

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

**RECEIVED**

Certiorari to Richland County

SFP 07 2016

Honorable Brooks P. Goldsmith, Circuit Court Judge

---

S.C. SUPREME COURT

ROOSEVELT ANTHONY REAVES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-002325

---

PETITION FOR WRIT OF CERTIORARI

---

KATHRINE H. HUDGINS  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

**INDEX**

INDEX.....i

ISSUE PRESENTED ..... 1

STATEMENT .....2

STATEMENT OF FACTS .....3

ARGUMENT

The PCR judge erred in refusing to find appellate counsel ineffective in failing to raise the trial judge’s error in allowing hearsay testimony from a nurse examiner that went beyond the time and place restrictions of Rule 801(d)(1)(D), improperly corroborated and bolstered the complaining witness’ testimony and was not admissible pursuant to Rule 803(4) or Rule 801(d)(1)(B).. .....7

CONCLUSION ..... 16

**ISSUE PRESENTED**

Did the PCR judge err in refusing to find appellate counsel ineffective in failing to raise the trial judge's error in allowing hearsay testimony from a nurse examiner that went beyond the time and place restrictions of Rule 801(d)(1)(D), that improperly corroborated and bolstered the complaining witness' testimony, and was not admissible pursuant to Rule 803(4) or Rule 801(d)(1)(B)?

## STATEMENT

In May of 2010, the Richland County Grand Jury indicted Petitioner Reaves for burglary first degree and criminal sexual conduct first degree, indictments #2010-GS-40-1305, 1317. On April 11, 2011, Reaves proceeded to jury trial before the Honorable Clifton B. Newman. James Cooper, Charlie Cochran and Clarke Newton represented Reaves at trial. Margaret Fent Bodman and Carter Potts prosecuted the case. The jury returned a verdict of not guilty of burglary first degree but guilty of criminal sexual conduct first degree. Judge Newman sentenced Reaves to thirty (30) years in prison. A timely notice of intent to appeal was filed and the direct appeal perfected. On November 20, 2013, the South Carolina Court of Appeals affirmed the sentence and conviction. State v. Reaves, 2013-UP-422(S.C. Ct.App. filed November 20, 2013).

On January 27, 2014, Reaves filed an application for post-conviction relief [PCR]. The State filed a return on June 23, 2014. On April 2, 2015, an evidentiary PCR hearing was held before the Honorable Brooks P. Goldsmith. Jonathan D. Waller represented Reaves at the PCR hearing. Clay Mitchell represented the State. In a written order signed September 30, 2015, Judge Goldsmith denied relief and dismissed the application. A timely notice of intent to appeal was served on November 13, 2015. This petition for writ of certiorari follows.

### STATEMENT OF FACTS

Reaves was charged with criminal sexual conduct and burglary first degree involving Rochelle Morrow on January 21, 2010. Reaves admitted that he and Morrow had consensual sex. The jury found Reaves not guilty of burglary first degree.

In January 2010, Reaves went to Columbia to visit his family. (App. p. 335, lines. 8 – 10). He stayed at his sister's apartment. (App. p. 336, lines 3 – 5). At the time Reaves lived in Atlanta with his wife and two children and worked as a pipefitter. (App. p. 334, lines. 5 – 20). Reaves testified that one day during his visit he went to a convenience store across the street to purchase some snacks. (App. p. 337, line 5 – p. 338, lines 1-2). Reaves testified that while at the store he had a flirtatious conversation with a woman named Tasha who gave him her telephone number. (App. p. 338, lines 3 – 25; p. 339, lines. 1 – 3).

Reaves testified that later that night, he called Tasha and she invited him to her apartment, giving Reaves directions while he remained on the phone. (App. p. 339, line 19 – p. 340, lines 1- 22). Reaves stated that Tasha let him into her apartment through the back sliding glass door. (App. p. 340, line. 23 – p. 341, lines 1-14). Reaves sat on her couch and waited while Tasha finished some business on her computer. (App. p. 341, lines 16 – 23). Reaves testified that Tasha then invited him to go upstairs. (App. p. 341, lines 22 – 23).

Reaves testified that he and Tasha had consensual sex upstairs in her bedroom. (App. p. 342, line 18 – p. 343, lines 1- 3). Reaves said that Tasha told him, “[S]he liked it rough and then she first told me she was a cougar. She liked the young men.” (App. p. 342, lines. 15 – 17). Reaves described their sexual encounter as “rough” and lasting about thirty minutes. (App. p. 343, lines 4 – 11). Reaves said that during intercourse, Tasha asked him if he would leave whoever he was with for her and he responded that he would. (App. p. 343, lines. 14 – 20).

After sex, Reaves confessed to Tasha that he was married and had two kids in Georgia, but he still wanted to see her again when he visited Columbia. (App. p. 343, line. 21 – p. 344, lines 1-3). Reaves testified that at this point, “she went berserk.” (App. p. 343, line 23). Reaves testified that Tasha “said she ain’t no secondhand woman. She wanted to be first. So she told me to pack – put my clothes on, get out of the house.” (App. p. 344, lines. 4 – 7). Reaves testified that he left her apartment through the front door. (App. p. 344, lines. 13 – 16). Reaves admitted taking Tasha’s two cell phones from her nightstand before he left. (App. p. 353, lines. 7 – 13). Reaves testified that he felt badly about cheating on his wife and called her immediately after the incident from Tasha’s phone. (App. p. 345, lines. 2 – 6).

“Tasha” was actually Morrow. She testified that around 9:00 PM on the night of the incident, she heard “a rustling or something or a screech noise.” (App. p. 109, lines. 18 – 19). She called 911, but told the dispatcher not to send anyone after she turned on a light and looked in the backyard. (App. p. 109, line. 20 – p. 110, lines 1- 5). She went to bed around 10:30 PM. (App. p. 110, lines 16 – 18).

Morrow testified she woke up after hearing “a loud creak.” (App. p. 110, lines. 21 – 23). She then felt someone sit on her bed. (App. p. 111, lines. 4- 5). She testified the person on her bed said, “I just want to fuck you,” and then told her to “shut up.” (App. p. 111, lines. 15 – 21). She testified that they had sex in four different positions. (App. p. 117, lines. 7 – 13). She testified that after the sex was finished, the man told her he had been watching her, that he had seen her before and wanted to meet her, but “didn’t want it to be like this.” (App. p. 113, lines. 13 – 25). Then she heard him go downstairs and she heard him shut something. (App. p. 114, lines. 3 – 6). Morrow then called 911. (App. p. 114, lines. 6 – 7).

Morrow testified she could not identify the race of her attacker by the color of his skin. (App. p. 128, lines. 2 – 4). Morrow did not testify that her attacker used a weapon. She did not testify that there was a struggle or that she tried to get away. She did not testify that she tried to scream for help. The units in her apartment complex were close together and there were approximately eight units in Morrow's building. (App. p. 86, line. 21 – p. 87, lines 1- 14).

Chauncey Smith of the Richland County Sheriff's Department was the first police officer to arrive at Morrow's apartment after her second call to 911. (App. p. 75, lines. 9 – 11). Smith testified the front door was locked when he arrived. (App. p. 81, lines. 21 – 22). Smith testified he did not notice any signs of forced entry to the back sliding glass door. (App. p. 88, lines. 2 – 10). He also testified that he did not see any physical injuries to Morrow's face. (App. p. 89, line. 23 – p. 90, line 1).

Investigator Yvonne Woods, a crime scene investigator, testified that she looked for any possible forced entry, but found none. (App. 167, line. 23 – p. 168, lines 1- 4). She found no marks on the front door. (App. p. 168, lines 5 – 6). She testified that the back door was unlocked when she examined it. (App. p. 168, lines 7 – 13). Investigator Woods stated that she was unable to lock the back door. (App. p. 168, lines. 17 – 18). Morrow never testified that she had problems locking the back door.

Investigator Woods testified that immediately in front of the back door was a computer desk and the items and papers on it appeared to be undisturbed. (App. p. 174, lines. 6 – 14). There were several other items in front of the back door. (App. p. 174, lines 21 – 23). Woods admitted on cross-examination that she originally concluded that the suspect was someone with access to the apartment. (App. p. 177, lines 14 – 25).

Investigator Richard Carter an investigator with the Richland County Sheriff's Department's special victims unit, testified that he obtained Reaves' name as a suspect from a DNA match. (App. p. 198, lines. 2 – 6). On February 11, 2010, Reaves was arrested in Atlanta and Investigator Carter traveled there to question him. (App. p. 203, line. 14 – p. 204, lines 1-8). Reaves immediately told him he did not know why he had been arrested. (App. p. 204, lines. 14 – 17).

Investigator Carter told Reaves “it was about the apartment he broke into and sexually assaulted a female who lived there when he was at his sister's house.” (App. p. 207, lines. 16 – 18). Reaves said “I don't know what you're talking about, I didn't break into any house.” (App. p. 207, lines. 20 – 21). After investigator Carter told him his DNA matched semen found on Morrow, the investigator testified Reaves “smirked at me, and said, This is all about the girl I met who asked me over. He said, Man, she's just saying this because I told her I wasn't leaving my wife and kids.” (App. p. 208, lines. 2 – 5).

Reaves then told Investigator Carter about meeting Tasha at the store and their later sexual encounter. (App. p. 211, line. 23 – p. 212, 213, lines 1- 3). Investigator Carter lied to Reaves and told him that they had checked the tape and he was not on it. (App. p. 238, lines. 9 – 13). In actuality, the investigator waited almost two weeks, until February 23, to go to the convenience store to check its surveillance tape. (App. p. 234, lines. 16 – 24). By that time, the video from the date of the incident was no longer stored. (App. p. 221, lines. 1 – 4). Reaves never told Carter that his encounter with Morrow was anything but consensual. (App. p. 238, lines 9 – 13).

## ARGUMENT

The PCR judge erred in refusing to find appellate counsel ineffective in failing to raise the trial judge's error in allowing hearsay testimony from a nurse examiner that went beyond the time and place restrictions of Rule 801(d)(1)(D), improperly corroborated and bolstered the complaining witness' testimony and was not admissible pursuant to Rule 803(4) or Rule 801(d)(1)(B)..

At trial the State offered the testimony of Temple Hart as an expert in the field of forensic nursing. (App. p. 296, lines 17-18). Nurse Hart examined Morrow. (App. p. 297, lines 16-18). The State asked Nurse Hart, "Okay, Continuing on to the assault history, do you need to know if potentially any weapons were involved?" (App. p. 300, lines 16-17). Nurse Hart testified, "Yes, we ask questions about how the assault occurred. It would also tell us if there could be any other injuries, if she was threatened, how she was threatened, if she was held down, if she was strangled, if there were any weapons used, like guns or knives or anything like that." (App. p. 300, lines 18-23). The State then asked Nurse Hart, "And specifically in terms of my methods that were used to assault her, what did she indicate?" (App. p. 300, lines 24-25). Counsel for Reaves immediately objected citing "801-D." (App. p. 301, line 1). The judge overruled the objection stating, "The witness can testify to information gathered for purposes of her services." (App. p. 301, lines 7-9).

The State then asked Nurse Hart, "What methods were used to commit the assault?" (App. p. 301, lines 11-12). The nurse answered, "One was a verbal threat. She felt threatened by what he told her." The State then asked, "And specifically what did he tell her?" (App. p. 301, line 15). The nurse began to respond and counsel for Reaves objected as hearsay. (App. p. 301, lines 16-17). The judge again overruled the objection. (App. p. 301, line 18). The nurse

completed her answer testifying, “She told me, and I quote, ‘As long as I stay quiet, he said he wouldn’t hurt me.’” (App. p. 301, lines 19-20).

The nurse was further allowed to testify that Morrow stated that her leg had been grabbed, her vagina penetrated by a finger and a penis and her anus penetrated by a penis, and that her back was kissed and licked. (App. p. 301, line 23 – p. 302, lines 1-24). The nurse also testified, “Yes, she reported in the assault that at one time he stopped and it seemed like he may have masturbated. And that he had slapped her behind.” (App. p. 303, lines 2-4). The nurse also testified that Morrow believed ejaculation occurred in her vagina, anus and on the bedding. (App. p. 303, lines 5-14).

In the original *pro se* PCR application Reaves alleged a general ineffective assistance of both trial and appellate counsel. (App. p. 447). In the amendment to the *pro se* PCR application, PCR counsel for Reaves alleged that appellate counsel was ineffective “in failing to raise the Trial Court allowing impermissible corroboration testimony by Temple Hart over Trial Counsel’s timely objection.” (App. p. 470).

During the PCR hearing trial counsel testified that he objected to the nurse’s testimony. Trial counsel testified that he read through the trial transcript and “did see objections to her testimony in terms of basically relaying the rape-trauma narrative that the victim had given her. And the basis for my objection was certain – she’s allowed to – under an exception to the hearsay rule, she’s allowed to give hearsay statements made by the victim, but limited to time and place. And in my opinion, the state was seeking to get testimony that went way outside time and place. And we objected under that rule, which I believe is 401(b)<sup>1</sup>. And that objection was overruled.” (App. p. 499, line 19 – p. 500, lines 1-6). Trial counsel also testified, “To my

---

<sup>1</sup> At trial counsel cited “801-D.” The rule addressed by this petition for writ of certiorari is Rule 801(d)(1)(D).

recollection she – she was allowed to testify to how the assault occurred, how – what the victim told her and how the assault occurred, which my objection was that’s not admissible – that doesn’t fit under the exception of time and place narrative.” (App. p. 500, lines 14-18).

When specifically asked why he did not raise the issue presented on pages 300-301 of the trial transcript, appellate counsel answered, “I don’t recall what my thought process was with regard to this issue specifically. I remember the two issues that I did raise. You know, I would say that when it comes to an issue like this I certainly wouldn’t have a strategic reason not to raise something that I would think would be a winning issue.” (App. p. 513, lines 17-22). At the close of the PCR hearings, PCR counsel argued that appellate counsel was ineffective in failing to raise on direct appeal the improper corroboration testimony from the nurse that exceeded the time and place restrictions of rule 801(d). (App. p. 518, line 8 – p. 519, 520, lines 1-13). Appellate counsel raised the following two issues on direct appeal: 1.) Did the trial court err by admitting photographs of the prosecutrix’s genitalia that were enlarged on a projection screen where the prejudicial value greatly outweighed any possible probative value; and 2.) Did the trial court err by allowing an expert to testify outside of her qualifications and outside of the bounds set by the court? State v. Reaves, 2013-UP-422(S.C. Ct.App. filed November 20, 2013).

In the order of dismissal the PCR judge wrote, “Applicant further argues appellate counsel was ineffective in failing to challenge the trial court’s decision in allowing the nurse examiner to testify to statements made by the victim. (See. Trial Trans. p. 300-301). This court finds Applicant failed to meet his burden in proving counsel was deficiency [sic] and in proving the requisite prejudice entitling him to relief. This allegation must be denied and dismissed with prejudice.” (App. pp. 529-530). Later in the order of dismissal the PCR judge wrote:

The trial court properly admitted the nurse’s testimony as a statement for purposes of medical diagnosis or treatment. See Rule 803(4), SCRE. The trial court ruled,

“The witness can testify to information gathered for purposes of her services. (Trial Tr. 301, lines 7-9). The victim was giving information to the nurse examiner pertinent to the diagnosis and treatment of her injuries sustained during the rape. It is not likely that an appellate court found find [sic] the trial court abused its discretion in admitting the statement.

In addition, the trial court could have admitted the statement as a prior consistent statement. See Rule 801(d)(1)(B), SCRE. Applicant questioned the victim on whether she reviewed her testimony with the solicitor’s office prior to trial. (Trial Tr. p. 131, line 17- p. 132, line 20). The State was then allowed to present the prior consistent statements to combat Applicant’s implied allegation of improper influence or coaching.

(App. p. 532)(Citation omitted). The trial judge and the PCR judge erred. The nurse’s hearsay testimony was not admissible pursuant to Rule 803(4) because the statements were not pertinent to diagnosis and treatment. The nurse’s hearsay testimony was not admissible pursuant to Rule 801(d)(1)(B) because it was not admitted to rebut an implied charge of recent fabrication. Appellate counsel was ineffective in failing to raise the meritorious issue of the trial judge allowing hearsay testimony from the nurse examiner that exceeded the time and place restrictions of Rule 801(d)(1)(D) and improperly corroborated and bolstered the complaining witness’ testimony.

Rule 801(d)(1)(D), SCRE, provides a statement is not hearsay if the declarant testifies at trial and is subject to cross examination concerning the statement and the statement is “consistent with the declarant’s testimony in a criminal sexual conduct case ... where the declarant is the alleged victim and the statement is limited to the time and place of the incident.” State v. Whisonant, 335 S.C. 148, 154, 515 S.E.2d 768, 771 (Ct. App. 1999). The rule expressly allows other witnesses to testify the victim complained of the assault, but only as to “time and place”; it specifically circumscribes such testimony by “excluding details or particulars.” State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993). Among the details which must be excluded under the rule is the identity of the alleged perpetrator. See Jolly v. State, 314 S.C. 17,

443 S.E.2d 566 (1994). State v. Jeffcoat, 350 S.C. 392, 396, 565 S.E.2d 321, 323 (Ct. App. 2002).

The nurse's testimony that the witness told her that a verbal threat was used to commit the assault, that the witness felt threatened by what he told her and that he told her that as long as she stayed quiet he said he wouldn't hurt her are details that exceed the time and place exception and should have been excluded pursuant to Rule 801(d)(1)(D), SCRE. (App. pp. 300-301). The nurse's additional testimony that the witness told her that her leg had been grabbed, her vagina penetrated by a finger and a penis and her anus penetrated by a penis, and that her back was kissed and licked are also details that exceed the time and place exception and should have been excluded pursuant to Rule 801(d)(1)(D), SCRE. (App. p. 301, line 23 – p. 302, lines 1-24). The following testimony from the nurse should also have been excluded as outside the time and place exception: "Yes, she reported in the assault that at one time he stopped and it seemed like he may have masturbated. And that he had slapped her behind." (App. p. 303, lines 2-4). The nurse's final testimony that that Morrow believed ejaculation occurred in her vagina, anus and on the bedding included details that exceeded the time and place exception and should have been excluded pursuant to Rule 801(d)(1)(D), SCRE. (App. p. 303, lines 5-14).

The PCR judge ruled that the trial judge properly found that the nurse's testimony was admissible pursuant to Rule 803(4), SCRE. (App. p. 532). Both the PCR judge and the trial judge erred. "Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment; provided, however, that the admissibility of statements made after commencement of the litigation is left to the court's discretion" are not excluded by the hearsay rule. (Rule 803(4),

SCRE). The nurse's testimony that the witness told her that a verbal threat was used to commit the assault, that the witness felt threatened by what he told her and that he told her that as long as she stayed quiet he said he wouldn't hurt her is not reasonably pertinent to the diagnosis and treatment of the witness. Additionally, the nurse's testimony that, "Yes, she reported in the assault that at one time he stopped and it seemed like he may have masturbated. And that he had slapped her behind" is not reasonably pertinent to the diagnosis and treatment of the witness.

In State v. Burroughs, 328 S.C. 489, 492 S.E.2d 408 (Ct. App. 1997), the South Carolina Court of Appeals found that the statement the witness made to a nurse indicating that the defendant asked for a hug before raping her was not admissible pursuant to Rule 803(4) because the statement was not reasonably pertinent to the treatment and diagnosis of the witness. The Court of Appeals wrote:

Certainly, a statement that the victim had been raped or that the assailant had hurt the victim in a particular area would be pertinent to the diagnosis and treatment of the victim. In this case, however, the fact that Burroughs asked if he could have a hug before he assaulted the victim in no way can be viewed as "reasonably pertinent" to the victim's diagnosis or treatment. Cf. State v. Brown, 286 S.C. 445, 447, 334 S.E.2d 816, 817 (1985) (Trial court improperly allowed doctor to relate child's statement that he had been assaulted by "Mr. Carl," because the identity of the assailant is not necessary for diagnosis or treatment. "A doctor's testimony as to history should include only those facts related to him by the victim upon which he relied in reaching his medical conclusions."). Thus, the nurse's testimony was not admissible under Rule 803(4).

State v. Burroughs, 328 S.C. 489, 501-02, 492 S.E.2d 408, 414 (Ct. App. 1997). The nurse's hearsay testimony was not necessary for diagnosis and treatment and should not have been admitted pursuant to Rule 803(4).

The PCR judge additionally ruled that the trial court could have admitted the nurse's testimony pursuant to Rule 801(d)(1)(B), SCRE. (App. p. 532). The PCR judge erred. Rule 801(d)(1)(B) provides that a statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is

consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; provided, however, the statement must have been made before the alleged fabrication, or before the alleged improper influence or motive arose. The nurse's testimony in the present case was not offered to rebut an express or implied charge of recent fabrication or improper influence or motive. At trial, counsel for Reaves questioned Morrow about a prior statement she made to police that she heard Reaves go downstairs and she heard the front door close. (App. p. 131, lines 8-10). Morrow admitted that she could have been wrong about which door Reaves used. (App. p. 130, lines 4-10). While counsel for Reaves asked Morrow if she reviewed her prior statement to police with the solicitor, this does not rise to the level of an implied charge of recent fabrication, improper influence or motive. Instead, the questioning was proper impeachment to question the credibility of Morrow's testimony. This is especially true given the fact that the nurse's testimony did not include any statement by Morrow about which door Reaves used when he left.

In State v. Saltz, 346 S.C. 114, 124, 551 S.E.2d 240, 245-46 (2001), the South Carolina Supreme Court wrote:

The plain language of Rule 801(d)(1)(B) only permits evidence of a prior consistent statement when the witness has been charged with recent fabrication or improper motive or influence. Although questioning a witness about a prior inconsistent statement does call the witness's credibility into question, that is not the same as charging the witness with "recent fabrication" or "improper influence or motive." Cf. Tome v. United States, 513 U.S. 150, 157, 115 S.Ct. 696, 130 L.Ed.2d 574 (1995) ("Prior consistent statements may not be admitted to counter all forms of impeachment or to bolster the witness merely because she has been discredited.... The rule speaks of a party rebutting an alleged motive, not bolstering the veracity of the story told."). Appellant questioned the accuracy of the witness's memory; he did *not* charge her with recent fabrication or improper influence or motive. The State should not have been permitted to introduce hearsay testimony of Sydney's prior consistent statement because appellant's cross-examination of Sydney did not imply recent fabrication or improper influence or motive. The trial court's admission of the testimony pursuant to

former evidentiary rules constituted an error of law amounting to an abuse of discretion.

The proper cross examination of Morrow did not charge recent fabrication, improper influence or motive. Even if the questioning could be construed to rising to that level, the nurse's testimony did not include any statements by Morrow about which door Reaves used when he left. Rule 801(d)(1)(B) would not have allowed the nurse's hearsay testimony.

The nurse's hearsay testimony was not admissible pursuant to Rule 801(d)(1)(B) because the testimony was not offered to rebut an implied charge of recent fabrication. The nurse's hearsay testimony was not admissible pursuant to Rule 803(4) because Morrow's statements to the nurse were not reasonably pertinent to her diagnosis and treatment. The nurse's hearsay testimony exceeds the time and place exception and should have been excluded pursuant to Rule 801(d)(1)(D), SCRE. Reaves was prejudiced by the admission of the improper hearsay testimony by the nurse. Reaves testified that he and Morrow had consensual sex. Credibility was a key determination to be made by the jury. The nurse's hearsay testimony improperly corroborated and bolstered the testimony of Morrow.

Appellate counsel was ineffective in failing to challenge the admission of the prejudicial and improper hearsay testimony by the nurse. In Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009) the South Carolina Supreme Court wrote:


A criminal defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 398, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). However, counsel is not required to raise every non-frivolous claim, but may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000). Generally, in analyzing a claim of ineffective assistance of appellate counsel, this Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616,

524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance.

Appellate counsel was ineffective in failing to raise the meritorious claim that the trial judge erred in admitting the prejudicial improper hearsay testimony of the nurse. Petitioner was prejudiced by appellate counsel's deficient performance. There is a reasonable probability that if appellate counsel had raised the issue in regard to the improper hearsay, Petitioner would have prevailed on direct appeal and a new trial would have been granted.

**CONCLUSION**

Based on the above argument, the petition for writ of certiorari should be granted to allow further briefing on the issue.

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of September, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Richland County

Honorable Brooks P. Goldsmith, Circuit Court Judge

---

ROOSEVELT ANTHONY REAVES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

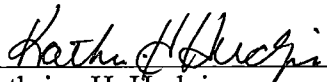
APPELLATE CASE NO 2015-002325

---

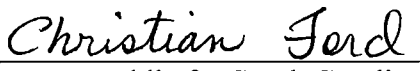
CERTIFICATE OF SERVICE

---

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Jessica Kinard, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Roosevelt Anthony Reaves, #286377, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 7th day of September, 2016.

  
Kathrine H. Hudgins  
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER  
this 7th day of September, 2016.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: March 1, 2026