

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge

RISHAWN LAMAR REEDER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001459

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

I.

Whether the PCR court erred in denying Petitioner's application of newly discovered evidence where Petitioner proved by a preponderance of the evidence that Lorin Williams committed fraud in obtaining the warrants for Petitioner's arrest in violation of Petitioner's due process rights?

II.

Whether the PCR court erred when it denied Petitioner's Rule 59(e) SCRCP motion where the original order failed to address certain issues of law and failed to make specific findings of fact relevant to each issue presented by Petitioner as required by S.C. CODE ANN. § 17-27-80?

STATEMENT OF THE CASE

Petitioner was indicted for one count each of assault with intent to kill, assault and battery with intent to kill, and murder during the May 2010 term of the Spartanburg County grand jury. App. 486-487; App. 489-490; App. 492-493. The State, represented by Abel Gray and Prina Tailor, called the case to trial on May 9, 2011, before the Honorable Roger L. Couch and a jury. Petitioner was represented by Michael Brown and was jointly tried with his co-defendant Darius Cathcart. App. 1. The charges arose from a shooting that occurred during the early morning hours on March 14, 2009.

Dwight Geter, Duncan Geter, Bryant Miller, and Marty Jackson went out the evening of the shooting to Club Dreams. While there Duncan, Dwight, and Marty were involved in an altercation with Cathcart and some other unidentified individuals. As a result of the altercation, the men were told to leave the club. Dwight subsequently picked Cathcart out of a six-pack photographic line up as the person they were fighting with at Club Dreams and as the person he thought shot at them. App. 84, l. 22-App. 87, l. 4; App. 175, l. 23-179, l. 8; App. 188, l. 2-App. 190, l. 13 . None of the men identified Petitioner as being at the club, as being involved in the altercation, or as being the shooter. App. 87, l. 25-App. 88, l. 1; App. 178, ll. 5-12; App. 190, ll. 10-13.

The four men left the club and traveled to a local Waffle House where they hung out in the parking lot with various other individuals for approximately thirty to forty-five minutes. Police arrived to patrol the Waffle House and the men left because Miller had a .40 caliber Taurus handgun. They drove to the Lakeview Manor neighborhood where Miller lived and stopped at his house. They then began to travel toward the Geter home to take Duncan, who was sixteen at the time, home for the evening. While at a four-way stop a dark colored Nissan with

its headlights turned off pulled up to their car and opened fire. Miller returned fire. Miller was struck in the neck but survived. Dwight was not struck by any bullets. Duncan was also struck in the neck and was pronounced dead at Mary Black Hospital. The men could not identify the shooters. App. 87, l. 10-App. 90, l. 24; App. 91, ll. 18-23; App. 92, ll. 2-24; App. 96, ll. 21-22; App. 115, ll. 2-8; App. 122, ll. 16-22; App. 179, l. 8-App. 180, l. 19

At approximately four that morning investigators with the Spartanburg County Sheriff's Office received reports of shooting victims at two different area hospitals. Then Investigator Lorin Williams responded to Mary Black Hospital where he encountered the Geter's and Miller. Investigator Chris Durham responded to Spartanburg Regional Medical Center where he encountered Cathcart and Petitioner. Petitioner had a gunshot wound to his left arm. Cathcart had a grazing gunshot wound to his right side. App. 151, ll. 17-25.

Cathcart was questioned at the hospital and told the police he was at Club Dreams with Petitioner "and a guy named Black." Cathcart was driving a Nissan. Cathcart claimed he did not remember much about the shooting, could not give a description of the other vehicle, and drove himself and Petitioner to the hospital. During a later interrogation at the sheriff's office, Cathcart told the police he was driving a gray Nissan with Petitioner, they left the club and went to Waffle House, then to a gas station. A car came beside them as they were getting onto I-85 and opened fire. Cathcart drove to a nearby fast-food restaurant where he and Petitioner got out of the car and went to the hospital. "Black" took the car and drove off. The car was later found abandoned and on fire. App. 153, l. 11-App. 156, l. 9; App. 158, l. 16-App. 159, l. 6; App. 159, ll. 1-24.

The police collected gunshot residue swabs from Cathcart and Petitioner at Spartanburg Regional Medical Center. SLED's gunshot residue expert testified that the swabs were positive for Petitioner and Cathcart. On cross-examination, the expert admitted that a person who is shot

will likely have gunshot residue on their hands “even if they have never fired a gun.” Petitioner had a gunshot wound to his left arm. App. 258, ll. 2-9; App. 325, ll. 10-24; App. 345, l. 8-App. 346, l. 13; App. 389, ll. 11-18. SLED also collected gunshot residue swabs from Dwight, Miller, and Duncan. All three tested positive for gunshot residue. SLED’s firearm expert testified that from his analysis of shell casings collected by the police at least three guns were involved in the shooting. App. 339, l. 19-App. 340, l. 17; App. 361, l. 3-App. 363, l. 22.

The State’s key piece of evidence was a surveillance video from a business called Southeastern Converters. The video purportedly showed Dwight driving past the business, followed by a car that is driving without its headlights on. After both cars have passed the business, brake lights are illuminated, and then various pops of light can be seen on the video. State’s Ex. 28 at 3:54:01-3:54:35. Barbara Waddell, an employee of Southeastern Converters, verified that the security system runs twenty-four hours a day, seven days a week, and it was working normally on March 14, 2009. Waddell turned over the surveillance video to Investigator Williams. App. 298, l. 13-App. 300, l. 12. During his closing argument, the solicitor told the jury “And thank God for this video surveillance camera. Otherwise, we wouldn’t even be here.” App. 426, ll. 16-20.

After a three-day trial, Petitioner was found guilty as indicted. App. 466, ll. 8-19. Judge Couch sentenced Petitioner to concurrent terms of ten years’ imprisonment for assault with intent to kill, twenty years’ imprisonment for assault and battery with intent to kill, and life imprisonment for murder. App. 484, ll. 1-9; App. 488; App. 491; App. 494. Petitioner filed a timely notice of appeal which was dismissed for failure to timely order a transcript and/or serve and file the Initial Brief of Appellant. App. 509-510. On January 31, 2012, Petitioner filed his first PCR application. A hearing was held before the Honorable R. Keith Kelly on November 3, 2014. A

written order of dismissal was filed on December 9, 2014. Petitioner appealed the denial of his PCR application. The South Carolina Supreme Court denied certiorari on November 9, 2016. App. 510-511. Petitioner's federal Habeas Corpus petition was denied on March 22, 2018. App. 513.

On March 15, 2019, Petitioner filed a second PCR application alleging newly discovered evidence regarding the firing of lead investigator Lorin Williams for falsifying information to obtain warrants. Petitioner also raised a claim of newly discovered evidence regarding the failure of Counsel Brown to contact his alibi witnesses with an affidavit from the alibi witness attached to the application. App. 495-508. The State filed a return and motion to dismiss, along with a proposed conditional order of dismissal, on July 1, 2019. App. 509-533. Petitioner, proceeding *pro se*, filed a response and objection to the conditional order of dismissal on July 19, 2019. App. 534-547. By written order dated May 28, 2020, the circuit court denied the State's motion to dismiss and ordered that a hearing be set. App. 548-549.

Petitioner, through then appointed counsel Rodney Richey, filed amendments to his PCR application on March 1, 2021. App. 550-552. The State filed a second return and motion to dismiss on March 12, 2021. App. 553-567. A motion for discovery was filed by Petitioner's second appointed counsel, Scarlet Moore, on February 10, 2022. App. 568-573. The State filed a return to the motion for discovery dated March 24, 2022. App. 574-582. By order filed July 11, 2022, Counsel Moore was relieved from Petitioner's case and limited discovery was granted. App. 583-584.

Petitioner filed a *pro se* amendment to his PCR application on September 27, 2022, alleging a violation of due process when Williams knowingly and intentionally committed perjury by providing false information to the Courts to obtain the arrest warrant. He additionally

alleged he was denied due process of law when trial counsel failed to present his photographic lineup to the jury where Dwight Geter did not select him as being involved in the incident. App. 585-587. On January 26, 2023, the circuit court filed an order denying the State's motion to dismiss finding that Petitioner had established a *prima facie* case of newly discovered evidence and setting a date for an evidentiary hearing. App. 588-594. A hearing was held on February 16, 2023, before the Honorable Brian M. Gibbons. The State was represented by Chelsey Marto. Petitioner appeared *pro se*. App. 595.

At the start of the hearing the court clarified that Petitioner could move forward on

The newly discovered evidence, number one, Lorin Williams falsified documents. Number two, newly discovered evidence because your lawyer never contacted, interviewed, or subpoenaed alibi witnesses. Number three, false -- new evidence concerning false information by Williams and obtaining search warrants, or excuse me, arrest warrants. And lastly, your lawyer failed to present your -- any -- your photo identification lineup, which was an issue because of Lorin Williams involvement.

App. 600-604.

At the hearing Petitioner called Steven Calhoun an officer who was part of the initial investigation in Petitioner's case. Calhoun testified that he did not recall the case but confirmed his signature on a police report. The report stated that "per Investigator Williams" he and Investigator Durham responded to Spartanburg Regional Medical Center to obtain a video from the night of the shooting. The video was obtained on March 15, 2009. He testified that he had no recollection of being informed that the video was in any way altered or tampered with. Additionally, he was never informed that the timestamp was altered or incorrect. App. 611-615.

Petitioner next called Gary Foster an employee with Spartanburg Regional Medical Center in the security department at the time of the PCR hearing. Foster testified the security system date and time information was set by the internet and was accurate. App. 617-619. A

copy of the security video from the night of the incident was admitted into the record. App. 622, ll. 11-18; Applicant's Ex. 2.¹ The video from the hospital was never played at Petitioner's trial. Petitioner also entered into evidence the video from Southeastern Converters to show the court the date and time stamp it contained. Applicant's Ex. 3.² It was established at Petitioner's trial that the Southeast Converters video date and timestamp was accurate.

Petitioner testified that Lorin Williams presented a six-pack photographic line up to Dwight Geter on March 14, 2009, that contained Petitioner's photograph. Dwight did not select Petitioner as an individual involved in the incident. However, Dwight did identify Cathcart as the person he thought had shot at them and the person they had fought with at Club Dreams. App. 628, l.-App. 632, l. 10. Applicant's Ex. 4. Petitioner's photographic lineup was never presented at trial.

Petitioner's arrest warrants stated that he shot at the victims and the affidavit in support of that only stated, "based upon police investigation." App. 694; App. 697; App. 699. Petitioner argued that the arrest warrants in his case should have never been issued because Investigator Williams lacked probable cause to obtain them. He argued the exculpatory evidence in Williams' possession – namely the hospital security video and the six-pack lineup where he was not identified – were not presented to the magistrate judge. App. 627-641; App. 648, l. 2-App. 649, l. 15.

An order of dismissal was filed on March 17, 2023. The PCR court found that Petitioner had failed to prove that fraud occurred in his case. The court ruled that because Lorin Williams did not testify at trial, his connection to the case was "seemingly tenuous at best," such that a

¹ A copy of this exhibit is on file with this Court.

² A copy of this exhibit is on file with this Court.

finding of fraud would not likely influence the jury's verdict. The court additionally found the evidence was merely impeaching and not material to guilt or innocence. The court did not address whether Petitioner had shown that Williams had violated his due process rights in obtaining the arrest warrants and whether trial counsel had violated his due process rights by not presenting his line-up at trial. The court also did not address the newly discovered evidence claim involving Petitioner's alibi witness. App. 652-660. Petitioner filed a motion to alter or amend the order pursuant to Rule 59(e), SCRPC, arguing that the court did not address all of the claims raised in his PCR application and hearing.³ App. 661-702. The court denied the motion finding Petitioner did not comply with Rule 59(g), SCRPC. Additionally, the court found that the motion should be denied on substantive grounds as it presented the same or substantially the same arguments that the court ruled on previously. App. 703.

³ Undersigned counsel confirmed with the Clerk of Court for Spartanburg County that the 59(e) motion appearing in the Appendix accurately reflects the original document. Both documents are faded throughout and difficult to read.

ARGUMENT

I.

The PCR court erred in denying Petitioner's application of newly discovered evidence where Petitioner proved by a preponderance of the evidence that Lorin Williams committed fraud in obtaining the warrants for Petitioner's arrest in violation of Petitioner's due process rights.

Petitioner is challenging the propriety of the arrest warrants issued against him based upon the new evidence that the lead investigator, Lorin Williams, was fired for misconduct and falsifying evidence to obtain warrants. Petitioner alleged two issues in his PCR application and amendment that are intertwined: the newly discovered evidence claim involving the misconduct Lorin Williams and the denial of due process claim when Lorin Williams fraudulently obtained the arrest warrants against Petitioner. Based on the evidence presented, Petitioner's arrest warrants, subsequent arrest, and trial all ran afoul of his due process rights.

"All proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue." S.C. Code Ann. § 22-3-710 (1989). "An affidavit must contain sufficient underlying facts and information upon which a magistrate may make a determination of probable cause. Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient." Illinois v. Gates, 462 U.S. 213, 239 (1983).

"The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest." Law v. S.C. Dep't of Corr., 368 S.C. 424, 441, 629 S.E.2d 642, 651 (2006) (internal citations and quotations omitted). "Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would

induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise.”
Id. Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion. Id.

“When determining the constitutional validity of an arrest, a court must consider whether, at the moment the arrest was made, the officers had probable cause to make it—whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [accused] had committed ... an offense. State v. Goodwin, 351 S.C. 105, 110, 567 S.E.2d 912, 914 (Ct. App. 2002) (internal citations and quotations omitted). “Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officers [sic] disposal.”
Id.

“Probable cause is a commonsense, nontechnical conception that deals with factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” State v. Porch, 471 S.C. 619, 628, 790 S.E.2d 440, 444 (Ct. App. 2016) (internal quotations and citations omitted). “A warrant issued without probable cause violates the Fourth Amendment of the United States Constitution and Article I, section 10 of the South Carolina Constitution and makes any seizure based solely on the warrant unlawful.” U.S. Const. Amend. 4; S.C. Const. art. 1, § 10; Carter v. Bryant, 429 S.C. 298, 838 S.E.2d 523 (Ct. App. 2020)

To obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since the trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt

or innocence; and (5) is not merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993).

In Petitioner’s case, the issue before the PCR court centered around whether Lorin Williams committed fraud when he obtained the arrest warrants for Petitioner. In support of that argument Petitioner showed that Williams sent other officers to obtain the security video from Spartanburg Regional Medical Center on the day of the shooting. He further showed that the time and date stamp on the video from the hospital was correct. He also showed that Williams personally presented Dwight Geter with a six-pack photographic line up containing Petitioner’s photograph and Dwight did not make any identifications from the lineup. The hospital video shows Petitioner entering the hospital at approximately 3:55 in the morning on March 14, 2009. That is mere seconds after the shooting that was captured on the Southeastern Converters video surveillance which was accurately time stamped at 3:54:35 that same morning. The distance between the location of the shooting and Spartanburg Regional is approximately five miles. That simply is not a distance that could be traveled in mere seconds. The video evidence with the confirmed time and date information presented by Petitioner defeated a probable cause determination and proved by a preponderance of the evidence that Williams committed fraud in obtaining Petitioner’s arrest warrants.

The testimony at the PCR hearing evinced that Lorin Williams had this information available to him when he sought the arrest warrants against Petitioner on March 15, 2009. Notably, the arrest warrant affidavits in Petitioner’s case all read “based upon police investigation.” The warrants were invalid on their face as there was no information upon which a magistrate could make a probable cause determination and certainly not “sufficient underlying facts and information” in the affidavit to support such a determination. Illinois v. Gates, 462

U.S. 213, 239 (1983). The evidence presented to the PCR court showed that it was more likely than not that Williams had the highly exculpatory evidence in his possession at the time he obtained the arrest warrants against Petitioner. It further showed that it was more likely than not that Williams did not present the magistrate with the totality of the circumstances but instead purposefully withheld information from the magistrate in violation of Petitioner's right to due process.

Whether evidence of an officer's misconduct in one case can be considered newly discovered evidence to support the granting of a new trial in another case has never been addressed by our appellate courts. However, other jurisdictions have considered the matter. In State v. Gookins, 135 N.J. 42, 637 A.2d 1255 (1994), the Supreme Court of New Jersey considered whether an officer's misconduct in falsifying breathalyzer results in one case required the reversal of three guilty pleas in other, unrelated cases. Id. at 44, 637 A.2d at 1256. Three separate defendants who had maintained their innocence pled guilty to driving while under the influence of alcohol because their breathalyzer readings showed the amount of alcohol in their blood to be in excess of .10. All three defendants were arrested by the same officer. An undercover operation revealed that the officer had falsified the results of a breathalyzer test of an undercover agent as well as stolen money from drivers he had stopped. The defendant's argued that the officer's misconduct constituted newly discovered evidence of fraud relating to the reliability and validity of their breathalyzer results such that the interests of justice required new trials in their cases. Id. at 45, 637 A.2d at 1256-1257.

The lower courts focused on the evidentiary issue concerning whether the officer's misconduct was newly discovered evidence admissible as "other crimes" evidence under Evidence Rule 404(b) to impeach the officer's testimony. The defendant's claimed that the

evidence of the officer's misconduct constituted newly discovered evidence necessitating vacation of their convictions because the evidence (1) was material to the issue of whether they were guilty of driving under the influence of alcohol, (2) was neither discoverable nor discovered at the time of their guilty pleas, and (3) would probably change their judgments of conviction. The lower courts held that "other crimes" evidence is admissible only where there is "such a concurrence of common features that the various acts are naturally to be explained as caused by a general plan of which they are the individual manifestations." The lower court did not find sufficient similarity between the defendant's cases and the ones in which the officer was convicted of misconduct to warrant the granting of a new trial because (1) the officer's convictions did not establish falsification in any of these defendants' cases, and (2) the cases of these defendants did not involve allegations of theft by the officer. *Id.* at 45-46, 637 A.2d at 1256-1257 (cleaned up).

The Supreme Court of New Jersey reversed the lower courts finding "[t]he fact that [the officer] falsified a breathalyzer result in another drunk-driving case provides sufficient similarity to justify setting aside defendants' judgments of conviction." The Court reasoned that at a new trial the defendants could use the officer's conviction to establish that the officer had the opportunity to falsify their breathalyzer results and to prove the absence of mistake or accident with regards to any incorrect readings. *Id.* at 47-48, 637 A.2d at 1258 (cleaned up).

However, the Court did not reverse solely on the evidentiary matter. The Court wrote:

A more fundamental premise requires vacation of these pleas. Because public confidence in the criminal-justice system depends on the integrity of the courts, the prosecutors, and the police, **the system can never disregard misconduct by such actors in the fulfillment of their public duties.** In Brady v. Maryland, 373 U.S. 83, (1963), the Court explained that corrective justice in such circumstances does not constitute "punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only

when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.”

Id. at 48, 637 A.2d at 1258 (cleaned up) (emphasis added). The court continued “courts may not abide illegality committed by the guardians of the law. To do otherwise would erode public confidence in the impartiality and fairness of the judicial process.” “A guiding principle in these appeals is that the judiciary is obliged to preserve public confidence in the administration of justice.” “The matters brought before this Court are shocking and represent violations of the right of a defendant to a fair trial. They stain our judicial system and mock the ideal of justice under the law.” Id. at 49-50, 637 A.2d at 1259 (cleaned up). See Also In re an Investigation of the W. Va. State Police Crime Lab., Serology Div., 438 S.E.2d 501 (1993) (holding the “pattern and practice of misconduct by the officer completely undermined the validity and reliability of any forensic work he performed or reported” and “that as a matter of law any testimonial or documentary evidence offered by the trooper at any time in any criminal prosecution should be deemed invalid, unreliable, and inadmissible.”).

Petitioner is similarly situated to the defendants in Gookins. He has shown by a preponderance of the evidence that Williams misconduct was newly discovered evidence of fraud relating to the validity of his arrest warrants such that the interests of justice, and his due process rights, require a new trial. The PCR court incorrectly ruled that Petitioner had not met his burden of showing the misconduct of Williams was newly discovered evidence. The evidence of Williams misconduct was discovered many years after Petitioner’s trial and could not have been discovered prior to trial. Williams was the only affiant to the arrest warrants and was the lead investigator of the case. He assembled all of the evidence presented against Petitioner at trial. The proof of his falsifying evidence to obtain warrants in other cases directly undermines the validity of the arrest warrants in Petitioner’s case where he was the sole affiant

and poisons the integrity of the entire court process. Categorizing such evidence as merely impeaching, when the fraud occurred at the earliest stage in the criminal prosecution of Petitioner, is nonsensical. The evidence that was in Williams' possession at the time he obtained the warrants would have defeated a probable cause determination had it been presented to the magistrate. The failure to present such evidence is material to the issue of his innocence as it shows that exculpatory material was withheld from the magistrate. This evidence would change the results if a new trial was had as the State should have been precluded from ever prosecuting Petitioner based on the investigation conducted by Williams.

Petitioner's arrest warrants were obtained through fraud. His arrest and subsequent trial were unlawful and in violation of Petitioner's right to due process of law. The commonsense conclusion reached when one views all of the evidence presented by Petitioner is that there was not probable cause to arrest, much less prosecute, Petitioner for these crimes. The totality of the evidence regarding the probable cause in Petitioner's case yields but one conclusion – no probable cause existed at the time the magistrate issued the warrants and therefore the warrants were obtained through fraud. Petitioner's right to the full and fair due process of law was violated by Williams' flagrant misconduct and the evidence of such misconduct was newly discovered evidence upon which a new trial should have been granted. Such conduct by an officer impugns the integrity of the criminal courts of this State and should not be disregarded.

II.

The PCR court erred when it denied Petitioner's Rule 59(e) SCRPC motion where the original order failed to address certain issues of law and failed to make specific findings of fact relevant to each issue presented by Petitioner at the evidentiary hearing as required by S.C. CODE ANN. § 17-27-80.

Petitioner presented evidence on two important matters that were never ruled upon by the PCR court. The first was the denial of due process, addressed *supra*. The second was the newly discovered evidence claim regarding his alibi witnesses. Neither of these issues were addressed in the order of dismissal. A remand is necessary for an order that adequately addresses these validly raised claims.

The failure of the PCR court to make specific findings of fact and conclusions of law regarding a duly raise issue at the PCR hearing is error. See, Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019); Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992). This Court has remanded numerous other PCR cases to the circuit court where a PCR court failed to make adequate findings of fact and conclusions of law. In McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991) this Court remanded the case to the circuit court after finding that the PCR court's conclusions regarding ineffective assistance of counsel were insufficient for appellate review and failed to meet the standards set forth in S.C. Code Ann. § 17-27-80. See also McCullogh v. State, 320 S.C. 270, 272, 464 S.E.2d 340, 341 (1995) (admonishing all those involved in future PCR matters to be meticulous in preparing and reviewing proposed orders so that the final order sets forth the required findings and reasons for those findings). Bryson v. State, 328 S.C. 236, 236-237, 493 S.E.2d 500 (1997) (remanding the matter back to the PCR judge to "make specific findings of fact and conclusions of law as to each issue *raised by petitioner in his post-conviction*

relief application and at the hearing thereon”) (emphasis added). Therefore, Petitioner would request that this Court remand the matter back to the PCR court for an order addressing the merits of his due process claim.

Notably, in 2018, this Court addressed the insufficiency of a PCR order and the summary denial of a Rule 59(e) motion in Reese v. State, 425 S.C. 108, 820 S.E.2d. 376 (2018). After the evidentiary hearing the PCR court took the matter under advisement, directing both the state and Reese to prepare proposed orders. Id. at 109, 820 S.E.2d at 376-377. The order prepared by the state was adopted by the PCR court and signed. However, in the order the state did not address each of Reese’s claims and did not include specific findings of fact or conclusions of law on any of Reese’s claims. Id. PCR counsel for Reese filed a Rule 59(e) motion stating that the “Order of Dismissal does not contain specific findings of fact and conclusions of law regarding each of the claims presented at the evidentiary hearing, as required by S.C. Code Ann. § 17-27-80 (2014).” Nevertheless, the circuit court summarily denied the Rule 59(e) motion. Id.

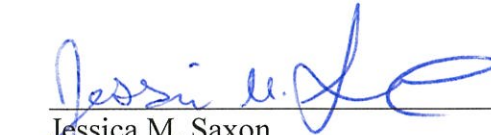
This Court, noting the numerous cases in this state’s jurisprudence that require a PCR order to comply with S.C. Code Ann. § 17-27-80 and Rule 52(a) of the South Carolina Rules of Civil Procedure, found that the PCR court erred by signing an inadequate PCR order and by summarily denying the applicant’s Rule 59(e) motion. Id. at 109-11, 820 S.E.2d at 377-78. The case was remanded back to the circuit court for entry of a new PCR order that complied with the law. Id. at 111, 820 S.E.2d at 378.

Included with his original PCR application was an affidavit from Antionette Butler. The affidavit stated that Butler, and two others, would have testified that Petitioner was at Butler’s home on the night of the incident. The affidavit also stated that Butler was never contacted by Counsel Brown. App. 502. The affidavit was before the court and the court specifically

acknowledge that Petitioner could go forward on the newly discovered evidence claim regarding his alibi witnesses. However, the PCR court failed to consider the merits of the affidavit and did not rule upon the issue. Importantly, the credibility of the alibi witness affidavit was bolstered by the video evidence which placed Petitioner in two separate places at the exact same time. This Court should remand this matter to the PCR court for an order addressing not only the alibi witness claim but the denial of due process claim as well.

CONCLUSION

Based on the foregoing arguments, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to allow full briefing of these issues.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 22nd day of April, 2024.