

STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

On Writ of Certiorari to Barnwell County
Honorable Maite Murphy, Circuit Court Judge

Appellate Case No. 2022-01515

STEPHON TERNARD ROBINSON,.....PETITIONER,

v.

STATE,..... RESPONDENT.

**RETURN TO PETITION
FOR WRIT OF CERTIORARI**

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PETITIONER'S STATEMENT OF ISSUE PRESENTED

Whether the PCR court erred in finding trial counsel provided effective assistance when counsel failed to cross-examine the State's key witnesses regarding the inconsistencies in their testimony where the case hinged on witness credibility and counsel could not articulate a strategic reason or failing to question the witnesses?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE PRESENTED

Whether the PCR court reasonably denied relief and found counsel performed reasonably according to prevailing professional norms when he strategically decided not to cross-examine Leanna Gunnels about her pre-trial statement that Petitioner had returned her car between twelve and one the day of the crime and her trial statement that he had returned sometime in the afternoon, and strategically decided not to cross-examine the victim, Eddie Williams, about his prior inconsistent statements regarding one of the other men who broke into the house when the time of the car's return was immaterial to guilt as Petitioner had admitted to driving the car, and the victim was always 100% sure Petitioner was one of the men who broke in?

STATEMENT OF THE CASE

In October of 2011, the Barnwell County Grand Jury indicted Petitioner Stephon Robinson for burglary first degree and possession of a weapon during the commission of a violent crime. App. pp. 232-235; 2011-GS-06-00245 & -00246. The case was prosecuted by Second Circuit Deputy Solicitor David A. Miller and Assistant Solicitor A. Keith McAlister, and Glenn Walters, Esq., represented Petitioner. App. p. 1. Petitioner proceeded to trial by jury from November 1-2, 2011, after which he was found guilty as charged. App. pp. 1, 187. The Honorable Doyet A. Early, III, sentenced him to twenty years' imprisonment for burglary and five years concurrent for the weapons charge. App. p. 197. Petitioner timely appealed.

The South Carolina Court of Appeals remanded Petitioner's case on March 10, 2014 in an unpublished opinion, instructing the trial court to conduct a "meaningful analysis balancing the impeachment value of Robinson's prior convictions against their prejudicial effect" on the record. App. pp. 199-201; *State v. Robinson*, Op. No. 2014-UP-068 (S.C. Ct. App. filed February 19, 2014). The State introduced Robinson's 2009 attempted armed robbery conviction and his two 2007 breaking into an automobile with intent to commit a felony convictions from Georgia at trial. App. p. 200. A hearing was held on June 9, 2014, and after a detailed discussion of the *Colf* factors,¹ *State v. Bryant*,² and Rule 609(a), SCRE,³ Judge Early took the matter under advisement. App. pp. 202-222. He issued an order denying relief on November 10, 2014, finding

¹ *State v. Colf*, 337 S.C. 622, 525 S.E.2d 246 (2000) (setting forth trial court procedure for weighing and balancing prior convictions for admissibility.)

² *State v. Bryant*, 369 S.C. 511, 633 S.E.2d 152 (2006) (discussing the admissibility of prior convictions at trial in light of Rule 609(a), SCRE.)

³ Rule 609(a), SCRE (creating a rebuttable presumption that remote convictions are inadmissible.)

the probative value of the convictions' admission outweighed any prejudicial effect. App. pp. 224-231.

The Court of Appeals affirmed and denied the petition for rehearing after Petitioner timely appealed. *State v. Robinson*, Op. No. 2017-UP-065 (S.C. Ct. App. filed February 1, 2017). Both parties petitioned for certiorari arguing the Court of Appeals improperly handled the *Colf* factors in its analysis of the trial court's order, and this Court granted certiorari in December of 2017. This Court affirmed as modified on May 8, 2019. *State v. Robinson*, 426 S.C. 579, 828 S.E.2d 203 (2019).

Petitioner filed his application for post-conviction relief on August 5, 2019, alleging ineffective assistance of counsel for failing to impeach the testimony of the State's witnesses through certain types of cross-examination. App. pp. 238-246. A hearing was held on May 24, 2022 through WebEx before the Honorable Maite Murphy. App pp. 254-310. Assistant Attorney General Julianna E. Battenfield represented the State, and Nancy C. Fennell, Esq., represented Petitioner. App. p. 254. Trial counsel and Petitioner testified, and three exhibits were entered. App. pp. 313-316. Judge Murphy issued an Order denying relief on October 3, 2022. App. pp. 324-332. Petitioner filed a petition for writ of certiorari with this Court on June 12, 2023, and this return of Respondent follows.

STATEMENT OF FACTS

For purposes of this brief, Respondent relies on the summary of facts of the crime, investigation, and trial as this Court set out in its published opinion affirming Petitioner's direct appeal:

At around 2:00 p.m. on Sunday, February 20, 2011, Eddie Williams was relaxing in his home when he heard a car pull into his driveway. Williams testified he heard a knock at the front door, looked through a window, and saw Robinson and the white car Robinson had driven to his house on prior occasions. Williams ignored the knock at the door because he figured Robinson had come to the house to play video games with his nephew, who was not home. Williams testified Robinson got back into the car and left. Williams made his lunch and retired to his bedroom to watch a NASCAR race.

Williams testified that about ten minutes later, he again heard a car pull into his driveway and then heard his front door being kicked in. He grabbed a handgun from his nightstand and went to investigate. Williams testified he started down the hallway and confronted Robinson face-to-face. Williams testified he also saw Robinson's brother (Reginald Felder) and another individual he did not recognize inside his home. Williams fired his handgun, and the intruders ran away.

Williams testified Robinson also had a handgun and fired it in his direction while fleeing the home. Williams testified he then retrieved a shotgun and fired it into the air outside the house as the three individuals escaped in a white car. Williams called law enforcement around 2:20 p.m. and told police the intruders were driving a white four-door vehicle he thought to be a Pontiac. In two separate photo lineups, Williams identified Robinson and Robinson's brother as two of the three intruders. The third intruder was never identified.

On cross-examination, Robinson attacked Williams' credibility, establishing that Williams initially failed to tell law enforcement he had fired his handgun. Williams admitted that on the day of the incident, he falsely informed law enforcement that the bullet holes in his home were not from the burglary but had been there since he purchased the home. Williams testified he was not truthful with law enforcement because he thought his handgun had to be registered in order for it to be legal. The gun had been reported stolen in Beaufort County, but Williams testified he was unaware of this when he purchased the gun.

Shelly Leanna Gunnels testified she had been in an "on and off" relationship with Robinson for the last six or seven years. She testified she allowed Robinson to use her white Pontiac sedan "whenever he wanted to use it." Gunnels testified Robinson borrowed her car on February 19 and returned it on February 20 (the day of the incident) "around that afternoon."

....

Robinson testified and denied any involvement in the incident but admitted to knowing Williams and previously going to Williams' house a “good bit of times” to “get things from [him].” Robinson later clarified he knew Williams because Williams sold him marijuana. Robinson testified he was at his own house with his brother and cousin at the time of the incident. Robinson testified he borrowed Gunnels' vehicle the night before the burglary so he, his brother, and his cousin could go to a club that night. Robinson testified he took the car back to Gunnels around noon or 1:00 p.m. the next day, which would have been prior to the burglary.

....

Arthur Wallace, Robinson's cousin, testified he, Robinson, and Reginald Felder went to the club together the night before the incident in Gunnels' vehicle and that Robinson returned Gunnels' vehicle to her around noon or 1:00 p.m., which would have been before the burglary. Wallace denied their involvement in the burglary and testified that he, Robinson, and Felder all hung out together at Robinson's house that day. The State impeached Wallace's credibility with a 2008 second-degree burglary conviction. Robinson does not challenge Wallace's impeachment in this appeal.

Reginald Felder (Robinson's brother) similarly recounted the three going to the club the previous night and hanging out together at Robinson's house on the day of the incident. Felder testified Robinson returned Gunnels' vehicle around 1:00 p.m. the day of the burglary. The State impeached Felder's credibility with the same 2007 Georgia convictions for breaking into an automobile and the same 2009 conviction for strong arm robbery that were used to impeach Robinson. Robinson does not challenge Felder's impeachment in this appeal.

During Robinson's closing argument, Robinson attacked Williams' credibility. During the State's closing argument, the State acknowledged the importance of credibility in the case and commented on the credibility of each of the witnesses

State v. Robinson, 426 S.C. 579, 586-590, 828 S.E.2d 203, 206-209 (2019).

STANDARD OF REVIEW

“Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court’s findings of fact and will uphold them if there is evidence in the record to support them.” *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). “However, the Court will reverse the lower court’s decision if it is controlled by an error of law.” *Milledge v. State*, 422 S.C. 366, 374, 811 S.E.2d 796, 900 (2018). “We review questions of law de novo, with no deference to trial courts.” *Smalls*, 422 S.C. at 180-181, 810 S.E.2d at 839.

DISCUSSION

I. Judge Murphy reasonably denied PCR relief because counsel strategically decided to not cross-examine the two witnesses on minor details that were immaterial to Petitioner's guilt.

Petitioner argues Judge Maite Murphy erred in denying him PCR relief because trial counsel's performance was so deficient on cross-examination that were counsel to have cross-examined like Petitioner wanted, the jury would have found Petitioner not guilty. Petition at p. 9. The State disagrees and maintains this argument is without merit. To obtain relief here, Petitioner must show Judge Murphy made an error of law in determining counsel's performance was not deficient, and that she ignored a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different because of the errors. *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984). He has not done so.

Under *Strickland*, counsel is "strongly presumed" to have rendered effective assistance, and the burden rests with the petitioner to prove otherwise. *Id.* at 690. Petitioner bears the burden of showing his attorney's representation amounted to professional incompetence under prevailing norms and prejudice resulted. *Id.* In other words, it is not enough to show that the representation "deviated from best practices or most common custom." *Harrington v. Richter*, 562 U.S. 86, 105 (2011). Rather, Petitioner must show that counsel's "conduct so undermined the proper functioning of the adversarial process that the trial court cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. "There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." *Id.* at 689.

Petitioner claims two of the State's witnesses, Eddie Williams and Leanna Gunnels, should have been cross-examined further by defense counsel, and counsel was ineffective for having neglected to do so. Eddie Williams, the victim, testified Petitioner had been over to his

house (the crime scene) before to play video games in a white car, and testified he recognized the same white car at his house the day of the crime. App. pp. 100-102. He testified he was sure Petitioner was the one who broke into his home and fired a weapon at him the day of the crime. App. pp. 109-110. Williams also testified he came face-to-face with Petitioner after he broke into his house with a gun in his hand. App. pp. 103-104. However, Petitioner claims counsel should have cross-examined Williams about his inconsistent statements regarding who one of the other burglars was, and that but for this error, he would have been found not guilty. App. pp. 262-263, 267.

Trial counsel testified at the PCR hearing that it would have been “absurd” to point out Williams’ inconsistencies regarding his identification of the other man, Reginald Felder, because Williams was always confident Petitioner was one of the other men who broke into his house. App. pp. 295-296. “You don’t want to open up a can of worms in a way that can hurt your client.” Williams had identified Petitioner in two separate photo line-ups shortly after the crime and also made an in-court identification of Petitioner. App. p. 101. He had no doubt about it. App. pp. 105, 108, 121-122. Petitioner admitted Williams had identified him at the hearing. App. p. 263-264.

Gunnels had been in an on and off relationship with Petitioner for years and testified Petitioner borrowed her car on February 19, 2011 but returned it the next day. App. pp. 95-97. Before trial, Gunnels stated Petitioner had returned the car between twelve and one the day of the crime, February 20th, but when the State asked her when Petitioner returned the car at trial, she said, “I guess around that afternoon.” App. pp. 96-97. Trial counsel declined to cross-examine Gunnels about her testimony. Petitioner testified and claimed he returned the vehicle to her at about twelve or one in the afternoon. App. pp. 132-136. The crime occurred at on or about 1:20

P.M. App. p. 327. Petitioner argues counsel should have cross-examined Gunnels about how different “twelve or one in the afternoon” was from “I guess around that afternoon.” Counsel at the PCR hearing agreed “in the afternoon” could be interpreted to mean many things. App. pp. 283-284. However, although counsel did investigate the alibi, he stated it “was a joke.” App. pp. 299-300.

Judge Murphy dismissed the allegation with prejudice, finding counsel was effective because he intentionally chose to not cross-examine the two witnesses based upon an agreed upon defense strategy. App. pp. 327-332. She found Petitioner could not prove prejudice as well, because Williams was always unwaveringly confident Petitioner was one of the men who broke into his house and his own brother had identified him as a perpetrator at trial. App. p. 328-332. She also found because Petitioner had admitted to driving Gunnels’ vehicle the day of the incident, the specific minute he returned the car was immaterial to his defense. App. pp. 328-329. As counsel is presumed to have rendered adequate decisions and to have made all significant decisions in the exercise of reasonable professional judgment, Judge Murphy reasonably found trial counsel’s performance was reasonable under prevailing professional norms. She also reasonably found Petitioner failed to overcome the presumption to receive relief and reasonably found he failed to prove prejudice. This Court should deny the petition.

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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