

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

MATTHEW JAMIE BRYANT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000966

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR Court err in finding trial counsel was effective when he admitted a lack of memory of being told before trial, by two sources, about a witness who testified at the PCR hearing that the prosecutrix admitted that she fabricated the allegations out of fear of her boyfriend?

STATEMENT

Petitioner was indicted by a Pickens County grand jury for a sexual battery accompanied by aggravated force for an incident on April 5, 2016, against KRC. App. 414. Petitioner was tried before the Honorable Letitia Verdin and a jury on April 17 – 19, 2018. App. 1. Daniel Hunt represented petitioner, and Megan Owen prosecuted the case for the state. App. 1.

The jury was presented two different versions of the acknowledged sexual encounter between KRC and petitioner. According to KRC, petitioner grabbed her arm and led her into a bedroom. Despite her telling petitioner no, she submitted to sexual intercourse against her will. App. 97, l. 2 – 99, l. 25. KRC was interviewed by police and underwent a medical exam. App. 98, l. 17 – 99, l. 20. According to petitioner, KRC made the initial sexual advances and the encounter was consensual. App. 325, l. 22 – 328, l. 25. Petitioner referred to KRC's concern about what he intended to tell the other people who lived in the same apartment. App. 333, l. 7 – 334, l. 9.

KRC knew petitioner since he formerly lived in the same home she shared with her young son, her boyfriend, Billy Reynolds, and Dirk Van Holland. App. 90, l. 12 – 92, l. 24; 198, ll. 1 - 18. Petitioner (identified during trial testimony as "Jamie") worked with Van Holland who was a close friend with KRC's boyfriend. App. 197, l. 5 – 198, l. 23. Van Holland was also familiar with petitioner's girlfriend at the time, Brandy Hayes. App. 199, l. 22 – 200, l. 17.

While charged with aggravated force sexual battery under S.C. Code Ann. § 16-3-652, the jury returned a verdict on the lesser included offense of criminal sexual conduct in the second degree under S.C. Code Ann. § 116-3-653. App. 416. Judge Verdin sentenced petitioner to fifteen years incarceration. App. 416.

On direct appeal, the Court of Appeals denied relief in an unpublished opinion finding the evidence, viewed in the light most favorable to the State, was sufficient to go to the jury on first- and second-degree CSC and that there was no error in charging second-degree CSC as a lesser included offense. State v. Bryant, No. 2018-000825 (S.C. Ct. App. Mar. 2, 2022).

Petitioner filed for post-conviction relief asserting ineffective assistance of counsel and newly discovered evidence. App. 417. PCR counsel, J. Falkner Wilkes, filed both an amended and a supplemental application asserting trial counsel was ineffective in failing to investigate and present evidence from one of KRC's co-workers, Dana Young. App. 425 – 427.

An evidentiary hearing was held before the Honorable Patrick Clerburne Fant, III, on October 9, 2024. App. 437. Mr. Wilkes appeared on behalf of petitioner and Tommy Evans appeared on behalf of the state. App. 437. Wilkes called several witnesses, including Dana Young, KRC, and Brandy Hayes (n/k/a/ O'Kelly). Despite Young testifying about KRC admitting to fabricating the rape allegation out of fear of her boyfriend, and Hayes testifying that she relayed this information to trial counsel before trial, the PCR court denied relief by written order dated May 2, 2025. App. 555.

This petition for certiorari follows.

ARGUMENT

The PCR Court erred in finding trial counsel was effective when he admitted a lack of memory of being told before trial, by two sources, about a witness who testified at the PCR hearing that the prosecutrix admitted that she fabricated the allegations out of fear of her boyfriend.

The standard for appellate review in PCR cases “depends on the specific issue” raised to the Court. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). The reviewing court will “defer to a PCR court’s findings of fact and will uphold them if there is evidence in the record to support them.” Id. However, “[q]uestions of law are reviewed de novo, and [this Court] will reverse the PCR court’s decision when it is controlled by an error of law.” Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016).

Criminal defendants are entitled to the effective assistance of counsel pursuant to the Sixth and Fourteenth Amendments to the United States Constitution. “The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984). “An ineffective assistance claim has two components: A petitioner must show that counsel’s performance was deficient, and that the deficiency prejudiced the defense.” Wiggins v. Smith, 539 U.S. 510, 521(2003). “When a convicted defendant complains of the ineffectiveness of counsel’s assistance, the defendant must show that counsel’s representation fell below an objective standard of reasonableness.” Id. at 687-688. “[T]he performance inquiry must be whether counsel’s assistance was reasonable considering all the circumstances.” Strickland, 466 U.S. at 688. Concerning prejudice, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional

errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694.

A. How the matter was raised at PCR.

During the PCR hearing, evidence regarding the veracity of KRC’s account was admitted for the first time. PCR counsel questioned KRC about her relationship with a former co-worker, Dana Young. KRC admitted knowing and formerly working with Young. App. 467, ll. 4 – 9. She denied ever telling Young that she had fabricated the rape allegation in fear of her then boyfriend’s reaction to the sexual encounter with petitioner. App. 467, ll. 10 – 22,

Having laid the proper foundation for extrinsic evidence of the prior inconsistent statement, PCR counsel then called Dana Young as a witness. Young testified about getting to know KRC through work and developing a bond with her. This included an incident when KRC experienced a seizure with Young providing KRC assistance. App. 470, ll. 2 – 19. Young testified that KRC told her the rape allegation was fabricated:

A She came in one day, and she didn't look good. So I asked her, you know, if she was okay. I was on my break. I believe we were sitting down at a table. She walked up to the table I was already sitting at and she said she felt fine but she was a little nervous. And she proceeded to tell me that she had got herself in a mess because she was messing with a man that was already taken. They had had sex and she's got to go to court. And I asked her what she had to go to court for. And she had told me that she said that the guy had raped her when she didn't -- he didn't rape her. And I told her that she knows she could go to jail if she lies, that she needed to tell the truth. And she said that if she did, then her boyfriend would leave. She was scared he was going to leave her. She was scared she was going to get beat up by the guy's girlfriend. And -- but I urged her to tell the truth.

Q Okay. And did you ever have any other conversations with her about it?

A I mean, here and there I would ask her how she's feeling. I told her that I would pray for her. She did tell me that she was struggling with it because she was scared. She didn't want to go to jail. But she was going to tell her truth, and it was he did it and she wasn't going to change her mind because she's not going to jail.

Q But she clearly indicated to you that it wasn't true.

A Yes.

App. 471, l. 1 – 472, l. 3.

Young acknowledged the conversation was from before petitioner's trial, so in her opinion six or seven years prior to her testimony. App. 472, ll. 10 – 18. Since Young's testimony was given on October 9, 2024, and petitioner's trial was in April of 2018, her timeframe was accurate. Young acknowledged sharing KRC's fabrication with Brandy Hayes, who she knew from prior jobs and saw, via social media, that Hayes and KRC were connected. App. 477, l. 28 – 478, l. 15.

Sensing danger, the state moved to strike Young's testimony in its entirety, arguing it was not newly discovered evidence and that trial counsel could have been found through "due diligence by her [sic] attorney." App. 473, l. 18 -474, l. 2. PCR counsel countered that his initial belief was that Young's testimony fell under newly discovered evidence, but he now believed trial counsel had been made aware of the Young statements and was therefore not pursuing the evidence in that fashion since trial counsel had been made aware of the statements before trial. App. 475, ll. 1 – 6. The PCR Court "sustained" the state's objection to the evidence regarding it being considered after-discovered evidence but allowed it as a basis for counsel's potential ineffectiveness. App. 476, ll. 15 – 19.

PCR counsel then called Brandy Hayes (now known as Brandy O'Kelly) who explained that she had been in a relationship with petitioner at the time of his conviction, but that

relationship was over. App. 479, ll. 14 -22. She confirmed being told about KRC's statements by Ms. Young as trial approached and that she informed trial counsel of the statements and was surprised it did not come out during trial. App. 479, l. 21 – 478, l. 22. On cross, Hayes stated trial counsel told her the statements were “[p]retty much it was like hearsay.” App. 482, ll. 15 – 20. Petitioner also testified that he relayed the Young information to trial counsel. App. 484, ll. 5 – 19. Like Hayes, petitioner related trial counsel told him the information was merely hearsay and could not be used. App. 484, ll. 13 – 19.

Importantly, trial counsel did not deny being told about Young and KRC's prior statements. Trial counsel acknowledged he and Hayes (n/k/a O'Kelly) spoke quite often leading up to trial. App. 495, ll. 10 – 13. Given multiple chances to deny being told about Young's testimony, trial counsel repeatedly testified that he could not recall the conversation with Hayes about Young's information:

I mean, I just -- you know, maybe I'm wrong, but I -- and I wouldn't tell this court an untruth for anything in this world. And -- but *I do not remember that*. I do not.

App. 495, ll. 17 – 20.

Q. Okay. So nobody ever told you about a Dana Young, did they?

A No, sir. *Not that I know of, no*.

App. 495, ll. 22- 24.

Q And you say you don't recall being told about Dana Young.

A I do not, no. And I may have. And I'm not going to sit here and tell you something that's untrue. I don't recall that.

App. 496, ll. 16 – 20.

Q. Okay. So you can't say for sure you weren't told. You just don't recall six years ago.

A I just -- here, I just know that had I been told about something like that, I would have been all over it.

Q That's not the question. The question is, are you saying that you were not told or you don't recall?

A I'm not going to represent to this court that I was or I was not. I'm just simply saying that I don't recall it.

App. 496, l. 21 – 497, l. 4.

While trial counsel speculated that he would not have sat on such information and would have made every effort to bring that information out during trial, those hopes about what he would have done with the information do not contradict the direct evidence that he was told and simply could not recall. The conversations around the importance of Young were not the only thing trial counsel could not recall. He could not recall the discussions about the use of a polygraph exam to assist with petitioner's case.¹ App. 494, ll. 23 – 25. Trial counsel could not recall if any plea offers were discussed. App. 495, ll. 1 – 9.

B. How the PCR court ruled.

The PCR Court found “Trial counsel testified that had he known there was a statement that contradicted the allegations, he would have pursued that witness, and that he would have “moved heaven and earth” to get Dana Young to testify.” App. 570. The PCR Court concluded:

This Court credits trial counsel's testimony that he was unaware of the information that Ms. O'Kelly claimed to have relayed to him regarding Ms. Young. This Court also takes note of trial counsel's lengthy experience as a criminal defense attorney and scrutinizes Ms. O'Kelly's testimony that counsel seemingly discounted the information she relayed to him regarding the victim allegedly confessing that the allegations were fabricated to Ms. Young as hearsay. Additionally, this Court notes the prior relationship between Ms. Young and Ms. O'Kelly, and passing on their

¹ During the PCR hearing, evidence was introduced that petitioner was given a polygraph test and showed no signs of deception regarding the sexual encounter with KRC being consensual. App. 461, l. 16 – 462, l. 13.

credibility, credits defense counsel's testimony that he was unaware of Ms. Young's conversation with the victim. As such, counsel acted reasonable under the circumstances and Applicant has failed to show deficiency, and resulting prejudice.

App. 570.

C. How the PCR Court erred.

In finding trial counsel was credible about what he likely would have done, in hindsight, if he was told about the Young information, the PCR court failed to acknowledge trial counsel's admitted lack of memory regarding details surrounding his representation of petitioner and his lack of any memory of being told about Young. Pointedly, trial counsel admitted "I'm not going to represent to this court that I was or I was not [told about Young]. I'm just simply saying that I don't recall it." App. 497, ll. 2 - 4. Trial counsel's general claims that he would have been "all over it" had he been told does not alter the frank admission that he does not recall. The PCR court's decision to give controlling weight on trial counsel's repeated and self-serving claims that he would have acted on the Young evidence does not change the value of those claims as merely speculative considering trial counsel's admitted lack of memory.

Critically, a hint of the impact of this evidence was admitted during trial. During petitioner's testimony, the problems associated with KRC's boyfriend finding out about the sexual encounter was touched upon by trial counsel during petitioner's direct examination:

Q Yes, sir. Now, you -- when you were getting ready to leave, Jamie, what did -- you were chatting with her about what she was -
- what was going on?

A Yeah, the baby -- she didn't have any formula left. She -- she was, you know, adamant about needing formula, needing me to take her to get formula. But I couldn't. I had to get back and finish babysitting because Franklin had to go back to work, him and Dirk.

Q Yes, sir. Now, you heard the tape?

A Yes, sir.

Q You were sitting here and you heard it when it was played. She sounded upset?

A Yeah, somewhat.

Q But what -- what -- was there a question about talking to boyfriends or formula or any of that kind of stuff?

A Yeah. Well, she -- I think she asked what I told Franklin and them, because she wanted to know if I had told him if I was going over there, due to the fact that they know her boyfriend and she might have been scared or worried that her boyfriend would find out. About the formula and me not being able to take her, she got mad about it.²

App. 333, l. 7 – 334, l. 5.³

In contrast, years after the events, both Young and Hayes testified about conversing about KRC's statements before petitioner's trial. Hayes specifically testified that she relayed the information to trial counsel who dismissed it as being mere hearsay. App. 482, ll. 15 – 20. Petitioner testified along similar lines with trial counsel again dismissing the Young evidence as merely hearsay and could not be used. App. 484, ll. 13 – 19.

In Weldon v. State, 436 S.C. 69, 870 S.E.2d 183 (Ct. App. 2021), the Court of Appeals reversed the PCR court's finding of fact that trial counsel was credible in articulating a valid trial strategy to preserve final argument when "*counsel repeatedly testified he did not know why he chose not to call the witnesses.*" Id., 436 S.C. at 83, 870 S.E.2d at 190 (emphasis added). In Stone v. State, 419 S.C. 370, 386, 798 S.E.2d 561, 570 (2017), this Court reversed the PCR

² KRC's lived in the same apartment as Dirk who was close friends and worked with with her then boyfriend Billy. App. 90, l. 7 – 91, l. 16.

³ The transcript of trial shows Ms. Owen as conducting the direct examination of petitioner. That is in error, as trial counsel (Hunt) called the petitioner and questioned him on direct. App. 324 – 339. Ms. Owen conducted the cross-examination, not the direct examination. App. 339 – 345.

court's finding that trial counsel had a strategic reason for not objecting to improper victim impact testimony noting "counsel testified he made the decision not to object for reasons other than the strength of his argument for exclusion." Thus, "counsel's belief the trial court would overrule his objection does not justify the decision not to make it" and would not justify a PCR court's finding of a fact that a valid strategic reason existed supporting counsel's decision. *Id.*, 419 S.C. at 387, 798 S.E.2d at 570.

As in Weldon and Stone, the PCR court's ruling here is not supported by the record. Trial counsel has no memory of being told about Young. In contrast, the direct evidence provided by petitioner and Hayes was supported by their consistent answers to why trial counsel did not follow up on the Young evidence: it was hearsay. Trial counsel's speculative opinion about how he would have handled the information had he been told does not alter his lack of memory.

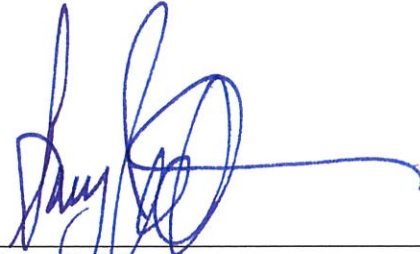
D. Prejudice.

As this case turned solely on credibility, prejudice clearly follows. A case that depends on the credibility of the witnesses does not lend itself to a finding of harmless error. *See State v. Gracely*, 399 S.C. 363, 731 S.E.2d 880 (2012) (holding the state's reliance on circumstantial evidence and credibility of witnesses negated a finding of harmless error); *see also Washington v. State*, 445 S.C. 233, 243, 911 S.E.2d 536, 541 (Ct. App. 2025) (noting "trial counsel's failure to object was prejudicial because there was no physical evidence of the alleged CSC and the only other evidence in the case required an assessment of the relative credibility of the witnesses."). As in Gracely and Washington, credibility, particularly since petitioner and KRC described their sexual encounter differently and from their own perspectives, was central to the jury's determination of guilt. In judging which version of the encounter was truthful, the jury was

deprived of a key piece of evidence by trial counsel's ineffective assistance: a co-worker of KRC testified under oath that KRC manufactured the rape allegation out of fear of her boyfriend's reaction.

CONCLUSION

Based upon the foregoing argument, petitioner respectfully requests that this Court grant the petition for certiorari to review the decision denying petitioner post-conviction relief and allow full briefing on the issue presented.



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This 29th day of October 2025.