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ARGUMENT IN REPLY

3.

The state’s contention that this case “is not similar to *Quattlebaum*” exhibits a lack of appreciation for the *intentional* prosecutorial misconduct the solicitor committed by his intimidation of critical expert mitigation witness Marti Loring. The defense, as this Court held in *Quattlebaum* had the right to call the Solicitor and Deputy Solicitor as witnesses on this issue of prosecutorial misconduct to prove it was intentional so the court would declare a mistrial.

Appellant admitted his guilt and pled guilty. Therefore the mitigation case was the key to this trial, and Dr. Marti Loring was a critical defense mitigation witness. It is clear the solicitor did not care for Dr. Loring given her effectiveness as a witness. There seemed and seems to be concerted effort to discredit Dr. Loring given this solicitor’s treatment of her, what occurred in the past with this solicitor, and what occurred in Corey Stephen Bryant, another death penalty case before this Court out of Sumter County. As seen, the Solicitor characterized Loring’s testimony in general as “a rambling recitation of rank hearsay.” R. p. 251, lines 20 – 21. During *voir dire*, the solicitor accused Dr. Loring of violating S.C. Code § 40-63-200 which “deals with the unauthorized practice of social work within the State of South Carolina” and “carries . . . both civil and criminal penalties for violation.” R. p. 328, line 1 – p. 329, line 8. Defense counsel objected to the Solicitor’s “inappropriate attempt to intimidate the witness with the authority that this Solicitor has in this state to indict” and predicted that “it will infect us from this point forward.” R. 329, line 12 – p. 330, line 22.

The state noted that the judge found prosecutorial misconduct but that he did not find “deliberate prosecutorial misconduct” in the solicitor’s intimidation of Dr. Loring. Tr. 210. Brief of respondent at 24 and 75. It was obvious that Dr. Loring was intimidated, and she had never experienced police officers showing up at her house in Georgia to arrest her until, as the state writes, they were told to “stand down.” The state also wrote that the judge called Dr. Loring as a court’s witness to “ensure that these claims of due process violations are put to rest.” R. 220, l. 14 – 221, l. 6; Respondent’s brief at 26.

The defense wanted to show beyond all doubt that the solicitor intentionally intimidated Dr. Loring to chill or outright prevent her testimony. The state noted that the solicitor later told Dr. Loring that he would grant her immunity for “all aspects of her work *on this case.*” Brief of Respondent at 82. However, the solicitor “acknowledged that he did not have the authority to grant immunity concerning other acts which might have already occurred.” R. 333-335; Respondent’s brief at 59.

The Solicitor had informed everyone of his right to seek an indictment against Dr. Loring. He was waiving as it applied to this case.¹ R. p. 330, line 23 – p. 331, line 2. Particularly where the judge did not find intentional prosecutorial misconduct he seriously erred by not allowing the defense to call the solicitors as witnesses *in camera*. This was not a jury case anyway and the testimony of the solicitors, under oath, about their intention to discredit, intimidate, or neutralize Dr. Loring as a defense mitigation witness was critical to the determination of whether the judge should have declared a mistrial.

¹ Dr. Loring had previously testified in the capital case of State v. David Edens and Jennifer Holloway in June 2006 without objection by the Solicitor. R. p. 109, line 1 – p. 110, line 16. His attitude changed when the jury returned life sentences for both defendants. R. p. 152, line 7 – p. 153, line 6.

As seen, Dr. Loring at one point invoked her privilege against self-incrimination. R. p. 336, lines 14 – 24. The judge had no authority to grant Dr. Loring statewide immunity from prosecution for testifying as an expert witness in South Carolina, and the solicitor made it apparent he would not or could not protect Loring from “consequences” of her other testimony. State v. Needs, 333 S.C. 134, 508 S.E.2d 857, 863 (1999); State v. Thrift, 312 S.C. 282, 440 S.E.2d 341, 346 (1994).

Defense counsel correctly moved for a mistrial “based on prosecutorial misconduct.” R. p. 415, line 18 – p. 417, line 25. The Solicitor’s intimidation tactics violated Inman’s right to due process, specifically his Sixth Amendment right “to present a full and complete defense” and “his Eighth Amendment right to . . . a full and fair presentation of mitigation in this case.” R. p. 417, line 25 – p. 418, line 13.

In addition to requesting a mistrial, defense counsel moved to recuse the Solicitor’s Office from further participation in Inman’s case. R. p. 420, line 1 – p. 423, line 25. He also asked the judge to quash the death notice and sentence Inman to life without parole. Tr. p. 426, lines 17 – 20. When sentencing reconvened on April 20, 2009, defense counsel renewed his motions for a mistrial and for a sentence of life without parole. April 20 through 22, 2009, R. p. 17, lines 2 – 11. The defense renewed its motion to disqualify the entire Solicitor’s Office. R. p. 60, lines 20 – 23. He alleged that the Solicitor had also threatened a defense psychologist for violating § 40-63-200 at capital resentencing in State v. Michael James Laney in April 2007. R. p. 62, line 18 – p. 64, line 6.

The state’s claim that this case is not on par with State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105, 110 (2000) is simply erroneous. The judge concluded that the

Solicitor's intimidation of Dr. Loring, while prosecutorial misconduct, was not intentional. R. p. 262, lines 6 - 19. The judge summarily denied defense counsel's motion to call the Solicitor and his Deputy as witnesses on the issue of the Solicitor's intent to prove what seems intuitive – that it was intentional intimidation of a key defense witness. Appellant strongly asserts that the Solicitor's *intentional prosecutorial misconduct* is apparent from this record. However, since the judge was not convinced the misconduct was intentional he unfairly ruled the Solicitor and his Deputy could not be called as witnesses to prove this fact to the court's satisfaction. R. p. 166, line 16 – p. 167, line 25. Counsel objected to this limitation on his ability to present Inman's defense under the Sixth and Fourteenth Amendments. R. p. 168, lines 1-6.

The judge's refusal to allow the defense to call the solicitors was reversible error under State v. Quattlebaum, 527 S.E.2d at 111. Despite the state's claim that this case is "not similar to the *Quattlebaum* case," as in Quattlebaum the judge here did not articulate his reasons for refusing to allow defense counsel to question the Solicitor and his Deputy. Respondent's brief at 95. As stated in appellant's brief, the ruling was controlled by an error of law and was therefore an abuse of the judge's discretion.

Secretly taping Quattlebaum talking to his attorney was despicable misconduct. So was the concerted effort to intimidate, chill, discredit and neutralize Dr. Loring in this case. Dr. Loring was obviously and for good reason intimidated by the solicitor's talk of indicting her. Dr. Loring would have been less than human if she did not fear what was happening in this case. An expert or other person cannot effectively do their job if they fear what the government might do to them if they effectively do their job.

Further, good mitigation specialists such as Dr. Loring are difficult to find. The other potential mitigation specialist, Ms. Vogelsang, stated she needed more time than the judge was willing to grant to be prepared. Brief of respondent at 75-76. It violates the essential demands of fairness for the solicitor, as the one did here, to intimidate a defense expert to essentially remove her as an effective defense witness. Appellant's death sentence should be vacated. State v. Quattlebaum, supra.

CONCLUSION

By reason of the arguments in appellant's brief, and this reply brief, this Court should respectfully vacate both appellant's guilty plea to murder and death sentence.

Respectfully submitted,

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

This 6th of September, 2011.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

FINAL REPLY BRIEF OF APPELLANT

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 6th of September, 2011.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 6th of September, 2011.

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



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Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 3, 2011

Donald J. Zelenka
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PO Box 11549
Columbia, SC 29211

Re: The State v. Jerry Buck Inman

Dear Don:

Enclosed please find two copies of the Final Reply Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Supreme Court.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/lec

Enclosure



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Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 3, 2011

Mr. Jerry Buck Inman, #5256
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PO Box 205
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Re: Your appeal

Dear Mr. Inman:

Enclosed please find a copy of the Final Reply Brief of Appellant in your case, which I have filed with the South Carolina Supreme Court.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/lec

Enclosure