

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Florence County  
Edgar W. Dickson, Circuit Court Judge  
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**RECEIVED**

DEC 21 2015

**S.C. Supreme Court**

ROBERT SINGLETARY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000883  
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PETITION FOR WRIT OF CERTIORARI  
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LANELLE CANTEY DURANT  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR court err in not finding trial counsel ineffective for not objecting to Debbie Elliott being qualified as an expert in child abuse assessment when there was not a sufficient showing of her individual reliability as there was no evidence her conclusions from the interview were accurate, and her qualification as an expert allowed her to give her improper opinion recommendations that Singletary should have no contact with this child or any child, and that Petitioner should have a complete sex offender assessment which was highly prejudicial to Petitioner Singletary and irrelevant to the jury's finding of guilt or innocence?

## STATEMENT

In September 2009, the Florence County Grand Jury indicted Robert Singletary on the charges of committing a lewd act on a minor and criminal sexual conduct (CSC) with a minor. On June 21, 2010, Petitioner Singletary proceeded to trial before the Honorable D. Craig Brown and a jury. Singletary was represented by Vick Meetze, and the state was represented by E.L. Clements, III., Robert N. Wells, Jr., and Catherine J. Anderson. App. 1. The jury found Singletary guilty on both charges as indicted. App. 238, ll. 5 – 19. Judge Brown sentenced Singletary to thirty years on the CSC with a minor and fifteen years on the lewd act charge to run concurrent with the CSC sentence. App. 244, ll. 3 – 22. The South Carolina Court of Appeals affirmed Singletary's convictions and sentences on October 31, 2012. State v. Singletary, Op. No. 2012-UP-589 (Ct. App. filed October 31, 2012).

On April 13, 2013, Petitioner Singletary filed an application for post-conviction relief. (PCR). The state filed a return on September 13, 2013. An evidentiary hearing was held on October 9, 2014 before the Honorable Edgar W. Dickson. Singletary was represented by Jonathan Waller, and the state was represented by Josh Thomas. App. 275. On March 25, 2015, Judge Dickson issued an order denying Singletary's PCR application and dismissing it with prejudice. App. 318 – App. 327. This petition for a writ of certiorari follows.

## ARGUMENT

The PCR court erred in not finding trial counsel ineffective for not objecting to Debbie Elliott being qualified as an expert in child abuse assessment when there was not a sufficient showing of her individual reliability as there was no evidence her conclusions from the interview were accurate, and her qualification as an expert allowed her to give her improper opinion recommendations that Singletary should have no contact with this child or any child, and that Petitioner should have a complete sex offender assessment which was highly prejudicial to Petitioner Singletary and irrelevant to the jury's finding of guilt or innocence.

At the time of trial, Minor was seventeen years of age, but claimed that the sexual abuse at the hands of Petitioner Singletary occurred over a three year span beginning when she was seven or eight. She and her brother were removed from their mother by the Department of Social Services (DSS) when she was five because her mother was on drugs and alcohol. She lived in three different foster homes with one of them being the home of Ella Graham. Robert Singletary was the brother of Ms. Graham. App. 86, ll. 1 – App. 88, ll. 25; App. 328 – App. 329, Indictment 2009-GS-21-1350.

Minor had little in worldly possessions, and Singletary would buy her clothes and items. Then Singletary allegedly started having sexual intercourse with her at different places over the course of the three years. The first time was when the children were playing hide and seek in the back yard of his parents' home in an old ice cream truck. Then she claimed it happened at Singletary's shop, and in the back seat of his car. App. 90, ll. 18 – App. 96, ll. 13.

Minor finally went to live with her grandmother, and then started to get into legal trouble. Once when she had to talk to law enforcement, she then began to assert that she had been sexually abused. She told her aunt, the police, and the "lady at the Care House." App. 96, ll. 14 – App. 100, ll. 25.

The state called Debbie Elliott to testify as an expert at Petitioner Singletary's trial. She testified that she had a Bachelors of Arts degree in Sociology from Clemson University, and had completed one course in Finding Words in 2002.<sup>1</sup> This was a course designed for forensic interviewers. She had been qualified in advanced word training. She had twenty-five years experience in working with abused children at different agencies. At the time of trial, she was employed at the Care House which was a child advocacy center designed to do forensic interviews and forensic medical assessments of children. She had been there four years. She worked "specifically with children that were severely physically abused and sexually abused." App. 125, ll. 19 – App. 127, ll. 23.

The state then offered her as an expert in the area of "children who have been sexually and physically abused." There was no objection by defense counsel and no voir dire by defense counsel. App. 128, ll. 7 – 25.

Elliott then testified that she was a forensic interviewer. App. 129, ll. 3 – 11. On March 19, 2008, she conducted a forensic interview with the Minor in Singletary's case. Investigator Roger Tilton with the Lake City Police had requested this interview. He came for part of the interview. But then she said: "I think he wasn't present." App. 147, ll. 1 – 19; App. 130, ll. 8 – App. 131, ll. 3.

Elliott then testified that the minor gave many details about multiple incidences at multiple locations from the first grade through third grade when she lived at Ella Graham's foster home. App. 134, ll. 4 – App. 136, ll. 6.

The solicitor asked Elliott if she made any recommendations and what they were. Elliott stated her recommendations:

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<sup>1</sup> Finding Words offered certification in the RATAC method of interviewing. See South Carolina Department of Social Services v. Pringle, 405 S.C. 608, 749 S.E.2d 301 (2013).

I recommended that Mr. Robert Singletary have no direct, or indirect contact with this child, any child. I recommended that he have complete sex offender assessment, and follow through with the recommendation. And I recommended that any child that had had any kind of contact with him while in that foster home be assessed to insure their safety. Also a recommendation for Minor to enter therapy to help her deal with the chronic sexual victimization and some high-risk behavior.

App. 136, ll. 7 – 20.

There was no objection from defense counsel. App. 136, ll. 21 – 25.

Then she was asked to explain what kinds of behaviors children did when they were the victims of sexual assault. Elliott then talked about promiscuity, theft, drugs and alcohol. App. 136, ll. 21 – App. 137, ll. 22. At the close of Elliott's testimony, she explained delayed disclosure. The solicitor then asked her:

**Q:** In your expert opinion, did you think that Minor had done this?[delayed disclosure] emphasis added.

**A:** Yes.

App. 138, ll. 2 – App. 139, ll. 13.

Defense counsel objected. The judge sustained the objection, and instructed the jury to disregard the question asked and the answer. App. 139, ll. 14 – 24.

In camera, defense counsel asked for a mistrial based on the fact that what the solicitor just asked Elliott was another way of saying that Singletary did these things and that Minor was telling the truth. In an earlier bench conference, the judge had told the solicitor that she could not ask Elliott if she believed that Minor was telling the truth. App. 140, ll. 3 – 21.

The judge agreed with defense counsel, and reprimanded the solicitor because the question was improper and elicited an improper answer. However, the judge denied the mistrial motion and said that his instruction to the jury cured the problem. There was no objection to the curative instruction by defense counsel. App. 141, ll. 1 – App. 143, ll. 25.

In the solicitor's closing argument, she said that the case came down to whether the jury believed the Minor or not. The solicitor relied on Elliott's testimony in her argument. App. 189, ll.

13 – App. 191, ll. 17. The solicitor argued:

You heard from several different witnesses....You heard from Debbie Elliott and Investigator Tilton. And, ladies and gentlemen, it comes down to the fact as you whether or not you believe Minor.

App. 189, ll. 13 – 19.

And later in her closing argument:

You heard from Debbie Elliott before you heard from Investigator Tilton. Now, this is a woman who is qualified as an expert in the area of child physical and sexual abuse assessments. She told you this is what she's been doing her entire life. ... She is now a forensic interviewer.... What she wants to do, she just wants to find out from the kid what exactly happened.

App. 199, ll. 23 – App. 200, ll. 11.

At his PCR hearing, PCR attorney Jonathan Waller, listed Singletary's claims of the ineffective assistance of his trial counsel, Vick Meetze. Singletary testified that he had wanted to testify but his trial counsel said it was not a good idea because the state would bring up his past. He believed his trial counsel was ineffective for not allowing him to testify, for not calling witnesses and not presenting his alibi defense. Singletary's evidence of alibi consisted of documents such as light bills, , his IRS statement and bank statements that showed that he lived in Manning during the time the offenses occurred in Lake City. App. 280, ll. 10 – App. 290, ll. 5.

Trial counsel Meetze testified that he was appointed as a public defender to represent Petitioner Singletary. App. 295, ll. 5 – 23. He admitted that he advised Singletary not to testify. He viewed the video from the Care House interview but did not know if he ever showed it to Singletary. App. 300, ll. 23 – App. 302, ll. 12.

On cross examination, trial counsel Meetze admitted that Debbie Elliott was offered as an expert in the field of assessment of abused children without an objection from counsel. The PCR attorney said that Elliott had only her Bachelor's Degree and listed only one course of Finding Words as her training in forensic interviewing. But at trial, trial counsel did not object to her qualifications to be an expert in the field of child abuse assessment. Trial counsel admitted that he did not have any problem with that. When asked, based on Elliott's overall testimony and qualifications, if expert testimony was needed, counsel said he did not think there was any need for her to be qualified as an expert. App. 308, ll. 8 – App. 312, ll. 25.

The PCR judge ruled that generally he found trial counsel's testimony credible and found Singletary's testimony not credible. App. 320. The judge ruled that Singletary did not meet his burden of proof that trial counsel was ineffective for failing to object to Elliott being qualified as an expert. The order provided that Elliott's qualifications as a "child abuse expert was proper based on her training and experience dealing with victims of child sex abuse." The PCR judge held that the state established Elliott's training and experience; therefore trial counsel could not have interposed a valid objection to her qualification as an expert. App. 324.

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, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland v. Washington, *supra*; Butler v. State, *supra*.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel's performance was deficient and fell below reasonable

professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 117-118, 386 S.E.2d 624 (1989).

A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

All expert testimony must meet the requirements of Rule 702, SCRE regardless of whether it is scientific, technical, or otherwise. The trial judge has a duty to serve the gatekeeper function in assuring the reliability of expert testimony. This also applies to non-scientific evidence. See State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009).

It is an abuse of discretion for a judge to qualify a witness who is not qualified or where his ruling lacks evidentiary support or is controlled by an error of law. See Watson v. Ford Motor Company, *supra*; State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). As in State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009), there was no need to qualify Elliott as an expert.

State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015), was a case with similar issues as Singletary's. In Chavis, Debbie Elliott was qualified as an expert in the field of child abuse assessment. She conducted the forensic interview of the child Chavis was accused of sexually abusing. This Court held that the state failed to show sufficient individual reliability of the witness to allow her to testify as child abuse assessment expert. The Court applied the standard set in State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009) because the testimony of child abuse assessment experts was non-scientific. In State v. White, *id.*, two prongs must be met: (1) the qualifications of the expert must be sufficient; and (2) there must be a determination that the expert's testimony will

be reliable. The Court focused on the reliability standard because that was the gist of Chavis' argument.

The Court held that there was no evidence demonstrating that Elliott was able to draw reliable results from the procedures which she consistently applied which was the RATAC method. There was no evidence that her conclusions taken from the interviews were accurate. There was only one peer interview of her work by another interviewer.

In State v. Chavis, *supra*, another interviewer, Ginger Griggs, was qualified as an expert in child abuse assessment. The Court did not reach the expert issue on Griggs but found error in Griggs' recommendation that Chavis not be around the victim for any reason. The Court ruled that this recommendation could only be interpreted that Griggs believed the victim's claim of sexual abuse. The Court ruled that this recommendation was inadmissible as improper bolstering of the victim's credibility. Nevertheless, the Court held that both of these errors were harmless beyond a reasonable doubt. Expert or not, this opinion was improper.

In State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), this Court held that the testimony by the forensic interviewer of the victim that the victim had given a "compelling finding" of child abuse was inadmissible but was harmless. This Court wrote that an expert can give an opinion but they may not offer an opinion regarding the credibility of others.

Singletary's case is similar to Chavis in that both of the errors in Chavis occurred in Singletary's case, and trial counsel did not object. In Singletary's case, Elliott was qualified as an expert without any gatekeeping function by the trial court of the reliability of her testimony. Defense counsel asked no questions regarding her limited qualifications. There was no evidence presented of her publications nor any other specific training courses nor of any kind of review of her work. Elliott admitted that Investigator Tilton did not stay to observe. There was no evidence of the

accuracy nor reliability of the results she obtained from her interview. Minor was a teenager by the time of this interview which made a review of the interviewer's work more significant due to the possible manipulation by an older victim.

Because Elliott was qualified as an expert, the trial court allowed her to give recommendations from her interview. Her recommendation that Singletary have no contact with Minor or any other child was evidence that Elliott believed Minor was sexually abused by Singletary which bolstered Minor's credibility just as in Chavis. Elliott's recommendation that Singletary undergo sex offender assessment again bolstered Minor's credibility, and was highly prejudicial to Singletary because again, it indicated Elliott believed Minor.

Singletary's case is distinguished from Chavis in the harmless error finding. These errors in Singletary's case are extremely prejudicial in that an alleged expert's recommendation that Petitioner undergo assessment for a sex offender certainly had an impact on the jury's decision and prevented Singletary from having a fair trial. This was not harmless. In State v. Kromah, 401 S.C. 572, 573, 737 S.E.2d 490, the Supreme Court held:

Although an expert's testimony theoretically is to be given no more weight by a jury than any other witness, it is an inescapable fact that jurors can have a tendency to attach more significance to the testimony of experts.

In State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009), this Court held that the testimony in the case of committing a lewd act on a minor was not required to be presented by an expert. Nevertheless, the Court held that Douglas suffered no prejudice as a result of the alleged expert's testimony. However, in his dissent, Justice Pleicones wrote:

In my opinion, it was not only unnecessary but improper for the circuit court to qualify Herod as an expert witness.

Justice Pleicones continued to write:

I cannot agree with the majority that qualifying Herod as an expert was harmless. ....qualification as an expert clothes the witness with an air of authority that does not attach to "ordinary" witnesses.

Qualifying Elliott s an expert was improper and not harmless to Singletary. Her opinion recommendations were improper whether she was an expert or not. Common sense should have told trial counsel that her recommendations that Petitioner should have no contact with this child or any child and that Petitioner should undergo sex offender assessment told the jury that Elliott believed that Minor was telling the truth. Trial counsel had the benefit of the opinion in Douglas, and of Justice Pleicones' dissent. The trial of Chavis was held in 2011, the year following Singletary's trial, and the trial attorneys in Chavis' case made the proper objections to Elliott as an expert witness.

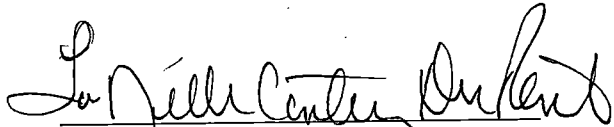
The issue of forensic interviewers as alleged experts has been fluid in the legal system for several years as shown by the continuum of cases such as Douglas, Kromah, and Chavis. Since the opinion in Kromah, forensic interviewers have apparently been renamed as experts in child abuse assessment as Elliott said clearly that she was a forensic interviewer. The trial court qualifying her as an expert in child abuse assessment and allowing her to give her improper opinions was improper.

The PCR court erred in failing to find trial counsel ineffective for not objecting to Elliott being qualified as an expert in child sexual and physical abuse assessment, and for giving the highly improper recommendations. App. 136, ll. 7-20. But for trial counsel's errors, there was a highly reasonable probability that the results would have been different.

CONCLUSION

Based on the above, certiorari should be granted, and Petitioner's convictions and sentences vacated, and the case remanded for a new trial.

Respectfully submitted,

A handwritten signature in cursive script, reading "LaNelle Cantey DuRant".

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of December, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Florence County  
Edgar W. Dickson, Circuit Court Judge  
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ROBERT SINGLETARY,

PETITIONER,

V.

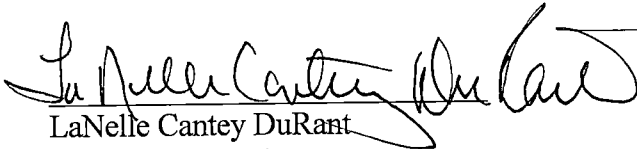
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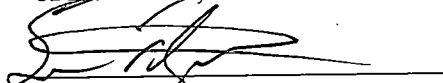
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CERTIFICATE OF SERVICE  
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I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on J. Croom Hunter, Esquire, and Mr. Robert Singletary, #189516, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 21st day of December, 2015.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 21<sup>st</sup> day  
of December, 2015.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022.