

**RECEIVED**

**Sep 03 2025**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO JASPER COUNTY  
Honorable J. Derham Cole, Sr., Circuit Court Judge

---

Appellate Case No. 2024-001503

---

ROHAIME HOPKINS,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

---

**RETURN TO PETITION FOR WRIT OF CERTIORARI**

---

ALAN WILSON  
Attorney General

BRYAN T. HALL  
Assistant Attorney General  
S.C. Bar No. 106039  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... i

QUESTIONS PRESENTED ..... 1

STATEMENT OF THE CASE ..... 2

STATEMENT OF THE FACTS ..... 4

STANDARD OF REVIEW ..... 6

ARGUMENT ..... 6

    I.    The PCR court correctly found Petitioner failed to prove a reasonable probability that the result of trial would have been different but for Counsel not objecting to the trial court admitting cellphone evidence where Petitioner admitted to killing Victim and several witnesses testified to seeing Petitioner and Victim together in Victim’s car shortly before Victim was killed and found dead outside of his car; and Petitioner failed to prove the result of his appeal would have been different if the issue were preserved since the cellphone evidence was not substantially outweighed by the danger of unfair prejudice and did not confuse the jury under Rule 403, SCRE. .... 7

    II.   The PCR court correctly found Petitioner failed to prove a reasonable probability that the result of trial would have been different but for Counsel not objecting to Milbrodt’s qualification and testimony as a cellphone records custodian since there was overwhelming evidence of Petitioner’s guilt, and Petitioner failed to prove the result of his appeal would have been different if the issues were preserved since the appellate courts were likely to find that the trial court did not abuse its discretion in allowing the testimony. .... 12

CONCLUSION ..... 16

## **QUESTIONS PRESENTED**

### **PETITIONER'S STATEMENT OF QUESTIONS**

1. Whether the PCR court erred in finding that 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 cell phone records.
2. Whether the PCR court erred in finding that trial counsel was not ineffective where on direct appeal the Court of Appeals found Counsel failed to timely object to Milbrodt's testimony before the cell phone records were admitted and to the trial court's finding that she could testify regarding the cell phone records as a records custodian.

### **RESPONDENT'S COUNTERSTATEMENT OF QUESTIONS**

- I. Whether the PCR court correctly found Petitioner failed to prove a reasonable probability that the result of trial would have been different but for Counsel not objecting to the trial court admitting cellphone evidence where Petitioner admitted to killing Victim and several witnesses testified to seeing Petitioner and Victim together in Victim's car shortly before Victim was killed and found dead outside of his car; and Petitioner failed to prove the result of his appeal would have been different if the issue were preserved since the cellphone evidence was not substantially outweighed by the danger of unfair prejudice and did not confuse the jury under Rule 403, SCRE?
- II. Whether the PCR court correctly found Petitioner failed to prove a reasonable probability that the result of trial would have been different but for Counsel not objecting to Milbrodt's qualification and testimony as a cellphone records custodian where there was overwhelming evidence of Petitioner's guilt, and Petitioner failed to prove the result of his appeal would have been different if the issues were preserved since the appellate courts were likely to find that the trial court did not abuse its discretion in allowing the testimony?

## STATEMENT OF THE CASE

In June 2015, the Jasper County Grand Jury indicted Rohaime J. Hopkins (“Petitioner”) for murder (2015-GS-27-00144). On May 15-17, 2017, Petitioner proceeded to a jury trial before the Honorable Perry Buckner. Assistant Solicitors Mary Jones and Brian Hollen prosecuted the case. Scott W. Lee, Esquire, represented Petitioner. The jury convicted Petitioner, and Judge Buckner sentenced him to life imprisonment.

On May 25, 2017, a notice of appeal was filed on Petitioner’s behalf. On appeal, Petitioner was represented by Chief Appellate Defender Robert M. Dudek. Petitioner raised the following issues on appeal:

1. Whether the court erred by admitting the cell phone and text message evidence (State’s exhibits 7-9), since the probative value of that evidence was substantially outweighed by its unduly prejudicial effect under Rule 403, SCRE, the exhibits were not statement against penal interest as the court ruled, and they were confusing to the jury, including the text message, which even if sent by appellant was ambiguous and where the court ruled the Verizon Wireless records custodian did not have the expertise necessary to impart the cell tower evidence to the jury?
2. Whether the trial court erred by not exercising its discretion to exclude Michael Taylor’s testimony which claimed that appellant burned his clothes in a barrel outside Taylor’s home on the night of the murder, since Taylor made this claim for the first time on the day of the trial, the defense had no notice of this newly claimed devastating evidence prior to that time – which violated fundamental fairness since it was ‘trial by ambush’ – and the court had the inherent authority, and duty, to ensure appellant received a fair trial?

On August 19, 2020, the Court of Appeals affirmed Applicant’s conviction and sentence, determining (1) the cell phone records issue was not preserved; (2) the trial court did not err in admitting the text messages because the text was circumstantial evidence of guilt and its probative value was not substantially outweighed by prejudice or confusion to the jury; and (3) the State did not violate Rule 5, SCRCrimP, because the State provided the defense with immediate notice of

the information when the State learned of it. *State v. Hopkins*, 431 S.C. 560, 848 S.E.2d 368 (Ct. App. 2020). The remittitur was sent on September 9, 2020.

On September 7, 2021, Petitioner filed an application for post-conviction relief (“PCR”). On December 20, 2021, the State (“Respondent”) filed its Return. On May 7, 2024, an evidentiary hearing convened before the Honorable J. Derham Cole, Sr. Assistant Attorney General Bryan T. Hall represented Respondent. Chelsey F. Marto, Esquire, represented Applicant. On August 13, 2024, Judge Cole denied Petitioner PCR relief. This petition follows.

## STATEMENT OF THE FACTS

On the morning of November 13, 2014, Terrence Johnson (“Victim”) was found dead from a gunshot wound, lying face down on the ground next to his car, with the passenger door open. (App. 131; 135). The night before (November 12<sup>th</sup>), witnesses Robin Simmons (“Robin”), Daytron Simmons (“Daytron”), and Antoine Drake (“Antoine”) saw Petitioner and Victim together at a wake. (App. 184; 221; 233). Robin testified that at the wake, she saw Petitioner with a black pistol tucked in his pants. (App. 185). Robin testified that around 8:00 pm, she heard Petitioner ask Victim to take him to see “Tutu” (Latanya Singleton). (App. 187). Daytron testified that he saw Petitioner and Victim leave the wake together with no one else, and Victim was driving his car. (App. 221).

The morning Victim’s body was found, LaTanya Singleton (“LaTanya” AKA Tutu), gave a statement to officers that responded to the scene. (App. 313). LaTanya said that she saw Petitioner and Victim the previous night. (App. 313). LaTanya said Petitioner arrived at her house in Victim’s car, and about twenty (20) minutes after Petitioner and Victim left, Petitioner returned to her house on foot without Victim with him. (App. 313-14). LaTanya said that when Petitioner returned to her house, he asked her for bleach. (App. 314). Victim’s body was found about 500 yards from LaTanya’s house. (App. 335). Petitioner’s DNA was found inside of Victim’s car. (App. 496). Michael Taylor testified that on the night of the murder, Petitioner came to his house and burned his clothes in a barrel. (App. 404).

Antoine testified that he was with Petitioner and Victim on November 12<sup>th</sup>, the day before the murder, and Petitioner and Victim were arguing about gas money. (App. 232). Antoine testified that Petitioner said repeatedly that he was going to kill Victim. (App. 233). Antoine testified that on the night of the murder, at the wake, he heard Petitioner ask Victim to take him home. (App.

234) When Antoine asked to come too, Petitioner said no and would not let Antoine go with them. (App. 234).

Antoine testified that a week prior to the murder, Trey Graves (“Graves”), a drug dealer, put a hit on Victim for \$15,000. (App. 247-48; 280; 337-38). Antoine admitted on cross-examination that after Victim was killed, Antoine tried to collect the money from Graves for the hit. (App. 248). Antoine admitted to being a scammer and attempting to scam Graves [by collecting money from the killing]. (App. 248). Antoine testified that he tried to claim the killing just wanted to see what really happened but did not get anything from Graves except a bottle [of alcohol]. (App. 141). Antoine testified that Graves did not pay him for the hit because Petitioner had already claimed the killing and told Graves that he did it alone. (App. 280).

Daytron gave a statement to police, in which he stated that about two (2) weeks before the murder, Petitioner told him and Antoine that he was “waiting for them boys,” referring to the hit Graves put on Victim. (App. 337-38). Byron Singleton (“Byron”), Petitioner’s jail cellmate, testified that Petitioner told him he killed Victim. (App. 440-42).

## STANDARD OF REVIEW

Appellate courts give great deference to the PCR court's factual findings and will uphold them if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, appellate courts will review the PCR court's conclusions of law *de novo* and will reverse if the PCR court's decisions are controlled by an error of law. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness under prevailing professional norms (i.e. deficient performance), and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694).

Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. When evaluating a claim for ineffective assistance of counsel, the court is to examine counsel's conduct by the law available at the time of trial and "every effort be made to eliminate the distorting effects of hindsight." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (quoting *Strickland*, 466 U.S. at 689).

## ARGUMENT

- I. The PCR Court correctly found Petitioner failed to prove a reasonable probability that the result of trial would have been different but for Counsel not objecting to the trial court admitting cellphone evidence where Petitioner admitted to killing Victim and several witnesses testified to seeing Petitioner and Victim together in Victim's car shortly before Victim was killed and found dead outside of his car; and Petitioner failed to prove the result of his appeal would have been different if the issue were preserved since the cellphone evidence was not substantially outweighed by the danger of unfair prejudice and did not confuse the jury under Rule 403, SCRE.**

Petitioner failed to prove prejudice from Counsel not objecting to cellphone evidence (St.'s Ex. 7-9). Failing to object does not automatically constitute ineffective assistance of counsel, the burden is on the applicant to prove both deficiency from not objecting and prejudice. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to object).

This Court need not address whether Counsel was deficient for failing to object to the cellphone issue where Petitioner failed to prove prejudice. "A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed." *Strickland*, 466 U.S. at 670. To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694).

- A. The result of trial would not have been different because there was overwhelming evidence of Petitioner's guilt since Petitioner admitted to killing Victim; several witnesses testified that Petitioner and Victim were together, alone, on the night of the murder; Victim's body was found near his car 500 yards from the location Petitioner asked Victim to take him; and Petitioner's DNA was in the car.**

Where there was overwhelming evidence of Petitioner's guilt, Petitioner failed to prove the result of trial would have been different if Counsel had objected to the cellphone evidence. In

determining whether an applicant has proven prejudice, the courts should consider the specific impact counsel's error had on the outcome of the trial, and the strength of the State's case in light of all the evidence presented to the jury. *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843-44 (citing *Strickland*, 466 U.S. at 695-96)). In rare cases, the court may find that overwhelming evidence of guilt precludes a finding of prejudice. *Id.* at 190-91, 810 S.E.2d at 944-45 (holding "overwhelming evidence" must include something conclusive such as a confession, DNA evidence demonstrating guilt, or a combination of physical or corroborating evidence so strong that *Strickland's* standard of a reasonable probability of a different outcome cannot be met).

As an initial matter, Petitioner failed to prove a reasonable probability that the trial court would have sustained an objection by Counsel under Rule 403 since the cell phone evidence did not confuse the jury and was not substantially outweighed by the danger of unfair prejudice (analysis below). *See* Rule 403, SCRE. Notwithstanding, even if the trial court excluded the cellphone evidence on Counsel's objection, the result of trial would not have been different since there was overwhelming evidence of Petitioner's guilt.

Petitioner admitted that he was "waiting for them boys," referring to the \$15,000 hit that Graves put on Victim. (App. 247-48; 280; 337-38). Petitioner claimed the hit to Graves, admitting to the killing. (App. 280). Petitioner also admitted to Byron, his jail cellmate, that he killed Victim. (App. 440-42).

Petitioner's confessions are corroborated by the evidence presented at trial. The day before the murder, Petitioner admitted to wanting to kill Victim. (App. 233). Petitioner, armed with a gun, was seen by several witnesses leaving the wake with Victim in Victim's car after Petitioner asked for a ride and refused to let anyone ride with them. (App. 184; 221; 233-34). Petitioner came to Singleton's house with Victim in Victim's car, then returned twenty (20) minutes later on foot,

without Victim, and asked for bleach. (App. 313-14). Victim's body was found dead from a gunshot wound about 500 yards from LaTanya's house. (App. 335). Victim was found on the ground next to his car with the passenger door open (Petitioner would have been seated on the passenger side). (App. 135). Petitioner's DNA was found inside of Victim's car. (App. 496).

Even if the trial court had excluded cellphone evidence, Petitioner still would have had a mountain of evidence from both Petitioner's own statements that he killed Victim and circumstantial evidence that he was at the scene of the murder and was the only person with Victim minutes before Victim was shot and killed. Even without the cellphone evidence, the State could put Petitioner at the scene of the murder based on the DNA evidence found in the car, LaTanya's statement that Petitioner came to her house with Victim, and Victim's body was found 500 yards from LaTanya's house. Additionally, the PCR court found the solicitor's testimony credible that she believed the State had sufficient evidence for the jury to convict Petitioner beyond a reasonable doubt even if the records had been excluded. (App. 861). Thus, Petitioner failed to prove prejudice by failing to prove a reasonable probability that the result of trial would have been different.

**B. Petitioner failed to prove a reasonable probability that the issue would have been successful on appeal if Counsel had objected to the cellphone evidence and preserved the issue since the appellate courts were likely to find that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice and did not confuse the jury.**

Petitioner failed to prove a reasonable probability that the result of his appeal would have been different if Counsel had objected and preserved the issue. Where Counsel failed to preserve an issue, the proper inquiry for determining prejudice is "whether the appellate courts would necessarily have affirmed the trial court's ruling." See *Millidge*, 422 S.C. at 380, 811 S.E.2d at 804. The standard the appellate courts would have applied depends on the facts and procedural posture of the individual case. *Id.* at 381, 811 S.E.2d at 804 (J. Few concurring) ("The standard of

review an appellate court applies can vary depending on the facts and procedural posture of the individual PCR case.”).

Petitioner argues Counsel is ineffective merely because the Court of Appeals found that Counsel failed to preserve the issue of the cell phone records by not objecting. However, Court of Appeals’ finding is not dispositive to either an overall analysis of ineffectiveness or an evaluation of whether Petitioner was prejudiced. Under *Strickland*, this Court need not address whether Counsel was deficient for not objecting where Petitioner failed to prove prejudice.

Petitioner argues Counsel should have objected under Rule 403 and argued that the probative value of the cell phone evidence was substantially outweighed by the danger of unfair prejudice. However, the trial court was likely to overrule the objection and find otherwise. The Court of Appeals would have likely affirmed the trial court’s ruling under an abuse of discretion standard.

The admission or exclusion of evidence is within the trial court’s discretion and will not be reversed on appeal absent an abuse of discretion. *State v. Gray*, 408 S.E.2d 601, 608, 759 S.E.2d 160, 164 (Ct. App. 2014) Under Rule 403, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE. “A trial court has particularly wide discretion in ruling on Rule 403 objections.” *Id.* (quoting *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012)); *see also State v. Dial*, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013) (“A trial judge’s decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances.”).

The cell phone records (St.’s Ex. 7-8) were relevant and probative since they placed Petitioner at the scene of the crime. *Gray*, 408 S.C. at 610, 759 S.E.2d at 165 (defining “probative

value” as the measure of the importance of the tendency to prove or disprove to the outcome of a case). The evidence was not unfairly prejudicial. *Id.* at 616-17, 759 S.E.2d at 168-69 (defining “unfair prejudice” as evidence that tends to suggest a decision on an improper basis; commonly, but not necessarily, an emotional basis). Cell phone records do not, and did not, suggest to the jury that it should make a decision on Petitioner’s guilt from an improper basis, such as emotions.

Further, the Court of Appeals addressed a similar argument under Rule 403 in Petitioner’s appeal. Petitioner argued on appeal that the probative value of text messages of Petitioner’s statements that were admitted at trial was substantially outweighed by the danger of unfair prejudice. *State v. Hopkins*, 431 S.C. 560, 571-73, 848 S.E.2d 368, 373-74 (Ct. App. 2020). The Court of Appeals disagreed, determining any inference or speculation the jury could draw from the text message was light compared to its relevance. *Id.* Thus, if Counsel had objected, the trial court would have likely overruled the Rule 403 objection, and the appellate courts would have affirmed the trial court’s ruling.

Petitioner also argues Counsel should have made an objection under Rule 403 and argued that the cell phone records were confusing to the jury. However, the jury was not confused about the use of cell phone records to place Petitioner at the scene of the crime in a murder trial. Under Rule 403, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of confusion of the issues or misleading the jury. Rule 403, SCRE; *State v. Phillips*, 430 S.C. 319, 328-29, 844 S.E.2d 651, 356 (2020) (“the danger of unfair prejudice is a separate analysis from the danger of confusion of the issues or misleading the jury”). In most cases, the risk of confusing or misleading the jury is low where the evidence is straightforward and reliable. *Cf. Phillips*, 430 S.C. at 328-29, 844 S.E.2d at 356 (stating although DNA evidence has come to be known for its potential to confuse and mislead jurors, the risk of confusing or misleading the jury

with DNA evidence is low because, in most cases, DNA evidence is “straightforward and reliable, and its probative force is highly persuasive – if not dispositive of guilt”).

The cell phone records were not confusing or misleading to the jury because the evidence was straightforward and reliable. The records were simply location data that put Petitioner at the location of the crime scene. Petitioner made a similar Rule 403 argument in his direct appeal regarding text messages that were admitted at trial were confusing to the jury. *Hopkins*, 431 S.C. at 571-73, 848 S.E.2d at 373-74. The Court of Appeals disagreed. *Id.* Thus, the trial court would have likely overruled an objection by Counsel, and the appellate courts would have likely affirmed the trial court’s ruling since location data is not confusing or misleading. Therefore, Petitioner failed to prove prejudice, and the PCR court correctly denied relief.

**II. The PCR Court correctly found Petitioner failed to prove a reasonable probability that the result of trial would have been different but for Counsel not objecting to Milbrodt’s qualification and testimony as a cellphone records custodian since there was overwhelming evidence of Petitioner’s guilt, and Petitioner failed to prove the result of his appeal would have been different if the issues were preserved since the appellate courts were likely to find that the trial court did not abuse its discretion in allowing the testimony.**

Petitioner failed to prove prejudice from counsel not objecting to Milbrodt’s qualification and testimony as a records custodian. Failing to object does not automatically constitute ineffective assistance of counsel, the burden is on the applicant to prove both deficiency from not objecting and prejudice. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to object). This Court need not address whether Counsel was deficient for failing to object to the testimony where Petitioner failed to prove prejudice. *Strickland*, 466 U.S. at 670. Petitioner must prove there’s a reasonable probability that the result of the proceeding would have

been different but for Counsel not objecting. *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694).

**A. In light of the overwhelming evidence of Petitioner’s guilt, Petitioner failed to prove a reasonable probability that the result of trial would have been different if Counsel had objected to Milbrodt testifying as a records custodian.**

Where there was overwhelming evidence of his guilt (analysis above), Petitioner failed to prove prejudice by failing to prove the result of trial would have been different if Counsel had objected to Milbrodt’s qualification and testimony as a records custodian. In determining whether an applicant has proven prejudice, the courts should consider the specific impact counsel’s error had on the outcome of the trial, and the strength of the State’s case in light of all the evidence presented to the jury. *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843-44 (citing *Strickland*, 466 U.S. at 695-96)).

Petitioner argues Counsel should have objected to the trial court’s ruling that Milbrodt could testify to the cellphone records as a records custodian. Petitioner also argues Counsel is ineffective merely because the Court of Appeals found that Counsel failed to preserve the issue by not objecting. However, the Court of Appeals’ finding that the issue was not objected to is not dispositive to the issue of ineffectiveness or prejudice. The burden remains on Petitioner to prove prejudice.

The record reflects that Counsel contested the State’s motion to qualify Milbrodt as an expert. (App. 532-48). In response, the trial court ruled that Milbrodt could not give expert testimony regarding cell phone towers but is qualified to testify as a records custodian based on her education, training, and experience in records. The PCR court found credible testimony from the solicitor and Counsel that the trial court’s ruling did not qualify Milbrodt as an expert witness but merely allowed her to read the records as a records custodian. (App. 862; 556).

If Counsel had objected, and the evidence were excluded, it would not have changed the outcome of trial since there was overwhelming evidence of Petitioner's guilt from Petitioner's admissions to killing Victim and the substantial corroborating circumstances that Petitioner and Victim were together, alone, shortly before Victim was killed. Counsel testified that he did not think Milbrodt's testimony was harmful to Petitioner's case [in light of the other evidence presented] because there was no question that Petitioner was with Victim on the day of the murder. (App. 825-26). The PCR court correctly found, based on the evidence presented at trial, that Petitioner failed to prove a reasonable probability that the result of trial would have been different if Counsel had objected to the testimony. Thus, Petitioner failed to prove prejudice.

**B. Petitioner failed to prove there's a reasonable probability that the result of an appeal would have been successful if the issue of Milbrodt's testimony had been preserved and raised on appeal since the trial court did not abuse its discretion by allowing the testimony.**

Petitioner failed to prove the result of his appeal would have been different if the issue of Milbrodt's testimony was preserved if Counsel had objected and preserved the issue. In determining prejudice for an unpreserved issue, the inquiry is whether the appellate courts would have "necessarily affirmed the trial court's ruling." *See Millidge*, 422 S.C. at 380, 811 S.E.2d at 804. On appeal, the appellate courts would have reviewed the trial court's ruling, allowing Milbrodt to testify as a records custodian, under an abuse of discretion standard.

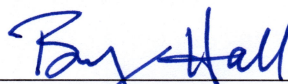
The decision to admit or exclude evidence is within the sound discretion of the trial court. *Hopkins*, 431 S.C. at 568-69, 848 S.E.2d at 372. The appellate courts will not disturb the trial court's finding on admissibility absent a prejudicial abuse of discretion. *Id.* An abuse of discretion occurs when the trial court's finding either lacks evidentiary support or is controlled by an error of law. *Id.* (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

If Counsel had objected, the appellate courts would have likely affirmed the trial court's ruling since the trial court's finding that Milbrodt was qualified to testify as a records custodian since the trial court's ruling was based on Milbrodt's testimony regarding her education, experience, and training. (App. 545-48). Petitioner has failed to prove that the trial court's findings amounted to an abuse of discretion by either lacking evidentiary support or being controlled by an error of law. Thus, Petitioner failed to prove prejudice by failing to prove a reasonable probability that the result of an appeal would have been different. Therefore, Petitioner failed to prove prejudice, and the PCR court correctly denied relief.

**CONCLUSION**

Based on the foregoing argument, the PCR court correctly found Petitioner failed to meet his burden. Accordingly, the State respectfully requests that this Court to affirm the PCR court's rulings and deny Petitioner's writ for certiorari.

Respectfully submitted,



---

BRYANT HALL  
Assistant Attorney General

S.C. Bar No. 106039  
Post Office Box 11549  
Columbia, S.C 29211  
(803) 734-3737

ATTORNEY FOR RESPONDENT

September 3, 2025