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9-19-06

Ms. Betty Sephton
Miss. Supreme Court Clerk
P.O. Box 249
Jackson, Ms. 39205

FILED
SEP 19 2006
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Dear Ms Sephton

Please find enclosed my brief on appeal, pursuant to Miss. Code Ann. 99-39-25. I recently filed a notice of appeal which was filed in this court on August 23, 2006.

I was informed by the Itawamba County Circuit Court Clerk that my application for proceeding Informa Pauperis is now being processed, and all necessary documents would be forwarded to the Supreme Court. I have previously been allowed to proceed Informa Pauperis in both courts. I respectfully request that you file my brief, and that you waive any fees.

Thank you very much for your time and assistance.

Sincerely
Timothy Sharp K5328
Unit 30-D
Parchman, Ms. 38738

In The Supreme Court of The State of Mississippi

Timothy Sharp — Appellant
V.
Cause no. 2006-KA-01407
State of Mississippi — Appellee

Certificate of interested persons

The following list of persons may have an interest in the outcome of this case.

Attorney General
Honorable Jim Hood
P.O. Box 220
Jackson, Ms. 39205

Circuit Court Judge, District 1
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Trial Counsel for Appellant,
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Post Conviction Counsel
Honorable Lori Basham
P.O. Box 1726
Fulton, Ms. 38843

Table of Authorities

In The Supreme Court of The State of Mississippi

Timothy Sharp — Appellant
V. — Cause no. 2006-KA-01407
State of Mississippi — Appellee

Appeal From The Trial Court's denial of Post Conviction Relief

Appellant Brief

Comes now, pro se appellant, Timothy Sharp with his brief on appeal of the Itawamba County Circuit Court's denial of his Petition for Post Conviction Relief. Itawamba County cause no. CV05-104-(G)I.

Statement of the case, and course of proceedings: Appellant, Timothy Sharp was convicted in the trial court of Itawamba County on January 17, 2001 of sexual battery and fondling, and was sentenced to serve a term of 20 years in the Mississippi Department of Corrections. Sharp's direct appeal was delayed approximately two (2) years due to trial counsel's failures to file the appeal. The direct appeal was finally filed by appellate counsel Kelly Mims on March 20, 2003, and the conviction was affirmed by the Miss. Court of Appeals on January 6, 2004. Sharp then filed a motion for leave to proceed in the trial court with a motion for post conviction relief on May 11, 2004. The Miss. Supreme Court granted leave to proceed, and ordered a hearing in the trial court, that order was filed on October 26, 2004. A hearing was held in the trial court on October 25, 2005, and Sharp received a copy of the trial courts order denying relief on August 4, 2006.

From that order Sharp brings this appeal.

Issues

Did appellant receive ineffective assistance from his trial counsel, and Did counsel's Performance result in Prejudice to Appellant's defense.

I, appellant, will use simple words and simple terms to describe the following, and may mention some things not in the record, reason being, there was no investigation of the case by defense counsel, therefore few facts were presented at trial: Appellant was accused of molesting his daughter, Amber. At the time the accusation against appellant began, he lived with his wife Carla Sharp, and their children, Amber, age 10, and Waylan, age 5, and appellant's two older sons from a previous marraige, Timmy, age 19, and Jason, age 18. My daughter Amber had a continuous habit of sleeping with her parents. I was totally against it and had tried every way I knew of to prevent it. (T.68), (T.105). But Amber refused to abey me concerning that, and would wait till I was asleep, then get in the bed. My wife Carla was not much help on the issue, she would allow Amber to get in bed with with us after I was asleep. Ambers sleeping in bed with us caused the initial accusation. One morning in July of 2000 I woke up with Amber next to me, actually up against each other. Amber was between me and Carla. I had been awake no more than a few seconds when I moved away realizing at the same time that I had an erection. I got out of bed waking Carla and scolding her, for having allowed Amber to get in bed with us. I did not know Amber was in bed with us till I woke up, and Amber appeared to be asleep until I was getting out of bed. After Carla got out of bed I told her about the inapropriate situation of waking up next to Amber. Later that morning Carla talked with Amber, supposedly about the situation of sleeping with us. Then sometime that afternoon Carla's favorite [redacted] friend Lulu Fair (real name, Rebecca Letson) came and visited Carla. I was gone during most of that visit. Within a few days, what had actually happened had changed into a story of molesting Amber, and Lulu Fair had called the D.H.S. and reported it as such. (T.7) The D.H.S. took custody of Amber, and about three (3) months later Amber was telling all sorts of different stories, (T.35.). And none of those stories resembled her trial testimony, (T.59)

Although social worker Tawnya Keys claimed that Amber had told her about acts of sexual activity from the beginning. (T.24) It was not true. See testimony concerning Amber's first interview with Dr. Trudy Porter. (T.36) Amber denied that there had ever been any kind of penetration, and Amber knew that Tawnya Keys was there, either listening to what was said, or would be told by the video tape.

Appellant's wife was still having some contact with appellant, such as bringing his youngest son to visit. My wife Carla had moved in with her mother after the D.H.S. took Amber, she said that the police had ordered her to leave appellant. But she came to visit sometimes, and did so after Amber's first interview with Dr. Porter. Carla told me that day, that Tawnya said they could not get an indictment with what Amber had stated during the interview, that they would have to have more than that. This was Tawnya Keys' first assignment as a social worker. (T.29). Tawnya Keys had already taken the child from her home, and into the custody of the D.H.S. A story of an inappropriate situation in which the accused had no control of was not acceptable.

At some point Tawnya Keys explained to Amber that she could go home to her mother after they got an indictment. (T.37-38). That alone would cause a child to give the kind of statements the social worker was asking for. Amber seen that her first, and true testimony to Dr. Porter was not accepted. And the suggestive interviews surely explained what Ms. Keys wanted to hear.

It is well known that psychological therapy is highly suggestive and can create a false reality. Amber was undergoing psychological therapy. (T.33) But Amber did not have any psychological problems, other than what was caused by being taken from her home and placed in a safehouse, which was a prison to her. Dr. Chidester testified that Amber had symptoms that were caused by abuse. (T.44). But Amber's testimony suggests that her psychological sickness started at the Faith Haven safe house, (T.63)

Appellant believes that his wife instigated the initial accusation against him, and later it changed and grew due to suggestion and confabulation. Dr. Linda Chidester was asked to find evidence to support the allegation. (T.33).

Summary of the Argument

Appellant having filed a motion for post conviction relief and a motion for leave to proceed in the trial court, was granted leave by the Miss. Supreme Court, and the Court ordered a hearing, stating that; "The panel finds that Sharp should be allowed to proceed in the trial court on his claim that his attorney at trial was ineffective in failing to call a medical professional or professionals who could have testified that the childs injury could have been caused by accidential injury." Reason being, at appellant's trial Dr. Linda Chidester testified that she examined Amber and found a tear of the hymen and a scar that was caused by sexual abuse. Dr. Chidester's claim could only be rebutted, or countered with the assistance of an expert to testify, unless otherwise the defense counsel was educated in that field of expertise.

A professional was also necessary for the purpose of reviewing prior medical records to see if there was an accident that may have caused a scar, and testified that the scar was, or possibly was the result of an accident. Appellant knows there was a bicycle accident that could have caused a scar. The Miss. Supreme Court ordered the hearing to give appellant an opportunity to show that Dr. Chidester's evidence was not valid evidence, or show that it should be considered as no evidence at all.

However, appellant was denied any opportunity to present evidence at the hearing. The circumstances were somewhat simular to appellant's trial. When a defendant is being held in jail he is dependant on the assistance of his counsel to locate and bring forth the needed evidence.

Appellant was transported to the Itawamba County Jail on Thursday October 20, 2005. And met Lori Basham, Appellant's post conviction counsel

at approximately five (5) oclock PM on Friday October 21,2006. We discussed the needed evidence, such as medical records to verify there had been an accident that required a pelvic examination and would possibly explain there would likely be a scar because of that. We also discussed whether to call my wife to testify at the hearing, that the bicycle accident happened and there was an injury.

We also discussed whether there were any pre-trial investigations or preparations, appellant explained that there were none. Ms Basham asked to see appellant's trial transcript, stating that she did not have one. She briefly looked through the transcript and stated that, "This is absolutely unheard of, voir dire, a 803 hearing, a sexual battery and a fondling trial, a two hour lunch break for conducting four revocational hearings, the jury left the courtroom at 4:19, back at 4:30 with a guilty verdict. This could hardly be called a trial." The statement gave appellant a certain confidence in Ms Basham. Ms Basham's conclusion of our discussion was that she would try to get the medical records from the clinic, and she would come back Saturday or Monday to discuss what witnesses we needed to call, or subpoena to testify at the hearing. Appellant did not see Ms Basham again till Tuesday October 25,2005, as we were about to have the hearing. Ms Basham had some medical records, but they were written in a physician's code and could not be read or understood. Without a professional's assistance they were of no use. We had not discussed bringing witnesses to testify, due to Ms Basham's failure to come back to the jail to talk with appellant. Therefore we had no witnesses to verify the bicycle accident, no professional to give testimony concerning the described scar, or the validity of Dr. Chidester's evidence. Appellant was denied any opportunity to present evidence at the hearing.

The prosecutor objected to our discussion of the significance of the scar as evidence of the alleged battery, on grounds that we were not experts. The judge substained his objection, and the hearing was closed with the judge stating that, "no relief will be granted, the motion dismissed."

Argument

Appellant claims that his trial counsel, Mr. David Daniels was ineffective assistance, and but for counsel's ineffectiveness there is a reasonable probability that the result of the trial would have been different.

Appellant claims that his trial counsel's failure to investigate the facts and circumstances of the case, including physical evidence, and make the necessary preparations to rebut the prosecutions evidence was deficient performance that resulted in prejudice to appellant's defense.

The trial court's order first states that Sharp asked the court to review and reconsider the sentence imposed. Appellant sent a letter to the judge after the post conviction hearing, and after the judge stated that the motion for post conviction relief was denied and dismissed. The letter did ask the judge to reconsider the sentence and provide appellant with some form of relief. However, the letter was an independant mercy letter and was not part of the post conviction motion. Appellant had simply lost faith in true fairness and justice.

The trial court's order states that Sharp's argument is without merit. And that states also, that Sharp never states how such evidence would have disproved the states evidence, or proved his innocence.

The trial court has failed to give appellant's argument fair consideration. And appellant has never been allowed any opportunity to present evidence in his favor, at trial, on direct appeal, or the post conviction hearing. Appellant has had three (3) different Itawamba County Public Defenders, one for each of those proceedings, and has explained to each one that a physical evidence investigation is needed, and explained why. The first two attorneys totally disregarded appellant's request for assistance concerning medical evidence.

Sharp's post conviction counsel, Ms. Lori Basham failed to put together a physical evidence argument, but she did obtain some medical records of vaginal examinations.

A.

At appellant's trial Dr. Linda Chidester testified that she examined Amber and found a scar that was caused by sexual penetration. (T.47-49) Dr. Chidester testified that the scar could not have been caused by trauma, meaning that she was certain it was caused by penetration. (T.48) As far as we know Dr. Chidester is the only person that seen the scar. Although Taunya Keys testified that Dr. Chidester has a colposcope, and the technology to take pictures to keep if needed. (T.33) Dr. Chidester testified significantly about physical evidence, but she never mentioned a colposcope, or having taken any pictures.

If there was any pictures, trial counsel should have known of them prior to trial, that he could have a different professional examine the pictures, especially Amber's regular physicians that had been seeing her for several years. If there were no pictures, counsel should have questioned their abstence. See- Gersten v. Senkowski, 426 F.3d 588, at 609, stating that, "Particularly troubling in this case is counsel's failure to examine prior to trial the colposcope slides that were made to record the physical evidence of trauma purportedly observed, --- Defense counsel's apparent failure to even request to examine them was a serious dereliction of his duty to investigate the fact and circumstances of the case."

See- Nealy v. Cabana, 764 F.2d 1173, 1177 (5th cir. 1985) Stating that "At a minimum, counsel has a duty to interview potential witnesses and make an independent investigation of the facts and circumstances of the case."

The prosecution's physical evidence was no more than Dr Chidester's claim, she is the the prosecution's regular expert witness, and her testimony is solely for prosecutig purposes.

At appellant's trial Dr. Chidester testified that the hymen could only be damaged or lost by sexual penetration. (T.-47). That is a false statement. Appellant's trial counsel apparently did no research concerning evidence of sexual abuse. Had he researched the issue he would have known that practically all other experts disagree with Dr. Chidester's statement about the hymen.

See,- United States V. Dorian, 803 F.2d 1439, at 1441, "The physician stated that she could not state with any degree of medical certainty what had caused the inflammation or the tear in the hymen,--- and at 1450, the physician stated that the tear could be the result of horse back riding or a fall."
and see,- United States V. Shaw, 824 F.2d 601, at 605, The physician stated, "that many activities besides sexual activity can cause a hymen to lose it's intactness."
And, Dr. Chidester contradicted her own prior testimony,- see,- Goodson v. State, 566 So.2d 1142 at 1166-67. Dr. Chidester testified in the Goodson trial that, "a girl's hymen could be damaged or lost for various reasons."
It is clear that Dr. Chidester testified falsely about the significance of an imperfect hymen at appellant's trial. This strongly suggest that she would exaggerate the significance of a scar she claimed to have found, and her hymental measurement.

Dr. Chidester testified that Amber's hymen should be about 10 millimeters, but she measured it to be 15 millimeters. But see,- Shaw, Id, at [604] [**9], stating that, "the hymen is a stretchy ring of tissue, and the size of the hymenal opening is not absolute because of the stretchy nature of the tissue."
and see,- Eze v. Senkowski, 321 F.3d. 110, at 128, in general, noting the growing concern of the inaccuracy of hymenal measurements.

Trial counsel could have rebutted Dr. Chidester's testimony concerning the hymen with the aid of an expert, but he chose to accept the prosecution's expert's version of the evidence. See,- Eze, Id. at 128, stating that "when a defendant is accused of sexual abuse of a child and evidence is such that the case will turn on accepting one party's word over the others, the need for defense counsel to, at a minimum, consult with an expert to become educated about the vagaries

of abuse indicia is critical. The importance of consultation and pre-trial investigation is heightened where, as here, the physical evidence is less than conclusive, and open to interpretation."

B.

Dr. Chidester's testimony about the scar seems to say that it was a serious wound that caused it. Dr. Chidester testified that the hymen was completely missing between 5 and 7, and the same tear came out of the vagina and extended down between the vagina and the anus. (T. 48-49). It seems that, for that to have happened by stretching the vagina open, the vagina itself would have been bursted open, because the hymen is inside the vagina, and the anus is around behind the vagina. Dr. Chidester testified that it was done when the alleged act of sexual battery took place. Amber testified that the alledged act happen when she was 6, 7, or 8 years old, when we lived in the blue house. (T. 57-58). How did Amber tend to such a serious wound all by herself? How did she keep such a wound a secret? There would have been bleeding, probably infection, and terrible pain.

Her mother assisted her with baths and with getting dressed. There were family members, friends, and neighbors around daily. It would have been impossibe to keep such a wound a secret. According to the seriousness of the wound Dr. Chidester described, Amber would have needed medical treatment. Common sense thinking finds fault in Dr. Chidester's testimony.

Appellant assumes that there may have been a scar because there was a bicycle accident that could have caused a scar. But the scar would not be anything like Dr. Chidester described, meaning that, she may have found a scar, and then exaggerated the significance of it. Her reason for conducting the examination was to look for evidence of sexual penetration. Had she been looking for evidence of a bicycle accident, that is what she would have found.

C.

Trial counsel failed to investigate the physical evidence of the case and make necessary preparations to rebut the prosecution's evidence.

Appellant will show some relevant medical records that he received from his post conviction counsel, and the significance of the records.

Amber testified that the act of sexual battery happened when she was 6, 7, or 8, years old. (T. 57-58). Prior to 1998. These medical records are of significance mainly because they were just prior to Dr. Childester's medical examination in July of 2000.

Appellant believes the medical record dated, 5-8-00, is the medical record of the bicycle accident injury, however appellant received only the end portion of that record. Each medical record begins with a box containing vital signs, height, weight, and such. See exhibit-A. This record is of a pelvic examination. At the bottom of that page another medical record begins, dated 5-10-00, which also appears to be a pelvic examination, possibly a follow up exam, or due to vaginal yeast infection, notice that Monostat cream was prescribed.

Notice at the bottom of the page is the word, 'vulva', which means;- "The external parts of the vagina". Notice at the top of the page is the word, 'vulvitis,'- meaning -;- coincident inflammation of the vulva; as in injury." If we had the beginning of this medical record we would probably know more about the injury. At the bottom of page in the part of the record dated, 5-10-00, it appears to say, "Vulva better". Appellant was given only a portion of that particular medical record, with only two translated words that are readable. However, it is clear that these are pelvic examinations. It would require a professional, and possibly even the examining physician to get a full understanding, as well as the entire record of the 5-8-00 examination.

See - exhibit-B, which is the biggest part of the medical record dated, 5-10-00, but there are no translations written on that page.

See; exhibit-C, This medical record is also a pelvic examination. Notice at the top of that page is the word, 'dysuria', which means,- "difficult, or painful discharge of urine." Then we see, 'frequency', and, 'no blood seen'. At the bottom of that page is the word, 'erythema', which means,- "abnormal redness of skin, due to capillary congestion." Then see the word, 'labia', which means, "the lower fold of the vulva". Appellant is given only enough information to know that this is a medical record of a pelvic examination.

While looking for identifiable words appellant found the word, 'leg', and remembered that Amber had a tree climbing incident and scraped the skin off her legs. She had also injured her pelvic area in such a way that she later complained to her mother that it burned when she used the bathroom. Her mother took her to the clinic later that afternoon, or the following day.

Amber was the tom-boy type of girl, and was always climbing in the trees, in spite of our warnings that she could fall and get hurt. On that partieular day she had climbed a small pine tree that had no limbs for about 10 feet up. When she started down she lost her grip and slid down the tree with her legs wrapped around it, much faster than she had intended. So fast that it could be considered a fall. But she pretended that it didn't hurt, mainly because we had seen what happened, and said, see there we told you about that climbing. And it was sometime later that she complained.

Appellant had somewhat forgotten the incident until he was looking at the medical record and trying to remember what it was about. Appellant believes that this medical examination followed the incident he has described. It may be possible that this incident also left some kind of scar.

See, exhibit-D, which is also part of the same record, however there are no translations on this page. Only a professional can fully understand these medical records, or it may be that only the examining physician would be able to completely translate the records. However, it is certain that there were accidental injury, or injuries to the vagina, and pelvic area.

See, exhibit-E, which is a medical record that identifies 'poison oak', all over, including the 'butt' and 'foot', (vagina). This record is over a year closer to the time that the alleged battery supposedly happened. Note that, the physician atleast examined the vagina to some degree, probably well enough to have noticed such a scar as Dr. Chidester described in her testimony at appellants trial. This examination was over a year closer to the time of the alleged battery than Dr. Chidester's examination, however there was no report of finding a scar, or any other indications of sexual battery. Tawnya Keys testified that there were no prior reports. (T. 9).

Appellant has shown medical records of prior pelvic examinations that were two (2) months, five (5) months, and a year prior to Dr. Chidester's examination of Amber, and there were no findings of sexual penetration in the prior examinations. And it was testified that the alledged act happened long before any of the examinations. (T. 57-58.).

See, Gersten v. Senkowski, 426 F.3d 588, at 608, stating that, "If a medical examination of the alledged victim failed to reveal any evidence clinically indicative of sexual penetration, that failure would constitute strong affirmative evidence that forced penetration did not occur."

There is, in the medical records evidence of accidental injury to the vagina, that would most likely explain the existence of a scar, if there in fact was one. Prior to trial appellant was told by his trial counsel that the state had physical evidence which was a scar. Appellant explained that Amber had a bicycle accident and injured her pelvic area, and that may have caused a scar, but trial counsel showed no interest and stated that it was not important. Appellant also asked trial counsel to get a second opinion of the physical evidence, counsel stated, "not unless appellant could pay for it."

See, Pennsylvania v. Ritchie, 480 U.S. 39, * 107 S.Ct 989, ** 94 L.Ed.2d 40, [HN 7], "Criminal defendants, under the compulsory process clause of the Sixth Amendment, have the right to the government's assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt."

Investigation of prior medical examinations of an alledged victim would be a common defense practice, or atleast should be. Prior medical exams. certainly fall in the catagory of facts and circumstances of the case.

At a minimum, counsel has the duty to interview potential witnesses and make an independent investigation of facts and circumstances of case. Payton v. State, 708 So. 2d 559, at 561.

The trial court seems to suggest that Sharp dreamed up the idea that there might be another possible source of injury. However, Sharp has shown medical records that indicate accidental injury to the vagina. And medical records of exams. that did not reveal any evidence of sexual penetration.

Sharp contends that his trial counsel should have investigated the physical evidence, brought the prior medical examinations to trial, and brought a professional to trial to testify that the scar was or could have been the result of accidental injury. And to testify that the prior medical examinations did not reveal any evidence of sexual penetration.

In Gersten v. Senkowski, 426 F.3d 588, at 599, a defense expert witness agreed with the prosecution's expert that clefts in the hymen are indicative of sexual penetration. Dr. Childester did not mention clefts in the hymen, very possibly because there none, were found. Therefore, a lack of actual evidence of sexual penetration caused a scar that resulted from accidental injury to become evidence of sexual penetration. And she declared that it was positive evidence.

In Sharp's case defense counsel failed to call as a witness, or even to consult in preparation for trial and cross examination of the prosecution's witness, any medical expert on sexual abuse. Counsel merely conceded that the physical evidence was indicative of sexual penetration without conducting any investigation to determine whether this was the case. Had conducted an investigation, counsel would have discovered that qualified medical experts could be found who would testify that the prosecution's physical evidence was not indicative of sexual penetration and provided no corroboration of the alleged victims story, and presented a strong case that the crime did not occur.

At appellant's trial, defense counsel hardly mentioned physical evidence, and his own statements suggest that he had not intended to challenge the prosecution's physical evidence. When he did mention physical evidence, he only stated that he "was not a doctor." (T.105). And once mentioned physical evidence, then abandoned the statement in mid-sentence, ending with, "so that, that testimony." (T.106). Defense counsel had not prepared to challenge the physical evidence.

The trial court cited, Bell v. State, 879 So. 2d at 434, suggesting that counsel's failure to challenge the prosecution's physical evidence was, "within the ambit of trial strategy and cannot give rise to an ineffective assistance of counsel claim."

However, "strategic choices can only be made after a through investigation of the facts and circumstances of the case." Nealy v. Cabana, 764 F.2d 1173, at [**12] It is evident that appellant's trial counsel did not investigate the physical evidence involved in the case.

Furthermore, appellant's trial counsel did not have any trial strategy. In counsel's opening statement he mentioned that an improper motive was involved. (T.18-20) But failed to present any meaningful argument on the issue.

Most important, trial counsel entirely failed to challenge the prosecution's physical evidence, leaving the jury with only one version of the evidence. Counsel's failure to use an expert or take other preparatory measures allowed the prosecution to dress up the weak and inconclusive physical evidence in the trappings of Dr. Chidester's expertise. Left unchallenged there is no little doubt that her testimony would be accepted as valid evidence.

If counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, there has been a denial of Sixth Amendment rights which makes adversary process itself presumptively unreliable. United States v. Cronic, 466 U.S. 648, 104 S.Ct. 2039, at [13]

The deficient performance is prejudicial to the defendant if counsel's errors are so serious as to deprive defendant of a fair trial. Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 2064, 80 L.Ed 2d 674

The right to offer the testimony of witnesses, and to compell their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of facts as well as the prosecutions to the jury so it may decide where the truth lies. An accused has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law. Washington v. Texas, 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed. 2d 1019.

Conclusion

Appellant Sharp was denied a fair trial, and due process of law.

Dr. Linda Chidester testified that a scar she discovered was caused by sexual penetration. Appellant has shown with medical records evidence of accidental injury, and that the scar was probably the result of an accident. Appellant has also show medical records that did not reveal any sign of sexual penetration. Which is evidence that there was no sexual penetration. If appellant's trial counsel had shown this evidence at trial, and called a medical expert to testify as to these facts, the jury would have had a totally different situation before them. With this evidence the jury could consider the alledged victim's prior statements that there had never been any sexual penetration. (T.36.) And there is a reasonable probability that the result of the trial would have been different. Sharp has shown that his trial counsel's performance was deficient, and the deficient performance deprived Sharp of a fair trial, and there is a reasonable probability that, but for counsels unprofessional errors the result of the trial would have been different.

The trial court failed to give Sharp's argument fair consideration, and ruled that it was without merit. The trial court's judgement is clearly wrong.

For all the foregoing reasons stated in this appeal, appellant Sharp prays that This Honorable Supreme Court will overturn the trial court's judgement, set aside the conviction and sentence, and order that Sharp be given a new trial.

Respectfully submitted this the 19th day of September, 2006.

Sincerely
Timothy Sharp K5328
unit 30-D
Parchman, Ms. 38738

GILMORE FULTON MEDICAL CENTER
302 Hospital Drive
Fulton, MS 38843
exhibit-A
PHONE: 662-862-7047
FAX: 662-862-7053

PATIENT NAME: Amber Sharp.
DOB /AGE:
#:

DATE	
	Impr: ✓ UTI
	✓ Candida Vulvitis
	Rx Monistat 7
	MaCC [illegible] TID
	Bactrim Ped El
	1 tsp TID x 5 d [illegible].
	Fluids ++
	RTC prn
	[signature]
5/8/00	Urine C+S neg.
	[signature].
5-9-00 1110	unable to reach pt's parents per phone - [signature]
5-9-00 7:15pm	unable to reach pt's parents per phone G. Kennedy
5-10-00	

MEDS
Bactrim Susp
1 TSP TID
Monostat Cream

T° 98.6	BP		
HR 68-REG	HT		
RR 16	WT	lbs.	
HEAD CIR.	WT	kg.	

Still having burning upon urination - Aching all over
[signature]

CC: [illegible] Afebrile
[redacted] leg dyspnea Vulva better
loose stool yesterday

[redacted]
FORM #903[redacted]

GILMORE FULTON MEDICAL CENTER
302 Hospital Drive
Fulton, MS 38843
PHONE: 662-862-7047
FAX: 662-862-7053

exhibit-B

PATIENT NAME: A Sharp

DOB /AGE:

#:

DATE

5/10/00

No N or V.
Sl. cough - allergy —
worse away
Stayed off school 5/9 & 5/10/00

PE:
NAD Afebrile.
HEENT: TM's ⊖
Neck ⊖ supple
Chest Clear.
Cor RRR BS.
Abd: Tender — mild.
no distension, bowel sounds
guarding. BSP

Ext. no rash

Impr: Viremia - GI ?

Rx: Fluids Light diet.
Finish Bactrim.
Tylenol prn
Off 5/9 & 5/10/00 Tuesday

213

FORM # 9034

GILMORE FULTON MEDICAL CENTER

302 Hospital Drive
Fulton, MS 38843

PHONE: 662-862-7047
FAX: 662-862-7053

exhibit-C

PATIENT NAME: A Sharp

DOB /AGE:

#:

DATE

7/7/00

T° 98.1	BP
HR 78	HT
RR 20 Reg	WT 62 lbs.
HEAD CIR.	WT kg.

burns ā urination, abd
back pain — Bessel

SPEC. GRAV.	1.020	GLUCOSE-	NORM
PH-	6.5	KETONES-	—
LEUKOCYTES	TRACE	UROBILI-	NORM
NITRITE-	—	BILIRUB-	—
PROTEIN	100	BLOOD-	—

gh

CC: Pyuria [redacted]
Freq [redacted]
no blood seen ~~No blood seen~~
Mouth/throat clear

O/ ES — NAD
HEENT neg
nodes
Chest clear
CVS: RRR
~~[redacted]~~ Abd: Soft soft
LKKS neg
~~[redacted] tender~~ tender BSO Suprapubic tender
[redacted] GU: Erythema of greater
[redacted] labia + urethra Ring
Ext: No Rash.

FORM # 9034

GILMORE FULTON MEDICAL CENTER
302 Hospital Drive
Fulton, MS 38843 exhibit-D
PHONE: 662-862-7047
FAX: 662-862-7053

PATIENT NAME: Sharp, Amber
DOB 6-12-90 /AGE: 9
#:

DATE	
	O/E NAD
2-7-00	Rhinorrhea - min
	Ear [illegible]
	Small [illegible] cervical node -
	mobile
	Chest. [illegible] wheeze.
	Throat. [illegible]
	CVS: RRR
	Abd Soft no masses
	[illegible]. No RASH
2 13	Impression: Bronchitis
	URI
	Rx. Biaxin 250 BID #20 NR
	[illegible]
	Off [illegible]
	[signature]

FORM # 9034

GILMORE FULTON MEDICAL CENTER
302 Hospital Drive
Fulton, MS 38843 exhibit-E
Phone: (601) 862-7047
Fax: (601) 862-7053

PATIENT NAME: Sharp, Amber
DOB 6-12-90 AGE: 8
#:

DATE

5-2-99

Breaking out in poison ivy again - had gotten cleared but started back again yesterday - Today rash is all over her rear end + "front" (vaginal area) and sides + trunk. Child scratching profusely though mom using Claritin, Calodryl + oatmeal baths.
Phone in Prednisone dose pack 4mg - Take 1 now Q day until all are gone Rx/pack/$ fills
Hydrocortisone cream 2.5% - apply thin layer to rash BID prn Rx 60 gms RTC if S/S of infx. or not improved in 48-72° —
Continue Claritin / soda baths prn.
Joy Chapman RN CS/FNP

Phoned to Walmart Tsda - @ 3:30 pm

5-4-99

T° 98.7	BP	(≈26.1 KG)	SORE THROAT : ACHING ALL OVER
HR 76-REG	HT		
BR 18	WT 58 lbs.		Treated 4-1-99 for pharyngitis. Jeff Hall RMA
HEAD CIR.	WT kg.		"Feels like knives" Child said

ALLERGIES
PCN

MEDS
CLARITIN 10mg TOD
PREDNISONE DOSE PK 4mg
HYDROCORTISONE CREAM 2.5%

(Freq. Grp. A Strep.)
(D) alert, sitting, NAD, oriented
Skin — poison ivy healing — numerous lesions on legs face,

Cont'd

Certificate of Service

This is to certify that I have this day caused to be mailed, via, United States mail, postage pre-paid, a certified copy of the foregoing brief to the following:

This the 19th day of September 2006. Timothy Sharp

Mississippi Supreme Court Clerk
P.O. Box 249
Jackson, Ms. 39205

Attorney General
P.O. Box 220
Jackson, Ms. 39205