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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Heath P. Taylor, Circuit Court Judge

JAMAR A. HUGGINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-002167

AMENDED PETITION FOR WRIT OF CERTIORARI

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2. Did the PCR court err in finding trial counsel was effective when trial counsel believed he was ethically prohibited from eliciting evidence regarding the identity of "Juice" since a lawyer representing "Juice" on separate charges provided information that "Juice" had an alibi for the crimes charged against Petitioner?

3. Did the PCR court err in finding trial counsel was effective when he failed to object to the trial court's instructions to the jury that they were to seek the truth so that they could render a true and just verdict?

STATEMENT

Appellant was charged with first-degree burglary, kidnapping and armed robbery of Angela Eckler at her residence on December 20, 2012. App. 190-198. Eckler was in bed watching a movie with her daughter but got up to answer a knock on her front door around 2:20 a.m. App. 66, l. 19 – 67, l. 15; 73, ll. 4 – 20. Upon seeing a female at the door, Eckler answered the knock but became distracted by her barking dog. App. 67, l. 5 – 68, l. 11. Two men then rushed inside the house, one of whom was armed with a handgun. App. 68, l. 1 – 69, l. 25. Eckler was physically grabbed and pushed into a bathroom, as was her daughter. App. 68, l. 1 – 69, l. 25. The men demanded to know where the money was and searched the house for cash, stole a small amount of money and other items, and left. App. 69, l. 11 – 70, l. 9; 73, l. 21 – 74, l. 3. At trial, Eckler identified Deaungela Shanta Montgomery as the female who knocked on the door but could not identify either of the two male assailants. App. 71, ll. 2 – 15; 75, ll. 3 – 9.

The state called Montgomery as its chief witness. However, on the stand, Montgomery denied Petitioner was a participant in the home invasion and that the wrong person was on trial. App. 50, l. 19 – 51, l. 2. Once Montgomery made this denial, Petitioner's trial counsel, John Long III, claimed to have changed his trial strategy to keep everything simple in hopes the jury would believe the trial version of Montgomery's testimony rather than her prior statements that were inculpatory of Petitioner. App. 427, ll. 15 – 17.

Petitioner was tried before the Honorable Benjamin Culbertson and a jury from September 15 – 17, 2014. Mr. Long represented Petitioner and Dona Elder appeared on behalf of the state. The jury convicted Petitioner on all charges, with Judge Culbertson sentencing Petitioner to fifteen years for first-degree burglary, fifteen years for kidnapping, and ten years for armed robbery, all sentences to run concurrently. App. 190 – 198. Petitioner's direct appeal

raised an issue on the sufficiency of the evidence in light of Montgomery's assertion that Petitioner was not the correct suspect. The Court of Appeals denied relief in an unpublished opinion. *See* State v. Huggins, No. 2014-002022 (S.C. Ct. App. 2016).

Petitioner sought a new trial based upon after discovered evidence by written motion filed September 27, 2016. App. 199. A hearing was held before Judge Culbertson on June 13, 2017. Natasha Hanna represented Petitioner and Jimmy Richardson appeared on behalf of the state. App. 200. The new evidence centered around Montgomery finally identifying the proper suspect: Jassamine Mitchell. App. 584-85. Judge Culberston ruled that the information presented did not qualify as newly discovered evidence since trial counsel knew of the connections between Montgomery and Mitchell before trial and could have pressed Montgomery when she indicated that someone else was involved during trial. App. 228 - 29. Petitioner appealed, with the Court of Appeals affirming the trial court in an unpublished opinion. State v. Huggins, No. 2017-001488 (S.C. Ct. App. 2019).

The present PCR application was originally filed on March 16, 2017, but was held in abeyance pending resolution of the new trial motion. App. 230. An amended PCR application was filed on April 23, 2024, asserting trial counsel was ineffective in presenting evidence in his possession that supported the mis-identification defense and for failing to object to the trial court's finding truth instructions to the jury. App. 237 – 241. An evidentiary hearing was held on November 13, 2023, before the Honorable Heath P. Taylor. App. 251. Tricia Blanchette represented Petitioner and Suzane Shaw appeared on behalf of the state. App. 251. Judge Taylor denied relief by written order dated September 30, 2024. App. 493. Petitioner's counsel filed a motion to reconsider under Rule 59, SCRCP. App. 494. Judge Taylor denied the motion on November 21, 2024. App. 529. This petitioner for certiorari follows.

ARGUMENT

"A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution." Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). To establish a claim for ineffective assistance of counsel, a PCR applicant must show (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

> In a PCR proceeding, the burden is on the applicant to prove the allegations in his application. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citation omitted). This Court will uphold factual findings of the PCR court if there is any evidence of probative value to support them. Webb v. State, 281 S.C. 237, 238, 314 S.E.2d 839, 839 (1984) (citation omitted). However, this Court will not uphold the findings of a PCR court if no probative evidence supports those findings. Holland v. State, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996) (citing Cartrette v. State, 323 S.C. 15, 448 S.E.2d 553 (1994)).

Rutland v. State, 415 S.C. 570, 576, 785 S.E.2d 350, 353 (2016).

1. **The PCR court erred in finding trial counsel was effective when he admittedly failed to present evidence that bolstered trial counsel's assertions during his opening statement to the jury that the state's entire case against Petitioner centered on the improper identification by the state's star witness, co-defendant Montgomery, of Petitioner as a participant in the crime through the confusion surrounding the nicknames of the criminal actor (Juice) and the misidentified Petitioner (Junk).**

A. How the matter impacted trial.

In trial counsel's opening statement, he informed the jury they would hear numerous nicknames and individuals that the jury would hear about during testimony. App. 43, ll. 20 – 22. Trial counsel told the jury:

> Now, evidence will show that Adrian Moore and Deaungela or Shanta they got their crack cocaine from one guy named Juice.[1] Juice had the crack. As a matter of a fact, the evidence will show that Juice introduced Shanta[2] and Drake.[3]

App. 45, ll. 22 – 25. Trial counsel did not elicit testimony supporting this claim.

Trial counsel told the jury during his opening that the evidence would show that Moore (aka Drake) owed Mitchell (aka Juice) money for drugs used by Moore and Montgomery. App. 45, ll. 2 – 8. Counsel told the jury that this drug debt led to Montgomery, McKiethan and Juice as the perpetrators of the home invasion of Moore's girlfriend. App. 45, ll. 9 – 18. Trial counsel then told the jury the reason Petitioner was before them on the charges was over Montgomery's confusion over the two nicknames: Juice and Junk. App. 46, ll. 3 – 9.

During the actual trial, in addition to the victim Eckler, the state presented only two other witnesses during trial: Deaungela Shanta Montgomery and detective Johnathan Martin.

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1 "Juice" was the nickname connected with Jassamine Mitchell. App. 584-85.

2 Shanta was Deaungela Shanta Montgomery.

3 Drake or Dre was Adrian Moore, Eckler's companion who lived in her home until just before the home invasion. App. 98, ll. 14 – 22; 103, l. 9 – 17; 293, l. 25 – 294, l. 2.

Montgomery, the state's star witness in the home invasion, testified that Petitioner was not the correct person:

> Q. Okay. Well, tell us what you told him about this event.
>
> A. I told him about me and Tyjuan McKiethan going, planning a robbery and went to, I guess, her name is Mariah Eckler.
>
> Q Uh-huh.
>
> A And he called somebody but that -- he don't look like the same guy [Huggins].
>
> Q Do you remember telling him that it was Junk?
>
> A Yeah. I remember the name by Tyjuan but he [Huggins] doesn't look like the same person.

App. 50, l. 19 – 51, l. 2.

Because she had heard the name "Junk" mentioned, Montgomery assumed that was the person with McKiethan who committed the armed robbery:

> Q Do you recall telling this detective that Junk was with you and you picked him out and showed, showed the detective?
>
> A After they say -- after they asked me was it Junk. So I assumed that that was Junk. I, I don't remember him [Huggins]. I don't know him [Huggins].

App. 51, ll. 14 – 18.

The state attempted to establish a connection between Petitioner and Montgomery through the nickname "Junk", but Montgomery refused to identify this person by name:

> Q Well, who did you tell them that you -- that he got the drugs from?
>
> A I told them Junk, but it was a lie. We -- I didn't want to say the name that we got it from, and I still don't want to say the name.
>
> Q But you told them at the time right after this happened that it was Junk?

A Yes. I did. Yeah. But it was a lie.

App. 60, ll. 3 – 10.[4]

However, detective Martin testified that he identified Montgomery as a potential suspect for the female who originally knocked on the door through an interview with Adrian "Dre" Moore. App. 98, l. 10 – 99, l. 8. Martin interviewed Montgomery at the detention center since Montgomery was being held for an unrelated armed robbery. App. 99, ll. 20 – 24. During his interviews with Montgomery, Martin claimed to use "police deception" as a method to get information from Montgomery. App. 108, ll. 1 – 15. From information provided by Montgomery, Martin confirmed Petitioner resided at the location identified by Montgomery during her pre-trial version of events and that Petitioner owned a car Montgomery claimed was used to transport the group for the home invasion. App. 100, l. 3 – 101, l. 22. Despite the strength of the state's circumstantial evidence supporting the pre-trial version of Montgomery's story and her acknowledgement that her trial testimony was based solely upon Petitioner's trial appearance, trial counsel took no steps to explain to the jury the relationships and connections between Montgomery, Moore (Dre), Mitchell (Juice), and McKiethan. Trial counsel made this decision despite telling the jury during his opening statement they would hear that evidence, and the only reason Petitioner was before them on the charges was over Montgomery's confusion over the two nicknames: Juice and Junk. App. 46, ll. 3 – 9.

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[4] In an affidavit filed in support of Petitioner's motion for a new trial under Rule 29, SCRCrimP, Montgomery identified this unnamed person as Jassamine Mitchell. App. 584-85. "To the contrary, petitioner produced both the written copy of Kestner's statement to law enforcement, as well as affidavits from individuals attesting to have heard Kestner state the victim was armed at the time of the shooting. Accordingly, there is no evidence of probative value supporting the PCR judge's ruling that petitioner failed to present extrinsic evidence of Kestner's prior inconsistent statements." Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016).

B. How the matter was raised during PCR.

During the PCR hearing, trial counsel was challenged with numerous connections between Montgomery, Moore (Dre), Mitchell (Juice), and McKiethan that he ignored during trial. This included text messages that showed Montgomery, Moore (Dre), Mitchell (Juice), and McKiethan knew each other and were in regular communication. App. 351, l. 1 – 352, l. 12.[5] While these communications were not inculpatory regarding the home invasion, they were notable in that there was no such communication with Petitioner. App. 351, l. 23 – 352, l. 12. Trial counsel was questioned about his decision to ignore the evidence that Eckler was visited on the afternoon of the home invasion by a person fitting the description of Mitchell (Juice) who was looking for Dre (Moore). App. 354, ll. 7 - 23. This visitor drove a distinct vehicle, matching the vehicle driven by Mitchell (Juice). App. 285, l. 15 – 286, l. 287, l. 2; 354, ll. 14 – 23. Evidence was introduced regarding the general resemblance of the photograph used by police in questioning Montgomery regarding the identity of "Junk" and the resemblance between Petitioner and Mitchell (Juice). App. 282, 5 – 283, l. 19; Applicant's Exhibit 1. Petitioner was questioned regarding his decision not the press Montgomery to identify Juice by name. App. 423, ll. 5 – 23. Petitioner was challenged over his decision not to bring out that Moore (Dre) drained Eckler's bank account of funds and was an active drug user behind her back. App. 355, ll. 10 – 21.

In response, trial counsel indicated he was prepared to go into almost all of these matters before trial, with the notable exception of actually naming Mitchell, discussed in the second issue presented, *infra*. However, because Montgomery failed to identify Petitioner at trial, trial

[5] Applicant's Exhibit 1 is a PowerPoint presentation that shows the telephone communication for visual reference. It is on file with this Court and available for review.

counsel claimed he changed his strategy completely and elected, as a strategic decision, not to cloud the jury with this testimony and evidence:

> This was a case of identification as it came out at trial and I felt like the introduction to any information regarding cell phones or texts would just cloud the main idea that this that there was no witness who could possibly identify Mr. Huggins at the scene of the crime.

App. 351, ll. 18 – 22. This "change in strategy" was connected with a desire to have the last argument and limit the state's re-direct as the basis for trial counsel's failure to introduce this evidence he admitted knowing about and having. App. 410, l. 18 – 411, l. 14.421, l. 18 – 422, l. 9; 423, ll. 13 – 23; 423, l. 24 – 424, l. 7.

C. How the PCR court ruled.

In connection with the numerous areas of evidence and testimony that trial counsel failed to present an elicit, the PCR court generally ruled that trial counsel articulated a valid trial strategy in support of those decisions in light of Montgomery's surprise testimony that Petitioner was not involved in the home invasion. App. 436 – 493.

D. How the PCR court erred.

This issue is guided by other cases dealing with evidence and testimony which would have been central to a defense when available and not called by trial counsel. *See* Weldon v. State, 436 S.C. 69, 82, 870 S.E.2d 183, 190 (Ct. App. 2021) (finding "no evidence supports the PCR court's findings that trial counsel provided effective assistance or implemented—much less articulated—any valid trial strategy with respect to the alibi witnesses."); Martin v. State, 427 S.C. 450, 456, 832 S.E.2d 277, 280 (2019) (finding as a matter of law that Martin's trial attorneys were deficient for not eliciting specific alibi timeline testimony from available witnesses);

Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) (finding counsel deficient in failing to call witnesses "that would have added significantly to the credibility of petitioner's case.").

The facts of this case closely mirror those in Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008). In Lounds, the petitioner sought PCR relief due to trial counsel's inadequate investigation and failure to call witnesses to confirm a prior relationship with the alleged victim. This Court noted if "witnesses other than petitioner were willing to testify" to a central element of the defense of the case, "certainly that would have added significantly to the credibility of petitioner's case." Id. at 463, 670 S.E.2d at 650. Trial counsel in Lounds failed to secure the favorable witness testimony and his performance fell below an objective standard of reasonableness.

> We have recognized that when counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). The validity of counsel's strategy is reviewed under "an objective standard of reasonableness." Ingle, 348 S.C. at 470, 560 S.E.2d at 402.

Lounds, 380 S.C. at 462, 670 S.E.2d at 650.

Here, trial counsel claimed he was fully prepared to connect Montgomery with Juice through text messages and the other evidence and testimony outlined above, but changed his strategy changed considering Montgomery's testimony that Petitioner was not a participant in the home invasion.[6] App. 427, ll. 13 – 17.

However, this alleged trial strategy change was completely defeated by the state's direct of Montgomery during trial:

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[6] Trial counsel claimed he ethically could not name "Juice" as Jasamine Mitchell, a claim addressed herein in the second issue presented, *surpa*.

> Q Okay. So Junk, Jamar Huggins, did, in fact, go with you to Ms. Eckler's house?
>
> A Junk went with me, nut what I'm telling you is I don't remember him. I don't know who he is.
>
> Q Okay. So it's possible that he looks substantially different?
>
> A Yes. Maybe. It just don't look like the same person that went with me.
>
> Q Okay. Were his dreds that long?
>
> A No.
>
> Q So his hair was different?
>
> A Yeah.

App. 61, ll. 4 – 15. Montgomery also testified that she told law enforcement she was afraid of "Junk". App. 61, ll. 16 – 22.

Importantly, trial counsel's strategy to ignore the evidence connecting Montgomery, Moore (Dre), Mitchell (Juice), and McKiethan was at direct odds with what he told the jury during opening statements the case involved. The solicitor effectively revisited this omission during closing argument and reminded the jury about trial counsel's failure to bring the promised evidence of "Juice" before them:

> Mr. Long told you a few things in his opening that some of them came in through trial and some of them we never heard about. One of them was that you did hear a street name, Junk, and he said that his client goes, that's -- client goes by or is referred to as Junk. He said that you hear about some guy named Juice, that somebody was going to stand up there and say that it was actually Juice that went into the house. There is nobody that got on that stand and said that some guy named Juice went into the house with a mask and a gun. Junk, Junk, Junk, Junk, that's the only name you heard.

App. 139, ll. 11 – 20. Trial counsel's reply, since last argument was evidently very important to his decision making during trial, noted only:

> Ms. Elder mentioned Juice, and I talked about Juice during my openings statements. If you remember, Deaungela Montgomery said that there was a person that she was involved with in this, but she would prefer not to give his name. I'll leave that to you.

App. 144, ll. 2 – 6.

Despite Montgomery's trial testimony that Petitioner was not the proper defendant being qualified by the fact that his appearance was different, trial counsel based his entire defense of Petitioner on Montgomery's failure to acknowledge Petitioner was the right "Junk". Trial counsel improperly ignored competent evidence that supported Montgomery's mistaken belief that "Junk" was her co-defendant rather than "Juice." As in Lounds, the claim of a trial strategy should be rejected when judged against a reasonableness standard.

Because the jury's conviction of Petitioner rested with the pre-trial testimony of a single witness, Montgomery, prejudice is established. *See* Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Like counsel in Smalls, trial counsel here had an obligation to effectively present evidence that contradicted the state's case and theory. Prejudice can best be argued by reference to the trial court's justification for not granting a directed verdict or a new trial following the jury's verdict:

> So I'll agree with you one hundred percent, *it is a very close call*, and, and I don't know what an Appellate Court will do with it. So they may very well say I committed legal error and should have granted a directed verdict or I should have granted a new trial on the 13th juror doctrine *because it was tenuous.* I agree, but I'm going to deny your motion.

App. 177, ll. 3 – 8 (emphasis added).

2. **The PCR court erred in finding trial counsel was effective when trial counsel believed he was ethically prohibited from eliciting evidence regarding the identity of "Juice" since a lawyer representing "Juice" on separate charges provided information that "Juice" had an alibi for the crimes charged against Petitioner.**

A. How the matter impacted trial.

In trial counsel's opening statement, he informed the jury they would hear numerous nicknames and individuals that the jury would hear about during testimony. App. 43, ll. 20 – 22. Trial counsel told the jury:

> Now, evidence will show that Adrian Moore and Deaungela or Shanta they got their crack cocaine from one guy named Juice. Juice had the crack. As a matter of a fact, the evidence will show that Juice introduced Shanta and Drake.

App. 45, ll. 22 – 25. Trial counsel did not elicit testimony supporting this claim during trial.

Trial counsel told the jury during his opening that the evidence would show that Moore (aka Drake) owed Mitchell (aka Juice) money for drugs used by Moore and Montgomery. App. 45, ll. 2 – 8. Counsel told the jury that this drug debt led to Montgomery, McKiethan and Juice as the perpetrators of the home invasion of Moore's girlfriend. App. 45, ll. 9 – 18. Trial counsel then told the jury the reason Petitioner was before them on the charges was over Montgomery's confusion over the two nicknames: Juice and Junk. App. 46, ll. 3 – 9. Trial counsel provided no evidence of this connection between "Juice" and the home invasion during trial. That such evidence was in his possession and available was not disputed.

B. How the matter was raised during PCR.

During the PCR hearing, trial counsel claimed one of his reasons for shying away from the evidence that connected Jasamine Mitchell (aka "Juice") to Montgomery and the home invasion was the existence of an alibi for Mitchell.

> A. And then Jasamine, referred to him as Jasamine, I did not write down the reason for his, that he was not involved in this crime, and I wish I had, but for whatever his alibi or his reason was, it was enough for me to know that that was a dead end, that he was actually not involved in the crime.
>
> Q. Okay. So you did not believe based on the information you had that the alibi, it was Jasamine Mitchell rather than Jamar Huggins as the third man, you did not believe that that would be a valid alibi defense?
>
> A. That's correct. I didn't feel ethically that I could point the finger at a third party knowing that they had an alibi. Now, the term "Juice," I felt like I could still use the term "Juice," but not associate it with Jasamine.

App. 407, ll. 4 – 16. Trial counsel even asserted he would have moved for a mistrial.

> Q. Now, the other thing I was going to ask, if she had actually identified the drug dealer, Juice, or said, Jasamine Mitchell, if she had said that would you have had concerns as an Officer of the Court, based on your knowledge of Juice or Mr. Mitchell's whereabouts and the possibility of him participating in this crime?
>
> A. Yes. As I said before, Jasamine -- I had a very good understanding that Jasamine Mitchell was not involved in this crime and I did not take a note of that, and I regret that, but as an Officer of the Court I would have felt I could not in good conscience or professional rules of ethics say that Jasamine Mitchell was involved in the crime.
>
> Q. And if she would have said that you would have actually have had to call for a mistrial or you would have had to make some sort of objection or representation on the record, correct?
>
> A. Most likely. I hadn't thought of that before, but most likely.

App. 424, l. 14 – 425, l. 6.

C. How the PCR court ruled.

The PCR court ruled that trial counsel could not ethically pursue the connections between Mitchell, Montgomery, and the home invasion since "Trial Counsel could not ethically go down

the third-party guilt path with Mitchell." App. 454. The PCR court found trial counsel's performance regarding Mitchell sound and reasonable. App. 454.

D. How the PCR court erred.

This question turns on whether trial counsel was ethically prohibited from asserting the connections between Montgomery and Mitchell after an attorney representing Mitchell told trial counsel that Mitchell had an alibi. Importantly, trial counsel claims not to remember the nature of the alleged alibi.

> A. I identified him, found out where he lived, I drove by his house, I was hoping they would catch up with him. There were several people sitting on the front porch. I didn't think it would be a good idea for me to stop. He was also represented by a defense attorney, Scott Bellamy, who I know. I contacted Scott Bellamy and talked to him about these pending cases. I couldn't talk to him directly, to Jasamine directly, but you know, one of my regrets, I think in this case is, Scott Bellamy gave me a valid reason why Jasamine was not involved . . .

App. 406, ll. 10 - 18. Thus, the extent of trial counsel's investigation of the alleged alibi of Mitchell was taking the word of a lawyer who represented Mitchell. Mitchell's alleged airtight alibi sprung up sometime during the few hours between his visit to Eckler's home in the hours before the home invasion and the crime itself, as those events were only a few hours apart. App. 354, ll. 4 – 20. This alleged alibi, which trial counsel cannot recall, was enough to deeply impact his representation of Petitioner during a criminal trial.

Under the South Carolina Rules of Professional Conduct, Rule 407, SCACR, Rule 3.3,

> (a) A lawyer shall not knowingly:
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

> (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
> (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
> (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
> (c) The duties stated in paragraphs (a) and (b) apply when the lawyer is representing a client before a tribunal as well as in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. These duties continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
> (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

However, as Editor's Note [8] guides, "[t]he prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(h). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood." Here, trial counsel's decision to accept the word of a fellow lawyer that Mitchell had an air-tight alibi should be contrasted with how counsel viewed the witnesses who provided Petitioner's alibi who he also elected not to call during trial:

> Q. So as part of your preparation of your case and working your file, you did speak to Ms. Whaley as a potential alibi witness, correct?
>
> A. Correct.
>
> Q. And what was your impressions after speaking with her? How would she hold up on the stand or how would she present?
>
> A. This was during -- as the trial was going Ms. Whaley was present at trial and I talked with her and told her that -- ran the questions that I would ask her at trial and I just felt like she did not have enough specific information about that particular night. To the best of my recollection, her testimony would have been talking about general practices of what time they went to bed and what she did, what Mr. Huggins would do, and I did not feel like it was -- her testimony would be substantial enough to carry that weight of an alibi, plus, if I present -- as you know, if I present a witness then I lose the ability to make final arguments.

App. 410, l. 14 – 411, l. 5. Whaley did testify during sentencing at Petitioner's trial but passed away before the PCR hearing. App. 178, l. 12 – 179, l. 11. This included that Petitioner lived under the same roof, stayed in a room right next to hers, and was there as a support and companion all the time. App. 178, ll. 17 – 179, l. 10.

Trial counsel's improper understanding of his duty of candor towards the tribunal, in taking the statements of a lawyer representing a suspect in the home invasion as definitively establishing an airtight alibi so that he was ethically unable to present competent evidence of that suspect's involvement in the crime for which Petitioner was charged was ineffective and the PCR court committed reversible error in agreeing with trial counsel's unsupported assertion of alibi.

3. **The PCR court erred in finding trial counsel was effective when he failed to object to the trial court's instructions to the jury that they were to seek the truth so that they could render a true and just verdict.**

A. How the matter impacted trial.

During trial, and without objection, the trial judge instructed the jury that "The primary function of this trial is a search for the truth to determine what happened." App. 33, ll. 22 – 24. The judge told the jury the role of the attorneys for both sides was to aid in this search for truth:

> Now, the attorneys appearing before you are advocates for the parties they represent, but first and foremost, they are officers of the court. They're sworn to uphold the integrity and the fairness of our judicial system and to help you in a search for the truth in this case. You can expect them to be professional, competent and ethical in the representation of their clients' interests.

App. 34, ll. 6 – 12.

Having explained the role of a trial was a search for the truth, the trial judge informed the jury of their role:

> Your job is to take the law as I give it to you and apply it to the facts as you find those facts to be.
>
> After doing that, you will then be in a position to render your verdict, a true and just verdict under the solemn oath you just took as jurors.

App. 36, ll. 2 – 6. Followed by an admonition to pay attention during trial so they could fulfill that role.

> Don't let your thoughts wander, but give strict attention to the testimony in this case so at the end of all the testimony, after the arguments of counsel and a charge on the law by the Court, you will then be in a position to determine what the true facts are and apply the law to those facts and thus render a true and just verdict.

App. 38, ll. 7 – 13.

B. How the matter was raised during PCR.

This ground was asserted in the amended PCR application. App. 442. At the PCR hearing, trial counsel denied knowing about the holding in State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012) that recognized this type of language that the duty of the jury was to seek the truth and render a just and fair verdict improperly shifted the burden of proof and implied an obligation on the part of the defendant to present evidence.

> Q. If you don't mind looking at Page 33, Line 22. And the judge tells the jury there: The primary function of this trial is a search for the truth to determine what happened. And it reflects that you did not object to that language. Do you find that objectionable?
>
> A. Based on conversations that I had with you earlier, I understand it's your belief it is objectionable.
>
> Q. Is it yours?
>
> *A. I haven't done the legal research, but I take your word for it, I don't doubt you. I have no reason why I did not object.*

App. 367, ll. 9 – 19 (emphasis added).

C. How the PCR court ruled.

In its order, the PCT court found the trial court's comments to the jury "did not unconstitutionally shift the burden of proof, and it is not reasonably likely the outcome would have been different" without the language. App. 458-59. The PCR court cited State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018), as support for this finding since the statements were during the opening remarks of the trial rather than the jury charge itself.

D. How the PCR court erred.

A trial judge's comments that a jury trial is a search for the truth improperly implies that the defendant has a burden of proof in connection with the trial. This is exacerbated when the trial judge singles out the defendant or defense counsel playing such an active role as in the present case.

> [W]e instruct the trial judge to remove any suggestion from his general sessions charges that a criminal jury's duty is to return a verdict that is "just" or "fair" to all parties. Such a charge could effectively alter the jury's perception of the burden of proof, substituting justice and fairness for the presumption of innocence and the State's burden to prove the defendant's guilt beyond a reasonable doubt. Moreover, to a lay person, the "all parties involved" in a criminal case may well extend beyond the defendant and the State, and include the victim. These inaccurate and misleading charges risk depriving a criminal defendant of his right to a fair trial.

State v. Daniels, 401 S.C. 251, 256, 737 S.E.2d 473, 475 (2012).

The PCR court misinterpreted State v. Beaty as excusing the improper remakes if made during the opening of the trial rather than the charge stage. In fact, Beaty stands for the exact opposite:

> However, *we agree with Appellant that a trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict.* These phrases could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best serves its perception of justice. We instruct trial judges to avoid these terms and any others that may divert the jury from its obligation in a criminal case to determine whether the State has proven the defendant's guilt beyond a reasonable doubt. Although there was error here, our review of the entirety of the judge's opening comments and the entire trial record convinces us that Appellant has not shown prejudice from this error sufficient to warrant reversal.

State v. Beaty, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018) (emphasis added).

A trial judge's comments that a jury trial is a search for the truth improperly implies that the defendant has a burden of proof in connection with the trial. The PCR committed an error of law in finding the language was appropriate in the context of opening remarks rather than the final jury instruction. This was exacerbated by the trial judge singling out the defendant or defense counsel as playing such an active role as in the present case.

> Now, the attorneys appearing before you are advocates for the parties they represent, but first and foremost, they are officers of the court. *They're sworn to uphold the integrity and the fairness of our judicial system and to help you in a search for the truth in this case.* You can expect them to be professional, competent and ethical in the representation of their clients' interests.

App. 34, ll. 6 – 12 (emphasis added).

Here, trial counsel offered no justification for his failure to object to the language despite trial occurring years after the admonition in State v. Daniels. As has been noted *supra*, prejudice can best be argued by reference to the trial court's justification for not granting a directed verdict or a new trial following the jury's verdict:

> So I'll agree with you one hundred percent, *it is a very close call*, and, and I don't know what an Appellate Court will do with it. So they may very well say I committed legal error and should have granted a directed verdict or I should have granted a new trial on the 13th juror doctrine *because it was tenuous.* I agree, but I'm going to deny your motion.

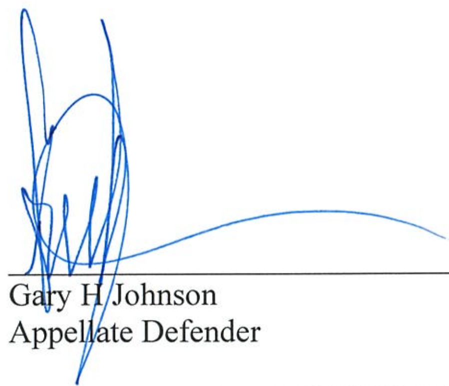
App. 177, ll. 3 – 8 (emphasis added). In such a close case, allowing the improper burden shifting language was ineffective assistance of counsel warranting a new trial.

CONCLUSION

While trial counsel attempted to assert there was trial strategy behind his decision making during Petitioner's original trial, this Court must look behind that bare claim to determine the reasonableness of such assertions considering the record before it.

> Though this court does not seek to second-guess the reasonable decisions of trial counsel, trial counsel still must articulate a valid strategy for his decisions. *See* Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) ("[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." (emphasis added)).

Washington v. State, 445 S.C. 233, 242, 911 S.E.2d 536, 540 (Ct. App. 2025). Petitioner's trial counsel was ineffective fore the foregoing reasons and this Court should reverse the decision of the PCR court and remand this matter for a new trial.



Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of June, 2025.