STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Apr 29 2024

S.C. SUPREME COURT

Certiorari to Jasper County

Honorable Roger M. Young, Circuit Court Judge

ANEISHA YOUNG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001386

PETITION FOR WRIT OF CERTIORARI

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Whether the PCR court erred finding trial counsel was not ineffective where The Court of Appeals found on direct appeal counsel failed to preserve for appellate review the erroneous admission of multiple text messages at trial?

STATEMENT

Petitioner was indicted by the Jasper County Grand Jury for the offenses of murder, attempted murder, and possession of a weapon during a violent crime. App. 837 – 42. Her case was called to trial on March 12, 2018, before the Honorable Carmen T. Mullen, and a jury. Stephen T. Plexico represented petitioner. Brian Hollen, Patrick Hall, and Lynnor Musser were the assistant solicitors. App. 1 – 2.

On March 15, 2018, petitioner was found guilty as indicted. App. 656, ll. 2-10. Judge Mullen sentenced petitioner for thirty years imprisonment for murder, ten years consecutive for attempted murder, and five years concurrent for possession of a weapon during a violent crime. App. 666, ll. 5-20.

Petitioner appealed her convictions and sentences. On direct appeal, appellate counsel argued (1) she was deprived due process where the state notified her on the third day of trial that Debbie Spann would testify as a jailhouse snitch; (2) the trial court erred admitting text messages through a business custodian that were not trustworthy and were unduly prejudicial and confusing; and (3) the trial court erred qualifying Eric Grabski as an expert in cell phone location data analysis. App. 669-98. The Court of Appeals affirmed in a published opinion. *State v. Young*, 432 S.C. 535, 854 S.E.2d 615 (S.C. Ct App. 2021); App. 734-41.

Thereafter, petitioner filed an application for PCR. App. 742-47; 764-73. An evidentiary hearing was held before the Honorable Roger M. Young. App. 774-818. Chelsey Marto represented petitioner and assistant attorney general Danielle Dixon represented the state. App. 774.

Judge Young signed an order of dismissal dated August 15, 2023. App. 820-36. The PCR court held that although the Court of Appeals held trial counsel's objection was not specific

enough to preserve the issue for review on appeal petitioner "failed to overcome the presumption that counsel's performance in this regard fell within prevailing professional norms and thus did not prove deficiency." App. 827. The court further found it was not reasonably likely the texts would have been excluded had counsel raised a more specific objection under Rule 403, SCRE. App. 827. Lastly, the court found it was not reasonably likely the Court of Appeals would have reversed had the objection been properly preserved. App. 828.

This petition follows.

ARGUMENT

The PCR court erred finding trial counsel was not ineffective where on direct appeal The Court of Appeals found counsel failed to preserve for appellate review the erroneous admission of multiple text messages at trial.

State's evidence at trial

Matthew Fraleigh, an employee of the Jasper County Communications Center, testified a man called 911 and said somebody was shooting at them. The caller did not identify the shooter. App. 148, l. 20-149, l. 7.

EMS employee, Rusty Wells, responded to the scene of the shooting on April 30, 2016. He testified when he arrived at the scene of the shooting behind the Kentucky Fried Chicken in Ridgeland, "I found two individuals sitting on the ground. One was holding another individual." Devonte Freeman was lying next to Wrenshad Anderson.[1] Freeman had a gunshot wound in the back of his head. Devonte Freeman would later die. App. 151, l. 1-153, l. 17.

Wrenshad Anderson told Officer Wells that "Peanut [Eric Darien] and Dre [Keandre Frazier]" were the shooters and that they were dressed in all black. App. 154, l. 11-155, l. 13. Wells testified Anderson told him he had "contact numbers for Peanut and Dre in his cell phone, and then, he also identified Aneisha." App. 156, l. 23-157, l. 5. Wells read from his "narrative" report, "Anderson, at some point in time during his excited state, indicated that he had in his cell phone the contact numbers for Peanut and Dre. He also included a third name of Aneisha. He further indicated several times that Peanut and Dre were suspects. Anderson also indicated that Freeman [the decedent] and Peanut [Eric Darien] had a beef all day." Wells admitted he did not know who Aneisha was at the time. App. 165, ll. 2-22. He admitted Anderson "never said

1 Wrenshad Anderson is referred to as "Kwame" throughout the trial. App. 233, l. 22; 436, l. 15; 523, ll. 22-23; 524, ll. 1-6.

Aneisha was the shooter." App. 166, ll. 21-23; 174, ll. 2-22.

Alex Inniss, a paramedic with the Jasper County Fire and Rescue crew, responded to the scene. He testified he found the decedent lying on his back with a gunshot wound to the back of his head. The decedent was unresponsive although he was breathing and had a pulse. Innis said decedent never regained consciousness while being transported to a hospital in Savannah. App. 189, l. 3-192, l. 4.

Lieutenant Joey Ginn testified that on April 30, 2016, he responded to a shooting behind the Kentucky Fried Chicken in Jasper County. App. 196, ll. 12-23. Ginn spoke with Keith Horton, the owner of the Siesta Hotel. App. 196, l. 24-197, l. 23. He also spoke to Anderson and testified Anderson was very confused, excited, and delirious after his decedent brother was shot. App. 198, l. 18-200, l. 12. Ginn said he was later told by Officer Wells that there were two unknown suspects dressed in all black. "They could have been Asian, they could have been Hispanic, they could have been white, they could have been black." App. 210, ll. 10-17.

Demitria Williams was pregnant with decedent's child at the time he was killed. Williams had gone to school with petitioner and knew her from there. App. 220, l. 4-222, l. 4. Williams claimed that "a couple of weeks or a month" before decedent was shot and killed petitioner came to her house and "she knocked on my door when me and [decedent] was living together at [the] Siesta." Williams alleged petitioner burst inside and fought with decedent in front of her. Williams claimed petitioner threatened to kill decedent and was cursing at him. Williams also maintained that petitioner "tried going through [decedent's] pants pockets -- on the floor by the bed," saying, "that N has some of her money." App. 222, l. 10-223, l. 14.

Bernard Seabrooks was a resident at the Siesta Hotel on April 29 – 30, 2016, the night the decedent was killed. He was playing cards the night of the incident and he remembered seeing

Anderson, "Kwame." App. 232, l. 25-233, l. 25. Seabrooks testified he saw Horton, the owner of the Siesta Hotel, talking to decedent and Peanut [Eric Darien] that night. App. 234, l. 3-237, l. 15.

Keith Horton testified that decedent rented from him at various times at the Siesta, but he was on trespass notice at the time of the shooting. App. 238, l. 21-239, 1, l. 23. Horton saw decedent and Anderson leave together on foot. App. 243, ll. 8-17. He saw petitioner leave with two men in a car. App. 243, ll. 18-24.

Wrenshad Anderson testified about the events at the Siesta Hotel prior to his brother, decedent being shot and killed. Anderson said he spoke with petitioner in Seabrooks' room that evening. Anderson contended it was "funny" to see petitioner at the Siesta Hotel because she "wasn't supposed to be there." App. 276, l. 4-277, l. 23. He claimed petitioner was wearing all black that evening. He alleged decedent and petitioner had "got into it." App. 278, l. 17-279, l. 9. Anderson remembered walking through the brush with decedent when they heard loud gunshots. The decedent was hit and he fell to the ground. App. 280, l. 17-287, l. 3.

Anderson admitted he told the police that Peanut [Eric Darien] and Dre [Keandre Frazier] were the shooters but at trial repeatedly exclaimed: "I was delusional. Something like that happened to you and you almost got your life taken from you, and these people shooting at you -- you don't know what's happening with your brother. You just know they haul him off somewhere, and yeah, I was a little delusional. Like, yeah, I was delusional . . ." App. 286, l. 8-287, l. 13.

Anderson said he knew decedent and petitioner had problems a few weeks before decedent was killed. Anderson claimed petitioner threatened to kill decedent and he speculated that petitioner was behind decedent being shot at on a prior occasion. App. 301, l. 1-302, l. 20.

Anderson did admit that before his brother's murder he stole a pistol from Peanut [Eric Darien] "that started the beef." App. 308, l. 17-309, l. 22.

Lieutenant Daniel Litchfield testified that based on his talks with others in law enforcement, he developed "Eric Darien, who is Peanut; [petitioner]; and I was looking at Dre, Keandre Frazier, as being involved in it." App. 358, ll. 18-25. Petitioner told the police during her interrogation that she had an alibi -- Deshonda Washington. Litchfield maintained he reached out to Washington, but he said she did not come in for an interview. He was even unsure Washington was the woman who answered the phone when he called about wanting to interview her. Litchfield did not pursue the alibi any further. App. 365, l. 6-367, l. 17. At the end of Litchfield's testimony, he said a female inmate in the detention center, Marie Powell, asked him to come and speak with her. App. 368, l. 2-372, l. 7.

Marie Powell testified she was in jail with petitioner. Powell claimed petitioner told her that Eric Darien possessed the .9 millimeter handgun. App. 525, l. 2-526, l. 22. She claimed petitioner asked her how much her friend Anthony Austin would charge to "take out [Anderson], because he was the only eyewitness." Powell said she interpreted this to mean petitioner wanted Anthony Austin to kill Anderson. App. 527, l. 9-528, l. 21.

Powell also testified she was aware petitioner at some point possessed a .22 caliber gun that allegedly was the murder weapon. App. 529, l. 6-530, l. 11. She claimed petitioner told her she planned to talk to police about Eric Darien's "role in the murder." App. 534, l. 19 -535, l. 13. Powell acknowledged she had a long criminal record but stated she was testifying to get "justice" for decedent who "had a baby on the way." App. 536, l. 1-537, l. 9.

Debbie Spann, alleged jail acquaintance of petitioner, testified over trial counsel's objection. Spann did not like talking to police but stated she met petitioner "in jail when

[petitioner] admitted that she killed my cousin Davonte Freeman." App. 558, l. 12-559, l. 18. On cross-examination, Spann said petitioner "admitted to murdering Davonte Freeman, and she wanted to take Kwame Freeman[2] off the streets cause he was a witness to the case." App. 563, l. 23-564, l. 6.

Text messages

During the testimony of Agent Eric Grabski, trial counsel asked for a ruling on the admissibility of text messages the state claimed originated from petitioner's phone. The solicitor responded Grabski would not be testifying about the text messages, instead witness Karen Milbrodt would testify regarding the text messages, and that Milbrodt "can't say that this was her [petitioner's] phone or the number that she's texting was Eric Darien's phone." At that point, the solicitor claimed Milbrodt would just testify as to the number from which the text message was sent, seemingly only to show that petitioner knew Eric Darien, which the argued conflicted with her statement to police. App. 399, l. 9-401, l. 17.

Karen Milbrodt, a records custodian for Verizon Wireless, testified. App. 442, l. 18-443, l. 4. When the solicitor offered State's Exhibit 28, a call log, the court noted defense counsel's prior objection. R. 316, l. 13 – 317, l. 12. During Milbrodt's testimony the solicitor asked her to review a text message contents log and offered the log in evidence. App 451, ll. 1-15. Trial counsel objected arguing the log was inadmissible under Rule 803(6), SCRE. Throughout the lengthy argument trial counsel stated only one time, "I also have further about relevance and undue prejudice." App. 451, ll. 16-20; 452, ll. 10-12; 463, l. 10-465, l. 5.

The court ruled the text messages were "her words. So, it's an admission by a defendant. The question then becomes the other text messages that are coming and going back and forth."

---

2 As stated above Wrenshad Anderson is referred to throughout the trial as "Kwame."

App. 452, l. 25-453, l. 8. The court, solicitor, and trial counsel discussed the various text messages, including "*I see you hitting niggas what that fire*. Is that fire?" and "*Welcome to the family fool*." "*The next bus leaves at 5:50 a.m. on 5/1; get it now*." App. 454, l. 6-457, l. 5. (emphasis in original).

Also included were the solicitor's claim that text messages between petitioner and Eric Darien said, "*Talking bout u told her I did that s/h/i/t* . . . smh means shaking my head." App. 457, l. 6.-464, l. 12. (emphasis in original). Trial counsel argued the text messages and documents were absolutely not trustworthy under Rule 803(6), SCRE, and that there was no legitimate purpose for the admission of text messages such as "*I see you hitting N's what with that fire welcome to the family fool."* App. 463, l. 10-465, l. 5. (emphasis in original). Counsel also noted petitioner told to law enforcement that she misplaced or lost her phone, and that she broke it later. Counsel again noted the untrustworthiness of the text messages and the bizarre nature of them. App. 463, l. 15-465, l. 5.

Ultimately the court ruled the jury could hear the text messages including those which were racially provocative, and vulgar. "I think they [the jury] can infer what they want from that. She could have absolutely said they're lying on me. And it isn't that it's not admissible because it's evidence of flight; it's her statement. Whatever she said as her statement's coming in. I mean, that's an admission by a defendant. Anything she says is coming in**.** So I think for the whole thing in context for what the jury wants to surmise from it, they can." App. 465, l. 6-466, l. 23.

The court allowed Milbrodt to read the text messages aloud to the jury. App. 467, ll. 13-16. Milbrodt then read the jury a text message that said, "*I see you hitting niggas what -- what the fire welcome to the family fool*." App. 472, ll. 5-7. (emphasis in original). Another text

message said, "*Mimi just hmu talking bout u told her I did that shit . . . smh.*" App. 473, ll. 7-9 (emphasis in original). Another said, "*Chillout for uh minute*." Another said, "*Mane I aint gone lie bruh I been hiding out they tryna pin me to this "M" delete this*." App. 474, l. 20-475, l. 5. (emphasis in original).

On cross-examination by trial counsel, Milbrodt admitted many of the text messages could have multiple meanings. App. 477, ll. 9-21.

Evidentiary Hearing

Regarding his objection to the text messages at trial, counsel testified that he recalled objecting to the messages. App. 795-96. However, he hedged regarding the basis of his objection stating, "if I didn't say unduly confusing, you know, I'm you know, a 402, 403 guy . . . I thought I did that correctly. If I didn't, I apologize." App. 796, ll. 14-20. He then admitted he did not recall if he objected on Rule 403, SCRE grounds specifically. App. 796, ll. 21-23. Counsel later said, "[i]f I made a mistake, well, hey, I'm sorry." App. 797, ll. 16-17.

Discussion

The PCR court erred finding trial counsel was not ineffective for failure to properly preserve for appellate review this evidentiary objection.

The burden is on the applicant in a post-conviction proceeding to prove the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case. *Strickland v. Washington*, 466 U.S. 668 (1984); *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). As to allegations of ineffective assistance of counsel, the applicant must show counsel's performance fell below an objective standard of reasonableness, and but for counsel's errors, there is a reasonable probability the

result at trial would have been different. *Strickland v. Washington*, *supra*; *Johnson v. State*, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Johnson v. State*, supra.

Trial counsel was deficient where he failed to properly preserve for appellate review his Rule 403, SCRE objection to the text messages. Counsel may have said the words "relevance" and "undue prejudice" during his objection. However, it is clear from the length of his argument and from the court's ruling the court ruled on the text messages on the basis of Rule 803, SCRE and not Rule 403, SCRE. Counsel never argued what, if any, probative value the text messages did or did not have. Moreover, counsel never asserted what made the text messages unduly prejudicial. The trial court did not conduct a 403 balancing test or make its ruling on that basis.

Finally, The Court of Appeals clearly found this basis was unpreserved on direct appeal. It was not reasonable for trial counsel to fail to make a record and properly preserve this issue for appellate review. The rules of preservation are well established, and trial counsel was deficient for failure to make a record that offered petiitoner the opportunity for meaningful appellate review. *See Jackson v. Speed*, 326 S.C. 289, 306, 486 S.E.2d 750, 759 (1997) (stating "it is the responsibility of trial counsel to preserve issues for appellate review.").

Petitioner was prejudiced by trial counsel's failure where the texts were substantially more prejudicial than probative and in this extremely circumstantial case every evidentiary issue at trial was important. Had counsel successfully excluded these extremely prejudicial text messages the outcome of trial would likely have been different.

The text messages were confusing, had multiple meanings, and had trial counsel objected on the proper basis the trial court would have excluded the messages. State's witness Milbrodt admitted the text messages could have multiple meanings. It was undisputed that they contained

racially offensive language and that they were vulgar at times. It should be undisputed that the text messages cast petitioner in an overall very bad light. Any probative value the text messages had was outweighed by their undue prejudice or unduly prejudicial effect. *See* Rule 403, SCRE. ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues . . ."). *See State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991).

The text messages showed petitioner speaking in some slang language, which a reasonable juror would conclude was attempting to hide illegal or socially unacceptable behavior from a law-abiding citizen and reader.

In *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017), the Supreme Court held that the judge abused his discretion in admitting fifteen minutes of jail calls from King without listening to them first. The Supreme Court also found the jail calls should not have been admitted against King because of their limited probative value being outweighed by their undue prejudice. The jail calls were riddled with racial slurs and profanity. In this case also, the text messages contained racial slurs and profanity.

The text messages, as with the jail calls in *King*, had the undue tendency to suggest a verdict on an improper basis, here, that petitioner was an uncouth lowlife not deserving of the benefit of the doubt.

The text messages far beyond allegedly showing that petitioner knew Eric Darien. The court's reasoning that because she believed petitioner wrote the text messages automatically making the text messages admissible flies in the face of the court's duty to weigh any probative value of the text messages against their unfair prejudice. *See* Rule 403, SCRE. It was an acquiescence of discretionary authority which in and of itself was an error of law. *See State v.*

King, supra, *citing State v. Smith*, 376 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) ("It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.") Just as the judge in *King* abused his discretion by refusing to listen to jail tapes before admitting them, the court here abused its discretion by reasoning and ruling that because the court believed petitioner wrote the text messages that they were automatically admissible since petitioner "wrote it," or "said it," ending the need for any probative value versus undue prejudice analysis. Rule 403, SCRE.

Finally, had trial counsel properly objected to the prejudicial text messages and properly preserved the issue for appellate review there is a reasonable likelihood petitioner would have been successful on appeal. *See Milledge v. State*, 422 S.C. 366, 380, 811 S.E.2d 796, 801 (2018) (instructing that the PCR court is to evaluate prejudice when considering an applicant's claim that counsel failed to preserve an issue for appellate review by viewing the "trial court's ruling through the same lens that would be applied on appeal . . .") (citation omitted).

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on the issue.

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of April, 2024.