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OCT 10 2014

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Georgetown County

Steven H. John, Circuit Court Judge

Shannon Mcgee,

Petitioner,

v.

State of S.C.,

Respondent.

Appellate case # 2014-000297

Certificate of Service

I do hereby certify that the Attorney General was served on This 7 day of October, 2014. By way of a true and correct copy of Objection to Petition to be relieved as counsel; 45 day Pro-se Johnson Petition for writ of Cert. Addresed as follows:

A.G. Office.
P.O. Box 11549
Columbia, S.C. 29211

Respectfully Submitted,

Shannon D. McGee Sr.

#142120

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GEORGETOWN COUNTY
STEVEN H. JOHN,CIRCUIT COURT JUDGE

SHANNON MCGEE,

PETITIONER,

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S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE # 2014-000297

OBEJECTION TO PETITION TO BE RELIEVED AS COUNSEL

Petitioner Shannon D. McGee States :

1.Ms. Carmen V. Ganjehsani is my Attorney within Appellate defense for the State of South Carolina and was appointed to my case to represent me.

2. She says she reviewed the records and transcript of my P.C.R. hearing which was held on December 19,2013.Yet she failed to brief my issues that my PCR Counsel clearly was ineffective for failing to preserve the record by my briefed issues,therefore the PCR Order is inaduate and improper .See:Washington V. State, 324 SC 232, 478 SE 2d 833 ; Odum V. S.C.,523 SE 2d 733 (1999) Appellate Counsel Should ask that the S.C. Supreme Court remand the case back to lower/pcr court after effective Counsel has been Appointed.

3. Pursuant to Johnson V. State ,294 S.C. 310, 364 S.E. 2d 201 (1988), it doen't give Appellate Counsel no authority to file just 1 issue that's moot with no merit and fail to brief the following issues with Merit.

4.P.C.R. Counsel Mr. Runyon intentionally with malice and forethought SABOTAGED THE pcr hearing when he failed to ask any questions pertaining to the attached issues,my question is how can appointed pcr counsel's do this and not be ineffectives and when petitioner testified he rushed through it and would not ask the necessary questions to develope a record,this is illegal. Therefore,Counsel's request from the Court to be relieved as Counsel should be denied and further briefing should then proceed on this appeals. He also failed to call my witnesses. see: Bannister v. State, you can not win a PCR case without witness testimony.

SEE ATTACHED BRIEF

45 Day PRO SE Johnson Breef

Respectfully Submitted,

Mr. Shannon D. McGee Sr.

#147120

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Georgetown County

Steven H. John, Circuit Court Judge

SHANNON MCGEE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE # 2014-000297

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45 Day PRO-SE JOHNSON PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted,

Mr. Shannon D. McGee Sr.

Shannon D. McGee

#147120

ISSUE # 1

1.Did the pcr Court erred by allowing pcr Counsel Mr. Ruyun to Sabotage the applicants issues raised in his pcr application & Amendment,that's clearly in a violation of Martinez V. Ryan U.S. States Supreme Court President,which in turn is in a violation of the pcr statues and S.C.R.Civ.P. Rule 71.1(d),whenever the pcr Court then let the Attorney General draw up the bullet-proof pcr order denying relief, this pratice is frown upon and is illegal.

FACTS

P.C.R. Counsel put trial Counsel on the stand first at the pcr hearing. See Record on Appeal pg.366 to pgs. 402 , Nowhere in his questioning did he ask him at any time questions about the attach issues petitioner hereto is attacking.

P.C.R. Counsel put Petitioner/Shannon D. McGee on the stand and Nowhere does he ask me the necessary questions pertaining to the attached issues Iv'e been Challenging now for years or did he ask me questions to carry my burden,he did this intentionally to have my case dismissed and denied.The records clear he intentionally did this to me so I would loose my pcr. See:Record on Appeal pgs. 412 to pgs. 428

P.C.R. Counsel Mr. Ruyun is well formiliar that a issue has to be raised and ruled on in the lower court before the issues are preserved for appeal.And what he's done to me here is illegal and I have also filed a complaint with the S.C. Supreme Court Disciplinary Counsel as well as the NAACP.All my evidence that was gathered up by other prior pcr counsel's he failed to give the Court my evidence and the Judge failed to take it also.

I DESRVE A NEW P.C.R. HEARING. Pursuant to Washington v. State, 324 S.C. 232, 478 S.E. 2d 833

This Case Should be remanded back to pcr Court for further testimony.The issues raised are hereto attached but at my pcr hearing my pcr counsel made sure none of my issues were addressed making me loose my pcr hearing.This is illegal and in a violation of my Due Process and Clearly Established Federal Law.The S.C. Rules of Court Civ.P. Rule 71.1 (d) states as follows:

(d)-Appointment of counsel for hearing - If,after the state has filed its return,the application presents questions of law or fact which will require a hearing,the court shall prompty appoint counsel to assist the applicant if he is indigent.Counsel shall be given a reasonable time to confer with the applicant. COUNSEL SHALL INSURE ALL AVAILABLE GROUNDS FOR RELIEF ARE INCLUDED IN THE APPLICATION AND SHALL AMEND THE APPLICATION IF NECESSARY.

In this case the applicant Amended his own application before Counsel was appointed to represent him.He then was given one after another pcr counsel's until the Attorney General found one to do what Mr. Ruyun did to me.

(e) BURDEN OF PROOF - The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.

PCR COUNSEL Mr. Ruyun Capitalized off the Rule (e) by Sabotaging my pcr hearing.The record's proof,then the next thing be I did not have a Constitutional right to Collateral Counsel citing PA V. Finley , 481 US 551,555 (1987)(right to appointede counsel applies only to first appeal of right.)

The record is clear the Honorable PCR Judge ask Mr. Runyun "Why he failed to ask Trial Attorney Mr. Axelrod,anything about the issued hereto attached that Petitioner is respectfully asking this Court to Rule on the Merits of my claims or remand back to PCR hearing to fully develope the Court records.

See:Tr.T. Pg. 415 lines 17-25

16. MR. RUNYUN: All right.
17. Q. Let's start with your first ground for relief.What is
18. your first ground for relief,Mr. McGee ?
19. A. The first one that I have in my petition,or just
20. period ?

21. THE COURT: In the Petition,in the Petition.

22. Q. Any order you want,in your Petition.
23.A. The first one,was counsel ineffective for failing to
24. object to the solicitor's improper closing arguments that
25. impermissibly bolstered--bolstered and vouched for the
Cont.pg. 416 lines 1-25
1.credibility of the victim as states witness,and in violation
2. of the fifth and sixth amendment rights to the united states
3.constitution,failing to properly object and preserve the
4. issues for appeal,and in a violation of petitioner's due process
5.under the fourteenth amendment.It says,Facts,and so this--

6--
7. THE COURT: You don't have to read that.I just ---
8. MR. RUNYUN: You don't have to read all that.

9. THE COURT: Each ---
10. A. Just go to the issue ?
11. THE COURT: Right.
12.Q.What's your next ground for relief that you seek? What
13 is the next ground that you seek relief on ?

14. THE COURT: He's actively pursuing that one,correct ?
15. MR. RUNYUN: Yes sir.
16. THE COURT: All right.Let's go on to the next one.
17. A. The next one,was counsel ineffective for failing to
18 object to Solicitor's improper closing argument that
19 impermissibility violated the golden rule,and in a violation of
20. petitioner's sixth amendment to the untited states constitution
21. for failing to properly object,and to perserve the issue for
22. appeal,and a violation of petitioner's due process under the
23. fourteenth amendment.

24. Q. All right.Your next ground for relief that you are
25 actively pursuing ?

CONT. pg.417 lines 1-7
1. THE COURT: Okay.You are moving along.Are you
2.actively pursuing that one ?

3.MR. RUNYUN: Yes Sir.

4. THE COURT: Okay.Because I didn't hear anybody ask

5. Mr. Axelrod question one about that.

6. We'll continue on.

7. MR. RUNYUN: Continue on.

See: Bannister v. State, you have to ask witness Testimony!
The Court had a duty at this point to stop the pcr hearing because it's clear that pcr counsel was sabotaging the hearing as well as ineffective, the way that he questioned petitioner is a violation of pcr statues as well as SCRCiv.P. Rule 71.1 (d)(e)and the inmate should not be held responsible for a negligent attorney this is clearly unconstitutiponal and needs to be investigated ASAP. It's Shocking to the universal sense of justice, triggering, see: Butler v. State

I WANT MY ATTACHED ISSUED BE MADE APART OF THIS JOHNSON BRIEF
AND I PRAY THAT THE COURT READ MY ISSUES AND GIVE ME FAIR JUDGMENT

Respectfully submitted,

M. Shannon D. McGee Sr.
Shannon D. McGee
#147120

ARGUMENT 1

1.) Was Counsel Ineffective for failing to Object to the Solicitor's improper closing Argument that impermisibly 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 Petitioners 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 sharira 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 Circuits 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, 359n. 15, 78 S. ct. 311, 323n. 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 impermisibly 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 Petitioners Due Process under the 14th Amendment?

FACTS

The Solicitor repeatedly violated the "Golden Rule" in his closing and opening Argument's 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 step-dad, 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, dont 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 8-19

... 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 Minor Child 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 Minor Child 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 from Id.

Jurors are sworn to be governed by the evidence, and it is their duty to consider the facts of the case impartiality 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 themselve's in the victims 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 thats 5 more times then the case of: State v. McDaniel 320 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 setting's. 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 server after that coupled with a jury charge that the victims testimony not be corroborated defiently 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 [illegible]; 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
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. Horry 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's 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 occured 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. Sheriffs' 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 rights, 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 client's and he had protection in Horry 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 experties. 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; Fraudlent 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 lost 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 8. 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 develope 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 can't 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 Horry 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 impertially 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 3-5.9 (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

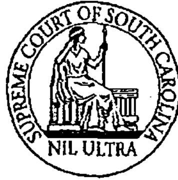
use every legitimate means to bring about a just one" 295 U.S. at 88, 55 S.Ct. 629 at 633 (emphasis added).

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]



The Supreme Court of South Carolina
OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Susan B. Hackett
Staff Attorney

Post Office Box 12159
Columbia, South Carolina 29211

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

September 11, 2009

PERSONAL AND CONFIDENTIAL

Shannon D. McGee #147120
Lieber Correctiona Institution
P.O. Box 205
Ridgeville, SC 29472

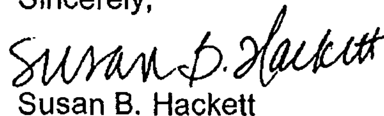
RE: NOTICE OF FINAL DISPOSITION
Lawyer: Robert B. Bryan, Esquire
Matter Number: 09-DE-L-0426

Dear Mr. McGee:

You previously filed a complaint with the Commission on Lawyer Conduct concerning Robert B. Bryan. On August 14, 2009, an investigative panel of the 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 action taken by the Commission constitutes final disposition of the proceedings in this matter. Your cooperation with the Commission and this office is appreciated.

Sincerely,



Susan B. Hackett

"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.'"

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

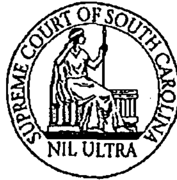
argument to the effect that this was an erroneous charge on the facts. Finally, the <u>Schumpert</u> Court held, "The trial judge properly charged the jury it could believe any single witness over several; it was the sole judge of the facts, he had no opinion about those facts, and the state had the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

The South Carolina Supreme Court in <u>Schumpert</u> specifically indicated that it's holding that the erroneous charge did not constitute reversible error was in accord with the holding of the Indiana Supreme Court in <u>Lottie v. State</u>, 273 Ind. 529, 406 N.E. 2d 632 (1980). This Court however, should decide to reconsider it's 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**] it's holding and **<u>reversed</u>** the **<u>Lottie</u>** decision on grounds very similar to the arguments raised by Petitioner. In **<u>Ludy v. State</u>**, 784 N.E. 2d 459 (2003), the Indiana Supreme Court [**overruled**] **<u>Lottie</u>** in a well reasoned decision, explaining:

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

FORTIOR EXHIBITS

[to support Argument 4 on Prosecutorial Misconduct]



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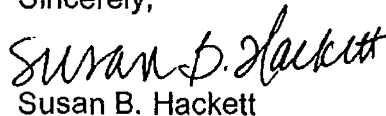

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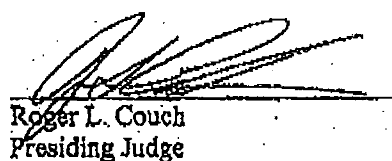
After a review of the record in this case, there is no evidence that any type of deal existed between the State and Kinloch for his testimony in this matter. The Solicitor met with Mr. Kinloch the day before the trial, which was after all of the charges against Mr. Kinloch had been

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.



Roger L. Couch
Presiding Judge

Spartanburg, South Carolina
November 9, 2006

8-4-06

EXHIBIT
Courts
dce 9 9-22-06

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

But Mr. Bryan I'm writting 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 Micheal never spoke to Shannon one on one, I did!!! I know him from the streets

So he came to me, and told me what happe
on that night. I told Micheal Jones ~~but~~ I
didnt tell him all. So If you wish to speak
me, I'm willing to help, if you are conc.
do need your help.

Thank-You

P.S. IF Need Be
I WILL TestIFy!

Aaron
R. Kinloch

And also I know something
about Micheal Jones Case
also, because his Codefendent
Mrs. Jesse Walker is Married To
My Uncle Mr. Franklin Walker, he didn't
know that until after he spoke with me abou
his charges and who was with him.

CHARLESTON

RECEIVED
AUG 07 2006

23440+2624

331157

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 victims 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 Ludy 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 § 16-3-655, 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)."

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> 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 it's 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 victims 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 Art. 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. 490 (1923). 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: Evitts 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 Petitioners 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 theres 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,
/s/ 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.

ALMA Y. WHITE
CLERK OF COURT
2011 MAR -7 PM 1:54
GEORGETOWN COUNTY, S.C.
FILED

Respectfully prays/submits

/s/ 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,)
V.)
State of South Carolina)
Respondent,)

MOTION TO INVOKE FULL DISCOVERY
Pursuant to S.C. Code Ann § 17-27-150(A)

FILED
GEORGETOWN COUNTY, S.C.
2011 MAR -7 PM 1:55
ALMA Y. WHITE
CLERK OF COURT

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

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 Courts 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 misscarriage 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 Prosecutor 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 innocenty 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 Solicitor's 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.

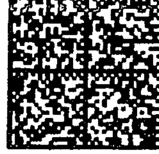
Respectfully submitted,

/s/ Shannon D. McGee

Shannon D. McGee, #144120

Shannon
Lieber Corr. Inst. C-A-48
P.O. Box 205
Ridgeville, S.C. 29472

FIRST CLASS



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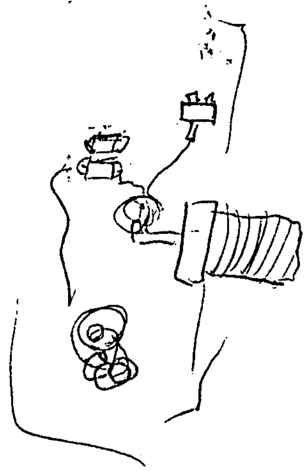

The Supreme Court of S.C.
Attn: Mr. Daniel E. Shearouse, Clerk
P.O. Box 11330
Columbia, S.C. 29211