

- III. The trial judge (a) summoned to the bench and then chastised co-counsel Haney in the presence of the jury and could be heard to threaten Haney with jail, such that Appellant's case sustained severe damage and his trial was not fair, and (b) sternly rebuked co-counsel Brown in the full presence of the jury and during closing argument and forced Brown to loudly tell the jury he did not mean to violate a motion in limine ruling that counsel could not mention the firing of witness David Joe Woods, Calera's Police Chief;
- IV. The trial court erred by excluding evidence under color of Title 12, Section 2608, which would show witness bias, and which thus was admissible and relevant. This deprived Appellant of his full Sixth Amendment right to confront the complaining witness and to present evidence so crucial that the error cannot be characterized as harmless;
- V. Trial counsel's assistance was ineffective in failing to cross-examine the complaining witness and other State witnesses for numerous inconsistencies and in failing to argue that external corroboration was insufficient to convict due to these inconsistencies and due to the failure of the State's external forensic evidence as argued in propositions I and II. The demurrer should have been sustained despite these failures;
- VI. The court reporter did not record bench conferences, possibly unbeknownst to defense counsel. In one crucial instance this resulted in a ruling adverse to Appellant that was arguably erroneous but which cannot be adequately argued for lack of a sufficient record;
- VII. The cumulative effect of all these errors deprived Appellant of a fair trial; and
- VIII. The sentence of twenty years was excessive, given Appellant's lack of a criminal record, and warrants modification.

After thoroughly considering these propositions and the entire record before us, including the original record, transcripts, and briefs of the parties, we find reversal is required, as the record reflects numerous incidents that, when considered cumulatively, amount to ineffective assistance of counsel, as set forth in further detail below.

In reviewing claims of ineffective assistance of counsel, this Court follows the test set forth in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). Under *Strickland's* two-part test, a criminal defendant must overcome the strong presumption that his/her counsel's conduct falls within the wide range of reasonable professional assistance by showing: [1] that trial counsel's performance was deficient; and [2] that the defendant was prejudiced by the deficient performance. Unless both showings are made, "it cannot be said that the conviction ... resulted from a breakdown in the adversary process that renders the result unreliable." *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2064.

Appellant's trial counsel (1) failed to hire appropriate experts on the DNA issue, as set forth in proposition one, (2) violated an *in limine* ruling that resulted in defense counsel being forced to issue an apology, as set forth in proposition three, (3) failed to make offers of proof regarding court rulings on witnesses, (4) failed to ensure a proper record on bench conferences,¹ as set forth in propositions four and six, (5) failed to provide additional authority requested by the trial judge as to proffered experts, and (6) failed to properly cross-examine the victim regarding inconsistencies in her story, as set forth in proposition five. Considered together, these actions did not amount to reasonable assistance under prevailing professional norms and cannot be considered sound trial strategy. The record clearly shows deficient performance and prejudice under *Strickland*, in that our confidence in the outcome has been undermined.

¹ The Court Reporter also failed in this regard. See 20 O.S.2001, § 106.4.

DECISION

The judgment and sentence are hereby **REVERSED**, and the matter is **REMANDED** to the District Court of Bryan County for a new trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF BRYAN COUNTY
THE HONORABLE FARRELL M. HATCH, DISTRICT JUDGE

APPEARANCES AT TRIAL

TIMOTHY R. HANEY
303 WEST CHERRY, SUITE 200
SHERMAN, TEXAS 75090
COUNSEL FOR APPELLANT

BARRETT KEITH BROWN
402 WEST LAMAR
SHERMAN, TEXAS 75090
COUNSEL FOR APPELLANT

EMILY REDMAN
ASSISTANT DISTRICT ATTORNEY
BRYAN COUNTY
DISTRICT ATTORNEY'S OFFICE
117 NORTH THIRD STREET
DURANT, OK 74701
COUNSEL FOR THE STATE

OPINION BY: LUMPKIN, V.P.J.
CHAPEL, P.J.: CONCUR
C. JOHNSON, J.: CONCUR
A. JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR

APPEARANCES ON APPEAL

BYRON L. WILHITE
P.O. BOX 1456
DURANT, OK 74701
COUNSEL FOR APPELLANT

KEN RAINBOLT
211 NORTH FOURTH STREET
DURANT, OK 74701
COUNSEL FOR APPELLANT

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
KEELEY L. HARRIS
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL BUILDING
OKLAHOMA CITY, OK 73105
COUNSEL FOR THE STATE

RC