STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS JAMES,

PETITIONER.

APPELLATE CASE NO. 2014-002326

APPENDIX

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INDEX

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Thomas James, Appellant.

Appellate Case No. 2014-002326

Appeal From Horry County
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2016-UP-430
Submitted September 1, 2016 – Filed October 19, 2016

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Donald J. Zelenka, and Assistant Attorney General Caroline M. Scrantom, all of Columbia; and Solicitor Jimmy A. Richardson, II, of Conway, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012) ("In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous."); *State v. Vang*, 353 S.C. 78, 83-84, 577 S.E.2d 225, 227 (Ct. App. 2003) ("The admission or rejection of testimony is within the sound discretion of the trial [court] and will not be overturned absent a showing of abuse of discretion, legal error, and prejudice to the appellant."); *State v. McEachern*, 399 S.C. 125, 137, 731 S.E.2d 604, 610 (Ct. App. 2012) ("As well, the scope of cross-examination is within the discretion of the trial court, and the court's decision will not be reversed on appeal absent a showing of prejudice."); *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." (quoting *Black*, 400 S.C. at 16, 732 S.E.2d at 884)); *McEachern*, 399 S.C. at 137, 731 S.E.2d at 610 ("When a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even if the latter evidence would have been incompetent or irrelevant had it been offered initially."); *State v. Inman*, 395 S.C. 539, 557, 720 S.E.2d 31, 41 (2011) (providing a prosecuting attorney is competent to testify and may do so when necessary under the circumstances of a case, subject to the discretion of the trial court); *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986) ("[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant.").

AFFIRMED.[1]

LOCKEMY, C.J., and KONDUROS and MCDONALD, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

THOMAS JAMES,

PETITIONER.

APPELLATE CASE NO 2014-002326

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

Opinion No. 2016-UP-430

PETITION FOR REHEARING

Petitioner seeks rehearing pursuant to Rule 221(a), SCACR because this Court may have overlooked the fact that allowing a solicitor to "explain" why she allegedly chose not to prosecute the state's star witness on certain charges – where that witness admittedly repeatedly lied to the police – and where the solicitor granted him other great leniency based on her beliefs as to his culpability was improper. The solicitor's testimony *bolstered the credibility* of the shaky government witness, and *put the prestige of the government behind him.* It entailed the testifying solicitor giving her opinion on the evidence before the jury, and it evaded their province. All of this entailed **a prejudicial abuse of discretion by the trial judge.** Moreover,

the limitations on the defense cross-examining the former solicitor – once she erroneously was allowed to explain away her leniency as to the state's star witness, her view of the evidence, and her actions and inactions as a solicitor in this case – violated Rule 611 (b), SCRE.

Respectfully, the summary opinion of this Court did not apply the **specific** facts of this case to the law so petitioner below has, a s succinctly as possible, applied to the facts to the law. As this Court will recall, this case involves a brutal burglary and murder in a mobile home in on an isolated road in Horry County between 2:30-3:00 in the morning. R. 42, l. 6 – 43, l. 15. The police had little to go on in solving the crime. Therefore, "a suspicious brown van" that allegedly was in the area on the night of the burglary and murder received much attention since the police had little evidence as to the identity of murderous burglars.

A roommate in the mobile home where the murder occurred, Watts, testified he heard about nine shots fired when their mobile home was broken into. It seemed apparent the robbers were looking for drugs and money. R. 44, l. 23 – 45, l. 25. Watts could not identify the assailants since he hit under the bed when the break-in occurred. R. 54, ll. 8-11; R. 81, ll. 3-4. A neighbor, David Grissett, had called 911 because he had been watching **a suspicious brown van** slowly moving around on the dead end dirt road that early morning, and "a few minutes earlier before the whole thing happened and whatnot." R. 96, l. 5 - 97, l. 20.

The police, with guns drawn, ordered anybody remaining in the mobile home out -- "with their hands up." R. 84, ll. 6-20. Splurge, the boyfriend of the decedent, came out of the mobile home with his hands in the air but Watts recalled Splurge was acting "retarded" at the time. R. 85, ll. 4-21. Watts was not aware if Splurge "emptied his 357 magnum revolver through his doorway" at some point. R. 87, ll. 9-11. Watts maintained that the decedent had been running "to Splurge" at the time of the shooting. The pathologist, Dr. Edward Proctor, testified that it would

have been "extremely difficult" for that to happen given her injuries from the gunshot wound to her chest. R. 90, ll. 3-18. This was a strange case with shady facts and witnesses indeed.

Horry County police officer Matthew Singleton testified he arrived at the scene of the shooting at about three a.m. He did not see the suspicious brown van in the area. R. 139, l. 17 – 140, l. 24. The brown van was left in the front yard of Tiffany Oliver, somewhere in the same area, apparently sometime between 3:00 and 6:45 in the morning. R. 162, l. 25 – 165, l. 21.

With little but raw suspicion at this point, Keir Johnson, who was also charged with this murder, was successful in making himself the state's star witness instead of a defendant. During petitioner's trial he arrogantly mocked the attorneys cross-examining him stating his outstanding lawyer, Ron Hazzard, had out maneuvered the co-defendants on trial, and put him in the catbird seat. R. 498, l. 5 – 500, l. 14. Johnson now claimed petitioner and co-defendant Graham were with him **in his girlfriend's brown van** on the morning of the shooting. Prior to his testimony defense counsel Fredrick cited State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012), State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002), and State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001) for the proposition that the defense had a right to cross-examine Johnson about his sentencing exposure, and his dealings with the solicitor's office in this case. R. 422, l. 5 – 440, l. 11. The trial judge noted that Johnson gave a statement implicating both defendants, *and he then he was granted bond. The state also dismissed a burglary charge.* R. 432, l. 16 – 438, l. 22.

The solicitor claimed that Johnson had already given his statement, and maintained that Johnson therefor "did not need" any sentencing consideration from the state in return for his cooperation, and testimony. "We had no reason to dismiss the charges." R. 438, l. 23 – 440, l. 11.

The solicitor at this point began to argue that she should be able to call the former solicitor who worked on this case for a long time, Heather Von Herrmann, as a witness to "explain"

the prosecutorial decisions involving Johnson's charges. R. 440, l. 12 – 452, l. 6. Defense counsel Fredrick immediately noted his objections to calling the former solicitor as a witness for such an "explanation." The defense right to probe Johnson for his bias on cross-examination was well established under South Carolina precedent. Calling Von Herrmann for her to "explain" her prosecutorial decisions was "improper." R. 442, l. 11 – 444, l. 16. The judge stated that he would allow the impeachment of Johnson by the defense attorneys. R. 444, l. 17 – 445, l. 8.

Johnson would admit throughout his cross-examination **that he lied to the police.** Johnson now claimed "the truth" was that that petitioner and co-defendant Graham were with him on the night of the shooting, and he claimed they entered the mobile home while he waited in the brown van. Johnson claimed that petitioner and Graham came running out of the trailer and jumped in the van – he maintained that he did **not hear any shots fired and thought this was a "normal" crack buy.** R. 447, l. 6 – 450, l. 13.

Johnson continued to claim that he had not been promised anything for his testimony, and that he had not received any consideration in exchange for his testimony. R. 447, l. 6 – 450, l. 13. Johnson told different stories – lies – about what happened. Johnson claimed he called his friend: "Mike Pyatt to come pick me up, and he came and picked me up and took me to my grandma's house." R. 450, l. 8 – 451, l. 22. In another story, Johnson told the police he got a cab ride out of the area. Johnson's admissions of lying to the police were almost too numerous to mention. R. 462, l. 22 – 473, l. 21; R. 470, l. 3 – 476, l. 20; R. 512, l. 5 – 513, l. 21; R. 518, ll. 3-22; R. 521, ll. 5-12; R. 524, l. 6-7.

Defense counsel Fredrick continued to strongly question Johnson's credibility. Johnson admitted at another point that he had lied about being robbed. R. 518, l. 16 – 602, l. 12. Johnson admitted to counsel for the co-defendant, Mr. Canty, **that he had "lied through his**

teeth." R. 524, ll. 3-7. (emphasis added). This record shows that while defense counsel Fredrick impeached Johnson about other charges being dismissed, and his sentencing exposure, Johnson was very evasive. R. 482, l. 24 – 496, l. 21. Johnson denied knowing that a murder conviction carried a minimum sentence of thirty years. He claimed not to know the sentence for other charges. R. 498, l. 5 – 500, l. 14. Johnson told the jury he was not lying during the trial. R. 500, ll. 20-21.

The former solicitor is called as an "explanation" witness

Defense counsel Fredrick told the judge if the state intended to call the former solicitor, Ms. Von Herrmann, that the defense had a matter of law to address. R. 563, ll. 6-12. Solicitor Livesay then verified that she intended to call Von Herrmann to reply to "questions about Johnson's charges being dismissed" in this case. Defense counsel Fredrick objected to Von Herrmann being allowed to testify in this manner about her prosecutorial discretion in this case. Fredrick told the trial judge that allowing such testimony "was improper." Fredrick also said that if the judge allowed Von Herrmann to testify over his objection that the defense was entitled to cross-examine her on any issue related to the case. R. 565, l. 10 – 567, l. 7.

The judge took the extraordinary step of asking defense counsel Fredrick to proffer his cross-examination of the former solicitor in advance. Fredrick protested that "some questions may change based on her direct examination" before the jury. He was nonetheless forced to attempt a proffer. R. 563, l. 6 – 567, l. 19.

Von Herrmann admitted that she was a solicitor in this murder case for **"almost the entire pendency of the case."** R. 568, ll. 1-18. (emphasis added). She testified that she could not recall whether there were any returns to search warrants regarding cell phone records pertinent to this case. She said they would be in her file if they existed. She testified that she would need to get her file to refresh her memory. Solicitor Livesay said she would get the former solicitor's file for

her based on the cell phone records inquiry. R. 568, l. 22 – 570, l. 5. Von Herrmann said she could not recall whether Johnson's cell phone record revealed he was at the crime scene. She said "a variety of people" worked on the cell phone records. R. 570, l. 7 – 571, l. 7.

Von Herrmann reviewed the indictment and said a scrivener's had caused the wrong victim's name to be placed in the indictment. R. 571, l. 6 -- 572, l. 9. Von Herrmann also said she did not recall whether shoe impressions were taken from the crime scene. R. 572, ll. 17-25. Defense counsel Fredrick told the judge: "At the moment **on the fly**, that is all the questions I have." R. 573, ll. 1-3. (emphasis added).

Defense counsel Canty then asked if there were any statements his client gave that were not turned over to the defense. Von Herrmann said she did not recall but noted that at times statements not worthy of belief, **so she deemed them not exculpatory**, and they were not turned over to the defense. R. 574, l. 15 – 575, l. 12.

Defense counsel Fredrick then said he would withdraw his objection to Von Herrmann being allowed to testify *if the defense were afforded the extensive latitude that Rule 6ll (b), SCRE provided to the defense.* **The judge was not going to make any such promise. He told defense counsel "don't read me the rule," and he again stated the defense and the judge may not agree about what the scope of the cross-examination of Von Herrmann might be before the jury.** R. 576, ll. 11-25.

Heather Von Herrmann then testified in the presence of the jury. She acknowledged that she prosecuted Keir Johnson's pending charges. R. 578, l. 20 – 579, l. 22. She told the present solicitor some of Johnson's charges had been dismissed. Von Herrmann then sought to "explain" that a burglary first charge and an assault and battery charged were dismissed at the request of Johnson's former girlfriend, the victim. R. 580, ll. 2-16. Another armed robbery and possession of a

weapons charge were dismissed because Von Herrmann apparently thought the complaining witness was framing Johnson because Johnson would not return her romantic gestures. R. 580, l. 17 – 581, l. 15.

Von Herrmann told the jurors: "**We try to do our best as solicitors to go through and look at these cases and find the ones that we feel like are prosecutable and carry those cases forward. And ones that we, you know, don't feel like there is sufficient evidence to bring to a jury, we dismiss.**" R. 580, l. 17 – 581, l. 21. (emphasis added). Von Herrmann then "explained" that: "I believe those are the charges that were dismissed on Mr. Johnson. Of course, at that time the murder charge was pending, and obviously I did not dismiss that." R. 581, l. 16 – 582, l. 2. A review of the South Carolina Department of Corrections Inmate Locator does not show Keir Johnson incarcerated on **any charge.**

On cross-examination by defense counsel Fredrick the solicitor admitted that the victim in one of Johnson's cases had run screaming toward a police officer with blood covering her body. However, Von Herrmann "explained" that petitioner ran from the police and "was cut as well". She said this appeared a mutual combat situation to her, and she offered that defense counsel Fredrick himself knew where a "**victim is non-cooperative it is very, very difficult to get a conviction on those type of cases.**" R. 583, l. 21 – 585, l. 12. (emphasis added). Von Herrmann also acknowledged she opposed bond for co-defendant Graham while a solicitor. She offered that there were a number of witnesses against petitioner's co-defendant, Graham. R. 590, ll. 9-13.

Von Herrmann told defense counsel Canty that there was no *quid pro quo* for a defendant cooperating, and his charges being dismissed. "*That's not the way it works.*" She told the jurors that **if the defendant entered into a proffer agreement the solicitor's office tried to**

verify the information and that the solicitor's office did not promise anything beyond informing the judge of the level of cooperation. R. 593, l. 13 – 595, l. 23.

Von Herrmann admitted she entered into a consent order with Johnson's attorney, Ron Hazzard, so Johnson could make bond and get out of jail. R. 596, ll. 3-5. She also testified that the solicitor's office did not think Johnson was a principal in the crime, **they did not believe he entered the mobile home**, and **"that his [Johnson's] level culpability was less."** R. 596, l. 3 – 599, l. 21. **Thus, we have the testifying former solicitor, who was the long standing prosecutor in this case, telling the jury who the solicitor's office thought was being truthful, and who was guilty and who was not.** During the middle of this cross-examination the judge sent the jury out of the courtroom. R. 599, l. 18 – 600, l. 8.

Solicitor Livesay told the judge that the solicitor's office "*has no ability to charge anyone.*" She said only the police could seek a warrant and a magistrate issue a warrant. She argued the defense cross-examination was not relevant. R. 601, l. 1 – 607, l. 20. (emphasis added).

When the jury came back into the courtroom Canty asked Von Herrmann about her statement that therr "were a number of witnesses against my client." He asked Von Herrmann if Howard Parker was one of those witnesses. Von Herrmann responded: "I don't recall." The solicitor objected to the relevance of this inquiry. The judge then told Canty that based on the solicitor's response that was the end of the inquiry. R. 609, l. 12 – 611, l. 13.

Howard Parker had been earlier questioned about Levana Jackson calling Parker's friend Terry Bease to set up this robbery. The solicitor also objected to the relevance of that testimony. When defense counsel Frederick went to impeach Parker about his statement that they had considered Splurge a "good person for them to hit a lick on," Parker maintained that he was either "lying or wrong." Counsel also questioned Parker about his "shoe size, [for the molds taken at

the trailer]," his claim that he got "nothing out of testifying," and why he had not been charged with murder. **The judge told the defense to "move on" when witness Parker protested the relevance of the cross-examination.** R. 384, l. 6 – 386, l. 19; R. 409, l. 2 – 410, l. 13. (emphasis added).

In her closing argument, the solicitor maintained there was no evidence anyone else committed the crime. She said, "**Heather Von Herrmann didn't fall for it, nu-uh**. The guy that had it after me, or after Heather, he didn't fall for it. But yet here we are. Here we are. *Heather von Herrmann dismissed some cases against Bootsie [Johnson],* **and she told you why**. But the one she didn't dismiss was the murder case. She has the discretion to dismiss it, to plead it, to charge it with anything she wants to. She has that power . . . **She's not only a witness, she's a (sic) attorney for our office at one time and still a lawyer. She told you, these are the reasons why I dismissed it**, but what I didn't dismiss was that murder case." R. 873, ll. 1-19. (emphasis added).

This Court should grant rehearing because defense counsel correctly argued that a former solicitor, who worked extensively on this case, should not be allowed to testify as a witness regarding her prosecutorial discretion in this case, and to "explain" her attendant view of the evidence. Keir Johnson was **the** critical star witness for the state. Defense counsel said that **"but for" Johnson's claims**, which had to be taken at face value at the directed verdict stage, he would have asked the court to direct the verdict for petitioner. R. 683, ll. 9-12.

As seen, Johnson claimed he did not receive any consideration for testifying against petitioner. He also maintained he did not know the sentences for the crimes he had been charged with. Against this backdrop, the solicitor successfully convinced the judge to allow an "explanation" to be given to the jury by another solicitor about the charges being dropped, and other preferential treatment Johnson had received. Such "explanations" involving prosecutorial discretion are improper as defense counsel argued.

In State v. Joseph, 328 S.C. 352, 491, S.E.2d 275 (Ct. App. 1997), this Court held that it was prejudicial error for the trial court to allow a witness to explain the circumstances surrounding his conviction for giving false information to the police. This Vourt noted, at the time, that a witness could be impeached by evidence of a prior conviction for a crime of moral turpitude. State v. Outlaw, 307 S.C. 177, 179, 414 S.E.2d 147, 148 (1992). "However, the details of the crime for which the witness has been convicted, *whether the details could be considered mitigating or aggravating, are not admissible*, the witness has 'already been afforded [the] opportunity to defend himself against the charge and his [conviction] is conclusive.'" State v. Joseph, 328 S.C. at 361, 491 S.E.2d at 279-280. **The same concept should apply here – although what occurred here is much worse than the explanation allowed in State v. Joseph, and this Court should therefore grant rehearing.**

The solicitor's office chose to dismiss certain charges against star witness, Johnson. Johnson took every opportunity to "explain" -- spin why he was not getting consideration for his testimony against petitioner although it may appear that way to a rational person. A solicitor, conversely, was a "minister of justice." They are not merely advocates for the government. A "prosecutor has special responsibilities to do justice and is held to the highest standards of professional ethics." State v. Quattlebaum, 338 S.C. 441, 449, 527 S.E.2d 105, 109 (2000).

Von Herrmann was allowed to testify as a minister of justice and **"explain"** that the state dismissed one serious charge against Johnson because it did not find the prosecuting witness credible. The government, according to the solicitor, decided in another case that the complaining witness wanted to have a romantic relationship with Johnson, and was retaliating for his rejection.

The minister of justice, who acknowledged she was **the solicitor on this case at relevant times**, also testified that another serious charge was dismissed against Johnson because the victim, his girlfriend, did not want to continue to prosecute. The former solicitor told the jurors that it was difficult to prosecute a case where the victim was reluctant to cooperate. In fact, she lectured defense counsel Fredrick and asserted that petitioner's attorney was aware of this fact also.

Allowing a former solicitor to explain her view of the facts, and her prosecutorial discretion placed the prestige of the government behind Keir Johnson, a shadowy witness. The jury was asked to believe the former solicitor knew more than they did about what occurred, and that she made the right prosecutorial decision to dismiss charges against Johnson, and show him other leniency. All of this obviously was meant to support Johnson's testimony that he was not given sentencing consideration for his testimony by way of the dismissal of the charges **in exchange for his testimony. Such explanations of prosecutorial discretion by their nature constitute improper vouching of the witness -- here Johnson -- by placing the government's prestige behind the witness' testimony**, and his "innocent" explanation for the matter at issue. Von Hermann was telling the jury her prosecutorial discretion was proper in not going forward against Johnson on certain charges, helping him get released on bond, and showing other leniency towards him. Under her view of the evidence, she did not think Johnson was as culpable. See State v. Shuler, 334 S.C. 604, 630, 545 S.E.2d 805, 818 (2001), State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001).[1]

Defense counsel in this case correctly objected to Von Hermann being allowed to testify about her prosecutorial discretion. He further argued that if the trial judge was going to

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[1] *reversed on other grounds* in Kelly v. South Carolina, 534 U.S. 246 (2002).

allow the former solicitor to testify over his objection, then she was open to cross-examination on any relevant issue under Rule 611(b), SCRE. As seen, the trial judge stated that what defense counsel thought was relevant, and what the judge thought was relevant may be different matters. The defense obviously wanted to question the former solicitor, who again was the prosecutor on this case for a substantial time, about the failure to pursue leads, and pursue other subjects of investigation.

This record reveals that Von Herrmann did not recall anything of value about the integrity and extent of the investigation in this case. However, she vividly recalled that the investigation showed Johnson was much less culpable in this case, and that was why she entered into a consent order for his bond.

She also claimed that there was no "quid pro quo for a defendant cooperating and his charges being dismissed." She told the jury that they solicitor's office had *to verify the information given by the defendant* (here Johnson), and she maintained *the solicitor's office did not promise anything besides informing the judge of the level of cooperation.* r. 593, l. 13 – 595, l. 23. (emphasis added).

This Court should now grant rehearing because the judge's decision to allow Von Herrmann to testify about her prosecutorial discretion regarding Johnson, and her view of the evidence was prejudicial error. The judge's further reluctance to allow cross-examination on the particulars of the extent of the investigation in this particular case was disastrous and unfair. However, once the trial judge allowed the former solicitor to testify over objection, under South Carolina law cross-examination is limited **only** by the requirement that the inquiry relate to matters pertinent to the issues involved or the impeachment of the witness. State v. Ham, 259 S.C. 118, 191 S.E.2d 13 (1972).

"Since it is the function of the jury to determine the credibility of witnesses and the weight to be given their testimony, 'as a general rule, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony,' 98 C.J.S. Witnesses s 460; and 'on cross-examination, any fact may be elicited which tends to show interest, bias, or partiality' of the witness, 98 C.J.S. Witnesses s 560a." State v. Brewington, 267 S.C. 97, 100-101, 226 S.E.2d 249, 250 (1976).

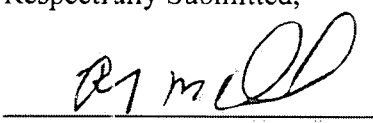
Further, Rule 611(b), SCRE rejected the more restrictive language of the federal rule which limited cross-examination to the subject matter of the direct examination, and matters affecting the credibility of the witness.

In sum, the state got everything it wanted by having its former employee, the former solicitor, *explain her prosecutorial discretion* in dismissing charges against Johnson, and explaining why he was allowed out on bond. As seen, the former solicitor told the jurors that Johnson was less culpable in this case, and she "explained" why charges were dismissed against Johnson. She went so far as to tell the jurors that there is no quid pro quo for a defendant getting sentencing consideration in return for his testimony –"that is not the way the system works." Such a fantasyland explanation of prosecutorial discretion should be reversible error in and of itself – but there was so much more prejudicial error in allowing Von Herrmann's testimony here.

She could not "recall" anything about the particular investigation in this case as it related to petitioner, and she maintained those matters were left for law enforcement to handle as if the solicitor's office was not involved. Allowing a solicitor to place the prestige of the government behind a shady witness, and defend him before the trier of fact – the jury presents

that rare case where this Court should respectfully reevaluate its summary holding that the judge did not abuse his discretion in allowing the former solicitor to explain away her leniency towards the state's star witness, an admitted liar, and then improperly limit the cross-examination of the explaining solicitor who defended that star witness to the jury. Where, as here, it appears the testifying solicitor supports the witness blaming the defendant for the crime, and the judge appears to protect that solicitor by not allowing legitimate cross-examination, it is respectfully difficult to conclude this petitioner got a fair trial. Rehearing should be granted.

Respectfully Submitted,



ROBERT M. DUDEK
Chief Appellate Defender

This 3rd day of November, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS JAMES,

PETITIONER

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Caroline M. Scrantom, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Thomas James, #361800, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 3rd day of November, 2016.

Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 3rd day of November, 2016.

(L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

Thomas James, Appellant.

Appellate Case No. 2014-002326

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ C.J.

_____ J.

_____ J.

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
Donald J. Zelenka, Esquire
Caroline M. Scrantom, Esquire
John W. McIntosh, Esquire

Jimmy A. Richardson, II, Esquire