

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
FLAGLER COUNTY, FLORIDA

CASE NO. 2012-CF-000878  
DIVISION: 50

STATE OF FLORIDA,

vs.

SHAWN (SHAUN) EVERETTE WHITT,

Defendant.

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**ORDER DENYING DEFENDANT’S MOTION FOR POST CONVICTION RELIEF**

THIS CAUSE came before the Court on the Defendant’s Motion for Post- Conviction Relief and the Court being fully advised of the premises, finds:

**Ground I:** Mr. Whitt claimed that his attorney was ineffective for failing to call the child victim’s mother as well as the teacher, Erica Arnold. During argument on the motion, however, the Defendant withdrew that portion of his claim. The Defendant continues to claim that his attorney was ineffective for failing to call the witness “Rob” to testify at trial. This witness is believed to be an investigator affiliated with DCF and was expected to testify that the victim told him that she told a “big lie”. But, it is believed that the victim did **NOT** disclose to the witness what she lied about.

This Court finds that trial counsel, Ms. Regina Nunnally, was not given sufficient and specific information to identify the witness and could not locate this witness despite her reasonable efforts to do so. She was not deficient in failing to locate the witness with the limited information available to her at that time. This Court further finds that even if Ms. Nunnally were deficient in failing to locate “Rob”, the Defendant was not prejudiced. The child victim was vigorously cross examined regarding the “big lie” and admitted she said that even though she could not remember what she lied about. Additional testimony by Rob would not have changed the victim’s testimony and, if anything, would have diminished the effect of the victim’s admission on the jury. More importantly, the defense did not establish that failure to locate and call this witness affected the jury’s verdict or the outcome of this case.

**Ground II:** The defense claims that Ms. Nunnally was deficient for not hiring and calling an expert witness to testify that the victim was not telling the truth. But, the Defendant's allegation is misplaced. Ms. Nunnally presented the testimony of an expert, Dr. Hoffman. Dr. Hoffman testified regarding the process used in a CPT interview and why the victim's interview might not be reliable. The alleged victim of a sex crime is generally regarded as a sympathetic witness, particularly so when, like here, the victim is a child. Ms. Nunnally's use of Dr. Hoffman was a creative and effective strategy by which she used Dr. Hoffman to point out deficiencies in the CPT examination of the child victim in order to attack the child's credibility. This Court finds that the defense has failed to establish any prejudice on this ground.

**Ground III:** The Defendant claims that his defense counsel refused to present his testimony at trial. At the hearing, the Defendant admitted that he did indeed discuss the "pro's and cons" of testifying with his trial counsel before and during trial. Ms. Nunnally testified that she discussed the issue of whether to testify or not as well as the benefits and disadvantages to testifying with the Defendant many times and, after careful consideration, the Defendant himself decided that he would not testify. Although Ms. Nunnally did in fact agree with his decision, there is no evidence to support that Ms. Nunnally told the Defendant that he *could not* testify.

This Court also reviewed the trial court's extensive colloquy with the Defendant regarding his decision on whether to testify. Based on this evidence, it is clear that the decision to testify was the Defendant's decision and Ms. Nunnally was not deficient in this regard.

Even if Ms. Nunnally had been deficient, however, this Court finds that the Defendant was not prejudiced by the Defendant's failure to testify. The facts elicited at trial were that the child victim was raped by the Defendant in the child's bedroom. She even showed detectives where in the room the rape occurred. Moreover, the Defendant's semen was found precisely where the child victim said it would be. Defendant claims that he masturbated in the child's room and that's why his semen was found in the room. However, the Defendant could offer no explanation for how the child victim would know if and precisely where the Defendant masturbated in her room. If the Defendant had testified and not been able to explain how the victim knew his semen would be found in the room, his credibility would have been destroyed and he would have been subjected to very damaging cross examination by the State which would have only weakened his defense further. This Court finds that the defense has failed to establish any prejudice on this ground.

**Ground IV:** The Defendant claims that he had some part-time jobs in the months before the incident and defense was ineffective for not presenting this favorable evidence. The defense did present the testimony of the Defendant's father-in-law to establish that he employed the Defendant part time but he could not testify about the Defendant's other employment. Further, Ms. Nunnally testified that the defense located 2 possible employers but the employers would not provide records to the defense, despite reasonable efforts to locate these employers and gain their support. It is this Court's findings that Ms. Nunnally was not deficient for failing to find all of the Defendant's employment records in light of these facts and circumstances.

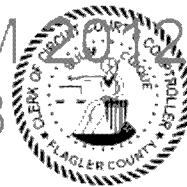
Even if the W-2 data that was presented in the hearing had been available and produced at trial, this Court finds that it would not have made a difference in the outcome of the case. The allegations were that the sexual abuse occurred multiple times over a fourteen-month period when the child victim's mother was not at home and the Defendant and victim were alone in the house. The defense does not dispute that the Defendant and victim were often alone in the home and clearly the evidence of employment would not contradict this critical fact. The employment was not material to any other issue. Accordingly, this Court finds that the defense has failed to establish any prejudice on this ground.

Based on the above findings, it is hereby;

ORDERED AND ADJUDGED that the Defendant's Motion for Post Conviction Relief is hereby **DENIED**.

DONE AND ORDERED at Bunnell, Flagler County, Florida.

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e-Signed 3/5/2019 3:27 PM 2012 CF 000878

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TERENCE R. PERKINS  
CIRCUIT JUDGE

cc: MELISSA L CLARK, A.S.A.  
RACHEL BUSHEY REESE, ESQ.

