trial roster to work out
18. a plea, as we attempted to work out a plea here today. I say
19. that it is trial by ambush. I say it's incorrect.

20. I also want to put on the record what occurred with me

20 I also want to put on the record what occurred with me
21 last week in

22 the same Circuit

23 I'm going to protect myself on this record, and [I will be more
24 than happy, Your Honor, to go forward with trial.]

25 THE COURT: Well, does this have anything to do with
1. the trial of this case?

2. MR. AXELROD: Well, I would like to put on the record
3. what -- if the Court would just give me a minute right now.

4. THE COURT: I want it to be germane to this case. Does
5. it have anything to do with the trial of this case?

6. MR. AXELROD: It does, Your Honor. It does to the
7. extent -- if I could just have a briefness here that Solicitor
8. Smith was going to try cases in Horry County, and told me for
9. the past eight weeks that he had gotten me protection from
10. Court this week, for two days, Tuesday and Wednesday, and I
11. issued subpoenas on three trials in Horry County -- in a
12. different County -- based on what Solicitor Smith told me.
13. Then I find out on Friday I have no protection; I have this
14. case. They are in the same office.

15. I could just say to this Court that, when people tell me
16. something I do it. I issued those subpoenas. I thought I was
17. going to have a trial Tuesday and Wednesday in Horry County.

18. I'm not having them. They are going to continue those.

19. I understand that this Court takes precedent over that

20. Court. I would just say, Your Honor, that the Solicitor knew

21. when he was going to try this case. I had several on it, and

22. my only recourse is to put on the record I feel that it's not

23. fair to my client; he won't get a fair trial, and I could be

24. [ineffective] if I can't reach the witnesses and get them here.

25. If the Court orders me to go forward, does not grant the

1 continuance, I would ask the Court to assist me -- I have the

2 subpoenas -- they are in my office typed -- I had my secretary

3 type them -- that I could have them faxed down to here, and

4 ask the Court to have the Sheriff help me serve these people

5 tonight and tomorrow morning, and that would be all, Your

6. Honor.

7. THE COURT: Anything from the State?

8. MR. BRYAN: I'll just be real brief, Your Honor, just

9. to clarify for the record, since this is a life without parole

10. offense. The notice was faxed on September the 7th from my

11. office to his office, giving him notice that this trial was on

12. the trial roster, and the case that he spoke of that he

13. thought he would be trying on Tuesday and Wednesday in

14. Magistrate's Court, and it would strike me that the obvious

15. thing to do, for somebody that concerned about it, would be to

16. pick up the phone and call me, if you knew that you were
17. trying a case in Horry County and were protected, maybe call
18. the Solicitor in Georgetown and say, why do you have me down
19. on your trial roster; you know I'm protected over here, which
20. never happened. We found out about that maybe Thursday or
21. Friday, and so we were -- I think Thursday -- and also just to
22. clarify, it was Thursday and not Friday at which point our
23. office told him exactly when he would be up, which was third
24. for trial. The record should reflect that he is not called
25. first for trial. Mr. McGee is actually third, and to get to
1. this point King Conyers, Robert Pusha, Roger Jenkins, Karon
2. Blake, have all pled guilty, in addition to the fact that Mr.
3. Axelrod has represented that Antonio Wright, whom he
4. represents, is going to plead guilty, although this seems to
5. be new news to Mr. Wright, who has told someone in our office
6. that he has never spoken to his lawyer, even though his lawyer
7. has represented to us that he's a plea.

8. MR. AXELROD: Well, that's true, Your Honor, and after
9. looking -- and I hadn't talked to my client that day, but
10. after looking at the facts I felt that that would be a plea.
11. I mean, I was giving him my best guess on that. I'm not going
12. to mislead the state and say that it's going to be a trial if
13. I think it's not.

14. MR. BRYAN: And just for clarification I think he's
15. done a good job of keeping it on track as far as -- but he did
16. say that he might be ineffective if certain things were unable
17. to be done, and I would just ask the Court to make sure that
18. we are clear about what things need to be done prior to use
19. commencing this case, so that he can be effective.

20. THE COURT: Mr. Axelrod, can you specifically tell me
21. the things that you need to do to be prepared for trial?

22. MR. AXELROD: I need the witnesses that I have
23. subpoenaed to be here for the trial, and the subpoenas are at
24. my office. If the Court allows me, I have them -- they are
25. two-sided. I'll have them fax the one side, and have the
1. second side faxed too. If we could staple them together, I
2. would ask the Court to have the Sheriff's Office -- because
3. they are going to have to be served tonight, and if not
4. tonight, first thing -- tonight, probably, so I can contact
5. these people, and they are germane to the case. It's ---

6. THE COURT: The State's position in regard to that
7. request.

8. MR. BRYAN: I've got no objection to it. I would have
9. been probably a good idea to bring those, knowing that he was
10. up for trial this morning. It might have been a good idea to
11. have brought those subpoenas.

12. THE COURT: Well, at any rate, I'll direct that the

13. Sheriff's Office assist you in the service of those.

14. MR. AXELROD: Thank you.

15. Your Honor, I think that ---

16. THE COURT: I think that the tape has been made -- is

17. being made available to you, and I think in chambers when you

18. discussed this with me earlier I explained -- and it would be

19. my ruling that should you, after viewing the tape, discover

20. information that's new to the case, that you had -- were

21. unaware of, or was a surprise to you, I will give you an

22. opportunity to take that up with me in the morning before we

23. begin trial. At this time, however, I'm going to deny the

24. motion. Again, the information, my understanding, has been

25. made available. You are exchanging with the State a tape that

1. you have in your possession, after this hearing, and I will

2. give the State the same right, once they have reviewed that

3. tape, if they wish to, to bring that up with me in the

4. morning.

5. MR. AXELROD: And Your Honor, as the Children's

6. Recovery Center does allow me to see it, and on my tape I have

7. no way to copy it, but I did tell the Solicitor, and I think I

8. told the Court in chambers, that the victim then made a phone

9. call to my office, and I had -- today I had a computer guy

10. Come over here to my office and we made a C.D. of that. We
11. will give the Solicitor that copy in the morning.
12. THE COURT: All right. Thank you very much.
13. Anything else we need to take up?
14. MR. BRYAN: No, Your Honor.
15. THE COURT: All right. Then we will convene in this
16. case at ten o'clock in the morning. I will be present at the
17. courthouse starting at 9:30 if there's any matters that need
18. to be taken up with me.
19. MR. AXELROD: Thank you, sir.

Tr. T. pages 14 lines 15 - page 21 line 19

The petitioner herein submits that Trial Counsel was not ready for Trial; and readily admitted such. And further more admitted that he had the case for about 1 year prior to the trial date. He admitted that it was a "Trial by Ambush" because he had about 700 criminal clients and he had protection in Henry County for 15th Circuit; part of the same circuit he already had prepared and ready for other Trials. As will be proven in the evidentiary Hearing of this post-Conviction relief, there will be evidence & testimony in support of this issue to be argued at the P.C.R. Hearing.

DISCUSSION

The Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right... ..to have the assistance of counsel for his defense." U.S. Const. amend. VI. The right to the effective assistance of counsel means the right to "effective assistance of counsel." See Cuyler v. Sullivan, 446 U.S. 335, 344, 352 (1980); also see United States v. Morrison, 449 U.S. 361, 366 (1981); Tollett v. Henderson, 411 U.S. 258, 266-68.

At the heart of effective representation is the independent duty to investigate and prepare. Goodwin v. Balkcom, 684 F.2d 794, 805 (11th Cir.), cert. denied ___ U.S. ___, 103 S.Ct. 1798. Therefore, permissible trial strategy can never include the "failure" to conduct reasonably substantial investigation of the case.

The test formulated in Strickland v. Washington, 466 U.S. 668 (1984), for determining whether counsel has rendered constitutionally ineffective assistance reflects this concern. In Strickland, the Court identified two components to any ineffective assistance of counsel claim. (1) deficient performance; and (2) prejudice. Under that decision, a criminal defendant alleging prejudice must show that counsel's errors were serious enough to deprive the defendant of a fair trial. Strickland v. Washington, 466 U.S. at 687, see also Kimmelman v. Morrison, 477 U.S. 365, 374 (the essence of an ineffective assistance of counsel claim is that counsel's unprofessional

errors so upset the adversarial balance between the defense and prosecution that the proceeding was rendered unfair and the conviction suspect).

Preparation and investigation "must be more than perfunctory." Counsel has an affirmative duty to conduct appropriate investigation, both factual and legal. Coles v. Peyton, 389 F.2d 224, 226 (4th.Cir.), cert. denied 393 U.S. 849 (1968). The failure to ascertain and investigate possible defenses has often resulted in finding that the defendant was denied adequate representation. See Goodwin v. Swenson, 287 F.Supp. 166, 176-86 (W.D.Mo.1968).

The primary input of the attorney to his client's case is that of professional expertise. Even in a simple criminal case, meticulous investigation and thoughtful legal analysis will often reveal a panolpy of issues -- to which the defendant, a layman, will be oblivious. Garland v. Cox, 472 F.2d 875, 879 (4th.Cir.).

The notion that defense counsel must obtain information that the State has and will use against the defendant is not simply a matter of common sense. The American Bar Association Standards for Criminal Justice, Prosecution and Defense Function describes the obligation in terms no one could misunderstand in circumstances of a case like this one: "it is the duty of the lawyer to conduct prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to

secure information in the possession of the prosecution and law enforcement authorities. See ABA for Criminal Justice 4-4.1 (2nd. ed. 1982 Supp.). The failure to investigate, research and prepare is equivalent to not representation at all. Brubaker v. Dickson, 310 F.2d 30, accord Willaims v. Beto, 354 F.2d 698, and Brooks v. Texas, 381 F.2d 619.

It's clear by the record that there was no Trial Strategy for counsel herein this argument and a clear violation of clearly Established Federal Law. see: Strickland v. Washington, 466 U.S. 668 (1984) and a violation of Petitioners 6th And 14th Amendment to the U.S. Constitution under Due Process.

Petitioner respectfully ask for the Grant of a New Trial.

ARGUMENT 4

4.) Did the Prosecutor commit Prosecutorial Misconduct in a violation of Petitioner's United States Constitutional right under the 14th Amendment under Due Process of Law?

FACTS

The Solicitor committed Prosecutorial misconduct; misrepresentation; False representation; Knowingly false testimony of government witness; unlawful and improper behavior which will be discussed herein, in the following: Colloquy / Trial Transcript.

Mr. Robert B. Bryan clearly made a Negligent; Fraudulent misrepresentation of a inadvertent False statement to the Court.

22. Mr. Bryan: If it please the Court, Your Honor, just
23. with respect to the last issue, as far as I met Mr.
24. Kinloch yesterday. I have never, ever spoken to him that I'm
25. aware of...

Tr. T. page 24 lines 22 - 25

5. ... I was unaware
6. of his involvement potentially in this case...

Tr. T. page 25 lines 5-6

12. ... MR AXELROD: Your Honor, so if I hear the Solicitor
13. correct, he's saying that yesterday was the first day he met
14. Mr. Kinloch, or spoke to him...

Tr. T. page 25 lines 12-14

21. MR. BRYAN: Can I see the R.A.P. sheet again?
22. Your Honor, yes, he does. It's on our docket. As I
23. said Your Honor, I did not speak to him about his charges
24. don't know because I didn't want to know, because I didn't
25. discuss it with him nor wish to...

Tr. T. page 25 lines 21-25

22. Q. ... but you
23. met me yesterday; is that correct?
24. Yes sir.
25. Q. And have I ever corresponded with you, written you a
1. letter?
2. A. No, uh uh.
3. Q. And has any representative of my office, or law
4. enforcement, ever talked to you about this issue prior to me
5. bringing you yesterday and speaking to you about it.

Tr. T. page 110 lines 22 - lines 5 page 111

17. ... I never spoke to
18. Dori. As an officer of the court I was never aware Mr.
19. Kinloch would be involved in this case, never heard from him
20. talked to him, nor Ms. Beaugiani, and so we would say that it
21. would be unfairly prejudicial to raise the implication that
22. this was some kind of deal which he received for his
23. testimony. It would be misleading to the jury, as well as
24. unfairly prejudicial.

Tr. T. page. 91 lines 17-24

By looking at the letter to this very same Solicitor dated 8-4-06
record on Appeal Bate stamp page 155 also marked as Courts
Exhibit 9 ["Dear Mr. Bryan"] and page 157 copy of envelope
addressed to Mr. Bryan Solicitor it's clear by the record and
Evidence that the Prosecutor just lied to the court, to the defense
as an officer of the court. We must also note for the record
that the stamp ["Received"] Aug. 07, 2006 page 157 also part
of Exhibit 9 this very same Solicitor used a fake stamp
that he also used and was caught using as a Prosecutor in
the Georgetown County Solicitor's office in the Dayo/white case
and he was moved out of that office to the Horry County Solicitor's
office. Petitioner filed a complaint against Robert B. Bryan, Esquire
matter number 09-DE-L-0426 see attached Fortior Exhibit herein

Whereupon the S.C. Supreme Court of South Carolina office of Disciplinary Counsel, on August 14, 2009, an investigative panel of Commission concluded this matter. The panel did not dismiss your complaint, but made a disposition that remains "Confidential" under the provisions of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

The Solicitor's actions of failing to disclose the contents of the letter in question were a clear disregard for his responsibility as a prosecutor to seek justice in any case which he is prosecuting.

Tr. T. Record on Appeal Bate Stamp page 146 - 147 Order from

The Honorable Roger L. Couch

The record herein is clearly proof that Mr. Robert B. Bryan lied to the court; misrepresentation of False Fraudulent statement; of wanton misconduct; using a government witness to give False testimony of his reprehensible methods to get a "prejudicial" conviction in using jail House snitch to get an illegal conviction. Petitioner submits at the evidentiary hearing he will present Evidence and testimony in support to fully develop the record as to all of the Prosecutorial misconduct involved with this issue herein.

- 8 Q. On Cross-examination you mentioned several people - I
9. dont know how many -- and I cant call their names now. Did
10. you mention all those people to me?
11. A. No
12. Q. Okay. So, to your knowledge, is there any way that me,
13. or another representative of the state would know that he had
14. said that to all those people?
15. A. No.
16. Q. So you told what you know, but you didn't tell me that
17. he told other people?
18. A. No, uh uh. I just told just what I knew.
19. Q. Is there any reason you didn't tell me, or you just
20. didn't think about it?
21. A. No, I just didn't thought about it at the moment, you
22. know, till Mr. Axelrod got out of hand.

Tr. I. page 118 lines 8-22 Redirect- Examination by Solicitor Bryan

The above redirect - Examination by Solicitor Bryan he's obstructing justice; miscarriage of justice, by getting a state witness to give perjured testimony of Facts that he was well aware of coupled with the fact that he withheld the letter of impeachment material; letter addressed to him of "Mike Jones"; rubber stamp proves a clean case of prosecutorial misconduct he knew about Mike Jones from the

letter from Aaron Kinloch that he failed to disclose / hid from defense, by his dishonesty; persuaded the court; and jury by using deceptive and unprofessional reprehensible methods just to get a Conviction which Petitioner received a life sentence by his planned "Trial by Ambush" by telling Defense on Friday that Petitioner's Trial would start on Monday when he had protection in Harry County and knew Defense would not be ready for trial.

Petitioner submits that Prosecutors are ministers of justice and not merely Advocates. Prosecutors has special responsibilities to do justice and is held to the highest standards of Professional ethics. A prosecutor's responsibility carries with it specifically obligations to see that the petitioner herein is accorded procedural justice and that guilt is decided upon sufficient Evidence, the judiciary bears the ultimate responsibility, for maintaining the judicial integrity and the high standards of professional conduct among the members of the Bar and for protecting and defending the "Constitutional rights of an accused."

DISCUSSION

Petitioner submits the United States Constitutional rights Amendments V; VI; VIII to Due Process of Law; by Solicitors actions above stated deprived petitioner of Life; Liberty; and Due Process of Law. Petitioner herein further submits that the Solicitor is an

officer of the court. see: Berger v. United States, 295 U.S. 78, 88 (1935) (Government Attorney is the representative "of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done");

ABA Standards for Criminal Justice; Prosecution Function & Defense Function, Standard 3-1.2(c) (3d ed. 1993) ("The duty of the prosecution is to seek justice, not merely to convict.") Nat'l Dist. Attys. Ass'n. National Prosecution standards, standard 1.1 (2nd ed. 1991) ("The primary responsibility of prosecution is to see that justice is accomplished.")

Thus, a prosecutor may not seek a conviction at any price. see also: State v. Porter 526 N.W. 2d 359, 362-63 (Minn. 1995); Salitros, 499 N.W. 2d at 817 [Many prohibitions that the Solicitor committed also appear in standards of conduct the American Bar Association has established for prosecutors as well as defense counsels alike. see: ABA Standards for Criminal Justice, Prosecution Functions, Standards 3-5.4 (prosecution).

A prosecutor may prosecute with earnest and vigor - indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his [duty] to refrain from [improper] methods calculated to produce a wrongful conviction as it is to

use every legitimate means to bring about a just one" 295 U.S. at 88, 55 S.Ct. 629 at 633 (emphasis added).

The South Carolina Supreme Court echoed this same standard in State v. King, 71 S.E. 2d 793 (1952) "A Solicitor is an officer of the Court representing all the people, including the accused, and occupies a quasi-judicial position and must see that justice is done, that no conviction takes place except in [Strict] conformity with the Law and that the accused is not deprived of any Constitutional Rights or privileges and, however strong his/her belief may be of an accused's guilt, he must conduct the Trial in a manner fair and impartial to the accused..." The Court has specifically indicated that the "duty of a Solicitor is to see that justice is done and not just to convict the defendant and furthermore, the Solicitor is quasi-judicial officer, and must not do things which prevent a fair Trial. see: State v. Durden, 212 S.E. 2d 587 (1975)

Petitioner respectfully ask that the Court Vacate his conviction and Order his immediately release from custody without re-indicted as a matter of Law; and justice, as to Prosecutorial misconduct.

FORTIOR EXHIBITS

[to support Argument 4 on
Prosecutorial Misconduct]

So he came to me, and told me what happened on that night. I told Micheal Jones but I didn't tell him all. So if you wish to speak me, I'm willing to help, if you are cause do need your help.

Thank-You

Olan

~~R~~inlock

P.S. IF need Be I will Testify!

And also I know something about Micheal Jones Case also, because his Codependent Mrs. Jesse Walker is married to my Uncle Mr. Franklin Walker, he didn't know that until after he spoke with me about his charges and who was with him..

8-4-06

EXHIBIT

Court's

Dec 9-2206

Dear

Mr.

Bryan,

First I want to send my prayers to you and your family, secondly I'm writing this letter in reference on the case you are prosecuting concerning Mr. Shannon M^e Fee. Mr. Bryan on July 24th you spoke with Michael Sonome Jore about this matter, the reason is because he came back and told me about it, and then turned around and told Mr. Shannon M^e Fee about the you not having nothing on him sense the girl changed her story etc.

But Mr. Bryan I'm writing to say is that, I know the whole story of what happened between Shannon and his stepdaughter, because he told me what and why how it happened, he been told me about 2 months ago, and it's disgusting, I have 4 daughters and my oldest is turning 16 in Dec. and I can't explain what I'll do if some-one like that touches or tries to touch her. I know why the rape test at the hospital came back inconclusive, from what he told me. Mr. Bryan Michael never spoke to Shannon one on one, I did!!! I know him from the street.

CLASSIFICATION OF
OF ALL INFORMATION

602
Sub 70

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RECEIVED
AUG 07 2006

AKOS Pink...

"The overriding theme of the Brady cases is the emphasis the Supreme Court has placed on the prosecutor's responsibility for fair play. In close cases, 'the prudent prosecutor will resolve doubtful questions in favor of disclosure. This is as it should be. Such disclosures will serve to justify trust in the prosecutor as the representative...of sovereignty...whose interest...in a criminal prosecution is not that it shall win a cause, but that justice shall be done. And it will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations.'"

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 FEDERAL BUREAU OF INVESTIGATION
 U.S. DEPARTMENT OF JUSTICE

Riddle at 46, citing Kyles v. Whitley, 514 U.S. at 438-40, 115 S.Ct. 1555.

The Solicitor's actions of failing to disclose the contents of the letter in question were a clear disregard for his responsibility as a prosecutor to seek justice in any case which he is prosecuting. A letter from a witness that demonstrates the willingness to make a deal in exchange for his testimony should be given to the defendant regardless of the actual existence of a deal. However, while this evidence could have been favorable to the defendant, it did not indicate that in fact a deal for the testimony had been reached. In light of all the evidence and testimony, and in particular, the lack of any facts indicating any deal struck between the witness and the Solicitor, it is this court's finding that the defendant received "a fair trial resulting in a verdict worthy of confidence." Riddle.

After a review of the record in this case, there is no evidence that any type of deal existed between the State and Kinloch for his testimony in this matter. The Solicitor met with Mr. Kinloch the day before the trial, which was after all of the charges against Mr. Kinloch had been

Handwritten initials/signature

resolved, except for the charge of receiving stolen goods. That charge came before this judge the day after the trial, but Mr. Kinloch's plea was taken without recommendations or negotiations as to sentencing. In addition, the dismissed burglary charge was dismissed on July 28, 2006. The letter from Kinloch, in which he asks for some help in exchange for his testimony, was dated August 4, 2006, which was after the burglary charge had been dismissed. The dismissed burglary charge would have very little probative value, if any, as to a deal between Solicitor Bryan and Mr. Kinloch. Thus, Solicitor Bryan's actions do not rise to the level of bring the trustworthiness of the verdict into question and thereby requiring the granting of a new trial.

THEREFORE, it is the Order of this Court that Defendant's Motion for a New Trial is denied.

IT IS SO ORDERED.

Spartanburg, South Carolina

November 9, 2006


 Roger L. Couch
 Presiding Judge

FILED
 CLERK OF COURT
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 SPARTANBURG, SC

ARGUMENT 5

5.) Was Counsel ineffective for failing to object to the Trial Court's Jury Instruction that impermissibly commented on the Facts?

FACTS

Petitioner submits that S.C. Constitution Art. V, § 21 prohibits Jury instruction as will be shown in the following: colloquy / Tr. T.

21. ... Direct evidence is testimony from an
22. individual, or a person who claims to have direct knowledge
23. concerning some material fact in the case.

Tr. T. page 178 lines 21-23

21. ... The Defendant is not required to prove himself
22. innocent of any charge. The Burden of proof, as I have told
23. you throughout this trial, is upon the state to prove the
24. Defendant guilty beyond a reasonable doubt.

Tr. T. page 181 lines 21-24

16. I also Charge you, the testimony of a "victim in a
17. criminal sexual conduct case case [need not be corroborated.]"

Tr. T. page 183 lines 16-17

DISCUSSION

Petitioner herein submits that the language of S.C. Code Ann. § 16-3-657 states: "A victim's testimony need not be corroborated" but Petitioner herein argues it is a violation for Judge to charge the Jury with instruction as such because it would be an impermissibly commented on the facts in a violation of S.C. Constitution Art. V, § 21 because to tell the jury that "the testimony of a victim in a criminal sexual conduct case need not be corroborated" would prematurely direct the verdict for the state, because it confused the jury made them think that they had to look no further than the victim's testimony.

And the state could argue that this language is proper under the case State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) which the S.C. Supreme Court relied on an Indiana case, Accord Lottie v. State 273 Ind. 529, 406 N.E.2d 632 (1980) which has since the Schumpert ruling has been reversed in Luddy v. State, 784 N.E.2d 459 (2003) which will be discussed herein.

In Schumpert (supra) the court did not approve such a charge, but held only that the given charge did not constitute reversible error under the circumstances of that case given as a whole.

In Schumpert the Supreme Court first noted the statute and that the trial judge had charged, "the testimony of the victim need not be corroborated in prosecution under § 16-3-657, that being the offense of criminal sexual conduct with a minor." The Court then noted Schumpert's

argument to the effect that this was an erroneous charge on the facts. Finally, the Schumpert Court held, "The trial judge properly charged the jury it could believe any single witness over several, it was the sole judge of the facts, he had no opinion about those facts, and the state had the burden of proving the offense charged beyond a reasonable doubt. Taking the charge as a whole, the Court found no reversible error. Accord Lottie V. State, 273 Ind. 529, 406 N.E.2d 632 (1980)."

The South Carolina Supreme Court in Schumpert specifically indicated that its holding that the erroneous charge did not constitute reversible error was in accord with the holding of the Indiana Supreme Court in Lottie V. State, 273 Ind. 529, 406 N.E.2d 632 (1980). This Court however, should decide to reconsider its decision as to the propriety of the "no corroboration" charge and as to the reversible nature of the erroneous giving of such a charge in light of the fact that the Indiana Supreme Court has [since reconsidered] its holding and reversed the Lottie decision on grounds very similar to the arguments raised by Petitioner. In Ludy v. State, 784 N.E.2d 459 (2003), the Indiana Supreme Court [overruled] Lottie in a well reasoned decision, explaining:

The challenged instruction or argument is problematic for at least three reasons. First

it unfairly focuses the jury's attention on and highlights a single witness's testimony. Second, it presents a concept used in appellate review that is irrelevant to a jury's function as fact-finder. Third, by using the technical term "uncorroborated", the instruction or argument may mislead the jury.

The Indiana Supreme Court further indicated, "Instructions and argument that unnecessarily emphasize one particular evidentiary fact, witness, or phrase of the case have long been disapproved ... [A]n instruction directed to the testimony of one witness erroneously invades the province of the jury when the instruction intimates an opinion on the credibility of a witness or the weight to be given to his testimony." The Indiana Court in Ludy noted that appellate courts discussing the sufficiency of the evidence "observe that a conviction may rest upon the uncorroborated testimony of a victim". However, the court indicated that this was an appellate standard, unsuitable for jury's consideration. The Ludy Court observed, "The mere fact that certain language or expression [is] used in the opinions of this Court to reach its final conclusion does not make it proper language for instructions or arguments to a jury." The Ludy Court further observed that the meaningful term "uncorroborated" in this

instruction is likely not self-evident to the lay juror and that the use of the word "uncorroborated" in the charge or argument without a definition renders the argument or charge "confusing, misleading, and of dubious efficacy." The Ludy Court held that the giving of this argument and instruction was error. The Court overruled [all] prior decisions approving such argument and instructions, including the Lottie decision specifically referenced in Schumpert.

The Ludy Court found that in that case there was substantial probative evidence establishing the elements of the charged offenses independent of the victim's testimony and that, therefore, while the challenged argument and instruction was erroneous, the error did not require reversal. Similarly, in Schumpert, the prosecution presented the victim's testimony but also relied on several witnesses to whom the victim had complained and on expert testimony regarding rape trauma. In contrast, in Petitioner's case there was no evidence of guilt independent of the victim's testimony other than a jailhouse snitch who prosecution committed Prosecutorial misconduct on several grounds before, during, and after Trial. And the State's entire prosecution rested entirely on the victim's allegations; who made a allegation to have petitioner arrested and charged but made a taped statement / recanted statement but ultimately testified. The statute S.C. Code Ann. § 16-3-657 does say "the victim's testimony, not need to

be corroborated"; but for judge to give such a charge to the jury would be clearly a violation of impermissibly commenting on the facts; and directed verdict for the State in violation of South Carolina Constitution Arts. V, § 21 "Judicial comments on the facts are prohibited in South Carolina. A trial judge may not instruct the jury regarding what weight should be given certain Evidence or even that certain Evidence is or is not entitled to consideration from them. As the S.C. Supreme Court said in State v. Hartley, 414 S.E. 2d 182 at 183 "Judges shall not charge in respect to matters of fact, but shall declare the law. State v. Bagwell, 23 S.E. 2d 244 (1942) (A judge cannot express in his charge, or intimate any opinion as to the weight or sufficiency of testimony without violating the prohibition of the Constitution as to charging upon the facts.) see 75A Am. Jur. 2d Trial § 1203 at 693 (1991) (The trial court may not instruct the jury what weight should be given [to the Evidence], or even that any particular Evidence is or is not entitled to receive weight or consideration from them). State v. Edwards, 120 S.E. 2d 490 (1973). Further where there is a conflict between a statute and the Constitution... "The Constitution overrides, see: Anton v. South Carolina Coastal, 469 S.E. 2d 604. Counsel was ineffective in a violation of Strickland v. Washington, 466 U.S. 668 (1984) as a matter of law Petitioner respectfully ask for Grant of New Trial.

ARGUMENT 6

6.) Was Appellate Counsel Ineffective for failing to preserve for appeal Petitioner his Constitutional Right to a fair Presentment of his preserved issues on Direct Appeal?

FACTS

Petitioner submits Appellate Counsel was Ineffective for failing to raise the following motions on Direct Appeal.

- 1.) Motion for Continuance see: Tr. T. pages 14-21
- 2.) Motion for Direct verdict see: Tr. T. page 136
- 3.) Motion for Mistrial see: Tr. T. page 211-212

DISCUSSION

Ineffective Assistance of Appellate Counsel

see: Eritts v. Lucey, cite as 469 U.S. 387, 105 S.Ct. 830

see: Jones v. Barnes, cite as 463 U.S. 745, 103 S.Ct. 3308

Petitioner respectfully ask court for the Grant of Appeal as to the above issues that was properly preserved for Direct Appeal.

ARGUMENT 7

7.) Was Counsel Ineffective for failing to Object to the Solicitor's improper closing Argument that impermissibly Commenting on Facts not in Evidence Pertaining to expert witnesses testimony that is in a violation of Petitioner's sixth Amendment right to the United States Constitution for failing to properly object and to preserve the issue for Appeal; and also a violation of Petitioner's Due Process under the 14th Amendment?

FACTS

Petitioner submits the Solicitor in his closing impermissibly commented on Facts not in Evidence of governments expert witness Ms. Carol Ann Rahter M.D. see: following colloquy/Tr. T.

4. Q. Is recanting a rare thing for a twelve year old victim
5. of C.S.C.?

6. A. No. Actually the statistics and the research show
7. anywhere between twenty-five and seventy-five percent of
8. adolescent children recant, depending on which research study
9. you are looking at.

Tr. T. page 125 lines 4-9 Carol Ann Rahter M.D. Direct by Bryan

7. [I, thought] what she also testified to, [as an expert], was
8. even maybe as interesting, or [more informative for you], which
9. is delayed reporting. I think, what ninety-nine percent of
10. the time why it's -- at least in Georgetown and Horry Counties
11. -- that's consistent with what happened here, recantation is
12. part of the known cycle that goes on; it happens in a
13. substantial number of cases.

Tr. T. page 155 lines 7-13 States Summation (Bryan)

DISCUSSION

see: U.S. v. Walker, 155 F.3d 180 (3rd Cir. 1998) And
Strickland v. Washington, 466 U.S. 668 (1984)

Petitioner herein submits that his Trial Counsel was ineffective for failing to object and there's a reasonable probability exist that the result of the proceeding would have been different had my Attorney made the proper objection. Petitioner believes in good faith that he is entitled to the Grant of a New Trial, for the issue hereto argued.

CONCLUSION

Petitioner believes that through the issues presented, citations of authorities relied on, that he has shown unto this Court that he was denied his Sixth Amendment right to the effective Assistance of trial Counsel that is guaranteed by the Sixth Amendment, as well as Petitioner was also denied his right to a fair trial that is protected under the Due Process Clause of the Fourteenth Amendment of the South Carolina Constitution as well as the United States Constitution.

Due to the complexity of the issues involved, and the Fact that SCDC has not purchased any new Law Books since 2003. The Prison Law Library is inadequate to properly research and prepare all remaining issues not raised herein. Petitioner is a Layman and not represented by Counsel, Therefore any issues not raised herein is NOT WAIVED, EXPRESSED, OR IMPLIED. Petitioner would ask to be appointed counsel as soon as possible to research and Amend [Any and All] remaining issues. Petitioner hereby reserves that right.

For the requested relief stated herein. Petitioner will forever pray that this Court will Grant the requested relief of a New Trial.

Respectfully Submitted,

151 Shannon D. McGee

Shannon D. McGee, #147120

AFFIDAVIT OF SERVICE

I Shannon D. McGee, # 147120 swear under a penalty of perjury that I have forwarded an Original Courts copy (1) Motion to Sequester Witnesses; (2) Certificate of service signed by me / but needs Attorney of record signature because S.C. has a rule on Hybrid representation. on This 20 day of June, 2011 by placing the same in the U.S. postal services; postage prepaid, to Attorney of record.

(1) Mr. James B. Moore III Esquire

151 Shannon D. McGee Sr.
Shannon D. McGee, # 147120
Applicant.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 20th DAY OF June

2010

Sylvia Jones
NOTARY PUBLIC

STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES

1/24/2018

As you are aware Mr. Moore I have alot at stake. I got a Life Sentence and I'm innocent. I might be Guilty for being a stern step-father to a unruly Adolescent who lied on me, but I have done nothing in this matter. Now I want to establish a few things as I work with you on my case. Under SCRCiv.P. Rule 71.1(d) [If after the State has filed its return, the application presents questions of law or fact which will require a hearing, the court shall promptly appoint counsel to ASSIST the applicant if he is indigent.] Now theres no doubt that I need your help/assist; but we must work together as a team. Because Pursuant to SCRCiv.P. Rule 71.1(e) • The applicant/Me has the Burden of establishing his entitlement to relief by a preponderance of the evidence. So my job is to make sure I put up all available issue/witnesses/Evidence coupled with anything to help prove my allegations at the Evidentiary Hearing for PCR. Now I must testify and demonstrate for the court by pointing out to Transcript pages; lines where my Trial Attorney should have Objected to prove Ineffective Assistance of Counsel to pass 1st prong of Strickland v. Washington. Now to pass second 2nd prong of Strickland v. Washington, I got to prove on the witness stand how that Prejudiced my Trial to make it a denial of my Due Process of Law; and this is each issue while I'm on the witness stand. Now getting to the [Prosecutorial Misconduct claims] its really cut and

dry. Bo Bryan lied; got government witness to lie; hid Evidence from Defense/me; Trial By Ambush; and got caught. Now in order to build Record / Transcript in case it goes to Federal Court I must / shall put all witnesses on the stand to establish entitlement to relief by a preponderance of the evidence. see: State v. Bannister; ^{Court Ruled} Where you cant win a PCR unless you call witnesses. see also: Pruitt v. State, 423 S.E.2d 127.

I want a SCRCiv.P. Rule 59(e) Motion to Alter or Amend a Judgment if any (1) of my issues is left out of any Order; This is a [Old trick] the Attorney General likes to do. Because no issue is preserved for Federal Court if not Ruled on by the State's highest court; which is S.C. Supreme Court.

I want a Notice of Appeal filed in my behalf if relief isnt granted pursuant SCRCiv.P. Rule 71.1(g) Appellate Review; Continuing Representation; and SCACR Rule 243; Rules 203; 206 Because I want to challenge any adverse decisions.

Now the first court appearance will probably be only Preliminary Motions - (1) Motion to Address all issues Pursuant to S.C. Code Ann §17-27-80 [which Attorney General will consent] (2.) Motion to invoke Full Discovery Pursuant to S.C. Code Ann § 17-27-150 (A) [Judge must Order / Compell disclosure from the state because he was caught hiding Discovery already and it was talk that he's in possession of letter and Statement from Mike Jones] at this time / to date.

(3) Motion to Sequester All witnesses involved in Prosecutorial Misconduct issue / [Judge will have to rule on this one also]

I need you to issue the Subpoena list out that I sent to you and I have a couple others also that needs to testify; so please interview / talk to these witnesses prior to the hearing dont wait until the hearing has already started to talk to my witnesses / or take Affidavits

(1) Susan B. Hacket - [S.C. Supreme Court Disciplinary Counsel]

(2) Honorable Roger L. Couch - [Trial Judge]

(3) Aaron Kinloch

(4) Michael J. Jones

(5) Robert Bo Bryan

(6) Attorney Stewart Axlerod

The only way that I want Call Judge Couch and/or Susan B. Hacket if the Attorney General / Ms. Catoe will consent that Evidence be read into the record of Judge Couches Order and Ms. Hackets disposition to misconduct by Robert Bo Bryan where he was sanctioned, by S.C. Supreme Court Disciplinary Counsel. This issue will be talked on heavily at the hearing Be made/aware Proper

Please File Motion to Sequester as soon as possible it is hereto attached along with certificate of service that I served it on you.

proves case itself

see: Aice V. State, 305 S.C. 448, 409 S.E. 2d 392 (1991)
(a convict may not maintain a successive application for postconviction relief on the ground that his first complete postconviction application was insufficient due to ineffective postconviction counsel.

All grounds must be raised on 1st P.C.R. [I bite at Apple.]

I'm preparing a Question And Answer for when I get on the witness stand to testify / all my P's & Q's will be together / in the meantime I want you to prepare a Question And Answer for the requested witnesses who I do not have contact with but you as my Attorney can. I look forward to you coming to the prison so we can sit down and discuss presentation. I think they should change the name from Post-Conviction Relief - P.C.R. - To your last Chance to develop the Record; Because that's the last chance you have to build the Book / Transcript to relief. I thank you for all your time and help with this matter I look forward to seeing you and working with you on my case. I thank you and God Bless you and your family & friends.

sincerely yours
1st M. Shannon D. McGee Jr.
Shannon D. McGee,
Applicant

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF GEORGETOWN)
) C/A No. 2011-CP-22-00195
 Shannon D. McGee, #147120)
 petitioner,) MOTION TO INVOKE
 v.) FULL DISCOVERY
 State of South Carolina) Pursuant to S.C. Code Ann
 Respondent,) § 17-27-150(A)
)

FACTS

Petitioner herein motions the Court to Order the production of Full Discovery Pursuant to S.C. Code Ann §17-27-150(A) which states as follows:

§ 17-27-150. Discovery in postconviction relief proceeding
 (A) A party in a non-capital post-conviction relief proceeding shall be entitled to invoke the process of discovery available under South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise

Petitioner herein invokes Full Discovery under good cause shown herein. The solicitor Mr. Robert B. Bryan was the Prosecutor who prosecuted

1.

Petitioner as will be shown herein to attack on issue/Argument 4;

4.) Did the Prosecutor commit Prosecutorial Misconduct in a violation of Petitioner's United States Constitutional right under the 14th Amendment and Due Process of Law?

1.) This Prosecutor / Robert B. Bryan lied to Defense ; and Court.

As can be proven herein by attached Trial Transcript referenced in Argument 4.

2.) This Prosecutor / Robert B. Bryan produced a government witness to give perjured testimony.

3.) This Prosecutor / Robert B. Bryan failed to turn over to defense prior to trial of a witness / jailhouse snitch's letter to this Prosecutor willing to strike a deal to save his own hide and did testify at Trial.
see: Tr. T. record on Appeal Bate stamp pg. 155-157 also Court's Exhibit 9

4.) This Prosecutor / Robert B. Bryan used a rubber stamp on envelope of a government witness / jailhouse snitch that he also withheld ⁽¹⁾ envelope & ⁽²⁾ letter of witness which was recently discovered in the Georgetown Solicitors office in the Dayo / white case. Tr. T. page 157

5.) This Prosecutor / Robert B. Bryan was brought before the South Carolina Supreme Court Disciplinary Panel on August 14, 2009 from a complaint

filed, by petitioner and the panel did not dismiss the complaint, but made a disposition that remains confidential under the provisions of the Rules of Lawyer Disciplinary Enforcement, Rule 413, SCACR.

also see: hereto attached as Evidence to Argument 4

6.) This Prosecutor / Robert B. Bryan was sanctioned in a Order signed by the Honorable Roger L. Couch dated November 9, 2006 as follows:

see: Tr. T. record on Appeal 146

The Solicitor's actions of "failing" to disclose the contents of the letter in question were a clear disregard for his responsibility as a prosecutor to seek justice in any case which he is prosecuting. A letter from a witness that demonstrates the willing to make a deal in exchange for his testimony should be given to the defendant regardless of the actual existence of a deal.

DISCUSSION

Petitioner submits that for "good cause shown" hereto above that he is entitled to Full Discovery of the Governments Files due to the miscarriage of justice herein discribed under S.C. Code Ann § 17-27-150 Petitioner is entitled to discovery under the extraordinary circumstances of a lying; vindictive Prosecution who has after the Petitioner Trial been caught hiding / failing to turn over to Defense of [impeaching Evidence] of Government witness / jailhouse snitch who wrote Prosecutor a letter tryin to strike a deal.

Petitioner feels that in the interest of justice that the Court should issue an Order for the good cause shown herein this motion to protect Petitioner of his Fundamental Rights of the United States Constitution; and Due Process of Law under the 14th Amendment. Because Petitioner therefore believes that the Respondents are in possession of other ["raw materials"] that maybe detrimental to the guilt and innocents of Petitioner.

The Following relief is therefore prayed upon the Grant of Full Discovery of case File from the Government that's in the possession of "The Georgetown County Solicitors office to include any and all other legal Documents in the possession of any Georgetown County Law Enforcement Division not unlimited to city / and county; sled; ect.

Respectfully submitted,

151 Shannon D. McGee

Shannon D. McGee, #147120

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF GEORGETOWN)
) C/A No. 2011-CP-22-00195
 Shannon D. McGee, #147120)
)
) Petitioner,) MOTION TO ADDRESS ALL
)
) v.) ISSUES PRESENTED PURSUANT
)
) State of South Carolina) TO: S.C. CODE ANN §17-27-80
)
) Respondent)
)
)

COMES NOW, Petitioner respectfully asks this Honorable Court to direct the Attorney General's office to address [all] issues presented, pursuant to S.C. Code Ann § 17-27-80, as decided by the South Carolina Supreme Court in Pruitt v. State, 423 S.E. 2d 127. That each and every issue presented be addressed at any P.C.R. Hearing that is held according to Bryson v. State, 493 S.E. 2d 500 (1997).

Petitioner further asks that each and every issue raised herein be addressed by the Court, at any hearing that is held and that this Court direct that all issues be addressed in Order issued by this Court.

For the requested, Petitioner respectfully prays.

Respectfully prays/ submits
 s/ Shannon D. McGee
 Shannon D. McGee, #147120

Attorney's

of the Case. If you want a Sample pre-trial Brief upon request Mr. John H. Blume & Ms. Emily C. Paavola will give you one free of charge faxed to you. I recommend you request it and a copy of Charleston Law Review on Post-Conviction Survival Skills. Similarly, if evidentiary issues will likely arise at the hearing, counsel should prepare a memorandum or series of memoranda on those issues.

Argue off
of my
Arguments
Issues

The PCR court will issue its final decision in a written Order. The PCR Act requires the court's order to "make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented."

see S.C. Code Ann § 17-27-80 (2003) I request that

in order to preserve all issues for Appellate review, counsel must carefully review the Final Order and Address any insufficiency through a Rule 59(c) motion requesting the P.C.R. court to specifically address each issue raised in the application. see: Marlar v. State 653 S.E. 2d 266, 267 (S.C. 2009). In several past cases, where the Final order lacked specific findings of fact and Conclusions of Law, the S.C. Supreme Court has overlooked the failure to file a Rule 59(c) motion and remanded for Specific findings (or, in some cases, a New Hearing) in Order to Address the pervasive problem of Inadequate Orders. see: McCullough v. State, 464 S.E. 2d 340, 341 (S.C. 1995) The Courts has made it clear that past practice would not continue, stating that its past practice was a "unique" situation in which "the Court attempted to remind circuit court judges and parties that. (1) specific findings of Fact and Conclusions

Id. at 341 (quoting S.C. App. Ct. R. 501, Cannon 3 B(1)(e))
Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the Order and the P.C.R. judge should carefully review the Order prior to signing it. Even after an Order is filed counsel has an obligation to review the Order and file a Rule 59(e) S.C.R.C.P motion to Alter or Amend if the order fails to set forth the findings and the reasons for those findings as required by § 17-27-80. and Rule 52(a), SCRPC. see: Pruitt v. State 423 S.E. 2d at 128, see also: Maxlar 653 S.E. 2d at 267 Hall 601 S.E. 2d at 341

And of course the time tolls for filing a Notice of Appeal until 59(e) is Ruled on see: SCRCiv.P 59(f) Then you get 30 days to file Notice of intent to Appeal as I want to challenge any Adverse decisions And if I win on 1 issue and not another I want you to file Cross-Appeal on the remaining issues. see: S.C. App. Ct. R. 203(c)

Please do everything that I'm asking as you know I got a Life sentence and that's equivalent to [Death sentence], everything is counting on this P.C.R. / Discovery Request / witnesses / Affidavits / Any and all Evidence to support Ineffective Assistance of Counsel. I want everything on the Record so it's no need for Attorney General to try to cut no corners or you as my P.C.R. Attorneys because I'm not going for it. We need to get together as soon as possible and discuss my P.C.R in depth and what's expected of you other than what I've asked God Bless You abundantly. 7. and your family Shana Mc

of Law were required; and (2.) a Rule 59(e) Motion must be filed if issues are not adequately addressed in any Order to preserve the issues for Appellate review. Marlar, 653 S.E. 2d at 267

Because issues not properly preserved will not be addressed on Appeal. see: Hall v. Catoe, 601 S.E. 2d 335, 341 (S.C. 2004)

In addition to the situation when a court fails to address one or more PCR issues, a Rule 59(e) motion may also be used when the Order contains an erroneous finding of fact, a (misapplication of Law), or if there has been intervening Authority relevant to an issue in the case. So I'm respectfully asking you to file a Rule 59(e) within the (10) days and please keep in mind that Courts will often ask the prevailing party to prepare an Order. If this occurs I want you to Object to allowing the Attorney General's office to prepare the Written order on the basis that the practice is disfavored by the S.C. Supreme Court, and it greatly increases the chances that the Order will fail to make appropriate and specific findings with respect to each issue presented. The Supreme Court has said that it strongly encourage[s] PCR Judges to draft their own findings of Fact and Conclusions of Law, even if the objection is overruled, and the court requests the prevailing party to draft the Order. see: Hall v. Catoe, 601 S.E. 2d 335, 341 (S.C. 2004)

The Court may only do so if "the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and Conclusions."

see: (Case v. Nebraska), 381 U.S. 336, 338 (1965)

§ 33:5 argued the jury to disregard the most fundamental aspect of our criminal justice system, reversal was required, notwithstanding the fact that the argument may have been the result of unintentional, overzealous rhetoric.

§ 33:6 "Golden Rule" argument

South Carolina's courts prohibit the use of the "Golden Rule argument," in which jurors are urged to place themselves in the position of a party, a victim, or a victim's family member and decide the case from that perspective. *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2006). Although the forbiddance of Golden Rule Arguments began in civil trials to hinder the plaintiff from urging the jury to put itself in the place of the victim in order to obtain higher damages, the prohibition has been made applicable to criminal actions. *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2006).

The argument is essentially a plea to the passions and prejudices of the jurors, and completely destroys and nullifies the jurors sense of impartiality. *State v. White*, 246 S.C. 502, 144 S.E.2d 481 (1965). The argument also tends to arouse the jurors to violate their oath to be governed by the evidence and to consider the facts in the case impersonally. *State v. White*, 246 S.C. 502, 144 S.E.2d 481 (1965); *State v. Gilstrap*, 205 S.C. 412, 32 S.E.2d 163 (1944). The "Golden Rule" argument asks the jurors to become advocates for the plaintiff or victim and to ignore their obligation to exercise calm and reasonable judgment. *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2006). Regardless of the nomenclature used, any argument that importunes the jurors to place themselves in the victim's shoes is disallowed Golden Rule argument. *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2006).

For instance, in *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738 (2004), the Supreme Court noted that a solicitor's argument, while holding one of the victim's shoes, that the jurors should "put themselves in her shoes" constituted a prohibited form of the "Golden Rule argument," in which jurors are urged to place themselves in the position of a party, a victim, or a victim's family member and decide the case from that perspective. The court pointed out that other courts uniformly have condemned and prohibited Golden Rule arguments in criminal and civil settings. *Forrestal v. Magendantz*, 848 F.2d 303, 309, 25 Fed. R. Evid. Serv. 1349 (1st Cir. 1988) (stating golden rule argument is universally condemned and listing factors to determine whether it is reversible error); *U.S. v. Teslim*, 869 F.2d 316, 328 (7th Cir. 1989) (holding it is improper for prosecutor to urge jurors to place themselves in party's shoes); *State v. McHenry*, 276 Kan. 513, 78 P.3d 403, 410 (2003) (disapproved of by, *State v. Gunby*, 282

Kan. 39, 144 P.3d 647 (2006)) (golden rule arguments are not allowed because they encourage jury to depart from neutrality and decide case on improper basis of personal interest and bias); *Caudill v. Com.*, 120 S.W.3d 635, 675 (Ky. 2003), as modified, (Feb. 5, 2004) (prohibited golden rule argument is one in which prosecutor asks jurors to imagine themselves or someone they care about in position of crime victim); *Garron v. State*, 528 So.2d 353, 358-360 (Fla. 1988) (prosecutor's golden rule arguments during penalty phase of capital case, taken as a whole, demonstrating classic case of attorney who has overstepped bounds of zealous advocacy and entered into forbidden zone of prosecutorial misconduct, requiring new trial); *State v. Carlson*, 1997 ND 7, 559 N.W.2d 802, 811-812 (N.D. 1997) (golden rule argument is improper and should be avoided in civil and criminal actions, but brief comment in prosecutor's rebuttal argument did not constitute reversible error); *Hayes v. State*, 236 Ga. App. 617, 512 S.E.2d 294, 297 (1999) (an improper golden rule argument asks jurors to consider case, not objectively as fair and impartial jurors, but rather from biased, subjective standpoint or litigant or victim).

The court in *Von Dohlen* also rejected the State's argument that a "Golden Rule" argument is permissible in light of *Payne v. Tennessee*, 501 U.S. 808, 111 S.Ct. 2697, 115 L. Ed. 2d 720 (1991) (permitting a jury to consider victim impact evidence). Consideration of victim impact evidence does not open the door to Golden Rule arguments urging the jury to subjectively analyze a case solely or primarily from the victim's viewpoint. *Payne* allows a prosecutor to call upon jurors to consider objectively a victim's uniqueness as an individual and impact of the crime on the victim's family. The Supreme Court stated "we strongly disapprove of such arguments because their only possible use is to improperly arouse the passions and prejudices of jurors, urging them to abandon their sworn role as fair and impartial arbiters of the facts and view the evidence from an improper perspective." *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738 (2004).

Another example is *State v. McDaniel*, 320 S.C. 33, 462 S.E.2d 882 (Ct. App. 1995), in which the solicitor used the word "you" or a form of the word "you" about forty-five times in her closing argument, asking the jurors to put themselves in the place of the victim. The court of appeals reversed the conviction under *State v. White*, noting the solicitor's comments were directly related to the jurors and their family members.

In *State v. Reese*, the solicitor repeatedly argued, "Who speaks for [the victim]?" and responded that the jury would speak for her. The Supreme Court held this argument indisputably asked jurors to abandon their impartiality and view the evidence from the victim's viewpoint, and was an improper Golden Rule argument that deprived the defendant of a fair trial.

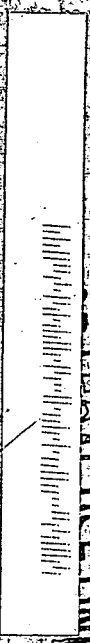
The S.C. Supreme Court reversed and remanded for a new trial, particularly where there was not overwhelming evidence of malice to support a

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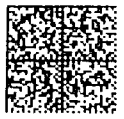
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