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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
The Honorable William A. McKinnon, Circuit Court Judge

JARVIS STRIPLING,..... PETITIONER,

v.

STATE OF SOUTH CAROLINA,.....RESPONDENT.

Appellate Case No. 2023-000560

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3713

ATTORNEYS FOR RESPONDENT

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COUNTERSTATEMENT OF ISSUES ON APPEAL

- I. Whether the PCR court correctly found Stripling was not prejudiced by counsel's failure to challenge a witness identification.
- II. Whether the PCR court correctly denied relief on Stripling's claim that trial counsel was ineffective for failing to object to alleged bolstering and leading testimony.

STATEMENT OF THE CASE

During its June 2017 term, the Spartanburg County Grand Jury indicted Stripling for first-degree burglary and two counts of kidnapping. The grand jury subsequently indicted Stripling for attempted armed robbery, murder, and possession of a weapon during commission of a violent crime. Stripling was represented by Charles W. Snyder, III, Esquire. On November 6–8, 2018, Stripling proceeded to jury trial before the Honorable J. Derham Cole, Circuit Court Judge. Stripling was convicted of first-degree burglary, two counts of kidnapping, and one count of attempted armed robbery and acquitted of murder and possession of a weapon during the commission of a violent crime. Judge Cole sentenced Stripling to thirty years' imprisonment for each count of kidnapping and first-degree burglary and twenty years' imprisonment for attempted armed robbery, with the sentences to be served concurrently.

Stripling filed a timely notice of appeal on November 14, 2018, that was perfected by Joanna K. Delany, Esquire, by filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal in an unpublished opinion. State v. Stripling, Op. No. 2020-UP-328 (S.C. Ct. App. filed Dec. 2, 2020). The remittitur was issued on December 21, 2020.

Stripling filed a PCR action on December 20, 2021. An evidentiary hearing was held on June 8, 2022, at Spartanburg County Courthouse before the Honorable William A. McKinnon, Circuit Court Judge. Susannah Ross, Esquire, represented Stripling and Assistant Attorney

General Chelsey Marto represented the State. The PCR court denied relief in an order filed April 4, 2023. Stripling filed a petition for writ of certiorari with this Court on August 1, 2023. This return follows.

STATEMENT OF FACTS

Francisco Villar was shot twice in the head during an attempted armed robbery of his home on February 11, 2017. App.159–64. The robbery was planned by Alicia Pilgrim, Stripling’s lifelong friend. App.141–44. She accompanied Stripling and another man, Rayshon Smith, to Villar’s home at around 5:00 a.m. An acquaintance of Villar, she gained access to the home and left the door open for Stripling and Smith. App.146–48. Dixie Wright and Simon Spicer were at Villar’s home at the time. App.147. Stripling and Smith entered the home with handguns drawn. App. 148–50. For a minute, the robbery went according to plan. Then Villar pulled a gun and began shooting at Smith and Stripling. App.152–53. Stripling returned fire, shooting Villar in the head twice, killing him. App.153, 109–21.

ARGUMENT

I.

The PCR court correctly found Stripling was not prejudiced by counsel's failure to challenge a witness identification.

Stripling alleges trial counsel was ineffective for failing to challenge the admissibility of Dixie Wright's in-court identification of Stripling as one of the men who robbed Villar.

Evidence supports the PCR court's finding that Stripling failed to show a reasonable probability the result of trial would have been different had counsel challenged the identification. Certiorari should be denied.

Wright was present during the robbery. Wright identified Stripling as one of the robbers and testified Stripling's face covering fell down briefly during the robbery. App.111. Wright had met Stripling once before. App.112. Wright testified Stripling shot Villar with a revolver. App.114. She testified Rayshon Smith did not fire his weapon. App.114. Consistent with this testimony, there were no shell casings recovered from the scene. App.96. After the robbery, Wright texted Investigator Nelson informing him she remembered Stripling attempted to sell Villar a revolver. App.119.

The robbery was captured on home surveillance footage. App. 94. Stripling's distinctive neck tattoo was visible on the footage. App. 118–19. At trial, Wright identified Stripling as one of the men on the video. App.120. Trial counsel did not object.

Evidence supports the PCR court's findings that Stripling failed to show prejudice. In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Strickland at 687. “There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. The attorney’s performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. If it is easier to dispose of an ineffectiveness claim due to a lack of evidence to prove sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 670.

The case against Stripling was strong. Stripling’s co-defendant Alicia Pilgrim testified against Stripling. She had known Stripling her whole life, and they were “like siblings.” App.142, 212, 113. She testified she, Stripling, and Smith agreed to rob Villar. Stripling was the link between Smith and Pilgrim, who were not friends. App.218. Pilgrim’s testimony was much more important to the case than Wright’s, and her identification was beyond question.

Furthermore, Counsel ably cross-examined Wright and cast doubt on her identification. He got Wright to admit she was not as sure about Stripling’s identity as she was about Smith’s.

App.129–31. Wright’s identification was not as important to the case as Pilgrim’s, or as the surveillance video of the robbery. The jury was able to view the surveillance footage for themselves and judge whether Stripling was the person pictured. App.168.

For all the foregoing reasons, Stripling failed to show a reasonable probability of a different outcome if counsel had moved to exclude Wright’s identification. Certiorari should be denied.

II.

The PCR court correctly found counsel was not ineffective for failing to object to bolstering and leading witnesses and that Stripling was not prejudiced.

Stripling argues the PCR court failed to make findings regarding counsel’s failure to object to leading and bolstering. Evidence supports the PCR court’s rulings. Certiorari should be denied.

While the PCR court’s findings regarding the allegations of leading are unartfully phrased, the gist of the ruling is that the PCR court did not believe the alleged leading was prejudicial to Stripling. The record supports this ruling. The PCR court’s ruling regarding the allegations of bolstering includes explicit findings that Stripling failed to show deficiency or prejudice. App.429–30.

Investigator Nelson’s testimony regarding Pilgrim’s statements were not prejudicial to Stripling. Nelson testified Pilgrim’s first statement was not truthful, but that her later statements were corroborated by other evidence. App.171. Nelson’s testimony that Pilgrim was “not truthful” conveys that he did not believe her, which is the opposite of bolstering. Chappell v. State, 429 S.C. 68, 75, 837 S.E.2d 496, 499 (Ct. App. 2019) (explaining bolstering is testimony that a witness believes another witness is telling the truth). His testimony that Pilgrim’s subsequent statement “seemed to be truthful” is a closer question, but is not sufficiently

prejudicial to warrant reversal. The jury was aware that the State's case depended largely on the testimony of Pilgrim, and that the officers would not have arrested Stripling if they did not believe Pilgrim's statement. This is far less prejudicial than the CSC with a Minor cases cited by Stripling, where forensic interviewers or other expert witnesses testify they believed the uncorroborated testimony of child victims. See State v. Kromah, 401 S.C. 340, 359, 737 S.E.2d 490, 500 (2013). This testimony could not have affected the outcome of trial.

Counsel was not deficient for failing to object to the investigators' testimony identifying Stripling as the person in the photograph. Nelson was testifying as to the conclusions he drew from his investigation which led to him arresting Stripling. App.174. Likewise, Investigator Taylor essentially explained that he concluded from his investigation that Stripling was the shooter. The police obviously believed Stripling was the shooter, hence the charges against him. Counsel is not required to raise every non-frivolous objection at trial. See Dunn v. Reeves, 141 S. Ct. 2405, 2410 (2021) (explaining "even if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if '[t]he record does not reveal' that counsel took an approach that no competent lawyer would have chosen"). Even if improper, this testimony could not reasonably have affected the outcome.


Finally, Stripling was not prejudiced by the prosecutor's alleged leading questions. The questions cited by Stripling were not leading because they did not suggest an answer. See State v. Tyner, 273 S.C. 646, 653, 258 S.E.2d 559, 563 (1979). Regardless, the testimony complained of could not reasonably have affected the outcome of trial. Certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that certiorari should be denied.

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

BY:  _____
Joshua A. Edwards
Bar # 101188
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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