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STATE OF SOUTH CAROLINA

APR 24 2013

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

GILES BELCHER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213072

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

SUZANNE H. WHITE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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Kathleen Hodges - Direct examination
by Mr. Richey

1 senses of the jury, you know. Probably as, as -- not as
2 advisable as it should of been, but I don't know that it
3 necessarily crossed the line.

4 Q And do you believe you should of objected to the
5 Court's jury charges?

6 A Yeah, I looked at the jury charges. I mean the Court
7 obviously did not give a direct and circumstantial evidence
8 charge. Based on the nature of the evidence presented, I
9 don't necessarily know that the standard charge of direct
10 and circumstantial evidence would necessarily have helped
11 the jury in terms of being able to make the decision that
12 they're being requested to make. It wouldn't have hurt, but
13 I don't necessarily know that the, the lack of that charge
14 impeded the jury from being able to make their decision.

15 Q And was this a circumstantial evidence case?

16 A Yeah, I mean it's -- essentially it was. But, you
17 know, but I don't know that necessarily the issues -- I
18 mean, as, as we've discussed previously, the primary issue
19 dealt with credibility of witnesses. So, you know, there we
20 were.

21 Q Thank you. No other questions.

22 THE COURT: Ms. Wilson.

23 MS. WILSON: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. WILSON:

Kathleen Hodges - Cross-examination
by Ms. Wilson

1 Q Mrs. Hodges, how long have you been practicing law?

2 A Since 1994.

3 Q And how much of that time has been spent doing criminal
4 law?

5 A Basically every, all but a year and a month at this
6 point.

7 Q And do you recall exactly when you were appointed to
8 represent the applicant?

9 A Mr. Belcher was arrested in 2005. I think it was May
10 of 2005. So, shortly after that time.

11 Q And how times did you meet with Mr. Belcher?

12 A I honestly couldn't tell you the number of times that I
13 met with him, but I met with him several times. All of
14 them -- and all of our meetings were at the jail. He was
15 incarcerated the entire time that I was representing him on
16 these charges.

17 Q And did you discuss with the applicant the elements of
18 the charges against him and what the State was required to
19 prove?

20 A Yes, I did.

21 Q And did you discuss any possible defenses with him?

22 A Yes, I did.

23 Q And did you have enough time to prepare for trial?

24 A Yes.

25 Q And do you feel like you brought out relevant

Kathleen Hodges - Cross-examination
by Ms. Wilson

1 inconsistencies at trial on cross-examination of the state's
2 witnesses?

3 A I believe I did.

4 Q what, what exactly was your trial strategy?

5 A well, essentially, you know, we had what is typical in
6 most of these cases of a child making a claim and the parent
7 denying what the child had said. So, essentially the
8 strategy was, to, to the extent permissible by the Trial
9 Court, provide whatever other evidence there was to show
10 that Mr. Belcher was not the actual perpetrator of this
11 abuse. When the Court denied that ability to, to do that in
12 terms of presenting the testimony regarding Mr. Stewart,
13 then it's a matter of ensuring that the state's case, you
14 know, just pointing out all the inconsistencies in the
15 state's case, what the holes are in the state's case, what
16 the holes are in the state's investigation, and then
17 impeaching the credibility of the state's witnesses.

18 Q Thank you.

19 MR. RICHEY: No other questions.

20 THE COURT: All right. You may step down.

21 MR. RICHEY: We have no other witnesses, Your Honor.

22 THE COURT: State wish to call any witnesses?

23 MS. WILSON: No, Your Honor.

24 THE COURT: All right. Mr. Richey, you wish to argue
25 the matter?

1 MR. RICHEY: Yes, Your Honor.

2 And, Your Honor, I will say to the Court I want to
3 spend the majority of my time on one issue, but I want the
4 record to reflect we're not abandoning any other, other
5 issues.

6 THE COURT: I understand.

7 MR. RICHEY: Okay. Your Honor, it's our position that
8 counsel was ineffective in this case, number one, I think
9 the testimony was that the child that -- first of all, I
10 think the trial itself was a trial of credibility. I think
11 there was no direct evidence against my client. The main
12 evidence is what the child said. Whether he said, whether
13 she said to counsel or to anybody, that was the evidence,
14 what the child said.

15 So, it gets down in this case to where it's a case of
16 credibility, and it's our position that the child had stated
17 to a relative that someone else was the perpetrator, and, in
18 a case of credibility, I believe that that evidence is
19 admissible. Once the child gets on the stand and says hey,
20 it was Mr. Giles who did it, that the child could be
21 impeached by prior inconsistent statements.

22 So, it's our position that evidence should of been
23 presented at trial or framed to the Trial Court as saying
24 hey, we've got a witness who will testify that the child
25 told us, told them that the child had accused someone else,

1 and the transcript -- and I'm trying to get my notes.

2 In the transcript, when the Court goes through this,
3 the Court is saying hey, you got nobody directly who will
4 say. It's all speculation. I need to get to my spot. The
5 transcript -- I think the -- that's what -- hold on one
6 second, Your Honor, and I'll keep arguing while I'm trying
7 to find it.

8 THE COURT: That's all right.

9 MR. RICHEY: In the transcript the Court talks about
10 you have no one who's gonna say the child says that. This
11 is direct speculation that you're putting up and that stuff.
12 But I think it's a witness that was at Court that was
13 subpoenaed that was outside that came to Court that day who
14 will testify that another, that she, the child told her,
15 told him that this Issac had done it.

16 So, there was direct testimony as to the child saying
17 someone else did it, and also I think Mr. Long came to Court
18 today and he testified that the applicant had been in the
19 church prior to being charged, after being charged, and did
20 a lot of stuff in the church, that he was faithful, and that
21 he had done what they asked. He came to Court. He didn't
22 ask for anything like other members did. So -- and that
23 went to my client's credibility, who, who Mr. Giles did
24 testify at trial.

25 So, it's my position that, in a credibility trial,

1 where the evidence is there at the courthouse, that these
2 folks were present that day of the trial, that they should
3 of been called and I believe that it could have made a
4 difference in Mr. Giles' trial.

5 THE COURT: I haven't read the transcript, Mr. Richey,
6 but maybe you can help me.

7 Did the defendant ever put his character into question
8 in the case?

9 MR. RICHEY: Your Honor, I think when a defendant
10 takes---

11 THE COURT: Now, the defendant had prior convictions
12 for fraudulent checks or how do you get into, to the DOC
13 with bad checks?

14 MR. RICHEY: If you get 90 or more days they ship you
15 out.

16 THE COURT: Well, I understand that. But I mean were
17 these forgeries?

18 Were these -- I'm trying to find out what he was
19 actually charged with.

20 APPLICANT: Your Honor, sir?

21 THE COURT: Just talk, talk to your lawyer.

22 MR. RICHEY: They were fraudulent checks, Your Honor.

23 THE COURT: So, they were forgeries?

24 MR. RICHEY: They were bounced. They didn't have
25 sufficient funds. Insufficient funds. I don't think it's

1 a---

2 THE COURT: Usually that goes into Magistrate's Court.
3 I'm just wondering how that ends up in the General Sessions
4 Court and he ends up in DOC. I'll find out later. It's a
5 record. It's a matter of record. I'll find out. I just
6 thought you could tell me.

7 But go ahead. It's a little puzzling to me.

8 MRS. HODGES: Your Honor, I---

9 THE COURT: Can you help me with that, Mrs. Hodges?

10 MRS. HODGES: I can try.

11 THE COURT: Yes, ma'am.

12 MRS. HODGES: My experience, and it is usually you have
13 so many fraudulent checks or so many bounced checks or bad
14 checks, often times magistrates will sentence them
15 consecutively. If they sentence 30 days consecutively and
16 enough time---

17 THE COURT: Okay. So, he may of ended up with
18 consecutive sentences depending on the number or the---

19 MRS. HODGES: It turns into a Department of Corrections
20 ultimate sentence.

21 THE COURT: Okay. That makes a little more sense.

22 MR. RICHEY: Yes, sir.

23 THE COURT: I'm just trying to figure out how he ended
24 up in the DOC with bad checks. So---

25 MR. RICHEY: It's 90 days or more.

1 THE COURT: It's just a question I had because, you
2 know, if we get into his character, that opens the door for
3 a lot of things that -- they may of come in anyway in the
4 transcript.

5 Did he get cross-examined on that?

6 MR. RICHEY: Yes, Your Honor.

7 THE COURT: Okay. So maybe that wasn't a concern. I
8 haven't read the transcript.

9 Go ahead.

10 MR. RICHEY: I just say to the Court it's all in. But
11 I think when you look at it, weight it without the, the
12 examination of the child to impeach the challenge, and
13 without him having some good standing in the community, I
14 mean I just -- it's our position that that is the minimum
15 that he should have had at trial, that he should of had the
16 witness to step forward and say hey, this child has accused
17 somebody else because when you throw that monkey wrench in
18 it, then not only does -- the jury has to take that evidence
19 into consideration. The State has to take it into
20 consideration.

21 Two, I believe that if, if a gentleman's in the
22 community going to church, doing what he's suppose to do,
23 that could have an affect on this, on this verdict too.

24 So, that's our position, Your Honor, that counsel was
25 ineffective for those reasons that I just outlined, and the

1 reasons that we laid out on the record.

2 Thank you.

3 THE COURT: Yes, ma'am.

4 MS. WILSON: May it please the Court, Your Honor.

5 As to the applicant's allegations that counsel was
6 ineffective for not challenging the date listed on the
7 indictment, it's the State's position that there was no
8 prejudice that resulted from that. Trial counsel testified
9 that that time frame, in her experience, was reasonable and
10 it was specific enough to put the applicant on notice of the
11 time frame that the State was alleging that these
12 occurrences took place.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. WILSON: In addition, the State -- it's the State's
15 position, regarding the applicant's allegation, that trial
16 counsel was ineffective for not obtaining independent mental
17 evaluation. It was her allegation that the applicant never
18 had any trouble understanding her or assisting her with his
19 defense in that she never, she didn't have any indication of
20 any prior mental illnesses other than him being treated for
21 depression when he was in, he was formerly or prior, prior
22 incarceration prior to his trial.

23 As to allegation that counsel was ineffective for
24 failing to impeach the State's witness with their
25 inconsistent statements, I think he was specifically

1 referring to ^{MINOR} Trial counsel attempted, by
2 motion, to enter into evidence testimony about Issac Stewart
3 being, possibly being the perpetrator, and the judge denied
4 her motion, and as a result---

5 THE COURT: Again, I have not read the transcript.
6 They make the point that it was never presented to the judge
7 as a prior inconsistent statement. It was -- and I don't
8 know how it was presented to the judge.

9 Can you help me with that a little bit?

10 MS. WILSON: Your Honor, from what I recall, I think
11 that Mr. Richey accurately reflected the way it was
12 presented to the judge. I can direct you to exactly where
13 it was in the transcript.

14 THE COURT: That would be helpful.

15 MS. WILSON: Okay.

16 THE COURT: Can you tell me where that is in the
17 transcript?

18 MS. WILSON: Yes, I can tell you. The pretrial motions
19 started on Page 39, and then on Page 40 -- let's see.
20 Starting -- it starts -- the discussion with the Court
21 starts on Page 40 at Line 9, and that's when they start
22 discussing Isaac Stewart, and it says the Court -- this is
23 what the Court is saying that how it understands
24 Mrs. Hodges' motion to be. The Court says you say that you
25 want to be permitted to introduce evidence through direct or

1 cross-examination as it relates to just the fact that Issac
2 Stewart did live in the residence at the time that the minor
3 child was in the residence during the time that this
4 incident is alleged to have occurred, and it seems like, to
5 me, that that kind of indicates that the State was aware
6 that the purpose of presenting this direct or
7 cross-examination testimony was to show that Mr. Issac,
8 Issac also lived there and could have potentially been a
9 suspect.

10 THE COURT: I understand.

11 Yes, ma'am, you may proceed.

12 MS. WILSON: Thank you, Your Honor.

13 As to the applicant's allegation that counsel was
14 ineffective for failing to obtain independent forensic
15 evidence, expert and behavioral experts, it was trial
16 counsel's testimony today that she did not see any
17 inconsistencies or any problems with the State's expert, and
18 as a result she did not provide one. And I -- Your Honor, I
19 think that's sufficient. The applicant didn't provide any
20 evidence that prejudice resulted from the testimony
21 provided.

22 Also, the applicant alleges that trial counsel was
23 ineffective for not taking exception to the court's failure
24 to give a standard direct and circumstantial evidence
25 charge, and trial counsel testified today that she did not,

1 she did not see how leaving out that charge in anyway hurt
2 or harmed the applicant's case, and she didn't necessarily
3 think it would of helped had it been included.

4 Lastly, Your Honor, as to failure, as to applicant's
5 allegations about failure to investigate certain witnesses,
6 several of the witnesses that the applicant, that the
7 applicant said that he told, told Mrs. Hodges to subpoena
8 and have ready for trial she did, and we have Pastor Long's
9 testimony about him being there and how he would of
10 testified on behalf of the applicant about the applicant's
11 character and truthfulness and his involvement in the
12 community.

13 However, Pastor Long also testified that he didn't
14 interact with the applicant at the -- he only interacted
15 with the applicant post him being charged with these crimes,
16 and he couldn't testify to the applicant's character prior
17 to his being charged when these occurrences took place.

18 And lastly, Your Honor, the applicant makes allegations
19 about his appellate counsel, and appellate counsel did file
20 an Anders brief on his behalf, and the Appellate Court
21 reviewed all the record and found no, no additional
22 appealable issues and they affirmed his conviction.

23 So, that's the State's position and we just request
24 that you deny the applicant's post-conviction relief
25 application.

1 THE COURT: All right. Thank you very much. I'll take
2 the matter under advisement and issue an order. But thank
3 you.

4 MS. WILSON: Thank you, Your Honor.

5 MR. RICHEY: Thank you, Your Honor.

6 THE COURT: Uh-huh. (Affirmative).

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8 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

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3 I, Pamela E. Green, Official Court Reporter for the
4 Seventh Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete Transcript of Record of the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of Common Pleas Nonjury for
9 Spartanburg County, South Carolina, on the 15th day June,
10 2012.

11 I do further certify that I am neither of kin, counsel
12 nor interest to any party hereto.

13
14 November 15th, 2012

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18 PAMELA E. GREEN, Court Reporter
19
20
21
22
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24
25

B.J.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Giles Belcher, #289817,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2011-CP-42-0462

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated January 31, 2011. The Respondent made its return on February 15, 2012. An evidentiary hearing on the matter was convened on June 15, 2012 at the Spartanburg County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Rashey Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

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 SPARTANBURG COUNTY
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 M. HEPELA GALEY

Testifying at the hearing was the Applicant, Gary Long, Ginny Belcher Bishop, Eric Scottie Belcher, and Kathleen J. Hodges, Esquire. The Court had before it the trial transcript, the Spartanburg County Clerk of Court records, and the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's return, and the Applicant's appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. The Applicant was indicted at the April 2007 term of the Spartanburg County Grand Jury for criminal sexual

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conduct with a minor- 1st degree (2007-GS-42-1673). He was represented by Kathleen J. Hodges, Esquire.

After the State called the case to trial, the Applicant was found guilty. On May 8, 2007, the Applicant was sentenced by the Honorable J. Derham Cole to confinement for thirty (30) years.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. M. Celia Robinson, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Belcher, Unpub. Op. No. 2010-CP-112.

ALLEGATIONS

In his original application and in amendments to his original application, the Applicant listed a lengthy set of allegations against trial counsel. At the hearing, Applicant proceeding solely on the allegation of ineffective assistance of counsel. He alleged the following:

1. Ineffective Assistance of Counsel
 - a. Failure to challenge the indictment
 - b. Failure to obtain an independent medical evaluation of the Applicant
 - c. Failure to object to a hearsay statement
 - d. Failure to object to the State's closing argument
 - e. Failure to impeach the State's witness
 - f. Failure to obtain an independent forensic expert
 - g. Failure to object to the direct and circumstantial evidence charge
 - h. Failure to investigate
 - i. Failure to object to the admission of the Applicant's statement

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 M. HOPE BLACKLEY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their

credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 388 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 737 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

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SHERMANBURG COUNTY
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M. HOPE BRACKLEY

At the evidentiary hearing, the Applicant testified that trial counsel should have challenged his indictment because the time span listed on the indictment for the incident should have been narrower. He also testified that trial counsel did not properly investigate his case. The Applicant testified that he had several witnesses that he wanted to testify at his trial on his behalf, but that trial counsel never called these witnesses. He testified that the witnesses would have testified that others were initially accusing another man of molesting the victim. The Applicant conceded that trial counsel did briefly talk to the witnesses, but that she did not review with the witnesses their testimony.

The Applicant testified further that trial counsel should have requested that he receive an independent mental evaluation. He testified that he was not thinking clearly because of the stress from being previously incarcerated. He also testified that a mental evaluation would have shown he was under a lot of stress at the time of interrogation. The Applicant conceded that he had never been formally diagnosed with a mental illness.

The Applicant testified that trial counsel failed to impeach the credibility of the victim. He testified that trial counsel told him that she did not ask the victim all of the questions that she should have. He also testified that trial counsel failed to object to hearsay from the State's witness Kathy Perry. The Applicant testified that trial counsel failed to request an independent forensic examiner. He testified that he felt that the victim's therapist's statements were too general. He testified that he never discussed this issue with trial counsel and that an expert would have refuted Dr. Henderson's testimony.

The Applicant testified further that trial counsel should have objected to the solicitor's closing statement because it was prejudicial. He said that the statement referred to him personally in the closing when telling the "Perry Mason story". He also testified that the solicitor's statement demeaned him. The Applicant testified that trial counsel failed to object to the direct and circumstantial evidence jury charge. Lastly, the Applicant testified that trial counsel should have argued against the admission of his statement. However, he also testified that he did recall having a Jackson v. Denno hearing on the matter.

At the evidentiary hearing, the Applicant called Pastor Gary Long to testify on his behalf. Pastor Long testified that he met the Applicant after he was charged with the crime. He testified that the Applicant never tried to hide anything and that the Applicant always asked for guidance and encouragement. Pastor Long testified that he saw no evidence that the Applicant had the

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BLACKLEY

tendency to commit this type of crime. Lastly, he testified that he did not know the Applicant prior to the Applicant being charged and that he could not testify as to the Applicant's character for truthfulness prior to the Applicant being charged of this crime.

At the evidentiary hearing, the Applicant called Ginny Belcher Bishop to testify on his behalf. Bishop testified that she was the Applicant's sister and was around the Applicant and his family often. She testified that she told the Applicant about what she had heard about another person being the perpetrator. She testified that she never spoke with trial counsel and was willing to come to court to testify on the Applicant's behalf. Bishop also testified that she did not notice any inappropriate touching between the Applicant and the victim. She then conceded that she was not with the Applicant every time he was with the victim.

At the evidentiary hearing, the Applicant called Eric Scottie Belcher to testify on his behalf. Bishop testified that he was the Applicant's brother and that he was around when all these allegations were being made. He testified that trial counsel never called him and that he was willing to testify and was present at trial. Eric Belcher testified further that he was told the victim that the perpetrator was actually Isaac Stewart. He testified that he was subpoenaed by trial counsel and available to testify at trial.

Applicant's trial counsel Kathleen Hodges, Esquire, also testified at the evidentiary hearing. She testified that she was appointed to represent the Applicant. She testified that she interviewed the Applicant's brother and was told that Isaac Stewart was the perpetrator. She testified that she subpoenaed the Applicant's brother and other potential witnesses. Trial counsel testified that she made a pre-trial motion to get in the witnesses' testimony saying that Isaac Stewart was the perpetrator, but that her motion was denied. She testified that she wanted to use the Applicant's brother's testimony to show the prior inconsistent statements of the victim.

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SARASOTA
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M. HOPPE-BLAKLEY

Counsel testified that her trial strategy was to provide other evidence to show that the Applicant was not guilty. She testified that when the trial judge excluded the testimony on Isaac Stewart being the perpetrator, her focus turned to poking holes in the State's case at trial.

Trial counsel testified that she did not challenge the indictment because the indictment stated a 15-18 month time frame as the date the incident took place and in her experience that was not an overly broad time frame. Counsel also testified that she did not obtain an independent medical evaluation and that she never had an indication that the Applicant could not assist her at trial. She testified further that there was no need to obtain a forensic examination expert because the child took the stand to testify. She also testified that the child was an effective witness and that she properly impeached the forensic examiner on the child's behavior. She testified further that there was nothing faulty or improper with the investigation of the child abuse allegation.

Trial counsel testified that she thought that the State's closing argument was prejudicial, but that a prejudicial argument was to be expected on closing. She also testified that the solicitor injecting herself in the argument may have come close to being inappropriate, but the statement was not unduly prejudicial. She testified that the solicitor's statement did not inflame the jury to cross the line. Lastly, trial counsel testified that she did not recall a direct and circumstantial evidence jury charge. She testified that with of the nature of the charge, the charge would not have helped the jury. She testified that the missing charge did not hurt the Applicant because the main issue in the case was the credibility of witnesses.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. Trial counsel is an attorney with extensive criminal trial experience. Trial counsel

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M. HOPPE, CLERK

met with the Applicant several times prior to trial and discussed with the Applicant the elements of the charges against him and what the State was required to prove. Trial counsel also discussed with the Applicant possible defenses at trial. This Court finds that trial counsel was adequately prepared for trial and effectively represented the Applicant.

Failure to challenge the indictment

This Court finds that trial counsel was not ineffective for failing to challenge the Applicant's indictment. Indictments are sufficient when they allege time and place, as required by law, and charge the crime substantially in the language of the statute or the common law which prohibits the crime or so plainly that the offense charged may be easily understood and, if the offense is statutory, that the offense is contrary to the statute involved. S.C. Code Ann. § 17-19-20 (2003). All indictments must be viewed with a "practical eye" to determine whether they fulfill their function to notify the accused of the charge he must answer, notify the court of what judgment and sentence to pronounce, and present a bar to subsequent prosecution. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

This Court finds that the Applicant's indictment was sufficient to give the Applicant notice of the charge he must answer and to notify the court of what judgment and sentence to pronounce. This Court finds that trial counsel provided credible testimony that she did not object to the time frame for the crime listed on the indictment because in her experience the time frame listed was not objectionable. This Court finds that the time frame listed on the Applicant's indictment was not objectionable and was sufficient to allege time and place of the crime. The Applicant has failed to carry his burden of proving that trial counsel was deficient for failing to object to his indictment.

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M. HOPE BLANKLEY

Failure to obtain an independent mental evaluation of the Applicant

This Court finds that trial counsel was not ineffective for failing to obtain an independent mental evaluation of the Applicant prior to trial. A defendant must be mentally competent to stand trial to assist counsel in his defense. Drope v. Missouri, 420 U.S. 62 (1975). In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of this trial or plea. Jeter v. State, 308 S.C.230, 417 S.E.2d 594 (1992). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

This Court finds that trial counsel gave credible testimony that she never had any indication that the Applicant suffered from mental illness and that she felt that he was able to assist in his own defense. At the evidentiary hearing, Applicant testified that he has never been diagnosed with a mental illness, but was having trouble thinking clearly. This Court finds that the Applicant has not shown that a reasonable probability exists that he would be found incompetent at the time of his trial. This Court finds that the Applicant has failed to carry the burden of proving that trial counsel was deficient for failing to obtain an independent mental evaluation of the Applicant prior to trial.

Failure to object to a hearsay statement

This Court finds that trial counsel was not ineffective for failing to object to hearsay statements made by Kathy Perry, the State's witness. This Court finds that the hearsay statement alleged by the Applicant to be have been made by Perry is not reflected in the record. This Court finds further that if any of the witnesses' statements were hearsay, trial counsel's failure to object to the statements was not unreasonable and did not prejudice the Applicant in light of the overwhelming evidence presented against the Applicant at trial. This Court finds that the

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Applicant has failed to carry his burden of proving that trial counsel was ineffective for failing to object to a hearsay statement of Kathy Perry.

Failure to object to the State's closing argument

This Court finds that trial counsel was not ineffective for failing to object to the State's closing argument. The State's closing argument was not unduly prejudicial to the Applicant. "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn there from." Id. at 609-10, 602 S.E.2d at 744. This Court finds that the State's closing did not arouse the jurors' passions or prejudices. The solicitor's reference to herself during the closing argument was not improper and in no way prejudiced the Applicant at trial. This Court finds that the Applicant failed to carry his burden of proving trial counsel was ineffective for failing to object to the State's closing argument.

Failure to impeach the State's witness

This Court finds that trial counsel was not ineffective for failing to impeach the victim MINOR "Evidence offered by a defendant as to the commission of the crime by another person is limited to facts which are inconsistent with the defendant's guilt." State v. Manfield, 343 S.C. 66, 81, 583 S.E.2d 257, 265 (Ct. App. 2000). The Court finds that the prior statement by the victim regarding Isaac Stewart, if used in the trial to impeach the victim, would not have been inconsistent with Mr. Belcher's guilt. This Court finds further that the statement about Isaac Stewart could have only been used to weigh the victim's credibility. In light of the overwhelming evidence against Mr. Belcher, the potential influence the impeachment may have had on the jury

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would not have been enough to change the result of the trial. Therefore, trial counsel's failure to impeach the victim with her statement about Isaac Stewart did not prejudice Mr. Belcher. Mayo v. State, 347 S.C. 422, 556 S.E.2d 380 (2001). This Court finds that the Applicant has failed to carry his burden of proving trial counsel was ineffective for failing to impeach the State's witness.

Failure to obtain an independent forensic expert

This Court finds that trial counsel was not ineffective for failing to obtain an independent expert to refute the testimony of Dr. Nancy Henderson and Meredith Loftis, the State's sexual abuse and trauma treatment experts. Trial counsel is not deficient for failing to procure an expert witness when trial counsel vigorously cross-examined the State's expert and attacked the accuracy of the evidence. Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991). A finding of prejudice is merely speculative when the Applicant fails to call the expert to testify at the post-conviction relief hearing. Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005).

This Court finds and the record reflects that trial counsel adequately cross-examined Dr. Nancy Henderson and Meredith Loftis on their testimony during the Applicant's trial. Court also finds that the Applicant has failed to prove that prejudice resulted from this alleged deficiency by failing to call an expert to testify at the post-conviction relief hearing. This Court finds that the Applicant has failed to carry his burden of proving that trial counsel was ineffective for failing to obtain an independent forensic expert.

Failure to object to direct and circumstantial evidence charge

This Court finds that trial counsel was not ineffective for failing to object to the direct and circumstantial evidence jury charge. The record reflects that the jury was not given an instruction on direct and circumstantial evidence. This Court finds further that trial counsel gave

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credible testimony that the jury charge would not have helped the jury and the fact that the charge was not given did not prejudice the Applicant. This Court finds that the Applicant has failed to carry his burden of proving trial counsel was ineffective for failing to object to the direct and circumstantial evidence jury charge.

Failure to investigate

This Court finds that trial counsel was not ineffective for failing to investigate the Applicant's case prior to trial. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). This Court finds that trial counsel thoroughly investigated the Applicant's case prior to trial. Trial counsel gave credible testimony that she investigated the allegation by the Applicant that Isaac Stewart committed the crime. Trial counsel also gave credible testimony that she attempted to put the information before the jury at trial, but the testimony was held inadmissible by the trial judge. This Court finds that the Applicant provided no evidence of what would have resulted from further investigation by trial counsel. This Court finds that the Applicant has failed to carry his burden of proving that trial counsel was deficient for failing to fully investigate his case prior to trial.

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Failure to object to the admission of the Applicant's statement

This Court finds that trial counsel was not ineffective for failing to object to the admission of the Applicant's statement at trial. This Court finds that the record reflects that trial counsel objected to the admission of the Applicant's statement prior to trial and as a result a Jackson v. Denno¹ hearing was held. (Transcript p. 50-109). The record also reflects that trial

¹ 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964).

counsel objected to the admission of the Applicant's statement once again after it was admitted into evidence. (Transcript p. 216, ln. 12-14). This Court finds that trial counsel vigorously objected to the admission of the Applicant's statement and vigorously cross-examined the State's witnesses during the Jackson v. Denno hearing prior to trial. This Court finds that the Applicant has failed to carry his burden of proving that trial counsel was ineffective for failing to object to the admission of the Applicant's statement at trial.

Accordingly, this Court finds the Applicant failed to prove the first prong of the Strickland test- that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in their representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland- that he was prejudiced by trial counsel's performance. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 244, 478 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), State, 305 S.C. 365, 409 S.E.2d 344 (1991). This Court finds there was overwhelming evidence of the Applicant's guilt presented at trial. At trial, the State presented the victim who testified that the Applicant abused her (Transcript p. 126-135), two sexual abuse experts who testified about the child victim's allegations and her lack of physical signs of abuse (Transcript p.154-185), and the Applicant's statement to police (Transcript p. 220-221). This Court finds that trial counsel's performance did not prejudice the Applicant and there was overwhelming evidence of guilt presented at the Applicant's trial. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore they are hereby denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

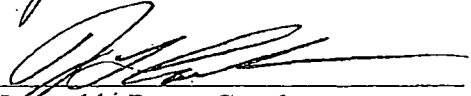
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules. The appropriate procedures to follow after notice of intent to appeal has been timely filed.


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IT IS THEREFORE ORDERED:

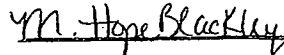
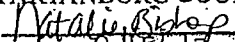
1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 18th day of September, 20 12


The Honorable Roger Couch
Presiding Judge
7th Judicial Circuit

, South Carolina.

A CERTIFIED COPY


CLERK OF COURT
SPARTANBURG COUNTY
BY:  D.C.
DATE: 9/18/12

WITNESSES

SENTENCE MADE

1. **Committed**
Spartanburg Co. Sheriff's Office

3. CARD PULLED

4. INDEXED

5. CHECKED

6. CHECKED SIGNATURE
Spartanburg County Sheriff's Office

7. ASSESSMENT AND
FINE CARD **provided**

8. TRAFFIC VIOLATIONS COPY

ARREST WARRANT NUMBER

H937238

DI

ACTION OF GRAND JURY

Giles Belcher

Foreperson of Grand Jury
Date: 4-5-07

VERDICT

guilty

Orna B. Strickland
Person of Petit Jury

5/8/07

U S U T E
The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

APR 09 2007

TERM

THE STATE

VS.

Giles Belcher

Indictment for

CRIMINAL SEXUAL CONDUCT
W/MINOR, FIRST DEGREE

SC Code: 16-03-0655(1)

CDR Code: 0385

Class FEL-CV

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

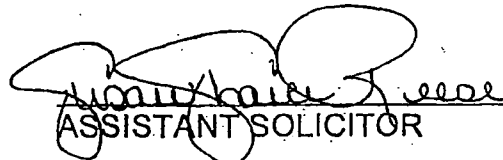
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At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That Giles Belcher, did in Spartanburg County, between the dates of May 1, 2001 through August 31, 2002, commit the crime of Criminal Sexual Conduct with a minor, in that the defendant did commit a sexual battery upon the minor victim, MINOR who was under eleven (11) years of age at the time of the said incident. Said incident occurred in Spartanburg County, South Carolina, in violation of §16-03-655 (1), *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

Computer

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Spartanburg

STATE OF South Carolina

AKA: Giles, Belcher

Race: M Sex: M Age: 34

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Spartanburg SC

DL# _____ SID# _____

INDICTMENT/CASE#: 01-GS-42-11673

AW#: Direct Indictment

Date of Offense: 5-1-01 thru 8-31-02

S.C. Code §: 16-3-1055(1)

CDR Code #: 0305

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Criminal Sexual Conduct w/a Minor 1st Degree (0-30 yrs)

in violation of § 16-3-1055(1) of the S.C. Code of Laws, bearing CDR Code # 0305

NON-VIOLENT VIOLENT SERIOUS MOST-SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS

PTUP _____ days/hours Public Service Employment
Obtain GED. _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

| Recipient: | | |
|--|---------|------------------|
| *Fine: | | \$ |
| §14-1-206 (Assessments 107.5%) | | \$ |
| §14-1-211(A)(1) (Conv. Surcharge) | \$100 | \$ <u>100.00</u> |
| §14-1-211(A)(2) (DUI Surcharge) | \$100 | \$ |
| §56-5-2995 (DUI Assessment) | \$12 | \$ |
| §35-13 (Public Def/Prob) | \$500 | \$ |
| §73-3, 1B-TP (Law Enforc. Funding) | \$25 | \$ <u>25.00</u> |
| §33-7, 1B-TP (Drug Court Surcharge) | \$100 | \$ |
| §50-21-114 (BUI Breath Test Fee) | \$50 | \$ |
| §56-5-2942(J) (Vehicle Assessment) | \$40/ea | \$ |
| 3% to County (if paid in installments) | | \$ <u>3.75</u> |
| TOTAL | | \$ <u>128.75</u> |

Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

[Signature]
Clerk of Court/ Deputy Clerk
Court Reporter: [Signature]

PRESIDING JUDGE [Signature]
Judge Code: _____
Sentence Date: May 8, 2007

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GILES BELCHER,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

M. CELIA ROBINSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

I. Did the trial judge err in precluding arguably exculpatory testimony by the appellant and cross-examination of the State's witnesses as to third parties whose access to the victim could reasonably have been the cause of the victim's complaint and/or the source of her information as to sexually explicit matters and speech?

STATEMENT OF THE CASE

Giles Belcher, appellant, was indicted by the Spartanburg County Grand Jury for committing criminal sexual conduct with a minor between the dates of May 1, 2001 through August 31, 2002. On May 7, 2007, appellant proceeded to trial before the Honorable Judge J. Derham Cole and a jury. The jury convicted appellant as charged and Judge Cole sentenced him to incarceration for thirty years with credit for time served. This appeal follows.

ARGUMENT

- I. The trial judge erred in precluding arguably exculpatory testimony by the appellant and cross-examination of the State's witnesses as to third parties whose access to the victim could reasonably have been the cause of the victim's complaint and/or the source of her information as to sexually explicit matters and speech.

Appellant was accused of criminal sexual assault against his, at the time, four year old daughter. The State's indictment alleged that abuse took place between the dates of May 1, 2001 through August 31, 2002, during the time appellant, his wife, and his two daughters were living in a yellow house on Stephens Grove Road in an impoverished neighborhood in Spartanburg County. After the jury was selected, counsel for appellant argued her motion to allow cross-examination of the State's witnesses and testimony regarding Isaac Stewart and also regarding Darryl and Larry Riddle.

Counsel for appellant requested leave to cross-examine the State's witnesses regarding alleged inappropriate sexual conduct with the victim by Darryl Riddle. Counsel further requested leave to cross-examine regarding Isaac Stewart, the victim's mother, Joann Belcher's, brother, who lived in the home with the victim and her parents during the time the abuse was alleged to have occurred. Counsel for appellant argued that Isaac Stewart's living in the house with the victim was of great concern to DSS so that the initial safety plan, crafted in 2005 at the point when the victim had begun to reveal abuse, required that Isaac Stewart have no contact with the minor victim at all. (R. p. 40). Counsel for appellant conceded that, to her knowledge, the victim had made no outcry against Isaac Stewart. However, Counsel argued that she was not attempting to raise speculation but that, given that the victim's mother, Joann Belcher, had named her brother as a possible perpetrator of abuse upon her daughter when the problem was reported to DSS, there was a good faith basis to conclude that Isaac Stewart was the guilty party. (R. p. 42, lines 5-8). The assistant solicitor informed the judge that because she is developmentally delayed and "not very verbal,"

when the abuse was first discovered, the victim was unable to disclose details of the abuse or the identity of the perpetrator so that DSS kept the mother, appellant, and Isaac Stewart away from the child using a safety order. The trial judge ruled that because Isaac Stewart had not been identified as a potential witness and because Stewart had not been named as a perpetrator by the victim, he was unable to understand the purported relevance of Counsel's proposing questions on cross-examination regarding Isaac Stewart, the other man living in the home with the minor victim. (R. p. 43, lines 19-25).

In response to counsel's indicating that, although D.S.S. apparently did not investigate Isaac Stewart, the victim's mother/Stewart's sister "said that she thought that Isaac was the perpetrator initially when the report was first made to D.S.S.," the trial judge focused only on the fact that the victim made no similar charge. (R. p. 42, lines 5-17). The judge ruled, "It seems to me that evidence relating to him being in the residence would serve no useful purpose. It would not be probative on any point and it might result in allowing some juror or a number of jurors to speculate as to any contact he may have had. That being inappropriate, I'm going to deny your motion to admit such evidence." (R. p. 44). This ruling was error which improperly curtailed appellant's presentation of a defense, limited his ability to testify fully in his defense, and limited counsel's cross-examination of the State's witnesses.

The trial judge further erred in precluding testimony or cross-examination regarding the Riddle brothers. Darryl Riddle is the victim's mother's boyfriend. (R. p. 44, lines 9-10). Counsel argued that after appellant had been removed from the home by D.S.S. order and not allowed to have any contact with the victim, the Riddle brothers moved in. Counsel indicated that during the course of the victim's therapy, her ability to articulate and to speak understandably increased dramatically. Counsel indicated that, when able, in addition to her allegations against appellant, the

victim also started disclosing sexual abuse perpetrated by Darryl and Jerry Riddle. Counsel argued that, in order to present a full and fair defense for appellant, she should be allowed to introduce testimony regarding the victim's allegations against the Riddle brothers. Counsel further explained that her exposure and contact with the Riddle brothers would serve to explain the victim's sexually explicit knowledge and speech used to describe alleged abuse. (R. p. 45, lines 1-15). The assistant solicitor argued that the victim first acted out in August of 2002 and that at that point, she began to disclose abuse. The State argued that in October of 2002, the victim alleged oral sex and vaginal and anal penetration perpetrated by her father, appellant. (R. p. 45, lines 17-25). The State further argued that the victim continued in counseling and she continued to make allegations and disclosures up until March of 2005.

According to the State, it was in March of 2005 that the victim was placed back in Joann Belcher's home and also at that time that the victim's mother moved her boyfriend and his brother into the home. The State argued that the victim's disclosures and allegations were made prior to the time she was moved back home and prior to the time she met the Riddle brothers. However, counsel for appellant pointed out that it was unclear when the victim actually made the allegations against appellant and that her examination regarding the Riddle brothers was necessary to the defense in order to explain an alternate source of the victim's sexually explicit knowledge. Counsel argued that in 2005, when she had moved back home to live with her mother, her mother's boyfriend, and her mother's boyfriend's brother, was the point in time when it was decided that the victim was finally able, after years of counseling, to articulate sexual abuse by her father sufficient to obtain a warrant. The judge ruled that the facts precluded any contact with the Riddles so that they could not be the source of the victim's sexually explicit complaint or speech. However, the judge thereby ignored counsel for appellant's argument that the Riddles could have been the source of the victim's

sexually explicit knowledge and information as disclosed from March of 2005 through the date of appellant's trial.

The trial judge's preclusion of testimony and examination regarding Stewart and the Riddle brothers further interfered with appellant's right to testify in his own behalf. In reporting his decision to testify in his defense, appellant raised the effect of the judge's ruling on his testimony. Appellant indicated, "There's a lot that needs to be said, sir, but I'm not allowed to say it, sir." (R. p. 247, lines 7-8). The judge reminded appellant that he had a right to testify; however, appellant responded, "The only problem, sir, I see and know is that I cannot say what truly needs to be said, sir." (R. p. 247, lines 9-15). Appellant explained, "And my hands are tied at this point, sir, because I'm not allowed to completely have the whole truth told, sir. Because they are witnesses, sir, but you and the solicitor have ruled that that is inadmissible evidence, sir." (R. p. 248, lines 1-7), Appellant asserted, "There is stuff that is in D.S.S. paperwork, sir, that provided that others were there and that, pardon me, sir, but my wife wasn't there and that she is accused of it as well and that she has stated that someone else done it, sir, and - -" (R. p. 248, lines 11-15). Appellant did determine to testify in his defense; however, he clearly indicated that his testimony was stymied by the judge's ruling precluding evidence regarding Stewart and the Riddle brothers.

The trial judge committed reversible error by not allowing Appellant to fully present a defense. His rulings unjustifiably prohibited cross-examination that was critical to appellant's ability to challenge the State's case and to develop facts necessary for his defense. In State v. Grovenstein, the Court held that evidence "should have been admitted because it provided an alternate explanation of how the young victims would be familiar with the sexual conduct they alleged Grovenstein committed." State v. Grovenstein, 340 S.C. 210, 220, 530 S.E.2d 406, 412 (S.C.App.,2000). Likewise, here, the proposed testimony and cross-examination regarding

the Riddle brothers should have been admitted because it provided an alternate explanation of how this young victim would be familiar with the sexual conduct she alleged appellant committed.

The Constitution of the United States guarantees a criminal defendant certain fundamental rights. See U.S. Const. amend. VI. "The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses; the cross-examination of adverse witnesses, and the orderly introduction of evidence." State v. Gillian, 360 S.C. 433, 449-450, 602 S.E.2d 62, 71 (Ct. App. 2004); accord State v. Mizzell, 349 S.C. 326, 330, 563 S.E.2d 315, 317 (2002); State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). The Due Process Clause of the Fourteenth Amendment ensures these rights are extended to criminal defendants in state courts. See U.S. Const. amend. XIV; Pointer v. Texas, 380 U.S. 400, 403-404, 85 S.Ct. 1065 (U.S.Tex. 1965)(holding the Sixth Amendment applicable to the states through the Fourteenth Amendment); Mizzell, 349 S.C. at 330, 563 S.E.2d at 317 ("The Sixth Amendment is applicable to the states through the Fourteenth Amendment.") The South Carolina Constitution further ensures that individuals accused of a crime will enjoy these rights. The Constitution of the State of South Carolina provides:

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both.

S.C. Const. art. 1, § 14; see also S.C. Const. art. 1, § 3 (due process rights). "Few rights are more fundamental than that of an accused to present witnesses in his own defense." Chambers v. Mississippi, 410 U.S. 284, 291, 93 S.Ct. 1038, 1044 (U.S.Miss. 1973); see also California v.

Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528 (U.S.1984)(finding the Due Process Clause of the Fourteenth Amendment affords criminal defendants a meaningful opportunity to present a complete defense); State v. Hutton, 358 S.C. 622, 631, 595 S.E.2d 876, 881 (Ct. App. 2004) (recognizing fundamental fairness requires criminal defendants be granted a meaningful opportunity to present a complete defense); State v. Harris, 311 S.C. 162, 167, 427 S.E.2d 909, 912 (Ct. App. 1993) (“Due process requires that a criminal defendant be given a reasonable opportunity to present a complete defense.”). “The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State’s accusations.” Chambers, 410 U.S. at 294.

Here, the State’s witness, Meredith Loftis, testified that she was disturbed by the victim’s “extensive sexual knowledge at the age of five” the fact that her play and drawings were sexualized, and her use of sexualized slang terms for body parts. (R. p. 159, lines 11-15). “It is well settled that evidence is relevant and admissible if it tends to establish or make more or less probable some matter in issue and to bear directly or indirectly thereon. The evidence need not be sufficient in itself to establish the whole or any definite portion of a party’s contention.” State v. Finley, 300 S.C. 196, 199, 387 S.E.2d 88, 89 (S.C.,1989). Here, the information regarding the victim’s exposure to Isaac Stewart and the Riddle brothers was relevant as tending to make it more probable that the victim was exposed to explicit sexual behavior and talk from a source other than appellant. This evidence tended to make it less probable that appellant was the perpetrator of the abuse complained of.

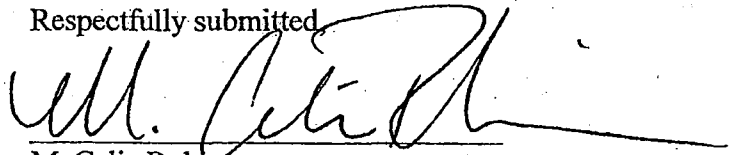
“Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’ ”

Holmes v. South Carolina, 547 U.S. 319, 324, 326, 126 S.Ct. 1727, 1731 (U.S.S.C. 2006), (quoting Crane v. Kentucky, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (U.S.Ky. 1986), quoting California v. Trombetta, *supra*.) The trial judge in this case abused his discretion by excluding the testimony and cross-examination proposed by the defense. Appellant had a fundamental right to present a complete defense, including the right to testify and the right to cross-examine the State's witnesses. The trial judge erred in ruling that the testimony and cross-examination was inadmissible as irrelevant and unfairly prejudicial under the South Carolina Rules of Evidence. The evidence proposed was highly relevant and probative as constituting an alternate source of the victim's complaint and an alternate source of her sexually explicit knowledge and speech. The judge's preclusion of this cross-examination and testimony interfered with appellant's right to present a defense, right to testify in his defense, and also his right to cross-examine the State's witnesses. Given that this evidence could reasonably have caused the jury to have a reasonable doubt as to the guilt of appellant, the trial judge's error was not harmless but reversible error.

CONCLUSION

Appellant's conviction should be reversed and a new trial ordered.

Respectfully submitted,



M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of November, 2008.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GILES BELCHER,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Giles Belcher states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge J. Derham Cole, which was held on 5-8-07, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Giles Belcher.

Respectfully submitted,

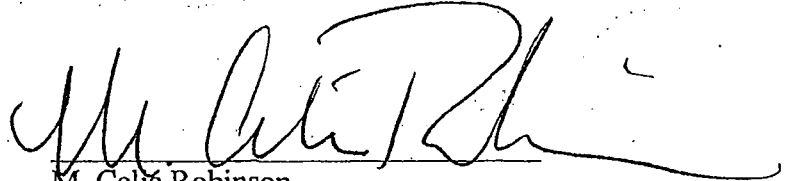
M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 17, 2008



M. Celia Robinson
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
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THE STATE,

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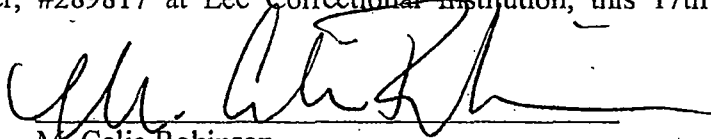
V.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal on Giles Belcher, #289817 at Lee Correctional Institution, this 17th day of November, 2008.



M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of November, 2008.

Lauren E. Cause (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014