

STATE OF SOUTH CAROLINA
In the Supreme Court

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SC SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Richland County
The Honorable Alison R. Lee, Circuit Court Judge.

Opinion No. 5359 (S.C. Ct. App. filed Nov. 12, 2015)
Court of Appeals Appellate Case No. 2011-187246

BOBBY JOE REEVES,

Respondent,

vs.

THE STATE OF SOUTH CAROLINA,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals err in reversing the post-conviction relief court and remanding Reeves's case to the court of general sessions for a new trial based on its finding trial counsel was ineffective for failing to investigate and present the testimony of a gynecological expert witness?

STATEMENT OF THE CASE

During its December 2002 term, the Richland County Grand Jury indicted Respondent Bobby Joe Reeves for lewd act upon a child (2000-GS-40-56188). Subsequently, the Richland County Grand Jury indicted Reeves during its August 2002 term for first-degree criminal sexual conduct with a minor (2002-GS-40-00211). Both indictments stemmed from the sexual assault of the same minor victim. Reeves retained Gene Stockholm, Esquire, to represent him on both charges. On September 17, 2002, Reeves proceeded to jury trial before the Honorable Henry F. Floyd. On September 18, 2002, the jury convicted Reeves as indicted on both offenses. Judge Floyd sentenced Reeves to fifteen years of imprisonment for both offenses, with the sentences to be served concurrently.

Reeves appealed his convictions and sentences, and an appeal was perfected on his behalf by former Chief Appellate Defender Joseph Savitz, III. Following the submission of briefs, the South Carolina Court of Appeals affirmed Reeves's convictions and sentences in an unpublished opinion. State v. Reeves, 2005-UP-099 (S.C. Ct. App. filed Feb. 10, 2005). The Remittitur followed.

Thereafter, Reeves filed an application for post-conviction relief on May 27, 2005. The State filed its Return on January 6, 2007, requesting an evidentiary hearing. Reeves filed an amended application on June 2, 2010. An evidentiary hearing was convened on June 2, 2010, at the Richland County Courthouse before the Honorable Alison R. Lee. Reeves was present and represented by Jeremy A. Thompson, Esquire. The State was represented by Assistant Attorney General Brian T. Petrano. At the hearing, Reeves presented testimony from Dr. Frederick Thompson, a local gynecologist who was qualified as an expert in gynecology, and testimony from trial counsel

Stockholm and appellate counsel Savitz. Following the presentation of all testimony, the post-conviction relief court asked for proposed orders from both parties. On February 3, 2011, the court issued an Order of Dismissal, dismissing all of Reeves's claims except that he was entitled to a resentencing hearing.¹

Reeves filed a timely notice of appeal on March 1, 2011, and subsequently filed a Petition for a Writ of Certiorari with this Court on September 28, 2011. The State served its Return to the Petition on December 22, 2011. Thereafter, this Court transferred the case to the Court of Appeals pursuant to Rule 243(l), SCACR. By Order filed January 31, 2014, the Court of Appeals granted certiorari and requested full briefing. Reeves filed his Brief of Petitioner on April 2, 2014. The State filed its Brief of Respondent on June 30, 2014. The Court of Appeals heard argument of this case on June 1, 2015.

On November 12, 2015, the Court of Appeals reversed the post-conviction relief court and remanded the matter to general sessions for a new trial. Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (S.C. Ct. App. 2015), reh'g denied (Mar. 24, 2016). In reaching this result, the Court of Appeals found the post-conviction relief court erred in denying relief as to Reeves's claim trial counsel was ineffective for failing to investigate and present the testimony of a gynecological expert witness.

The State filed its Petition for Rehearing on December 8, 2015. On January 25, 2016, Reeves filed his Return to the Petition for Rehearing. The State subsequently filed a Motion to Strike and Require Filing of an Amended Return to Petition for Rehearing on January 26, 2016, arguing Reeves's return to the petition for rehearing presented numerous facts not in the record pertaining to his financial arrangement with counsel, the amount paid to counsel, and the source of the monies paid to counsel—all which Reeves

¹ The State did not challenge this grant of resentencing and it is not at issue in this appeal.

did not present to the lower court and were not contained within the Appendix. Reeves filed his return to the motion to strike on February 10, 2016.

On March 24, 2016, the Court of Appeals issued an order denying the State's Petition for Reheating and Motion to Strike and Require Filing of an Amended Return to Petition for Rehearing. This Petition for a Writ of Certiorari follows.

STANDARD OF REVIEW

The post-conviction relief court's findings of fact and conclusions of law receive great deference during appellate review. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). The proper standard of review of a post-conviction relief decision is whether "**any** evidence of probative value" exists to sustain the lower court's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (emphasis added). The reviewing court should affirm if there is any evidence to support the post-conviction relief court's findings. Moore v. State, 399 S.C. 641, 646, 732 S.E.2d 871, 873 (2012). The reviewing court should reverse the post-conviction relief court only if there is no probative evidence to support the lower court's ruling or if it is controlled by an error of law. Suber v. State, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007) (citing Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004)).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). An applicant must overcome this

presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. Strickland, 466 U.S. at 689. The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, an applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

ARGUMENT

Did the Court of Appeals err in reversing the post-conviction relief court and remanding Reeves's case to the court of general sessions for a new trial based on its finding trial counsel was ineffective for failing to investigate and present the testimony of a gynecological expert witness?

On November 12, 2015, the Court of Appeals reversed the post-conviction relief court's denial of relief to Reeves and remanded the matter to the court of general sessions for a new trial. Bobby Joe Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015). In reaching this result, the Court of Appeals determined the post-conviction relief court erred in denying relief as to Reeves's claim trial counsel was ineffective for failing to investigate and present the testimony of a gynecological expert witness. Specifically, the Court of Appeals found, "trial counsel was deficient because he should have discussed hiring a medical expert with Reeves to more thoroughly challenge the State's medical evidence presented at trial." Id. at 377, 782 S.E.2d at 752. The Court of Appeals further found trial counsel did not provide "a legitimate trial strategy for failing to consult with [a gynecological] expert before trial or call a medical expert witness to testify at trial." Id. at 378, 782 S.E.2d at 753. The Court of Appeals also found Reeves was prejudiced by this deficiency based on the testimony of Dr. Fredrick Morris Thompson at the post-conviction relief hearing concerning additional ways the injury could have occurred. Id.

The Court of Appeals erred in reversing the post-conviction relief court and remanding Reeves's case to the court of general sessions for a new trial for several reasons. First, the Court of Appeals erroneously determined Reeves established the requisite prejudice based on the testimony of Dr. Thompson. Second, the Court of Appeals incorrectly found trial counsel's performance was deficient for failing to consult with a gynecologist to challenge the State's medical evidence. Furthermore, the Court of Appeals inaccurately surmised Reeves was indigent without proper evidence in the

record to support such a finding. Accordingly, the Court of Appeals erred in reversing the post-conviction court's denial of relief. This petition for a writ of certiorari should be granted, and the post-conviction relief court's findings should be affirmed.

A. The Court of Appeals incorrectly found Reeves established prejudice.

The Court of Appeals incorrectly determined Reeves established the requisite prejudice from trial counsel's alleged deficiency to consult with and present a gynecological expert. In its opinion, the Court of Appeals found Reeves established the requisite prejudice through testimony from Dr. Thompson, a gynecologist who testified at the post-conviction relief hearing as a medical expert. Reeves, 415 S.C. at 378, 782 S.E.2d at 753. The Court of Appeals remarked Dr. Thompson "provided additional ways the injury could have occurred, including self-infliction or by accident," that were not presented during Reeves's trial. Id. The Court of Appeals further noted, "Dr. Thompson opined Victim's scars would have had to have been substantial to be seen one month after the accident" but then acknowledged Dr. Bash's testimony did not indicate Victim's injuries were substantial. Id. Respectfully,, the Court of Appeals' prejudice determination was incorrect, as there is no reasonable likelihood the result of Reeves's trial would have been different if counsel consulted with a gynecological expert such as Dr. Thompson.

To receive post-conviction relief, an applicant must prove counsel's performance was deficient and this deficiency prejudiced him or her to the extent "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C.at 117-18, 386 S.E.2d at 625 (internal citations omitted). However, these standards do not establish mechanical rules, as the ultimate focus of inquiry must be on the fundamental fairness of the proceeding being challenged. Strickland, 466 U.S. 668. A court need not first determine whether

counsel's performance was deficient before examining the prejudice suffered by an applicant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id.

In the present case, there is no reasonable likelihood the result of Reeves's trial would have been different—i.e., Reeves would have been acquitted—if counsel consulted with a gynecological expert. As the post-conviction relief court correctly found in its Order of Dismissal, Dr. Thompson's testimony was ultimately consistent with the two medical experts presented at Reeves's trial and likely would have had no impact on the outcome of the case. See App. 377.

At trial, the State presented Dr. Dennis Bash and Dr. Maureen Claiborne. Dr. Bash, who was admitted as an expert in pediatric emergency care, routinely performed pediatric sexual assault examinations as part of his duties as an emergency pediatric care physician at University Hospital in Augusta, Georgia. (App. 111). He examined Victim roughly one month after the abuse occurred when she came to the emergency department with her mother. (App. 112-15). Upon examination, Dr. Bash found the Victim's hymen rounded over, which he noted was a sign of healing. (App. 113-14). Dr. Bash also found a healing scar at the five o'clock position on Victim's hymen. (App. 113-14). Dr. Bash could not determine a specific date of injury but opined the injury occurred at least one week prior to his examination due to the healing state of Victim's hymen. (App. 114). Dr. Bash commented Victim's injuries were consistent with any kind of penetration. (App. 114-15). He also stressed his evaluation of Victim was an initial screening only and Victim needed to follow-up with a comprehensive examination. (App. 116-17).

The State also presented Dr. Maureen Claiborne, a pediatrician and the medical director of the child abuse team at the Medical College of Georgia. (App. 118-19). Dr. Claiborne, who was admitted as an expert in pediatric medicine, examined Victim approximately one month after Dr. Bash. (App. 119-22). Dr. Claiborne testified she completed a physical examination of the victim and took cultures to screen her for sexually-transmitted diseases per standard protocol when doing a follow-up sexual abuse examination. (App. 121-22). Dr. Claiborne noted Victim's examination was normal and did not report any tears or scars on Victim's hymen. (App. 122). Dr. Claiborne, who had vast experience treating pediatric victims of sexual assault, testified most children who have been sexually abused have normal examinations in the weeks and months following an assault. (App. 122-23). She testified unless the assault was a violent rape (which was not the case here), there likely would not be any lingering medical evidence from an assault found in an examination two months later. (App. 123-24). Dr. Claiborne testified her examination results were consistent with some type of penetration two months prior **but also consistent with nothing happening.** (App. 124, 127).

At the evidentiary hearing, Reeves presented testimony from Dr. Fredrick Morris Thompson, III, a local gynecologist who was admitted as an expert in general gynecology. (App. 292-307). However, it is important to note Dr. Thompson was **not** admitted as an expert in pediatrics or sexual assault and it is unclear what experience—if any—he has treating child sexual assault victims. (App. 292-95). Rather, Dr. Thompson was a former obstetrician and current gynecologist who treated adult patients at Lexington Women's Center. (App. 292-95). Furthermore, he testified his only experience treating victims of sexual assault was when he conducted rape kits at the start of his career, which began several decades earlier. (App. 292-95). He admitted he never

testified in a sexual assault trial. (App. 293). In sum, Dr. Thompson's background is starkly different from the two experts presented by the State at Reeves's trial, both whom had vast experience treating pediatric victims of sexual assault.

It is also of considerable note that Dr. Thompson only reviewed portions of Reeves's trial transcript. (App. 296). Thompson **never reviewed** medical records, photographs, or anything else documenting Victim's injuries. (App. 296-307). Dr. Thompson even testified it was difficult for him reach any conclusion because the transcript did not provide a detailed description of the healing wound on Victim's hymen. (App. 296-307).

Despite these obvious limitations of experience and necessary background information on Victim's injuries, Dr. Thompson opined as to the cause of Victim's injuries. Dr. Thompson testified there are multiple ways trauma can occur to the vaginal area, including sexual assault, accidental injury, or self-mutilation. (App. 295). He further testified Victim's injury as reported by Dr. Bash could have been caused by digital penetration approximately one month prior to the examination, a finding **consistent** with Dr. Bash's findings. (App. 299). However, consistent with the testimony of Dr. Claiborne that was presented to the jury, he ultimately admitted, "[t]here's no way to document what was the cause of the injury." (App. 299). He also opined it would be "very difficult to date" when the injury occurred and "certainly difficult to say what exactly had caused that particular injury if there was not any other evidence of trauma." (App. 300-01).

Ultimately, Dr. Thompson's testimony was consistent with the two experts presented at Reeves's trial. All three experts—including Thompson—testified they could not opine as to the cause of Victim's injuries or the date when the injuries occurred. While Dr. Thompson did offer conjecture as to what other types of penetration could

have caused Victim's injuries, these hypotheses were speculative at best and were not supported by the record.²

Therefore, there is no reasonable likelihood the result of Reeves's trial would have been different if Dr. Thompson had testified. As a result, the post-conviction relief court properly denied this allegation and this ruling is supported by ample evidence of probative value in the record. Thus, the Court of Appeals erred in finding Reeves established the requisite prejudice entitling him to relief and in reversing of the post-conviction relief court. Accordingly, the State asks this Court grant this petition and ultimately affirm the lower court's denial of post-conviction relief.

B. The Court of Appeals incorrectly found Reeves established deficiency of counsel.

The Court of Appeals incorrectly determined trial counsel was deficient for not consulting with or presenting a gynecological expert at Reeves's trial. In its opinion, the Court of Appeals found counsel was deficient "because he should have discussed hiring a medical expert with Reeves to more thoroughly challenge the State's medical evidence presented at trial." Reeves, 415 S.C. at 377, 782 S.E.2d at 752. The Court of Appeals

² In its opinion reversing the post-conviction relief court, the Court of Appeals noted the alternative ways Victim's injury could have occurred as opined by Dr. Thompson, including self-infliction or accident. The Court further cited to Dr. Thompson's testimony "that girls, more than boys, are given to masturbation, and in the course of masturbation, they could potentially injue themselves." There is absolutely nothing in the record, including the trial transcript (the only part of the case that Thompson admittedly reviewed), to support this particular theory of Victim's injury as speculated by Dr. Thompson. Furthermore, no testimony or evidence was presented during the evidentiary hearing establishing Dr. Thompson was qualified in any way to give such expert testimony in regard to the masturbation frequency of young girls and variations between male and female juveniles. In fact, Dr. Thompson **conceded** he could not quote anything to support his testimony on the subject. (App. 299). In sum, Dr. Thomspson was not qualified as an expert in pediatrics or sexual assault and spent the vast majority of his career in general obstetrics and gynecology treating adult women, and therefore, was not qualified to give such testimony. See Hoard v. Roper Hosp., Inc., 377 S.C. 503, 661 S.E.2d 113 (Ct. App. 2008) (noting simply because testimony is uncontradicted does not render it undisputed; rather, the question of the inherent probability of the testimony and the credibility of the witness remains); Diamond Swimming Pool Co. v. Broome, 252 S.C. 379, 385, 166 S.E.2d 308, 311 (1969)("There may be, however, inherent contradiction or improbability in the witness's statements which take the case out of the general rule and justify the fact finder in giving the testimony less than full value. Similarly, the witness manner of testifying or omissions in his statement may give rise to reasonable doubts of his sincerity or knowledge.").

further found trial counsel did not provide “a legitimate trial strategy for failing to consult with [a gynecological expert] before trial or call a medical expert witness to testify at trial.” *Id.* at 378, 782 S.E.2d at 753. However, the Court of Appeals incorrectly determined Reeves established trial counsel’s deficiency, as counsel testified to a trial strategy focused on attacking the veracity of Victim’s claims.

Reeves’s trial counsel testified at the post-conviction relief hearing as to his trial strategy to attack the accuracy of Victim’s claims by showing her mother’s lack of credibility. (App. 327-42). Specifically, counsel testified he focused on establishing Victim’s mother fabricated the allegations in retaliation and as vengeance against Reeves for his perceived judgment of her parenting skills and asking her and her daughter to move out of his home. (App. 337-38). Counsel testified this strategy was developed after several meetings with Reeves where the two discussed case strategy. (App. 338).

Significantly, this was an entirely logical and legitimate trial strategy in light of the fact the State’s physical evidence was ultimately underwhelming in that it demonstrated to the jury the cause and timing of the victim’s injury could not be determined, which was a fact trial counsel was fully aware of and exploited by calling the weakness and uncertainty of the State’s physical evidence to the jury’s attention while at the same time focusing Appellant’s defense on attacking the credibility of the testimony of the State’s most important witnesses—Victim and her mother. This trial strategy is evident throughout the record, including in trial counsel’s opening statement, his closing statement, his cross-examination of Victim and her mother, and his direct examination of Reeves and Reeves’s roommate. Counsel repeatedly referenced The Crucible and made comparisons to the case at hand, including this during his opening statement:

Now you’re going to hear about Victim. And Victim has several disabilities and several problems. They have been

going on for a long time and have nothing to do with these allegations. Bobby Joe Reeves is the only person she could ever relate to as a father. She doesn't know her father. She rarely ever heard from her father. Her father was not a nice man. I think when you consider this case, you should go back to when you were in high school and when you had to read a book called The Crucible. It's about unfounded accusations and how they can ruin a person's life. That's what this case is about. And as tragic as it is that Victim has to suffer from what people have place in her head an what they have told her, **the medical evidence** and testimony is going to show it didn't happen. And again, just like The Crucible, it has almost destroyed an innocent man. Thank you very much.

(App. 64) (emphasis added).

“There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” Ard, 372 S.C. at 331, 642 S.E.2d at 596 (citing Strickland, 466 U.S. at 689). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel’s strategy is viewed under an ‘objective standard of reasonableness.’” Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008). “The United States Supreme Court has cautioned that ‘every effort be made to eliminate the distorting effects of hindsight’ and evaluate counsel’s decisions at the time they were made.” Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011) (citing Strickland, 466 U.S. at 689). Accordingly, we must be wary of second-guessing trial counsel’s tactics. Edwards, 392 S.C. at 456-57, 710 S.E.2d at 64 (citing Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992)). In this case, counsel formulated a reasonable trial strategy in light of the evidence he knew would be presented by the State, particularly the medical evidence that did not firmly establish if or when Victim had been sexually assaulted.

Furthermore, the United States Supreme Court case of Harrington v. Richter, 562 U.S. 86 (2011), is instructive in the present case. In Harrington, the United State Supreme Court reversed a grant of habeas corpus to an inmate convicted of murder on the basis he was denied effective assistance of counsel when his counsel failed to consult blood evidence experts in planning a trial strategy and in preparing to rebut expert evidence the prosecution might—and later did—offer. Id. Reversing the lower court, the Harrington Court held trial counsel was not ineffective for failing to consult with a blood expert in light of a reasonable trial strategy. In reaching this determination, the Court noted:

Criminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both. There are, however, “countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.” Rare are the situations in which the “wide latitude counsel must have in making / tactical decisions” will be limited to any one technique or approach.

Id. at 106-07 (citing Strickland, 466 U.S. 668).

The Court further stated there can often be “any number of hypothetical experts—specialists in psychiatry, psychology, ballistics, fingerprints, tire treads, physiology, or numerous other disciplines and subdisciplines—whose insight might possibly have been useful, but [a]n attorney can avoid activities that appear distractive from more important duties.” Id. at 107 (internal quotations and citations omitted). The Court further stated, “[c]ounsel was entitled to formulate a strategy that was reasonable at the time and to balance limited resources in accord with effective trial tactics and strategies.” Id. at 107. The Court then warned that “reliance of the ‘harsh light of hindsight’ to cast doubt on a trial that took place now more than 15 years ago is precisely what Strickland [sought] to prevent.” Id. at 107.

In the present case, counsel used a similar approach, electing to focus on attacking the credibility of Victim's allegations and strong motivation for fabrication rather than concentrate on physical evidence he already knew would be lacking. He combated the State's medical evidence through his cross-examination, where he highlighted to the jury that Dr. Bash's examination was not comprehensive and that Dr. Claiborne's comprehensive exam was consistent with no injury or assault to Victim.

Based on the foregoing, counsel did not perform deficiently.³ Therefore, the post-conviction relief court properly denied this allegation and this ruling is supported by ample evidence of probative value in the record. The Court of Appeals erred in its

³ In its opinion, the Court of Appeals noted, "[i]f Reeves was indigent and could not afford to pay for an expert, the South Carolina Office of Indigent Defense could have provided the funds needed to secure and expert witness." In support of this proposition, the Court of Appeals cited to South Carolina Code Section 17-3-50 (B) (2003) and noted an applicant is "entitled to fees to pay for expert witnesses if the applicant shows a need for the expert testimony," citing *Thames v. State*, 325 S.C. 9, 11, 478 S.E.2d 682, 683 (1996). While the State agrees with the general proposition concerning indigent defendants entirely dependent upon the State for representation, it respectfully submits that by finding or even suggesting Reeves was indigent, the Court of Appeals misapprehended Reeves's alleged indigency status. Nothing in the record before the Court of Appeals established Reeves was indigent or would have been entitled to funds from the Office of Indigent Defense. The only mention of possible financial hardship came during the post-conviction relief hearing, when counsel, without the aid of his file and relying on memories from nearly a decade prior, stated, "Bobby was making payments to my partner because he didn't have a lot of money at the time," and "all I remember is there was a question about money." (App. 338-339). Neither of these passing statements establish Reeves was indigent or could not afford an expert to assist in his defense. Furthermore, a review of the record establishes Reeves was **not indigent** at the time of his trial. Reeves retained trial counsel to represent him. He was out on bond prior to his trial and able to work during the pendency of his case. At the time of trial, Reeves had a good job and the record is replete with references of him "spoiling" Victim with toys and other gifts during their weekend visits. Furthermore, Reeves was able to retain current counsel to handle this post-conviction relief appeal. Therefore, the Court of Appeals' implication that trial counsel could have used indigent funds to secure a medical expert for use in Reeves's case is not supported by the record. Additionally, the State submits there likely would be profound detrimental consequences to both the state's legal system and judicial efficiency if **retained counsel** had unfettered access to funds for experts, investigators, and other specialists simply based upon a bare assertion of indigency after his client has paid his retainer—the very scenario alleged in this case. This could create an unbalanced system, giving an advantage to private counsel, who having been paid their full retainer, could then move before the court for resources from the Office of Indigent Defense to fund their retained client's defense. This would pervert the purpose of the Office of Indigent Defense, emptying their coffers to aid private counsel on retained cases at the cost of crucial funds needed to support our state's public defender system and those truly indigent defendants who cannot afford to retain counsel in the first place. This would create a system ripe for exploitation, where private counsel can use any monies collected from his or her client to cover attorney's fees while saddling the Office of Indigent Defense with the actual cost of funding anything else required in defending this retained client. At the very least, retention of private counsel should weigh heavily against a subsequent finding of indigency and should preclude such a finding except in the rarest of circumstances.

reversal of the post-conviction relief court. The State asks this Court to grant this petition and ultimately affirm the lower court's denial of post-conviction relief.

CONCLUSION

For all the foregoing reasons, the State requests that this Court grant this petition for a writ of certiorari and reverse the Court of Appeals. In requesting this relief, counsel for the State certifies a petition for rehearing was made and ruled upon by the Court of Appeals.

Respectfully submitted,

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BY: Megan Harrigan Jameson
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ATTORNEYS FOR PETITIONER

April 22, 2016

STATE OF SOUTH CAROLINA
In the Supreme Court

On Writ of Certiorari to the Court of Appeals
Appeal from Richland County
The Honorable Alison R. Lee, Circuit Court Judge

Opinion No. 5359 (S.C. Ct. App. filed Nov. 12, 2015)
Appellate Case No. 2011-187246

BOBBY JOE REEVES,

Respondent,

vs.

THE STATE OF SOUTH CAROLINA,


Petitioner.

PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Petition for Writ of Certiorari, Appendix, and Supplemental Appendix on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jeremy A. Thompson, Esquire
Post Office Box 12891
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 22nd day of April, 2016.


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