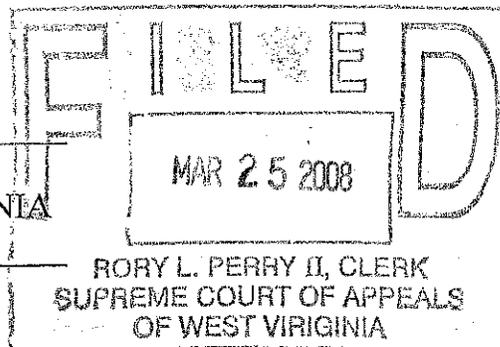


NO. 33831

IN THE
SUPREME COURT OF APPEALS
OF
WEST VIRGINIA

CHARLESTON, WEST VIRGINIA



STATE OF WEST VIRGINIA,

Petitioner Below, Appellee,

VS.

CIRCUIT COURT OF WOOD COUNTY
CASE NO. 06-JD-62

MEGAN S. [REDACTED]

Respondent Below, Appellant.

APPELLANT'S BRIEF

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APPELLANT'S BRIEF

I. KIND OF PROCEEDING AND NATURE OF RULING BELOW

The Juvenile Respondent, Megan S [REDACTED], appeals from an order of the Circuit Court of Wood County, West Virginia, entered on October __, 2006, which finds her to be a juvenile delinquent, under West Virginia Code Chapter 49, Article 1, Section 4.

II. STATEMENT OF FACTS

On August 16, 2006, the State of West Virginia filed a Petition against the Juvenile Respondent, Megan S [REDACTED], a juvenile, for allegedly committing the offense of battery against Brittany [REDACTED] B [REDACTED], in violation of West Virginia Code 61-2-9, on or about the __ day of May, 2006.

On the 12th day of October, 2006, an Adjudicatory Hearing was held in the underlying case. [The Adjudicatory Hearing Order states the hearing took place on May 10, 2006, however, an Amended Adjudicatory Hearing Order was entered to reflect the correct date of the hearing, October 12, 2006.]

The Circuit Court found beyond a reasonable doubt that the Juvenile Respondent, Megan S [REDACTED], committed the offense of battery and was therefore a juvenile delinquent. The case was further set for a Dispositional Hearing.

III. ASSIGNMENTS OF ERROR

A. The Circuit Court of Wood County erred in finding the Juvenile Respondent a juvenile delinquent due to the State's failure to prove beyond a reasonable doubt that the Juvenile Respondent committed the offense of battery; and

B. The Juvenile Respondent was denied the effective assistance of counsel.

IV. ISSUES

A. Whether the Court erred in finding the Juvenile Respondent a juvenile delinquent due to the State's failure to prove beyond a reasonable doubt that the Juvenile Respondent committed the offense of battery; and

B. Whether the Juvenile Respondent was denied the effective assistance of counsel.

V. ARGUMENT

A. **THE CIRCUIT COURT OF WOOD COUNTY ERRED IN FINDING THE JUVENILE RESPONDENT A JUVENILE DELINQUENT DUE TO THE STATE'S FAILURE TO PROVE BEYOND A REASONABLE DOUBT THAT THE JUVENILE RESPONDENT COMMITTED THE OFFENSE OF BATTERY.**

The Adjudicatory Hearing held in the underlying case comprised of only two witnesses, the alleged victim, Brittany B [REDACTED], and the Juvenile Respondent, Megan S [REDACTED]. The alleged victim, Brittany B [REDACTED] testified that while out jogging on May 31, 2006, she stopped by Spencer Park, in Vienna, West Virginia, to speak with Randy B [REDACTED]. Adjudicatory Hearing Transcript, at page 9. Shortly thereafter, Megan S [REDACTED] entered the park. Brittany B [REDACTED] testified that Megan S [REDACTED] approached her, angry and threatening her because Brittany B [REDACTED] was running her mouth. Id at 10.

Brittany B [REDACTED] then testified that she told Megan S [REDACTED] that three other girls, namely, Heidi B [REDACTED], Megan R [REDACTED], and Adrienne C [REDACTED], were the ones saying things about Megan S [REDACTED]. Id at 10-11.

According to Ms. B [REDACTED]'s testimony, Megan went to speak with the three other girls, also there at the park, then returned to Brittany B [REDACTED] stating the girls said Brittany was the one "mouthing" and then hit Brittany B [REDACTED] in the face. A fight ensued. Brittany B [REDACTED] testified that she did not hit Megan S [REDACTED] first and that

she never hit Megan S [REDACTED] at all, simply wrestled with her on the ground and shoved her away. Megan S [REDACTED] "backed off" and started to leave, but then Brittany B [REDACTED] called her a "fucking cunt" and Megan S [REDACTED] returned and punched Brittany in the face. Id at 11-13

This whole incident was to have been witnessed at least by Randy B [REDACTED] and likely by the three girls listed above.

Upon cross examination Brittany B [REDACTED] denied that she had ever been told by the police or an adult to stay away from Megan S [REDACTED]. Id at 15.

Megan S [REDACTED] testified that on May 31, 2006, she rode her bike to Spencer Park and went to the gazebo. Megan stated that the other people showed up ten (10) minutes after her. Id at 22. Megan heard somebody calling her a "skank." Megan was able to ascertain that the person making these comments was Brittany B [REDACTED]. Megan approached Brittany to ask what Brittany was saying about her. Brittany told Megan the other girls had made the comments. Id at 23. Megan went to the other girls, who denied making the comments and stated it was Brittany. Megan went back to Brittany to confront her. Id at 24.

Megan S [REDACTED] testified that she and Brittany then began to "tussle", falling on the ground and pulling hair. At some point Brittany hit Megan and Megan hit Brittany. Id at 24, 29. Megan then began to leave when Brittany called her a "fucking cunt." Megan went to Brittany and told her not to call her that and Brittany swung at Megan and

they fought more. Megan testified that “we started fighting the same time.” Id at 29, 30.

During this second altercation, Randy held Megan and Brittany kicked her in the forehead. Id at 25, 31.

When questioned as to whether Megan and Brittany had had trouble before this incident, Megan S [REDACTED] testified that Officer Pifer came to speak with them and told them to stay away from each other. Id at 25, 26.

Upon both parties resting their case, the Court addressed the parties. The Court was confused as to the age of both witnesses and the grade of at least one of the witnesses. The Court then stated he had fifteen (15) for both girls (both testified to being 16 years of age) and stated “they didn’t speak very loud. The Court then found: “I have to be frank. I do feel that Megan’s – Brittany’s testimony was more persuasive by an extensive amount and she was very distinct and clear in her testimony. So, I will find on the basis on credibility, which is all I have to go on right now, that the allegations in Paragraph Four have been sustained by proof beyond a reasonable doubt...” Id at 30, 31.

The Court was very confused on some of the basic facts of the case. The Court stated that the witnesses did not speak very loud, giving the impression the Court did not hear all of the testimony given. Additionally, the Court was confusing on its ruling as to which girl it found to be more credible.

Furthermore, this case boiled down to a she said, she said argument. The Court was presented with only one witness on each side. Both witnesses had a similar story of

the incident with a few details in question, such as did Brittany B [REDACTED] ever strike Megan S [REDACTED]? It seems highly unlikely that two such altercations could occur and Brittany B [REDACTED] not try to defend herself by striking Megan S [REDACTED]. Additionally, Brittany B [REDACTED] denied the girls were admonished by Officer Pifer to stay away from one another, as per the evidence offered by Megan S [REDACTED], thereby diminishing her credibility. Brittany B [REDACTED]'s testimony is unbelievable and implausible and therefore, the Court abused its discretion in finding beyond a reasonable doubt that Megan S [REDACTED] committed the offense of battery against Brittany B [REDACTED].

B. THE JUVENILE RESPONDENT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL.

The West Virginia State Code states that "a juvenile has the right to be effectively represented by counsel at all stages of proceedings under the provisions of this article." West Virginia State Code 49-5-2(h). Further, this Court has adopted a two (2) pronged test in order to establish ineffective assistance of counsel. State v. Miller, 194 W.Va. 3, 459 S.E.2d 114 (1995). The Court, in Miller, held that claims of ineffective assistance of counsel require the defendant [petitioner] to prove two things: (1) Counsel's performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. Id. at 15.

An examination of Juvenile Respondent's counsel's representation in this matter justifies a finding that such representation falls outside the range of reasonable professional assistance. A review of the transcript from the Adjudicatory Hearing reveals that there were five potential witnesses not called to testify on behalf of the Juvenile Respondent, Megan S [REDACTED]. The alleged victim and the Juvenile Respondent state that Randy B [REDACTED], Heidi B [REDACTED], Megan R [REDACTED], and Adrienne C [REDACTED] were present at or around the altercation between the two. Additionally, Officer Pifer could have been called as a witness to testify as to his order for the girls to stay away from each other thereby directly contradicting Brittany B [REDACTED]'s testimony that no police or adult had ever told her to stay away from Megan S [REDACTED]. Counsel for the Juvenile Respondent failed to subpoena any of the five potential witnesses to trial.

Further review of the transcripts reveal the affirmative defense of self-defense would have been a viable option to present at trial. The Juvenile Respondent's counsel failed to present said affirmative defense.

The second part of the two-pronged test under Miller requires the Juvenile Respondent to show that but for her counsel's unprofessional errors, the result of the proceedings would have been different. Had the Juvenile Respondent's counsel subpoenaed the witnesses to the altercation said witnesses may have confirmed the Juvenile Respondent's version of events thereby contradicting Brittany B [REDACTED]'s story. Additionally, had the Juvenile Respondent's counsel called Officer Pifer to testify, his

testimony may have confirmed the Juvenile Respondent's statements thereby rendering Brittany B. [REDACTED]'s testimony as not credible.

Furthermore, by failing to assert the affirmative defense of self-defense, the Court was denied the opportunity to find that the Juvenile Respondent's actions were a result of her exercising her right to protect herself from physical attack.

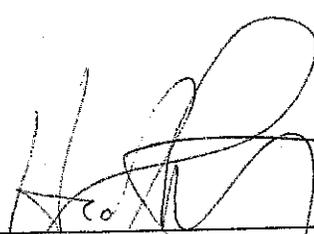
But for the Juvenile Respondent's counsel's deficient performance in not subpoenaing all possible witnesses on behalf of the Juvenile Respondent, which in turn would have resulted in a different outcome in the lower court proceeding, and by failing to assert the affirmative defense of self-defense, the Juvenile Respondent was denied the effective assistance of counsel. This Court should find that the ineffective assistance of counsel provided to the Juvenile Respondent constitutes reversible error, and therefore, should reverse the ruling of the Circuit Court of Wood County and enter a judgment of acquittal.

VI. RELIEF SOUGHT

The Circuit Court erred in finding Megan S [REDACTED] to be a juvenile delinquent because there was not sufficient evidence to say beyond a reasonable doubt that Megan [REDACTED] battered Brittany B [REDACTED]. Further, the Juvenile Respondent was denied the effective assistance of counsel before the Circuit Court.

Megan S [REDACTED] respectfully requests that the Supreme Court reverse the order of the Circuit Court of Wood County that found her to be a juvenile delinquent and that a judgment of acquittal be entered on her behalf.

**MEGAN S [REDACTED], Appellant,
By Counsel**

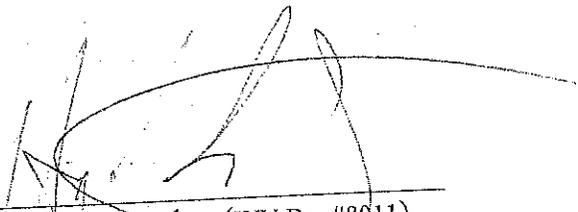


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CERTIFICATE OF SERVICE

I, Heather L. Starcher, certify that on the 24th day of March, 2008, I served the forgoing **APPELLANT'S BRIEF**, by depositing a true copy, via United States Mail, postage pre-paid to the following:

Dawn E. Warfield
Senior Deputy Attorney General
State Capitol, Room E-26
Charleston, West Virginia 25305



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