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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Brooks P. Goldsmith, Circuit Court Judge

RANDOLPH ASHFORD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-002509

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ISSUE PRESENTED

Trial counsel erred in failing to object when the solicitor vouched for the credibility of two state's witnesses (police officers) during closing arguments at trial.

STATEMENT

Petitioner Randolph Ashford was found guilty of assault and battery of a high and aggravated nature, first degree burglary, two counts of kidnapping, three counts of carjacking, and two counts of assault with intent to kill during the March/April 2009 term of the Richland County General Sessions Court before Judge G. Thomas Cooper, who sentenced petitioner to an aggregate prison term of forty years. App. 1 -1131. Deon O'Neil and Nicole Singletary represented petitioner at trial, and Assistant Solicitors Kathryn Luck and Will Braynt appeared on behalf of the state.

Petitioner appealed, but his convictions and sentences were affirmed after briefing. App. 1133-1145. See State v. Ashford, Unpublished Opinion No. 2012-UP-035 (S.C.Ct. App. January 25, 2012). App. 1146-1147. The undersigned counsel represented petitioner on direct appeal.

On February 6, 2012, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 1148-1156. The respondent filed a Return dated April 30, 2012, requesting that a hearing be held in the case. App. 1157-1163.

A hearing was convened on March 31, 2005, at the Richland County Courthouse before Judge Brooks P. Goldsmith. App. 1165-1358. Petitioner was present at the hearing and represented by David E. Belding, and J. Clayton Mitchell appeared on behalf of the state.

On November 9, 2015, Judge Goldsmith issued an Order of Dismissal denying and dismissing petitioner's allegations of ineffective assistance of counsel in the case. App. 1392-1405. Petitioner appealed Judge Goldsmith's Order. This petition follows.

ARGUMENT

Trial counsel erred in failing to object when the solicitor vouched for the credibility of two state's witnesses (police officers) during closing arguments at trial.

Deborah Simmons testified that on February 24, 2007, petitioner burst through the door of her trailer and started asking about the whereabouts of Roberta, who was apparently his friend that had money. Simmons stated that at some point, Kenyatta and her two children, who were inside her home at the time, managed to escape. In addition, Simmons explained that during this event, petitioner fired a gun from a window in her home. Simmons claimed further that petitioner forced sex on her while he was in her home. Ultimately, police entered and pulled them outside. App. 493, l. 23 – p. P. 509, l. 25. Petitioner was charged with kidnapping, first degree burglary, and first degree criminal sexual conduct in connection with Simmons' account of the events in question.

Police Officers David Unger and Nathan White both testified that they were dispatched to Simmons' address on the date in question and that had been placed in charge of setting up a perimeter around the residence. During that time, Officer Unger testified that he heard the "whiz of a bullet" as they approached the trailer, and Officer White testified that he heard "one shot" that was "ringing out from the trailer" also. Both Officers Unger and White stated in effect that they remained in place until the Special Reaction Team arrived on the scene. App. 589, l. 4 – p. 601, l. 3; App. 611, l. 17 – p. 618, l. 18. The shot fired led to indictments on two charges of assault with intent to kill to be levied against petitioner.

The kidnapping charges against petitioner emanated from the testimony of Barry Taylor, Olin Kelly, and Evelyn Worthy. Barry Taylor testified that on the morning of February 24, 2007, he was driving on Oakland Avenue in Columbia when a male holding a .32/.38 weapon stopped

him and ordered him out of his (Taylor's) Oldsmobile (88 Delta). Taylor stated that he made his exit out of the driver's seat and watched the perpetrator drive off in his car. Later, Taylor learned that his vehicle was located at Wash World on North Main Street. Tr. p. 311, l. 19 – p. 321, l.6.

Olin Kelly testified that he and his wife were inside their car (Lincoln Town Car) in the parking lot of Wash World on North Main Street in Columbia on the morning of February 24, 2007, when a male pulled up in a vehicle and stopped at their vehicle. The male pointed a gun and said he was going take their Lincoln Town Car. After they got out of their car, the male perpetrator got in their car and drove off. When shown a photographic lay-out containing possible suspects in the case afterwards, Kelly selected petitioner's picture and identified him as the perpetrator. Tr. 325, l. 18 – p. 347, l. 13.

Gregory Fleming and Kimberly Galliard testified that they were on Cushman Drive in Columbia on the morning of February 24, 2007, when they saw the driver of a Lincoln Town Car crash into a pole. Then, they saw the driver get out and approach them, but they drove off. However, Fleming and Galliard went back to the area to observe the driver's subsequent actions. They saw the perpetrator approach several females who were standing outside Gill Street Church,¹ and then they saw the male enter the church and come out holding a woman by the name of Evelyn Worthy,² whom he later released after he hailed a Blue Ribbon Cab³ that was in the area outside the

¹ Kelli McQueen testified that she and her friends were listening to music inside her mother's white Tahoe parked in front of the Gill Street Church on February 24, 2007, when a male whom she identified as petitioner approached with a gun. Kelli McQueen and the other girls then ran inside the church. Tr. p. 393, line 19 – p. 413, line 20.

² Evelyn Worthy testified that she was inside the Gill Street church when she heard Kelli McQueen scream call 911. Worthy stated that she was dialing 911 when a male approached, took the phone, and shepherded her outside the church, wherein after he ultimately released her and got into a cab. Tr. p. 428, line 22 – p. 445, line 16.

church. Both Fleming and Gilliard later identified the male driver and perpetrator as petitioner after having viewed a photographic lay-out shown to them by police. Tr. 358, l. 14 – p. 371, l. 20; Tr. 380, l. 14 – p.388, l. 24.

During the PCR hearing, petitioner testified that counsel was ineffective in failing to object to the portion of the solicitor’s closing argument that including vouching for the testimony of the police officers. App. 1236, l. 21 – p. 1237, l. 25. Trial counsel testified during the PCR hearing and admitted that he failed to object to this impermissible vouching. App. 1303, l. 10 – p. 1304, l. 23; App. 1340, lines 8-20. The portion of the solicitor’s argument in question was a remark stating the following assertion: “you heard from Deputy Unger and Nathan White...and they got up here and were honest with you.” App. 1072, lines 8-9.

The PCR judge ruled that counsel was not ineffective in failing to object to such a comment because the remark did not rise to the level of improper vouching and even if this were to be considered error, it was harmless error nonetheless. App. 1402 – 1403.

Clearly, it was error for the solicitor to reference the testimony of the police officers as true. This constituted improper vouching. Improper vouching occurs when the prosecution places the government’s prestige behind a witness by making explicit personal assurances of a witness’ veracity, or where a prosecutor implicitly vouches for a witness’ veracity by indicating information not presented to the jury supports the testimony. State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001); State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001). Also, improper vouching occurs when a prosecutor implies he has facts that are not before the jury for their consideration. By telling the jury that the officers’ testimony constituted the truth in this case, the solicitor directly

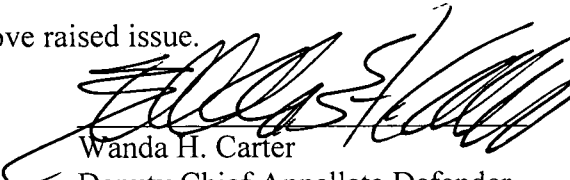
³ Cab driver Malachi Jones testified that he was on Cushman Drive when a man holding a gun approached asked him and his passenger to step out, and then off in the cab. Tr. 294, line 2 – p. 299, line 12.

assured the jury that they should be believed over petitioner. This was improper vouching and trial counsel should have objected to the same, particularly since the solicitor's stamp of approval on the officers' testimony certainly contributed to the guilty verdicts on the assault charges, which meant the error was not harmless.

Counsel's error in failing to object to the solicitor's vouching for police officers White and Ugnier during closing arguments at trial constituted deficient representation in violation of the Sixth Amendment's guarantee that a criminal defendant receive competent legal representation at trial. See Strickland v. Washington, 466, U.S. 668, 104 S. Ct. 2052 (1984). But for counsel's error in this regard, a reasonable probability exists that but for the error, the outcome of the trial would have been different.

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant the petition and allow full briefing on the above raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of October, 2016.

STATE OF SOUTH CAROLINA

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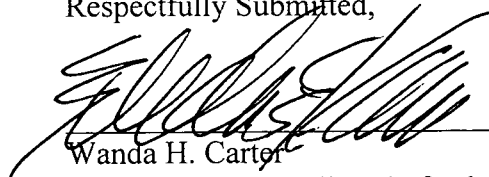
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Randolph Ashford states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's trial before Judge Brooks P. Goldsmith, which was held on March 31, 2015 (PCR Hearing), and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process. Therefore, counsel requests that the Court relieve her as counsel for Randolph Ashford.

Respectfully Submitted,



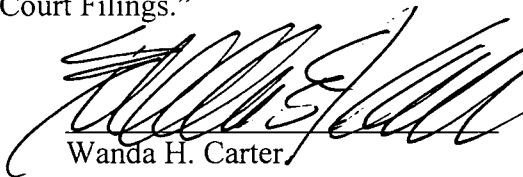
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of October, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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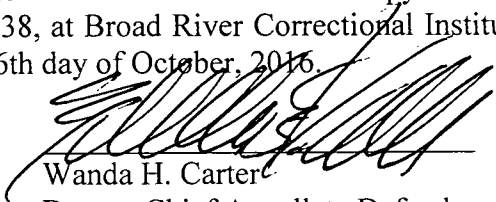
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RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson 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 Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Randolph Ashford, #256638, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 26th day of October, 2016.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 26th day of October, 2016.



(L.S)

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