



RECEIVED

SEP 18 2014

S.C. Supreme Court

ALAN WILSON
ATTORNEY GENERAL

September 18, 2014

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

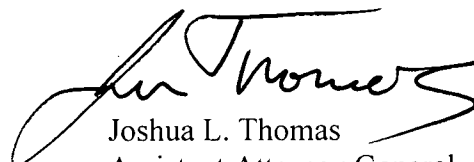
Re: Steven L. Hewitt, Sr., Respondent v. State of South Carolina, Petitioner
Civil Action No. 2012-CP-22-00864

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. A copy of the order to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.
3. Correspondence with the court reporter regarding the transcript.

Sincerely,



Joshua L. Thomas
Assistant Attorney General

JLT/jlt

Enclosures

CC: Tristan M. Shaffer, Esquire
South Carolina Department of Corrections
The Honorable Alma Y. White, Horry County Clerk of Court
The Honorable Jimmy A. Richardson, Fifteenth Circuit Solicitor
Office of Appellate Defense
Ms. Trisha Allen, Victim Services

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

SEP 18 2014

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable George C. James, Jr., Circuit Court Judge

Case No. 2012-CP-22-00864

Steven L. Hewitt, Sr., #303283,Respondent,

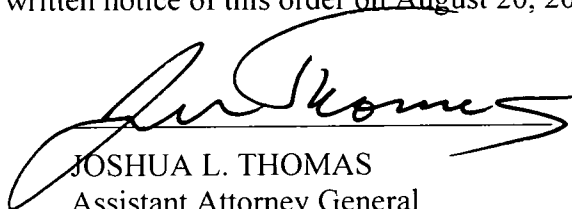
v.

State of South Carolina, Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the order granting post-conviction relief of the Honorable George C. James, Jr., dated June 26, 2014, and filed July 11, 2014. Petitioner filed a Rule 59(e), SCRCF, motion to alter or amend, which was denied by order dated July 21, 2014, and filed August 13, 2014. Petitioner received written notice of this order on August 20, 2014.

September 18, 2014



JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

Other Counsel of Record:

Tristan M. Shaffer, Esquire
4701 Oleander Drive
Myrtle Beach, South Carolina 29577

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

SEP 18 2014

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable George C. James, Jr., Circuit Court Judge

Case No. 2012-CP-22-00864

Steven L. Hewitt, Sr., #303283,Respondent,

v.

State of South Carolina, Petitioner.

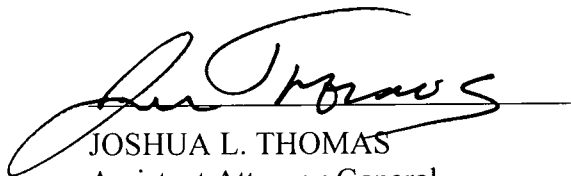
PROOF OF SERVICE

I, Joshua L. Thomas, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Tristan M. Shaffer, Esquire
4701 Oleander Drive
Myrtle Beach, South Carolina 29577

I further certify that all parties required by Rule to be served have been served.

September 18, 2014



JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

15
JT

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

Steven L. Hewitt,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2012-CP-22-0864

**ORDER GRANTING
POST-CONVICTION RELIEF**

This matter is before the Court pursuant to an application for post-conviction relief timely filed by the applicant. The State filed a return. An evidentiary hearing was convened at the Georgetown County Courthouse on March 21, 2014. The applicant was present in court and represented by Tristan M. Shaffer, Esq. The Respondent was represented by Joshua L. Thomas, Esq., Assistant Attorney General.

PROCEDURAL HISTORY

The applicant is presently confined in the South Carolina Department of Corrections pursuant to an order of commitment from Georgetown County. The applicant was indicted in November 2009 for one count of criminal sexual conduct with a minor, first degree (2009-GS-22-0302) and one count of lewd act on a minor (2009-GS-22-1199). He was initially represented by Eric Fox, Esq., and was represented at trial by Verdell Barr, Esq. Mr. Barr, now deceased, will be referred to herein as "trial counsel". The applicant was tried May 24-26, 2010, and the jury found him guilty of the indicted offenses. Trial judge Steven H. John sentenced the applicant to twenty-five years on the CSC charge and fifteen years concurrently on the lewd act charge. The applicant appealed, the Court of Appeals affirmed his convictions (see 2012-UP-

FILED
2014 JUL 11 PM 4:31
ALMA Y. WHITE
CLERK OF COURT
GEORGETOWN COUNTY, S.C.

117, filed February 29, 2012), and the case was remitted to the lower court by letter dated March 16, 2012. The application for post-conviction relief was timely filed.

ALLEGATIONS

The applicant's allegations are summarized in each relevant section of the court's Findings of Fact and Conclusions of Law. The applicant seeks a new trial arising from ineffective assistance of counsel.

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "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." Strickland v. Washington, 466 U.S. 668 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 441, 334 S.E.2d at 814. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood, 338 S.C. at 109, 525 S.E.2d at 517 (citations omitted). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this

prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. When a defendant challenges his conviction after a trial, the proper consideration is whether there is a reasonable probability that, absent the errors, the fact-finder would have had a reasonable doubt respecting guilt. Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007) (citations omitted). In order to receive relief, an applicant must prove both ineffective assistance and resulting prejudice. See, e.g., Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

Brief Summary of Factual Background

The applicant is the victim's biological father. In 2008, the victim, the applicant's son, age fourteen, made allegations that the applicant had sexually abused him when he (the victim) was approximately seven years old. The victim was born in 1994.

The PCR Hearing

At the PCR hearing, this court had before it the applicant's PCR file, including all pleadings filed, the records of the Georgetown County Clerk of Court regarding the conviction, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript. At the hearing, this court heard the testimony of the applicant and Renee Howard. Trial counsel passed away prior to the PCR hearing, so his testimony was unavailable. The court has carefully considered all of the testimony presented and weighed the same according to credibility. The court also considered the arguments of counsel as to the relevant facts and applicable case law.

Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code § 17-27-80 (2003):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Testimony of Prior Molestation Charge

The applicant claims trial counsel was ineffective in eliciting testimony from witness Renee Howard, the applicant's sister, that the applicant had previously been charged with molesting his four year old daughter but that the charges had been dismissed for lack of evidence. It is conceivable that trial counsel was attempting to establish that the applicant's estranged wife had prompted a report of false molestation charges with regard to the daughter and that, therefore, the wife was behind a false report of charges with regard to the instant victim, the applicant's son. That was a very risky strategy to begin with, but counsel's implementation of this strategy fell below accepted professional norms, primarily because there was no substance to the strategy and no effective preparation for its proper implementation. Trial counsel first put the issue of the prior molestation charge involving the daughter in front of the jury through Ms. Howard. The instant allegations involving the instant victim were made by him in 2008, two years prior to the trial. When the applicant testified, trial counsel asked him, "Okay, have there been consistent allegations about wrongdoing on your part filed by your estranged wife?" The applicant answered "This went on for pretty much up until about the last five years it kind of cooled down." He went on to testify that his wife would set things up to look like he was harassing her; for example, he testified she would invite him over to see the children and when he would arrive, she would not come to the door, and then the police would come and apprehend him. The applicant's testimony that his wife's action "kind of cooled down" five years prior to the trial belies trial counsel's supposed strategy that the wife was behind the instant allegations

B/4

made two years before trial. In addition, on cross-examination, the prosecutor asked the applicant, "So are you saying that she's the one that put [victim] up to have to get up in front of all these people and tell that this happened?" The applicant responded "No, I'm not saying that, no ma'am, I'm not saying that at all." This answer was inconsistent with any strategy designed to blame the wife for prompting the victim to make false allegations, and it definitely gutted any such trial strategy. As employed, the strategy was horribly prejudicial to the applicant. The applicant testified that he did not consent to trial counsel bringing up the allegations concerning his daughter. He claims he talked to trial counsel in advance of trial one or two times, and only then about payment of attorney's fees. It is obvious from the hearing testimony that trial counsel did not adequately prepare the applicant to testify in order to carry out the proposed strategy. If there was not to be adequate preparation and counseling of the applicant about the effective use of such a risky strategy so as to make sure his own testimony fit the narrative, the strategy should not have been employed at all. I conclude that even if the strategy was valid trial strategy, the applicant has established trial counsel's implementation of the strategy fell below accepted professional norms.

During cross-examination of the applicant at trial, the prosecutor asked him "... have you ever threatened anybody in regards to coming to court and testifying?" The applicant replied he had not and the prosecutor asked the question again. After objection, the trial judge sent the jury out and admonished the prosecutor for not bringing such an accusation to the court's attention beforehand. The trial judge took a break. After resuming the trial outside the jury's presence, he again expressed his displeasure with the State for asking such a question and also stated he could not understand why the allegations of molestation of the daughter were even brought up. After much discussion, the trial judge brought the jury in and exhaustively instructed the jury that it

was not to consider any evidence of the prior molestation charge and was not to consider any evidence of witness intimidation. To the extent applicant now claims that trial counsel was ineffective for failing to object to the curative instruction, that claim is denied. The trial judge gave the applicant more relief at that stage than he deserved, as trial counsel was the one who created the entire reason for the curative instruction as to the prior molestation charge. This court would also conclude that the prosecutor's question about witness intimidation was not improper in the first instance, and the curative instruction that the jury was to disregard that line of questioning was only beneficial to the applicant. Therefore, there was no ineffective assistance for trial counsel's failure to object to that portion of the curative charge.

As noted above, the applicant did not deserve a curative instruction concerning the prior molestation charge, as the issue was brought out by applicant's trial counsel. In State v. Warren, 341 S.C. 349, 534 S.E. 2d 687 (2000), the Supreme Court held that the defendant was not entitled to a curative instruction not to consider evidence of sex abuse of another victim when the evidence "was introduced largely through the questioning conducted by [defense counsel]." 341 S.C. 351. (It is interesting to note that the Supreme Court stated at the end of the Warren opinion, "We express no opinion whether [defendant] may be entitled to relief in a collateral proceeding.")

However, since the trial judge in the instant case did give a curative instruction, it must be determined whether the instruction sufficiently cured any prejudice brought to bear by the evidence of the prior molestation allegation. There are numerous appellate cases in which it has been held that when a jury is given a curative instruction that it is to disregard certain evidence, it is assumed that the jury will obey the instruction and the error is deemed to be cured. However, the rule has been stated somewhat differently by our Supreme Court in several cases, e.g., "An

AB/6

instruction to disregard incompetent evidence is usually deemed to have cured the error unless on the facts of the particular case it is probable that, notwithstanding the instruction, the accused was prejudiced." State v. Bell, 293 S.C. 391, 360 S.E. 2d 706 (1987), citing State v. Craig, 267 S.C. 262, 227 S.E.2d 306 (1976); State v. Smith, 290 S.C. 393, 350 S.E.2d 923 (1986) (emphasis added). The trial judge gave the curative instruction and then questioned each juror as to whether he or she could follow the instruction. All of the jurors replied that they could follow the instruction not to consider the evidence of the prior molestation charge. Under the circumstances, the judge did the best he could to attempt cure the prejudice brought about by trial counsel. However, I conclude that under the facts of this particular case, any prejudice brought upon the applicant by his own attorney was not sufficiently cured by the judge's instruction that the evidence be disregarded. The evidence that the applicant had been accused of sexual abuse perpetrated upon another child of his was simply too inflammatory. Evidence of guilt in the instant case was certainly not overwhelming. While the jurors stated they could disregard the evidence, I, again, conclude the facts and circumstances in this case are such that the applicant was irreparably prejudiced by the introduction of the evidence and the curative instruction did not cure the prejudice.

For whatever it is worth, an examination of the colloquy between the attorneys and the trial judge reveals that, more than likely, if the prior molestation charge had been introduced by the State instead of by applicant's trial counsel, the trial judge would have declared a mistrial. (Transcript, page 224, lines 5-17). Outside the jury's presence and prior to giving the curative instruction, the trial judge stated, "A defense witness introduced into this case a matter totally unrelated to this prosecution, a matter that should never have been raised in this courtroom at all.... should not have been mentioned by anyone." In determining that he would not declare a

B/7

mistrial and that he would instead give the curative instruction, he stated, "A defendant cannot cause, and the court cannot allow a defendant to cause a mistrial based on its own actions, and he is responsible, a defendant is responsible for the actions of his witnesses and his attorney." The trial judge realized the dire prejudice the introduction of the evidence caused to the applicant, but his hands were tied at that time. He could have easily echoed the sentiments of the Supreme Court in Warren that he "express[ed] no opinion as to whether [applicant] may be entitled to relief in a collateral proceeding." The PCR proceeding is the contemplated collateral proceeding, and this is one of those relatively rare circumstances in which the curative instruction did not cure the prejudice it was designed to cure.

II. Testimony of Patricia Brown

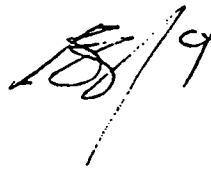
I further conclude that the applicant has met his burden of proving he is entitled to relief on the ground that trial counsel elicited from State's witness Patricia Brown that she believed the allegations made by the victim. Ms. Brown was employed by Waccamaw Center for Mental Health and worked as a school-based counselor for Georgetown Middle School. Upon referral from that school's guidance counselor, she began seeing the victim in early 2008. He confided in her that he had been sexually abused at around the age of seven. She acted as his counselor for a short time until he was referred to another counselor in the same group in April 2008. On cross-examination, applicant's trial counsel asked the witness, "Did you get the specific feeling that this might have been an obviation (sic) and not necessarily the truth?" The witness replied "No, I believe him, I believe what he said was true." (Transcript, page 98, lines 6-11). Our appellate courts have definitively ruled that in child sex abuse cases, prosecutors are forbidden from having witnesses such as Ms. Brown vouch for the credibility of the victim. See State v. Jennings, 394 S.C. 473, 716 S.E. 2d 91 (2011); see also Smith v. State, 386 S.C. 562, 689 S.E.2d

629 (2010) (forensic interviewer's hearsay testimony impermissibly corroborated the victim's testimony because the outcome of the case hinged on the victim's credibility regarding the identification of the perpetrator). Even though Ms. Brown did not testify as an expert, the same rationale would apply.

In Smith, the PCR applicant was convicted of CSC with a minor, second degree. At the trial, the forensic interviewer testified without objection that the child victim's statement was believable and that the child had no reason to lie. The Supreme Court concluded that there was no valid trial strategy for not objecting to the evidence and concluded that prejudice resulted in light of the prosecutor's repeated emphasis of the forensic interviewer's statement that the child was credible. In the instant case, I conclude there was no valid trial strategy that was furthered by eliciting testimony that Ms. Brown believed the victim. The testimony would certainly not have been admissible if the State had tried to have it admitted. While the State did not later emphasize Ms. Brown's belief that the victim was credible, I conclude the applicant has established the prejudice prong of Strickland. It is undeniable that the issue of the victim's credibility was of paramount importance in this case, and for trial counsel to elicit this testimony bolstering the victim's credibility was extremely prejudicial. The above-discussed evidence that the applicant had been accused of molesting his daughter, coupled with Ms. Brown's testimony that she believed the victim, was devastating to the defendant's position that the victim fabricated the accusations against the applicant.

III. Failure to Elicit Testimony that Victim Admitted He Fabricated the Allegations

The applicant is also entitled to relief on his claim that counsel was ineffective for advising witness Renee Howard to not mention during her testimony that the victim had told her that he fabricated the allegations against the applicant. She testified at the PCR hearing that trial



counsel told her this statement made by the victim was hearsay and that she was not to bring it up. It is apparent that this alleged statement would have been admissible under Rule 801 (d) (1) (A), SCRE, which provides that an out of court statement is not hearsay if the declarant testifies at the hearing, is subject to cross-examination concerning the statement, and the statement is inconsistent with the declarant's testimony. The declarant victim could have been cross-examined about the alleged statement as contemplated by Rule 613 (b), SCRE when he testified during the State's case-in-chief. If he had admitted telling Ms. Howard he fabricated the allegations, the inquiry would have ended there, but the defendant would have obviously benefitted from this admission. If the victim denied making the statement or equivocated, extrinsic evidence of the statement would have been admissible through Ms. Howard under Rule 613 (b). See Sheppard v. State, 357 S.C. 646, 661, 594 S.E. 2d 462, 471 (2004); State v. Rice, 375 S.C. 302, 317, 652 S.E. 2d 409, 416 (Ct. App, 2007). I find credible Ms. Howard's testimony that trial counsel instructed her to not mention the statement during her testimony. I conclude that trial counsel was simply not aware of or had misinterpreted the relevant hearsay rules governing the admissibility of prior inconsistent statements. The jury could have considered the prior inconsistent statement as substantive evidence that the crimes alleged did not occur. The victim's credibility was the key to this case. The absence of this admissible evidence was prejudicial to the applicant, as there is a reasonable probability that the outcome of the trial would have been different if the evidence had been properly presented.

The applicant also testified at the PCR hearing that the victim admitted to him he had made up the allegations "to get out of trouble". The transcript reveals (pages 34 and 84-85) that the victim was charged with possession of marijuana on May 14, 2008, several months before he made the allegations. He was adjudicated guilty in Family Court on June 3, 2009. He was

charged with ABHAN in 2005. The ABHAN charge was dismissed on March 14, 2009. Both charges were still pending at the time the victim made the subject allegations in 2008 but had been disposed of by the time of the May 2010 trial.

The State moved *in limine* (page 34, Transcript) to prohibit evidence of the marijuana conviction on the basis that Rule 609, SCRE, would not allow its admission on the issue of credibility since the offense carried a maximum prison term of less than one year and it was not a crime of dishonesty. The trial judge excluded evidence of the marijuana conviction pursuant to the restrictions in Rule 609, and the trial excluded admission of the ABHAN charge because it did not result in a conviction (Transcript, pages 85-86). Trial counsel did not argue any other ground for the admission of these two criminal charges. The applicant claims counsel was ineffective for failing to argue that the victim could be cross-examined on these two charges pursuant to either Rule 404 (b), SCRE, or for the purpose of establishing the victim's bias or motivation to lie.

I conclude that the evidence was likely not admissible under Rule 404 (b). However, there is no real doubt that the evidence was admissible under Rule 608 (c), which provides that "[b]ias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." Admission of the evidence would have also been subject to a Rule 403 analysis to determine if the probative value of the evidence was substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. I conclude the evidence would have been admissible under Rule 608 (c) as evidence of the victim's motive to misrepresent, i.e., his motive to fabricate the charges. I conclude the evidence would have survived a Rule 403 analysis. The victim was a boy of ten or eleven when he was charged with the ABHAN offense and he was thirteen or fourteen when

charged with the marijuana offense. His allegations against the applicant were made in late 2008, when both charges were pending. The same solicitor's office that was prosecuting these two charges was also prosecuting the applicant. The probative value of this evidence was that the victim had a motive to fabricate the charges in order to ease any blame or punishment he may receive for the two charges against him. This probative value was certainly not substantially outweighed by the dangers contemplated in Rule 403. At the least, the trial judge could have given a limiting instruction to the jury that the evidence was to be considered, if at all, only on the issue of the victim's credibility. Trial counsel's failure to pursue this avenue of admissibility fell below accepted professional norms, and if the evidence had been introduced, there is a reasonable probability the outcome of the trial would have been different.

In addition, the applicant asserts the State opened the door to the use of the evidence when the victim testified on direct examination that he didn't tell anyone the details of the molestation for a long time, and kept it to himself, and that he "was in and out of being in trouble", "kept getting in trouble", and "I got in a lot of trouble for smoking pot". (Transcript, pages 123-124). The solicitor asked the victim, "Do you know why you were doing these things?" The victim replied, "No ma'am. It's just like I felt like I had had a tough life and I just felt like everybody had given up on me so like I had no improvement where I had people was just, I wouldn't come in and ask them for help." (Transcript, page 124, lines 11-17). He then testified about a drawing he made showing tears coming out of his eyes; he said that drawing depicted him as "upset and it means I just didn't know what to do." He further testified that he was sad because "I was just thinking about my life." (Transcript, page 126, lines 9-17). When his drawing and poem were seen by school officials, the victim was referred to a school counselor, and he first made the allegations. This testimony opened the door to trial counsel

B/12

cross-examining the victim about the existence of the two pending charges and how the two pending charges might have also caused the victim to be upset with his life, etc. Trial counsel's failure to pursue this opening of the door fell short of accepted professional norms, and prejudice resulted because there is a reasonable probability the outcome of the trial would have been different if the evidence had been introduced.

IV. Failure to Object to Testimony Exceeding Scope Permitted by Rule 801 (d) (1) (D)

The applicant also claims entitlement to relief arising from trial counsel's failure to object to witness testimony that exceeded the time and place limitations mandated by Rule 801 (d) (1) (D), SCRE. Patricia Brown was employed by Waccamaw Center for Mental Health and was a school-based counselor at Georgetown Middle School. She counseled the victim beginning in 2008. She testified he told her he was sexually abused at age seven. She then referred the victim to Kathy McGrogan in April, 2008. She was qualified as an expert in child sexual abuse trauma. On cross-examination, trial counsel asked Ms. McGrogan why she waited from April 2008 until August 2008 to report the allegations to law enforcement and she replied that the applicant was in jail and that she was under the impression that he was in jail for sexually abusing the victim, and that therefore, there was no need to report what had already been adjudicated. (Transcript, pages 168-169). Even though it was likely apparent to the jury that the victim told these witnesses that the applicant was the perpetrator, case law and Rule 801 (d) (1) (D) clearly stand for the proposition that corroborating witnesses may only testify as to time and place factors, and may not testify that the victim identified the defendant as the perpetrator. Huggler v. State, 360 S.C. 627, 602 S.E. 2d 753 (2004); Watson v. State, 370 S.C. 68, 634 S.E. 2d 642 (2006); State v. Jeffcoat, 350 S.C. 392, 565 S.E. 2d 321 (Ct. App. 2002). Ms. McGrogan directly implicated the applicant as the perpetrator named by the victim, and trial counsel did not object to the

testimony, even though he elicited the testimony himself. At the least, he should have either not asked the question that elicited the statement, or he should have asked the trial judge to instruct the jury to disregard the inadmissible testimony. There was no trial strategy that could have been furthered by not doing so. Relief is granted on this ground. Coupled with the other errors noted herein, the failure to object to this evidence was prejudicial to the applicant.

V. Vouching by Solicitor During Closing Argument

The applicant has not established any basis for relief as to his claim for relief arising from trial counsel's failure to object to certain portions of the solicitor's closing argument. The applicant claims the solicitor vouched for the victim's credibility on four occasions (Transcript, page 257, line 15; page 258, line 16; page 259, lines 22-23; and page 262, lines 16-18). The court concludes that none of these comments were objectionable.

VI. Failure to Object to Qualification of Child Sexual Abuse Trauma Expert

The applicant claims trial counsel should have objected to the qualification of Ms. McGrogan as an expert in the field of child sexual abuse trauma. Relief is denied on this claim. In State v. Schumpert, 312 S.C. 502, 435 S.E. 2d 859 (1993), the defendant claimed error in the admission of rape trauma evidence to prove rape actually occurred. The Supreme Court expressly ruled that "both expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred when the probative value of such evidence outweighs its prejudicial effect." 312 S.C. at 506. Schumpert has not been overruled or modified. If presented to the jury in accordance with Rule 801 and case law prohibiting the witness from vouching for the victim's credibility, the probative value of the trauma evidence and the behavioral evidence in this case outweighed its prejudicial effect. Certainly, under Rule

B/14

403, SCRE, the probative value was not substantially outweighed by the danger of unfair prejudice, etc.

As to any other allegations of ineffective assistance of counsel, I conclude that the applicant has either abandoned them or has not met his burden of proving them by the greater weight of the evidence. The court also denies the applicant's claim under U.S. v. Cronin, 466 U.S. 648 (1984) that trial counsel failed to subject the State's case to meaningful adversarial testing, so as to make the adversarial process presumptively unreliable.

CONCLUSION

As discussed above, the applicant has met his burden of establishing both prongs of Strickland. For the foregoing reasons, the applicant's application for post-conviction relief is granted and the matter is referred to the Georgetown County Court of General Sessions for a new trial.

AND IT IS SO ORDERED.

June 26, 2014

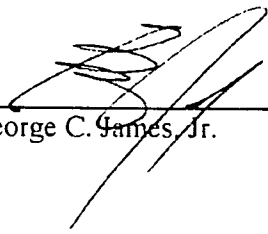

George C. James, Jr., Circuit Judge

AB/15

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GEORGETOWN)	FIFTEENTH JUDICIAL CIRCUIT
		12-CP-22-864
Steven L. Hewitt, Sr., #303283,)	
Applicant,)	
)	
vs)	ORDER
)	
State of South Carolina,)	
Respondent,)	
_____)	

The State's Motion to Alter or Amend dated July 12, 2014 is denied.

AND IT IS SO ORDERED.



George C. James, Jr.

July 21, 2014

FILED
 GEORGETOWN COUNTY S.C.
 2014 AUG 13 PM 3:15
 ALMA Y. WHITE
 CLERK OF COURT



ALAN WILSON
ATTORNEY GENERAL

September 18, 2014

The Honorable Alma Y. White
Georgetown County Clerk of Court
Post Office Box 479
Georgetown, South Carolina 29442

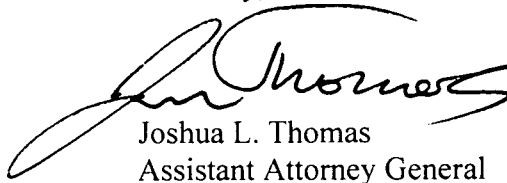
Re: Steven L. Hewitt, Sr., Respondent v. State of South Carolina, Petitioner
Civil Action No. 2012-CP-22-00864

Dear Ms. Rhodes:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. A copy of the order to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.
3. Correspondence with the court reporter regarding the transcript.

Sincerely,



Joshua L. Thomas
Assistant Attorney General

JLT/jlt

Enclosures

CC: Tristan M. Shaffer, Esquire
South Carolina Department of Corrections
The Honorable Daniel E. Shearouse, Clerk of the South Carolina Supreme Court
The Honorable Jimmy A. Richardson, Fifteenth Circuit Solicitor
Office of Appellate Defense
Ms. Trisha Allen, Victim Services