RECEIVED

Nov 03 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County
Diane S. Goodstein, Circuit Court Judge
Honorable Brian M. Gibbons, Circuit Court Judge

JAMAQUES SALLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001320

PETITION FOR WRIT OF CERTIORARI PURSUANT TO AUSTIN V. STATE

JESSICA M. SAXON
Appellate Defender

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

ATTORNEY FOR PETITIONER

INDEX

ISSUES PRESENTED

I.

Whether The PCR court erred in denying Petitioner relief where trial counsel failed to present an alibi witness whose testimony, if believed, would have made Petitioner's participation in the armed robbery impossible?

II.

Whether trial counsel was ineffective for failing to fully cross-examine and impeach co-defendant Carlos Williams with evidence of bias and/or motive where Williams's testimony was the only evidence directly connecting Petitioner to the armed robbery of the Quick Cash?

III.

Whether the PCR court erred in finding that counsel was not deficient for failing to research and hire an expert in digital forensics?

STATEMENT OF THE CASE

Petitioner was indicted during the May 2013 term of the Aiken County grand jury for armed robbery and kidnapping. App. 244-247. The state, represented by Kevin Malony and Nicholas R. McCarley, called the case to trial on August 8, 12-13, 2013, before the Honorable Doyet A. Early, III, and a jury. Petitioner was represented by Thomas D. Broadwater. App. 1. Petitioner was found guilty as indicted and sentenced to an aggregate thirty-five years' imprisonment. App. 238, l. 8-15; App. 242, ll. 11-16; App. 248-249.

Petitioner timely filed a notice of appeal from his convictions and sentences. At Petitioner's request, the Court of Appeals issued an order on September 30, 2014, allowing Petitioner to withdraw his appeal. The remittitur was issued on October 16, 2014. On August 14, 2014, Petitioner filed an application for post-conviction relief. App. 250-256. The state filed a return on January 26, 2015. App. 257-261. PCR Counsel Aimee J. Zmroczek filed an amended PCR application on May 16, 2016, alleging eleven grounds of ineffective assistance of counsel and one claim of prosecutorial misconduct. App. 262-266. The first evidentiary hearing held in the matter was convened on May 24-25, 2017, before the Honorable Diane S. Goodstein. Petitioner was represented by PCR Counsel Zmroczek. The state was represented by Julie Coleman. App. 267. On August 14, 2017, the parties reconvened to take testimony from digital forensic experts Christopher Watkins and Robert Watkins. App. 426-427.

On May 7, 2019, the state moved to admit the transcript of the guilty plea of Petitioner's co-defendant into the record. App. 511-528. Petitioner opposed the motion, arguing the plea transcript should not be considered without an opportunity to cross-examine the co-defendant. App. 529. The state responded that it did not object to reopening the record for further testimony. App. 530-538. Subsequently, the parties reconvened on October 6, 2021, for a third

evidentiary hearing in the matter where testimony was presented by Petitioner's co-defendant and the prosecuting solicitor. App. 538-541. An order of dismissal was filed on December 27, 2021. App. 592-633.

An appeal of the denial of Petitioner's PCR application was not filed. On August 7, 2023, Petitioner filed a second PCR application alleging the ineffective assistance of prior PCR counsel for failing to file an appeal of the denial of his PCR application. App. 634-641. The state filed a return on March 22, 2024. App. 642-648. An evidentiary hearing was convened on July 16, 2024, before the Honorable Brian M. Gibbons. Petitioner was represented by Tommy Thomas. The state was represented by Zachary Jones. App. 649.

At the hearing, Counsel Zmroczek testified that she had intended to file an appeal of the denial of Petitioner's PCR application but became ill and was hospitalized. She confirmed she had spoken with Petitioner and his mother about filing the appeal, and that, but for her illness, the appeal would have been filed. App. 654, l. 18 – 655, l. 14. Petitioner testified that he had requested Counsel Zmroczek file an appeal, and she had confirmed that she would file one on his behalf. He later tried to contact Counsel Zmroczek to see if the appeal had been filed but could not reach her. His family hired Counsel Thomas who then discovered that no appeal had been filed. App. 658, l. 7 – 661, l. 18. Petitioner's mother's testimony corroborated the testimony of Petitioner and Counsel Zmroczek. App. 662, l. 15 – 663, l. 21.

At the conclusion of the hearing, the state agreed that Petitioner had timely requested an appeal that Counsel Zmroczek was unable to file due to unforeseen circumstances. App. 664, ll. 5-14. The court agreed, finding based on the totality of the evidence presented that Petitioner was entitled to a belated appeal. App. 664, ll. 19-25. On August 13, 2024, a consent order granting an appeal pursuant to *Austin v. State* was filed. App. 667-672.

STATEMENT OF THE FACTS

On February 19, 2013, at approximately 10:30 that morning, Penny Guerrieri was working at the Quick Cash on Richland Avenue in Aiken County when it was robbed by two men. App. 53, ll. 7-10; App. 59, ll. 21-60, l. 8; App. 207, ll. 13-16. Guerrieri had arrived at work around 8:45 that morning to open the business by nine. Guerrieri helped two customers without issue. The third customer to come into the business that morning was a large, light-skinned black male with flat braids who was wearing a white hoodie with a red symbol on it. App. 54, l. 23 – 55, l. 2. The man asked how he would qualify for a loan, and he spoke with Guerrieri for about two minutes before leaving. She found it odd that the man did not have any of the documents people typically brought to get a loan. App. 55, ll. 20-23.

After the man left, Guerrieri noticed two black men in black hoodies walking in the direction of the business. At that same time, around 10:15 in the morning, the mailman Wayne Brinegar arrived at the Quick Cash. Guerrieri saw the two black men continue past the business towards the Days Inn hotel. Guerrieri found the men suspicious and mentioned them to the Brinegar. Brinegar noted the two men were walking toward the Days Inn and had the hoods of their sweatshirts pulled up. He gave Guerrieri the non-emergency phone number for Aiken Department of Public Safety (ADPS) as she appeared nervous and then continued to on his mail route to the Days Inn. After dropping off the mail at the Days Inn, he saw the two men in the reception area of the hotel. App. 56, ll. 1-6; App. 57, l. 14 – 58, l. 13; App. 67, ll. 7 – 68, l. 25.

Guerrieri called the non-emergency number for ADPS. After the call, she looked up to see two black men in the business wearing black hoodies, sunglasses, and white latex gloves. One man was pointing a gun at Guerrieri, and the second man had turned off the lights. They asked where the money was and told Guerrieri it would be all right. Once they had the money,

one man lifted the back of Guerrieri's shirt and tazed her before leaving the business. Guerrieri was able to get up to lock the door and called 9-1-1. Guerrieri could not identify the individuals who robbed the business. App. 58, l.12 – 62, l. 2. The armed robbery occurred at approximately 10:34 that morning. Petitioner's Exhibit 19, pg. 9 (on file with this Court).

Sheila Fulmer, an employee at the daycare center caddy corner from the Quick Cash, had noticed a silver truck driving slowly along the road that ultimately pulled into the dirt parking lot behind the daycare. She saw a heavyset man with short braids wearing a white sweatshirt with a red symbol on it get out of the truck and walk to the Quick Cash. He then returned to the truck, eventually sitting in the driver's seat, while two other men got out of the truck in hoodies. She watched the two men walk across the street towards the Days Inn while the silver truck pulled out of the parking lot. App. 73, l. 14 – 76, l. 22. Another daycare employee, Kathy Holsenback, was working and was alerted by Fulmer to a suspicious truck in the parking lot. As she watched, she saw the men coming and going from the truck. She eventually called 9-1-1 at the direction of Fulmer. App. 80, l. 3 – 82, l. 6. Neither woman could identify the men. App. 78, ll. 8-23; App. 83, l. 24 – 84, l. 16.

ADPS put out a BOLO for a silver Dodge Ram, and one was located approximately 30-to-45 minutes after the robbery on Hampton Avenue at the Busy Bee Hair Salon. Detective Jeremy Hembree responded to the truck and spoke to Carlos Williams. Williams confirmed he was driver of the truck. Officers, while talking with Williams, observed clothing in the truck that was consistent with the description of the clothing worn by the robbers and requested he come down to ADPS headquarters to provide a statement. During the interview, Williams stated that he, Michael "Big Mike" Quarrels, and Petitioner were involved in the robbery of the Quick Cash. App. 143, l. 17-145, l. 23.

Williams alleged that about a week and a half prior to the incident date, Petitioner asked him if he wanted to commit a robbery, and he agreed. He stated that the two individuals who entered the Quick Cash to perform the robbery were himself and Petitioner. The pair went to Walmart to purchase BB guns late in the evening the Friday before the robbery and removed the orange tip to make the guns appear real. App. 89, l. 21 – 93, l. 10; App. 96, ll. 20-24. According to Williams, Petitioner purchased a taser from The Barnyard, a flea market in Augusta, and the pair returned there a second time to get a key that was necessary to make the taser functional. App. 97, l. 1 – 98, l. 8. Williams stated that the morning of the robbery he picked up Quarrels and then Petitioner before heading to Roses. At Roses,[1] the three men entered the store so that Petitioner could purchase a bookbag. App. 100, l. 6 – 102, l. 9. Williams then alleged the three men drove to the daycare where he parked. Quarrels then entered the Quick Cash to see who was working and find the light switch. After he returned to the truck, Williams and Petitioner began to walk towards the Quick Cash. Once the mailman left, they entered the business – Williams with a BB gun, and Petitioner with a taser – and robbed it. App. 105, l. 2 – 110, l. 17. The state admitted text messages between Williams and Petitioner that appeared to discuss an armed robbery. App. 117, l. 13-118, l. 3.

Petitioner denied his involvement in the robbery, stating he had been home at the time of the incident. He confirmed he had known Williams for several years and had been staying with Williams until he was kicked out of that house when he "got into a situation with his [Williams'] sister." App. 184, l. 11 – 185, l. 16. Petitioner and Williams worked together at Carlisle Tire

---

[1] At trial, the state called Virgina Jackson, the cashier who sold the bookbag, to testify. She identified Petitioner to the police as the individual she sold the bookbag to, stating she compared his driver's license to the credit card used in the purchase. The receipt showed the sale had occurred at 10:04 a.m. on February 19. She then identified Petitioner in the courtroom as the person she sold the bookbag to. App. 131, l. 16 – 141, l. 9.

and Wheel. About two weeks before the robbery, Williams had lost his job and needed money. Petitioner explained that Williams could go to Quick Cash with his last paystub and get a payday loan, then change his phone number, and not have to pay the loan back. Williams suggested robbing the Quick Cash instead, and Petitioner stated he would not do that because the people at the business knew him. App. 186, l. 17 – 188, l. 13. Petitioner testified that he would not have robbed the Quick Cash because he has had an account with them for five years, as did other members of his family, and he frequented the business so much they would welcome him by saying "Hey, J." App. 185, l. 23 – 186, l. 6.

Petitioner denied going to Roses that morning to purchase a bookbag and maintained that the images provided of people at Roses were not of him. He admitted Quarrels and Williams came to his house the morning of the robbery, but he maintained he had not left with them. App. 188, l. 14 – 189, l. 10; App. 191, ll. 7-17. He confirmed he purchased a taser but that he had never gotten the key required to make it work. App. 191, l. 18 – 193, l. 10. He admitted to purchasing BB guns at Walmart. App. 196, l. 17 – 197, l. 12

ARGUMENTS

"To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different." Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992) (citing Strickland v Washington, 466 U.S. 668 (1984)). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Strickland 466 U.S. at 695 (1984). A PCR applicant is entitled to relief based on ineffective assistance of trial counsel if he can establish that counsel's performance was deficient and that this deficiency prejudiced his defense. Id.; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

I.

The PCR court erred in denying Petitioner relief where trial counsel failed to present an alibi witness whose testimony, if believed, would have made Petitioner's participation in the armed robbery impossible.

Relevant Facts

Timothy Davis, Petitioner's stepfather, testified at the PCR hearing that on the morning of the incident, he awoke around ten-to-ten-thirty in the morning. He knew it was around that time because his show, Supernatural, was on. He entered the kitchen and began to cook breakfast. While he was cooking, Petitioner came out of his bedroom. The two talked and ate breakfast until around eleven-to-eleven-thirty when Petitioner went to his room to take a nap. He next saw Petitioner at two that afternoon before he left for work. Davis continued that around seven that evening, police came to the house asking to search Petitioner's room. They informed Davis that Petitioner was arrested for committing an armed robbery, and he responded, "that can't be true because he was here with me." App. 292, l. 3 – 293, l. 24; App. 294, ll. 3-15.

Although he was listed as a witness, Davis was not called for trial. App. 296, ll. 11-13; Petitioner's Exhibit 14 (on file with this Court). He would have testified that Petitioner was with him during the morning of the robbery during the previously mentioned times. He stated he did not testify because Counsel Broadwater told him the state would arrest him for perjury. He continued:

> I said well, I didn't lie. I mean that's -- he was with me. That's all I know. All I can do is tell the truth. And he said well, if you testify they're going to arrest you. And I was like, well, I'm not testifying because I don't want to go the jail for telling the truth. Because the text message that Jamaques text me, all he was saying is tell them I was with you. And I'm like, you were with me. So...I never texted him back, but my response, you were with me. I can't say you wasn't because you were with me. Now, after you went in your room and after I went in my room, I didn't see you until 2 o'clock, so...

App. 296, l. 14 – 297, l. 16. On cross-examination, the state confirmed Davis had been convicted for a 2008 possession of less than one gram of ice or crack cocaine, first degree. App. 299, ll. 3-5.

Petitioner spoke about his alibi defense with Counsel Broadwater and how his stepfather could testify to his whereabouts during the armed robbery. They also discussed the Roses video and how to challenge it, as Petitioner maintained he was not involved in the robbery. App. 312, l. 17 – 313, l. 14; App. 331, l. 7 – 332, l. 25.

Counsel Broadwater testified that Petitioner, *from the beginning*, maintained he was not at the Quick Cash on the day of the robbery. He stated he discussed using Petitioner's stepfather as an alibi witness, and then claimed Davis left the courtroom when he informed Davis the state would "come after him on his record." App. 363, ll. 12-16. Counsel Broadwater "didn't see where [Davis] could help." App. 363, ll. 17-20. On cross-examination, Counsel Broadwater admitted he was familiar with the rule that requires an advanced alibi notice be provided to the

state with the alibi witness's name, address, and summary of testimony. He alleged the Defendant's Witness List served as alibi notice, but he could not say when he served that document on the state as it was not dated. App. 383, l. 10 – 384, l. 16.

The PCR court dismissed the claim, finding:

> First, it is questionable whether Davis'[sic] testimony offers a complete alibi. Davis testified he got up at 10:15 to 10:30 a.m. and Applicant came into the living room afterwards. Additionally, Applicant's text to Davis calls into question the potential alibi testimony, Counsel opined Davis'[sic] testimony would not help the defense, considering: (1) Davis appeared reluctant to testify at trial, (2) Davis was Applicant's stepfather and therefore a close relation with a bias, (3) Davis had a criminal record, and (4) Davis was ostensibly asked by Applicant to provide an alibi, this Court finds counsel's [sic] decision not to call Applicant [sic] as a witness was reasonable trial strategy. Dunn v. Reeves, S.Ct. (Op. No. 20-1084, 2021 WL 2742771 at 4, decided July 2, 2021) ("[E]ven if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen.")
>
> This Court did not find Davis' [sic] PCR testimony convincing. Further, this Court does not believe Davis' [sic] testimony was reasonably likely to affect the outcome of trial, especially in light of the overwhelming evidence of guilt. This allegation is denied.

App. 621-622.

Discussion

Petitioner was home at the time of the alleged crime, and his stepfather was able and willing to corroborate his alibi, but he was not called at Petitioner's trial. Counsel Broadwater admitted he was aware of Petitioner's alibi, but he "did not see where it would help." The testimony of Davis created a complete alibi for Petitioner and corroborated his testimony. Considering Petitioner, from the beginning, has claimed he was not at the Quick Cash on the day of the robbery, it was ineffective assistance of counsel to fail to call Davis.

The appellate courts of this state have repeatedly held that the failure of trial counsel to call a known alibi witness or to elicit specific alibi testimony is deficient performance when not excused by valid trial strategy. See Weldon v. State, 436 S.C. 69, 870 S.E.2d 183 (Ct. App. 2021); Martin v. State, 427 S.C. 450, 832 S.E.2d 277 (2019); Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) (finding that it "was not objectively reasonable given the defense theory of the case" for counsel not to call witnesses that were critical to his client's defense.).

"[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) (quoting Strickland, 466 U.S. 668, 691 (1984)). If a PCR applicant claims trial counsel was ineffective for failing to interview or call alibi witnesses, then the "applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence." Glover v. State, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995).

The appellate courts of this state 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. However, a strategy will be deemed unreasonable under the Sixth Amendment if *the reasons given for the strategy are not sound.* Stone v. State, 419 S.C. 370, 384, 798 S.E.2d 561, 569 (2017) (emphasis added).

The PCR court erred in finding Counsel Broadwater was not ineffective for failing to call Davis to testify to Petitioner's alibi. The armed robbery occurred at approximately 10:34 in the

morning. Davis testified that he awoke between 10 and 10:30 that morning and that Petitioner was at home. Petitioner's testimony at trial was that he was home during the armed robbery. Davis's testimony accounted for Petitioner's whereabouts at the time of the robbery, such that it was a physical impossibility that he committed the crimes. His testimony at the PCR hearing provided a complete alibi. The findings of the PCR court are not supported by the record. See Weldon v. State, 436 S.C. 69, 870 S.E.2d 183 (Ct. App. 2021)

Counsel attempted to excuse his failing to call Davis by stating that Davis left the courtroom and that he did not believe Davis's testimony would help that much. These "strategic reasons," if they can be called that, are not valid reasons to fail to call a witness that creates a total alibi. Further, the assertion that Davis's record was what prevented him from taking the stand is not supported by the testimony at the PCR hearing. Davis's only prior offense was a 2008 simple possession of crack cocaine or ice, hardly rich impeachment grounds for the state. Counsel Broadwater also attempted to excuse his failings by claiming Davis left the courtroom. Counsel, knowing that Petitioner was asserting from the beginning that he was not involved in the robbery, had a duty to place Davis under a subpoena which would have precluded Davis from somehow skipping out on testifying. Failing to issue that subpoena was further evidence of his deficiency regarding Petitioner's alibi witness and key defense.

The PCR court found Davis's testimony "not convincing" and unlikely to affect the outcome of trial considering the overwhelming evidence of guilt. "In some cases, there is overwhelming evidence such that it categorically precludes a finding of prejudice." Martin v. State, 427 S.C. 450, 455, 832 S.E.2d 277, 280 (2019) citing Smalls v. State, 422 S.C. 174, 190–91, 810 S.E.2d 836, 844–45 (2018) (cleaned up). "However, the evidence must include *something conclusive,* such as a confession, DNA evidence demonstrating guilt, or a

combination of physical and corroborating evidence so strong that the Strickland standard of a reasonable probability the factfinder would have had a reasonable doubt cannot possibly be met." Id. at 455, 832 S.E.2d at 280 (emphasis added). Here, the strongest evidence connecting Petitioner to the armed robbery was the testimony of Williams. Outside of that testimony, there was nothing to support that Petitioner participated in the armed robbery of the Quick Cash. The evidence is far from overwhelming. Petitioner has shown both deficiency and prejudice, this Court should reverse and remand for a new trial on this ground.

II.

Trial counsel was ineffective for failing to fully cross-examine and impeach co-defendant Carlos Williams with evidence of bias and/or motive where Williams's testimony was the only evidence directly connecting Petitioner to the armed robbery of the Quick Cash.

Relevant Facts

At trial, Petitioner testified in his own defense. He confirmed he had an assault charge on his record from 2009. He also testified that he had been living with Williams until he got into a "situation" with Williams's younger sister and got kicked out. App. 184, ll. 5-25. On cross-examination the state elicited, without objection, that Petitioner had pled down to assault and battery of a high and aggravated nature from criminal sexual conduct. App. 199, ll. 1-7. At the PCR hearing, Petitioner testified that he had been living with Williams until an incident with Williams's sister. Petitioner was charged with criminal sexual conduct with Williams's sister. He ultimately pled down to ABHAN and was sentenced pursuant to the Youthful Offender Act (YOA). Petitioner alleged that Williams recorded his sister, stating nothing had happened between her and Petitioner but that he refused to help Petitioner for fear of angering his mother. After that incident, the relationship between Williams and Petitioner changed significantly. App. 318, l. 2 – 319, l. 9.

At trial, Williams testified that he and Petitioner traveled back to the flea market to get a key for the taser to make it functional. App. 97, l. 14 – 98, l. 8. Petitioner testified that while he discussed going back with Williams to get the key, he never went back to the flea market. He stated that without the key the taser was essentially just a flashlight. App. 191, l. 18 – 193, l. 10. During the second PCR evidentiary hearing, digital forensic expert Christopher Watkins testified

that, based on the cellphone records, only Williams traveled back to the flea market. App. 478, ll. 12-24.

There were threatening messages sent from Williams to Petitioner while they were in pre-trial detention that were included in the discovery. Petitioner had turned over letters that had been sent to him by Williams, while other correspondence was located during a search Williams's cell. App. 495, l. 14 – 496, l. 11; Petitioner's Exhibits 11 and 12 (on file with this Court). One note read in part, "If I get off, I'll tell the cops I was lying and you ain't have nothing to do with it. You should be straight away cuz you wasn't around me when it happened. Just tell Tim or yo mama to testify. Shit you wuz proley [sic] with Kali." Petitioner's Exhibit 11. Counsel Broadwater stated that he was unaware of the threatening letters sent to Petitioner by Williams and did not recall them being in discovery, so he did not use them to cross examine Williams. App. 490, ll. 3-12.

Williams testified at the PCR hearing that he was told he would receive ten years, the mandatory minimum for armed robbery, and that his kidnapping charge would be dismissed if he helped to convict Petitioner. App. 549, l. 9 – 550, l. 3; Petitioner's Exhibit 30 (on file with this Court). He recalled that his lawyer had told him he would receive ten years upon his plea, but he received thirteen years and had to plead to the kidnapping charge. App. 550, ll. 4-13. He admitted that during the trial, he stated he had not been promised anything but that this was a misunderstanding on his part. Williams had never faced serious charges before and did not realize being given a plea deal in exchange for testimony was considered a promise. App. 554, l. 23 – 555, l. 11.

During trial, Counsel Broadwater did not question Williams about any possible motives or bias.

Discussion

The state's best evidence against Petitioner was the testimony of Carlos Williams. Counsel wholly failed to cross-examine Williams on his motives and biases to falsely accuse Petitioner of participation in the armed robbery. Williams had myriad reasons to be biased against Petitioner, and it was incumbent upon Counsel Broadwater to cross-examine him on the issues of his bias and motive in order to undermine his credibility. The failure to fully cross-examine and impeach Williams was ineffective assistance of counsel.

"Evidence of a witness's bias can be compelling impeachment evidence, and for that reason "considerable latitude is allowed" to defense counsel in criminal cases "in the cross-examination of an adverse witness for the purpose of testing bias." Smalls v. State, 422 S.C. 174, 182–83, 810 S.E.2d 836, 840 (2018) citing State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991) (cleaned up). "Our courts have followed the general rule that anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony, so that on cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness." Id. citing State v. Brewington, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976) (quoting 98 C.J.S. *Witnesses* §§ 460, 560a) (cleaned up). "Rule 608(c) of the South Carolina Rules of Evidence preserves this longstanding South Carolina precedent." Id. citing State v. Sims, 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002) (cleaned up). See Also Rule 608(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.").

The record reflects that there were multiple grounds to impeach Williams' credibility at trial, however Counsel Broadwater did not cross-examine Williams at all on his motives or bias.

He had no valid strategy for his failure to thoroughly cross-examine Williams on matters that were relevant to the case and Petitioner's defense. The failure to cross-examine on any potential deals he received, the charges against Petitioner involving Williams's sister, the fact that Petitioner did not return to the flea market with Williams for the taser key, and the coercive jail letters which implied Williams lied about Petitioner's involvement was deficient performance. See Smalls, *supra.*

In denying the claim, the PCR court found Petitioner could not prove prejudice because the co-defendant's testimony was "significantly corroborated," and therefore, any cross-examination to show motive or bias would not have elicited testimony sufficient to create a reasonable probability of a different result. App. 619. This finding is not supported by the record, especially when considered with Petitioner's alibi defense and the testimony provided by Davis. Williams had numerous reasons to lie about Petitioner's involvement, and undermining his credibility was essential to Petitioner's defense that he was not present for the armed robbery. Cross-examining Williams on all the grounds detailed above would have created a reasonable likelihood that the results of the proceeding would have been different, as the credibility of the state's star witness and only individual to place Petitioner at the scene would have been deeply undercut. Petitioner has shown both deficiency and prejudice. This Court should reverse and remand to the lower court for a new trial on this ground. See Smalls, *supra.*

III.

The PCR court erred in finding that counsel was not deficient for failing to hire an expert in digital forensics.

Relevant Facts

At trial, the state admitted video evidence and cellphone evidence against Petitioner. At the PCR hearing, Counsel Broadwater testified that it was the evidence on Petitioner's cellphone that would "take him down" at trial. App. 359, ll. 2-4. Counsel Broadwater testified that he was not sure how to hire an expert, and he stated that he hired a "photographer" to testify at trial. App. 375, ll. 9-21. He did not consider hiring a digital forensic expert to look at the cellphone records because he was unaware of what types of information could be retrieved from cellphone records. App. 376, ll. 5-13. He also admitted that the state failed to provide him with the cellphone records in full until the middle of the trial, and thus he had not reviewed what the text messages were going to say. App. 393, ll. 1-7. He admitted that he did not require the state to produce anyone to testify about the accuracy of the date and time the video was purportedly captured, and he allowed the state to enter the videos solely through the testimony of Williams. App. 402, ll. 5-14.

Digital forensic expert Christopher Watkins testified that there was no need to perform a video enhancement in the case and that a comparison could be performed with the video he was provided. App. 463, ll. 10-13. He testified that the video evidence was incomplete, and there were points missing that would have been relevant at trial. He further testified that the timestamp on the Roses video and the timestamp on the receipt did not match, and that could have been further investigated prior to trial. App. 465, ll. 7 – 466, l. 20. Watkins explained that there were also video cameras at the Days Inn and the Quick Cash that appeared to be working

but were never requested by law enforcement or Counsel Broadwater. App. 469, ll. 5-10; App. 471, ll. 8-13.

Watkins testified that the cellphone records contradicted the testimony of Williams, as they did not show Petitioner traveling back to the flea market in Augusta. App. 478, ll. 12-24. They also did not show any activity on Petitioner's phone between 10 and 11 that morning which supported his testimony that he was at home asleep on the couch. App. 490, l. 16 – 491, l. 2

Discussion

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Reeves v. State, 415 S.C. 366, 375–77, 782 S.E.2d 747, 752 (Ct. App. 2015) citing Strickland v. Washington, 466 U.S. 668, 691 (1984). "[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Id. citing Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007) (emphasis omitted) (citation omitted). "[A] particular decision not to investigate must be *directly assessed for reasonableness in all the circumstances*, applying a heavy measure of deference to counsel's judgments." Id. citing Strickland, 466 U.S. at 691. "[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Id. citing Stickland 466 U.S. at 690–91. Where counsel articulates a valid trial strategy for failing to call an expert witness to testify at trial, such conduct will not be deemed ineffective. Id. citing Legare v. State, 333 S.C. 275, 281, 509 S.E.2d 472, 475 (1998).

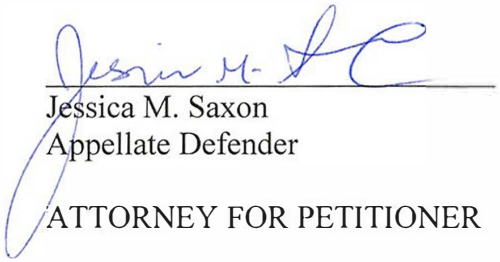
Counsel Broadwater did not do any investigation into the videos or cellphone evidence used at trial. He candidly admitted he did not even know what types of information could be obtained from cellphones, that he did not challenge the authenticity of the videos, and that he was provided the cellphone information in the middle of trial. This was deficient performance,

as counsel should have hired a digital forensic expert to thoroughly challenge the state's digital evidence that was presented at trial. See Reeves v. State, *supra.* This deficient performance was not excused by any trial strategy.

Petitioner presented the testimony of Watkins at the PCR hearing. That testimony revealed valuable information that was not presented to a jury that impacted the veracity of the state's video and cellphone evidence and the credibility of Williams and supported Petitioner's alibi defense. Petitioner has shown both deficiency and prejudice. This Court should reverse and remand to the lower court for a new trial on this ground.

CONCLUSION

Based on the foregoing arguments, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to allow full briefing of these issues.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of November, 2025.