

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Civil Action No. 2014-CP-32-4479

Glenn Edwin Vanover, Petitioner,

v.

State of South Carolina Respondent.

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SC Court of Appeals

REPLY BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS.....2
TABLE OF AUTHORITIES3
REPLY ARGUMENT4
CONCLUSION.....8

TABLE OF CASES and AUTHORITIES

Cases

<u>State v. Grovenstein</u> , 340 S.C. 210, 530 S.E.2d 406 (Ct.App. 2000).....	6
<u>State v. Major</u> , 301 S.C. 181, 391 S.E.2d 235 (1990).....	5
<u>State v. Smith</u> , 386 S.C. 562, 689 S.E.2d 629 (2010).....	7

STATUTES

U.S. Const., Amend. VI.....	6
S.C. Const. art. I, § 14.....	6
S.C. Code Ann. § 16-3-659.1.....	6

OTHER AUTHORITIES

SCRE Rule 403.....	6
SCRE Rule 404(b).....	5
SCRE Rule 607.....	5
SCRE Rule 608(a).....	6
SCRE Rule 608(b).....	6
SCRE Rule 613.....	7

ARGUMENT

Having reviewed the Brief of Respondent, and the arguments raised therein, Petitioner, Glenn Vanover, hereby submits this Reply Brief as a supplement to the initial Brief of Petitioner and specifically adopts and reargues those arguments presented therein. Without restating the issues or reiterating arguments which have been set forth already, the Petitioner offer the following points of clarification and rebuttal to the arguments raised by Respondent. For the reasons stated in Petitioner's Brief and as discussed below, the circuit court's ruling was in error.

Respondent argues that trial counsel's performance was neither deficient nor prejudicial sufficient to warrant relief in this case. Such a bald assertion belies reality and the law. The victim's credibility was the heart of this case, and trial counsel had a duty to investigate any allegations that undermined her veracity as a witness. Trial counsel presents no reasonable basis for his failure to investigate, despite admitting knowledge of an allegation involving Mr. Pace. While Respondent suggests it trial counsel's actions were proper, and based only upon a suicide note from the Victim's mother (see Brief of Respondent at page 15), this explanation completely disregards the information included in the discovery in the underlying trial at page 276 of 310. R. 310. This material recites a statement on Facebook where Brandon Vanover is messaging the Victim and outlines "What you did to Mr. Pace, saying all those lies, that man could have lost his job. You are sick..." R. 332. Such information outlined in the discovery materials clearly would have provided reasonable counsel sufficient notice to warrant investigation. Trial counsel was

deficient in failing to investigate further. There simply is no reasonable basis for failing to do so.

That credibility was key to this prosecution renders trial counsel's omission all the more important. As outlined, this was a delayed disclosure case, and there was neither physical evidence nor eyewitness testimony to support the alleged crime. As a result, the jury's determination was based *solely* on witness testimony, and primarily on the testimony of the victim. Thus, evidence that the victim had previously made false allegations of a sexual nature against a third party would have severely impaired her credibility, and in turn, affected the verdict. Respondent suggest Appellant would have been unable to introduce the Victim's prior false allegation and thus, prejudice cannot be demonstrated. Such is not the case.

The general rule in South Carolina is that a witness' general reputation for truth and veracity is placed in issue when taking the witness stand. See State v. Major, 301 S.C. 181, 391 S.E.2d 235 (1990). Rule 607 of the South Carolina Rules of Evidence outline this right by stating "the credibility of a witness may be attacked by any party, including the party calling the witness." Clearly, the Victim could have been impeached

While Respondent calls into question "how" the Victim might be impeached on this topic, the groundwork for doing so is quite simple, and comes from several sources. Respondent correctly identifies Rule 404(b) of the South Carolina Rules of Evidence as one such avenue. Clearly levying a false allegation against an authority figure to avoid punishment is a "bad act." This does not seem to be in dispute. The evidence is admitted to show motive, a common scheme or plan, the absence of mistake, and the intent of the

Victim. These are all proper reasons for admission under the Rule. Respondent questions the “close degree of similarity” to the crimes at issue, but the similarities are quite apparent – in each instance the Victim made a false allegation of a sexual nature to avoid punishment. While Respondent cites State v. Grovenstein, 340 S.C. 210, 530 S.E.2d 406 (Ct. App. 2000) for the proposition that the prior bad acts in that case were limited to explaining a source of sexual knowledge, such a limitation has no application in the instant case as in Grovenstein, the “Rape Shield Statute,” South Carolina Code Annotated Section 16-3-659.1, provided special protections surrounding the admission of the earlier sex acts. Here, we aren’t seeking to introduce prior sex acts of the Victim. Instead, the Victim’s prior misrepresentations to avoid punishment are the prior acts.

Respondent also suggests South Carolina Rules of Evidence Rule 403’s balancing test would prevent admission, but the defense’s right to question the accuser pursuant to the Confrontation Clause of the Sixth Amendment to the Constitution, will trump any argued prejudice the Victim might suffer. See also S.C. Const. art. I, § 14.

Under Rule 608(a) of the South Carolina Rules of Evidence, the credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, subject to the limitations outlined therein. Here, evidence of the Victim’s reputation for untruthfulness is one of the specifically permitted basis for challenge. Furthermore, while specific instances of misconduct may not be proved by extrinsic evidence, inquiry is properly made of the Victim on cross examination regarding her character for manufacturing false allegations to avoid punishment. This line of inquiry is appropriate under Rule 608(b) of the South Carolina Rules of Evidence.

Beyond the foregoing, had any inquiry been made into these issues, trial counsel would have had sufficient basis to examine the Victim under Rule 613 of the South Carolina Rules of Evidence regarding her prior statement regarding Mr. Pace and what she accused him of doing. Under South Carolina Rules of Evidence Rule 613(a), the statement need not be written. One of two things would happen in response: (1) either she admits having made the statement and the jury hears that she previously made a false allegation of a sexual nature against another authority figure to avoid punishment, or (2) she denies it, and extrinsic evidence is permitted under Rule 613 of the South Carolina Rules of Evidence. Either way, the jury properly learns of her prior false allegations and it cannot be said that the verdict would not be impacted.

Appellant's theory of the case at trial was that the victim manufactured accusations to avoid punishment and improve her circumstances. Having a prior allegation against a teacher to avoid detention would have clearly supported this theory of the defense and undermined the victim's credibility. Without any other evidence to support the allegation, failure to effectively cross-examine the accuser rises to the level of deficiency necessary to support a claim of ineffective assistance of counsel.

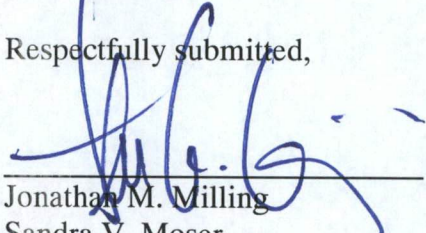
In State v. Smith, counsel failed to object to a forensic interviewer and there was otherwise an absence of overwhelming evidence of Smith's guilt. Smith, 386 S.C. 562, 689 S.E.2d 629 (2010). Although the instant case concerns a lack of testimony rather than the failure to object to testimony, the analysis is similar. In either scenario, the importance of witness testimony is crucial to the outcome of the case. In the case at hand, the testimony at stake is not that of a forensic interviewer or social worker, but perhaps the most important

witness of all- the victim- and there is a “reasonable probability” that the outcome would’ve been affected by questioning her credibility. Confronting the witness with a prior unfounded allegation would most certainly impact how the jury perceived her testimony.

CONCLUSION

For the reasons set forth herein, as well as those reasons advanced in the Initial Brief of Petitioner, the circuit court erred in holding that petitioner’s trial counsel was not ineffective in failing to properly investigate claims that the victim made unfounded allegations of a sexual nature against a former teacher. Petitioner’s prior counsel was defective as a matter of law and Petitioner was prejudiced thereby. The Petitioner asks this Court to vacate his conviction, and grant him a new trial. To fully address the arguments herein, as well as the analysis involved, oral argument is requested.

Respectfully submitted,



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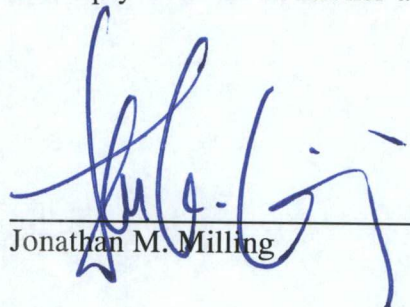
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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below he personally served counsel for the Respondent with a copy of the Reply Brief of Petitioner at 1000 Assembly Street, Columbia, South Carolina 29201.


Jonathan M. Milling

April 18, 2019