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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Saluda County

Honorable J. Cordell Maddox, Circuit Court Judge

ABIN LOWMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001761

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err in finding trial counsel was not ineffective for failing to adequately investigate and then cross-examine two co-defendants about their potential for bias due to their plea deals with the federal government and pending charges with the solicitor, particularly where one of the promises of the deal was to request the solicitor dismiss all charges?

STATEMENT

James Wilson and Joshua Darien, Petitioner's co-defendants, pleaded guilty in 2018 to federal charges related to their armed robbery of Danny and Lynda Tidwell. App. 1325 n.13, 1326. The Tidwells owned and operated Tidwell's Jewelry Store in Johnston, South Carolina. App. 163:3-17. They lived in a large house on the Persimmon Hill golf course in Saluda, South Carolina. App. 164:8-11. Danny testified the couple was at home asleep on March 8, 2017, when he heard men inside "hollering, 'ATF. ATF. Come out with your hands up.'" App. 182:1-15. Those men zip tied both of the Tidwells' hands; put them on the floor in separate rooms; stole three guns, some cash, and over $100,000 worth of jewelry; and threatened Danny into revealing the keys and combination to the jewelry store safe. App. 182:21-24, 190:3-11, 247:11-248:22, 191:1-192:19. The robbers fled in the Tidwells' car. App. 205:18-21, 249:13-20. The Tidwells never saw the men's faces and could testify only that there were three big men in masks, they were Black, and one wore glasses, along with a general description of some of their clothing. App. 197:15-24, 239:1-17, 262:1-16, 299:19-301:24.

James Wilson was arrested in Maryland on March 11, 2017. App. 652:17-23. Joshua Darien was arrested, also in Maryland, on March 24, 2017. App. 653:4-14. They testified on behalf of the state that along with a man named Robert Goodwin they broke into the Tidwells' home and acted as the Tidwells' testified. App. 689:6-12, 753:15-764:2, 892:2-25, 923:22-931:19. Robert Goodwin is Petitioner's uncle, and he did not testify at Petitioner's trial. Goodwin is from Maryland, like Wilson and Darien, and is the connection between them and Petitioner. App. 381:3-382:7, 691:11-693:22.

Wilson and Darien placed primary responsibility for the crimes on Petitioner and testified he was the mastermind behind the plan: he identified the Tidwells as a target, App. 693:23-

695:19, 896:17-897:14; he recruited them and drove them down from Maryland to commit the crimes, App. 698:2-699:11, 899:23-900:23; he purchased the gun and ammunition Goodwin carried during the burglary, App. 715:2-25, 724:5-728:25, 907:21-909:9, 912:3-913:13; and, although they testified Petitioner never entered the house, he was present at the scene and was supposed to break into the jewelry store after they obtained the key and code to the store safe, App. 750:20-751:17, 752:9-14, 756:17-759:2, 925:21-926:20. This was the only evidence placing him at the house that night or connecting him to the end-goal plan to rob the jewelry store.

James Wilson testified he was being charged with the same crimes on which Petitioner stood trial but was not promised anything to testify and had no promises of leniency. App. 689:14-5. This was false. App. 1326. Wilson had already entered a plea agreement with the federal government concerning the charges he faced resulting from these events.[1] App. 1258, 1326-1327. In it, the government promised to request a downward departure for his federal sentences and to dismiss his remaining federal charges. App. 1261, 1264-1265. The Assistant United States Attorney also "agree[d] to recommend that the Defendant not be prosecuted or, alternatively, be sentenced to concurrent time for any similar or related state crimes stemming from the incidents on or about March 8, 2017 . . . ." App. 1269. Wilson pleaded guilty on the day he signed the agreement, but he was not sentenced until several months after he testified at Petitioner's trial. App. 1327 n.15. He was eventually sentenced to just over eleven years in prison on the federal charges. App. 1327 n.15.

[1] He ultimately pleaded guilty in federal court to Hobbs Act Robbery and brandishing a firearm in furtherance of a crime of violence. App. 1258.

At the time of Petitioner's trial, counsel knew Wilson had previously entered a proffer agreement with the federal government regarding his federal charges arising out of the robbery. App. 1216:23-1217:4, 1326. Trial counsel was unaware, however, that Wilson had signed an actual plea agreement for the federal charges on April 26, 2018—two months before Petitioner's trial—and therefore he did not bring Wilson's falsehood or the promises to light before the jury. App. 1218:1-21, 1258, 1326-1327. The PCR court specifically found "counsel had no knowledge about the existence of [the] federal plea agreement." App. 1331. It also found that "had he investigated further . . . he would have learned of the existence of the April 26, 2018 plea agreement which would allow the Federal Government to move for a downward departure . . . ." App. 1326.

Joshua Darien testified, initially, that he had no "promises or deals" relating to his charges, just as Wilson had. App. 892:2-893:2, 945:1-22. He expressly testified there had been no "discussion with them about downward departure on the federal case." App. 977:4-6. This was also false. App. 1323-1324. After he finished the substance of his testimony against petitioner, the solicitor informed the court that Darien had in fact "entered into a plea agreement with the feds with a downward departure."[2] App. 978:21-25. The parties agreed to make that fact known to the jury, the state called Darien back to the stand, and he testified he actually did have a plea agreement with a downward departure for the federal charges. App. 980:5-981:4.

Petitioner was tried before Judge Eugene Griffith, Jr. and a jury from June 18–22, 2018. App. 1. He was tried for first-degree burglary, armed robbery, two counts of kidnapping, and

[2] PACER indicates Darien entered a plea agreement and pleaded guilty on July 19, 2018, after Petitioner's trial. App. 1323 n.9. The PCR court noted, "It is not clear whether there was an earlier plea agreement or if Solicitor Hubbard was misstating that it was actually a proffer agreement as Darien corrected him in the later questioning as to it being a proffer." App. 1323 n.9.

criminal conspiracy. App. 13:8-16. He was represented by Robert Theodore Williams, Sr. App. 1. Sutania Fuller and Richard Hubbard prosecuted the case. App. 1. Ultimately, Petitioner was convicted on all charges. App. 1057:13-19, 1290. Based on the state's prior notice of its intention to seek a life sentence due to Petitioner's prior convictions, Judge Griffith sentenced Petitioner to concurrent life sentences for the burglary, armed robbery, and kidnapping charges, as well as a concurrent five-year sentence for the conspiracy. App. 1061:12-1062:19.

Petitioner was represented on appeal by Robert Dudek who filed an *Anders* brief arguing the trial court erred by refusing to declare a mistrial after Wilson testified Petitioner had previously been in prison. App. 1291. The Court of Appeals then dismissed the appeal. *State v. Lowman*, 2021-UP-172 (S.C. Ct. App. dated May 18, 2021).

On March 9, 2022, Petitioner filed an application for post-conviction relief. App. 1080-1101. The state filed its return on March 13, 2024, and through appointed counsel Chelsey Marto, Petitioner filed an amended application on March 15, 2024. App. 1103-1122, 1124-1126. On March 19, 2024, Judge Cordell Maddox held an evidentiary hearing on Petitioner's application. App. 1128. At the hearing Petitioner, trial counsel, Hubbard, and Fuller testified. App. 1129. Petitioner also introduced several exhibits, including James Wilson's federal plea agreement. App. 1130, 1141:15-20, 1258.

Trial counsel testified that at the time of trial he knew Wilson had previously entered a proffer agreement with the federal government regarding his charges arising out of the robbery. App. 1199:11-25, 1216:23-1217:4, 1326. Trial counsel was unaware, however, that Wilson had signed an actual plea agreement for the federal charges two months before Petitioner's trial and therefore he did not bring Wilson's falsehood to light before the jury. App. 1218:1-21, 1326-

1327, 1258. Trial counsel's only investigation into any potential deals for Wilson and Darien consisted of a federal public defender telling him about the proffers. App. 1200:3-12.

The PCR court entered an order dismissing Petitioner's application on September 24, 2024. App. 1290-1366. In it the court concluded, "defense counsel could have learned [of] the existence of [Wilson's] federal plea agreement as docket no. 80 on April 26, 2018, before the Lowman trial." App. 1326. This was because trial counsel was previously "aware of the fact that the Witness Wilson had made a statement to the federal government pursuant to a proffer agreement with the federal government." 1327. That agreement "require[d] the federal government to request that any state charges not be prosecuted or that any state sentence run concurrent with the federal sentence." App. 1326-27. In fact, that is precisely what occurred: Wilson was sentenced on his state charges with terms to run concurrently with his federal sentences and several of the charges were dismissed outright. *State v. James Christopher Wilson*, Saluda County, Nos. 2017A4110100126, 2017A4110200046 through 2017A4110200052 (disposed 2019).

The order of dismissal did not expressly conclude counsel's performance was either deficient or reasonable on this point. App. 1326-1329. Instead, the PCR court found no prejudice from counsel's failure to impeach Wilson with clear evidence of potential bias. App. 1329. It placed importance on the fact the agreement was with the federal government rather than the state. App. 1328. It reasoned that because the jury heard about Darien's agreement and the two witness's testimony were so similar, there was no detriment to Petitioner. App. 1328-1329. The court also pointed to what it termed "additional corroborating evidence . . . which made further credibility issues with Wilson mitigated." App. 1329.

This appeal follows.

ARGUMENT

"The Sixth Amendment guarantees every criminal defendant the reasonably effective assistance of counsel." *Stone v. State*, 419 S.C. 370, 379, 798 S.E.2d 561, 566 (2017) (citations omitted). A PCR applicant proves ineffectiveness in two prongs: "(1) counsel's representation fell below an objective standard of reasonableness and (2) but for counsel's error, there is a reasonable probability that the outcome of the proceeding would have been different." *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Sellers v. State*, 362 S.C. 182, 188, 607 S.E.2d 82, 85 (2005)).

Here, trial counsel was deficient because any reasonable investigation into the case would have uncovered the plea deal with the federal government and then used that evidence to impeach James Wilson and Joshua Darien.[3] Counsel's failure to do so severely prejudiced his case because the deal was powerful evidence of bias and the jury had been misinformed there was no deal. Had the jury been properly informed, it likely would have disregarded Wilson's and Darien's testimony as incredible. Without that evidence the state's case connecting Lowman to the crimes was limited, and there is a reasonable probability he would have been acquitted.

(1) Deficiency

It has been long recognized that a witness for the prosecution with pending or dismissed charges can be impeached with evidence of that potential bias. *Smalls v. State*, 422 S.C. 174,

[3] For clarity, this issue refers primarily to Petitioner's allegation *i* that trial counsel was ineffective for "fail[ing] to investigate potential plea resolutions Applicant's co-defendants had." App. 1124. However, it necessarily incorporates some of the considerations in his allegation *j* concerning counsel's failure to cross-examine Wilson about his agreement. App. 1124. Although the PCR court is correct that counsel was not deficient for failing to speculate about an agreement given his lack of actual knowledge, App. 1331, that does not redeem the matter. *See Strickland*, 466 U.S. at 690-91 ("[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation."). The primary deficiency is the failure to conduct a reasonable investigation; the prejudice, however, is a combination of both allegations because reasonable counsel with knowledge of the agreement would have certainly used it as impeachment evidence, as trial counsel attempted to do upon learning of Darien's plea deal.

183, 810 S.E.2d 836, 840 (2018); Rule 608(c), SCRE; *see also* 70 Corpus Juris, *Witnesses* § 1181, at 981-82 (1935). Because of the potency of potential impeachment evidence tending to show bias and the witness's incentive to misrepresent the truth, evidence of a plea deal is important. *Smalls*, 422 S.C. at 182-83, 810 S.E.2d at 840-41 (citing *State v. Brown*, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991)) (finding counsel was deficient for failing to introduce evidence the witness's pending charge had been dismissed because "[e]vidence of a witness's bias can be compelling impeachment evidence"); *cf. Giglio v. United States*, 405 U.S. 150, 151-52, 154-55 (1972) (holding *Brady* disclosure-rule extends to credibility evidence where key witness's testimony could have been impeached by evidence of a plea deal). Given the nature of Wilson's and Darien's testimony, any reasonable counsel would have known to impeach their credibility and expose any bias as much as possible, and counsel was required to take reasonable investigatory steps to uncover such evidence.

Although unstated, the PCR court was correct to imply trial counsel was deficient for failing to discover Wilson's plea agreement. "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (alteration in original) (quoting *Strickland*, 466 U.S. at 691, 104 S.Ct. 2052). Here, trial counsel testified he knew about a proffer agreement between Wilson and the federal government relating to these charges prior to Petitioner's trial. App. 1216:23-1217:4, 1326. Any trial attorney should know that a proffer implies and leads to an agreement. Nonetheless, counsel made no efforts to learn of the agreements.

Importantly, the plea agreement was available on PACER many weeks before Petitioner's trial. App. 1326. Nonetheless, trial counsel did not discover the agreement despite his knowledge of the proffer and the ease with which he could have obtained it. App. 1331. Failing to recognize the potential for an agreement and the utility of such evidence is not reasonable.

Having knowledge potentially powerful evidence could exist and failing to obtain it when it is easy to do so is not reasonable. While the duty to investigate "does not force defense lawyers to scour the globe on the off chance something will turn up," counsel is required to make reasonable inquiries into potentially powerful information when counsel has reason to believe such information might be easily found. *Rompilla v. Beard*, 545 U.S. 374, 383 (2005). Trial counsel knew about the proffer statement at least a week prior to trial—and could have learned of it over a month before—and yet took no steps to determine if anything more had occurred and what Wilson stood to gain. He testified his only 'investigation' was being informed about the proffers by a federal public defender. That is not a reasonable investigation.

(2) Prejudice

a. This was Powerful Evidence of Bias and Motive to Lie

The potential for the plea deal to bias Wilson's testimony was substantial because he faced such severe possible punishments the deal could have avoided. The plea deal was evidence of bias in three ways. First, it directly resulted in dismissal of unidentified other charges and a promise the Assistant United States Attorney would recommend a downward departure for the federal crimes. That is a significant promise because Wilson faced up to twenty-seven years in prison on the federal charges to which he pleaded guilty. App. 1259. He also was not subjected to any punishment for the unidentified dismissed offenses. App. 1261.

Second, and even more impactful to a jury, the plea deal included a promise for the Assistant United States Attorney to request the solicitor's office "to recommend that the Defendant *not be prosecuted* or, alternatively, be sentenced to concurrent time for any similar or related state crimes . . . ." App. 1269. That is a huge potential boon when he was charged with the exact same offenses for which Petitioner was being tried: armed robbery, first-degree burglary, two counts of kidnapping, and criminal conspiracy. App. 689:16-24. Wilson could have received upwards of a life sentence for his crimes. S.C. Code Ann. § 16-11-311 (first-

degree burglary punishable by life imprisonment); S.C. Code Ann. § 16-3-910 (kidnapping punishable by up to thirty years); S.C. Code Ann. § 16-3-910 (armed robbery punishable by at least ten years and no more than thirty years). Wilson *also* had other pending state charges—which were ultimately dismissed after Petitioner's trial—for impersonating a law enforcement officer, grand larceny, and possession of a weapon during the commission of a violent crime.[4] He faced upwards of ten years in prison on the grand larceny alone. S.C. Code Ann. § 16-13-30. For all practical purposes, the only way for Wilson to ever have a life outside of prison again was for these charges to be handled *very* favorably, such as on the recommendation of an Assistant United States Attorney. He had an extreme need for the solicitor and federal government to look on him in a positive light. That is strong evidence of potential bias and could have easily influenced the jury to discredit Wilson's testimony. *See State v. Sims*, 348 S.C. 16, 24, 558 S.E.2d 518, 522 (2002) (reversing trial court ruling prohibiting cross-examination on evidence of bias where witness had pending charges including first degree burglary). As in *Sims*, there was a "substantial possibility" Wilson "would give biased testimony in an effort to have the solicitor highlight to his future trial judge how he had cooperated in the instant case." 348 S.C. at 25, 558 S.E.2d at 523.

Third, Wilson's testimony painted Petitioner as the mastermind behind the whole plan and him as a young fool who went along with it. He needed that to be the story and version of events to or else he likely never would have had a deal in the first place. As the state did here and as is common knowledge, in a situation like this law enforcement officers and prosecutors want the criminal leader, the one who came up with the plan. If the best way to do that is by cutting a deal with a co-defendant in exchange for his testimony, they will often make that

[4] *State v. James Christopher Wilson*, Saluda County, Nos. 2017A4110200048 (impersonating law enforcement officer), 2017A4110200049 (grand larceny), 2017A4110200050 (possession of a weapon). All of these charges were pending at the time of Lowman's trial and dismissed in January of 2019.

happen in order to catch the bigger fish. Wilson could only take advantage of that possibility if someone else was the leader. By misrepresenting or exaggerating Petitioner's involvement, Wilson not only curried favor with the state and federal prosecutors but also minimized his role in the crimes. That version of events is valuable to people staring down sentences of potentially over a hundred years because there never would have been a deal unless he implicated someone else as the leader. Had trial counsel conducted a reasonable investigation, he could have challenged Wilson with this bias and further demonstrated his incentive to misrepresent.

b. The PCR Court Failed to Appreciate the Full Influence of Counsel's Failure

The PCR court gave three reasons Petitioner was not prejudiced by this failure. First, "the federal plea agreement was not with the State and Solicitor's office related to the state charges . . . ." App. 1328. Second, Wilson and Darien gave "similar" testimony, yet "after the jury received similar information [about the federal agreement] in Darien's testimony, the jury still convicted Lowman." App. 1328-1329. Third, there was "additional corroborating evidence tying Lowman to the crime . . . which made further credibility issues with Wilson mitigated." App. 1329. These reasons are unavailing: the first disregards the promise in the agreement to request the solicitor dismiss the charges; the second misunderstands how Wilson's unimpeached testimony effectively bolstered Darien's testimony; and the third does not appreciate the impeachment value of the evidence or that Wilson and Darien are the only direct connection between Petitioner and the crimes.

As to the first point, the PCR court failed to appreciate the scope and significance of the plea agreement and its potential influence on the testimony. While the plea agreement was with the federal government rather than the solicitor, that does not eliminate—or even particularly mitigate—the potential bias. As explained above, Wilson had an incentive to downplay his own involvement and culpability for the crime. He had to continue to do so if he wanted the downward departure on the federal crimes. That deal, even if it had no connection to the state

crimes, is still strong evidence of potential bias or motive to lie, evidence trial counsel failed to uncover and demonstrate for the jury.

More importantly, the plea agreement expressly required the Assistant United States Attorney to "recommend" to the solicitor's office "that [Wilson] not be prosecuted or, alternatively, be sentenced to concurrent time for any similar or related state crimes stemming from the incidents . . . ." App. 1269. Wilson did have a plea deal with the federal government rather than the state. In another case, that distinction might be entitled to some weight, but not here. Wilson had a promise that if the Assistant United States Attorneys was satisfied with his performance, he would ask the solicitor's office *not to prosecute Wilson at all*. This goes further than a mere sentencing recommendation because while sentencing authority rests with the court, the authority to prosecute—or not to prosecute—rests solely with the solicitor's office. Had they decided to, based on their satisfaction with Wilson's testimony and on the recommendation from the federal government, the solicitor's office could have dismissed all charges against Wilson.[5] The plea agreement gave Wilson a promise that the federal government would try to get him out of his state charges without any punishment. That decision would certainly consider the solicitor's office's evaluation of Wilson's testimony and the Assistant United States Attorney's recommendation. That fact is a substantial source of bias and incentive to lie or misrepresent, and one not mitigated by the fact the deal was not directly with the solicitor. Counsel's failure to inform the jury about this plain source of bias was incredibly significant. Although the PCR court did not recognize the interconnection between the federal deal and the state charges, proper argument after a reasonable investigation could have ensured the jury did.

[5] While trial counsel could not have known what the sentences would ultimately be, the solicitor in fact did follow the recommendation and dismissed three of his charges and recommended concurrent sentences on the rest, a recommendation the court followed.

The second basis of the PCR court's reasoning was that the jury heard about Darien's deal so any similar credibility issue for Wilson was unimpactful. But that does not appreciate the interconnection between Wilson's unimpeached testimony and Darien's testimony. The PCR court believed the jury would have still convicted Petitioner even if it learned of Wilson's deal because it learned Darien's testimony was biased by a federal plea agreement or proffer, and yet it convicted Petitioner anyway. That prediction does not account for the likelihood the jury could have heard the impeaching evidence against Darien but then discounted the bias *precisely because Wilson's unimpeached testimony was so similar*. When the jury learned, belatedly, that Darien's testimony was tainted by a plea deal, it was likely to brush off any concern because it had previously heard Wilson's unimpeached testimony to the same effect. This undiscovered evidence was therefore important not just to impeach Wilson but also to appropriately call Darien's testimony into question. Without it, Wilson's testimony was unimpeached *and* impeaching Darien was almost worthless. The prejudice to Petitioner is not mitigated or limited by the fact Darien was impeached, as the PCR court concluded, but rather *increased* because Wilson's testimony effectively corroborated Darien's.[6] The PCR court gave absolutely no consideration to this possibility, and in doing so it failed to recognize the full scope of prejudice Petitioner suffered due to counsel's failure.

Additionally, the PCR court failed to consider the enhanced impact of counsel's failure because Wilson testified he had not been promised anything for his testimony. Not only was the jury not informed about the plea agreement, it was misled to believe Wilson had nothing to gain by testifying. More than simply failing to use a potential tool at his disposal—the impeachment

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[6] There is another reason the similarity between their testimony is not significant. In addition to the similar incentives each faced and of which the jury was unaware, the two lived in the same "pod" for the four-and-a-half months preceding Petitioner's trial and talked every day. App. 827:5-17, 950:25-952:1. That time includes the period when Wilson entered his proffer agreement with the federal government.

evidence—trial counsel allowed Wilson to lie to the jury about circumstances plainly affecting his testimony and potential for bias. Had trial counsel conducted a proper investigation, he would have been able to challenge this bold, false claim Wilson made at the very beginning of his testimony. Evidence Wilson had hidden this source of bias would have been exceptionally effective at discrediting his testimony.

The PCR court's third point is not incorrect; it is, however, a matter best left to juries and failed to consider alternative possibilities and explanations. While parts of Wilson's and Darien's testimony were in some sense "corroborated" by other evidence, none of it was directly connected to the crime. It is true Lowman purchased ammo in a Walmart with them and that a casing was found in his car. But that and similar non-criminal conduct is all that was corroborated, as is further addressed below. Whether the truth of such tangential facts would have been sufficient to outweigh the impeachment evidence counsel could have presented is the quintessential jury question. The risk that "the result of the particular proceeding is unreliable" due to counsel's unreasonable failure to investigate is not meaningfully mitigated because some unimportant, secondary facts in Wilson's and Darien's testimony were supported by other evidence. *Strickland v. Washington*, 466 U.S. 668, 696 (1984).

The jury could have disregarded all of Wilson's *and* Darien's testimony had it been properly informed of the plea agreement. In this context, the proper prejudice analysis is to assume the jury would have disregarded all of their testimony due to the substantial incentives each had to downplay their role, to testify against Petitioner, their opportunity to collaborate on a story, and the unequivocal lies each told when they falsely claimed they had received no promises of leniency for testifying. *See Smalls*, 422 S.C. at 194, 810 S.E.2d at 846 (explaining evidence "tainted by a significant error of counsel" cannot serve as "overwhelming evidence" of guilt). Although a robbery clearly occurred and the co-defendants readily admitted their guilt,

the evidence against Petitioner was circumstantial, and without Wilson and Darien to connect the dots and corroborate the state's piecemeal evidence it was insubstantial.

c. Other Evidence of Guilt Did not Connect Petitioner to the Actual Crimes

Without Wilson's and Darien's testimony, the state had little to directly connect Petitioner to the crimes. The rest of the case rested on weak and insubstantial evidence that indicated he knew the other men but there was nothing particularly involving him in the actual commission of the crimes. For example, Petitioner was near the golf course that night, as demonstrated by James Rutland's testimony. Rutland worked for a repossession company and was searching for the Grand Maquis Petitioner's mother purchased because his records indicated it was uninsured. App. 409:1-4, 434:3-12. GPS records showed the Marquis out by the golf course near the Tidwells' house. App. 384:23-385:13. Rutland found it that night, but the car then left the golf course, leading Rutland to inform Deputy Austen Harding of the Johnston City police about the car and the lack of insurance. App. 434:3-12, 438:1-8, 441:7-442:7. When Petitioner later spoke to police, he admitted to being at the golf course, but he stated he was there fishing in one of the ponds. App. 991:1-15.

Harding testified that he was an officer in Johnston at the time of the crimes. App. 480:9-22. He testified he was on patrol when a repossession company employee, Rutland, informed him a Mercury Grand Marquis was driving around without insurance. App. 481:9-482:14. Later in the evening, Harding was driving and passed a Grand Marquis which he noticed had dark tinted windows, so he turned around to follow it. App. 484:1-485:2. Petitioner was driving the car, pulled over, and gave Harding his ID. App. 489:1-11. He was driving on a suspended license and therefore Harding arrested him. App. 489:12-20. Harding, and other supporting officers who arrived, then "inventoried" the Grand Marquis before towing it. App. 490:8-25. In that search they found a box of nine-millimeter ammo in the trunk, which became State's Exhibit 72. App. 494:1-14.

This evidence—that Petitioner was near the house around the time of the robbery with ammunition of the same type[7]—is essentially the only evidence linking him to the crimes on that night other than the incredible, unimpeached testimony. Certainly, the state admitted other evidence that Petitioner knew the men involved. He was seen on video in Walmart buying bullets with Wilson, Darien, and Goodwin. App. 720:12-721:18, 725:16-726:16, 866:1-873:22; State's Ex. 113, 114. But that is all it shows. The only connection between Petitioner and the gun Goodwin used in the crimes came through Wilson and Darien. The ATF traced that gun to a sale at a pawnshop in Spartanburg where it was sold to a man named Robert Jollie. App. 881:2-882:14. The information Jollie provided when he purchased the gun roughly matches Wilson's description of the man they purchased the gun from. App. 716:10-17, 882:15-883:12. There is no other connection to Lowman. Jollie did not testify and identify Petitioner. Perhaps more importantly, the most this evidence could potentially show is that Petitioner bought a gun with his uncle and some of his uncle's friends—that is not meaningful evidence he participated in these crimes.

In a similar vein, Agent Padgett testified that on March 3rd he responded to call where Petitioner's Grand Marquis had been stopped and Goodwin, Wilson, and Darien were with him. App. 376:5-377:23. Nothing else came of that stop. It shows only that they knew each other and rode in the same car at least a few days before. It is therefore not surprising nor particularly incriminating that Wilson's and Darien's IDs and bag were found in the Grand Marquis. App. 572:2-574:15. These details do not connect him to the actual crimes. The best and only

[7] The state attempted to draw an additional—but threadbare—connection related to the Tidwells' store keys. Danny Tidwell testified State's Exhibit 40 was the keys to the jewelry store. App. 207:24-208:5. Steven Brown testified he and his family found those keys on the side of the road and turned them in at the Johnston police station. App. 529:5-531:9. While Wilson testified he gave those keys to Petitioner, there is no other connection. App. 757:11-25. The state's theory was that because Lowman was found with his passenger window down, he must have at some point thrown the keys out of the car. App. 1031:17-21.

evidence of that was Wilson's and Darien's testimony. Had their testimony been discredited as clearly self-serving and motivated by the potential benefit of lenient sentencing and dismissed charges, there is a reasonable probability the jury would have returned a different verdict.

There was also legitimate evidence that other people were involved in this crime. For one example, Danny Tidwell testified that the day before the robberies there was a young man walking around outside the jewelry store wearing a ski mask. App. 226:21-227:11. Obviously, owning and operating a jewelry store, he called the police. App. 227:10-15. Based on police report records, that man was Rashad Lott and he has nothing to do with Petitioner. App. 228:4-17, 885:18-886:8. For another example, Jerry Kirk's ID was found in the carport outside the Tidwells' home. App. 388:2-10. He is related to Steven Brown who found the shop keys. App. 541:16-542:10. He was arrested and charged with the burglary. App. 389:2-11. His card was not tested for DNA or fingerprints. App. 648:8-21. Although Wilson testified this was part of the scheme and Petitioner left it there to create a fake lead, that was the only support for the theory. App. 777:1-778:10. Kirk's involvement was an important question for the jury to decide, and so Petitioner argued in closing Kirk's ID should be considered and cause doubt particularly because they have similar appearances, which would be a foolish fake lead. App. 1044:10-1045:23. But the jury did not need to decide if that story was particularly believable because Wilson told them he watched it happen and counsel failed to give them a reason to doubt him.

* * *

The question in this case was never whether the Tidwells were robbed. The question was always whether and to what extent Petitioner was involved. At almost every point in the state's case Wilson and Darien were necessary to connect Petitioner to the crimes. They expressly named him as the mastermind and placed him at the house that evening. Their credibility was the most important question for the jury to decide, and the testimony was incredible because they *had* to testify, and to testify as they did, in order to avoid spending the rest of the lives in prison.

Yet due to counsel's unreasonable failure the jury had to make those determinations based on misleading and incomplete information. Trial counsel failed to conduct a reasonable investigation into their proffer and plea agreements, and he therefore failed to adequately present their incredibility to the jury. That was deficient performance which prejudiced Petitioner. The PCR court's decision must be reversed because its reasons for finding he was not prejudiced do not withstand careful analysis.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests this grant his petition for a writ of certiorari and permit full briefing on this issue.

Jordan Wayburn
Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of May, 2025.

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May 12 2025

S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his ability this Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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This 12th day of May, 2025.