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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable Daniel D. Hall, Circuit Court Judge

EZRA RYSUNN WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001145

PETITION FOR WRIT OF CERTIORARI

MOLLY M. KEEGAN
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

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ISSUES PRESENTED

I.

Whether the PCR court correctly granted petitioner a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), where the parties agree he did not knowingly and voluntarily waive his right to a direct appeal?

II.

Whether the PCR court erred by refusing to find trial counsel ineffective for failing to object to conclusory statements made by Detective Barton concerning petitioner's cellphone and where petitioner was prejudiced by trial counsel's deficient performance?

STATEMENT

The November 27, 2012, term of the Anderson County grand jury indicted petitioner for murder, armed robbery, kidnapping, and possession of a weapon during the commission of a violent crime. App. 759-764. On August 10, 2015, petitioner proceeded to a jury trial before the Honorable R. Lawton McIntosh. App. 1. Scott D. Robinson represented petitioner. App. 1. Rame Lambert-Campbell and Brantley Haigler prosecuted the case for the state. App. 1. The jury acquitted petitioner of the murder charge but found him guilty as indicted for the remaining charges. App. 478, l. 9 – 479, l. 12. Judge McIntosh imposed a total sentence of 55 years comprised of a 30-year sentence as to the armed robbery charge, a consecutive 25-year sentence for the kidnapping charge, and a concurrent 5-year sentence for the weapons charge. App. 489, ll. 13-22. Petitioner filed a timely notice of appeal, however, on October 14, 2016, the appeal was ultimately dismissed by the South Carolina Court of Appeals because trial counsel failed to provide proof that the transcript had been delivered, as required by Rule 207, SCACR. App. 491-504.

On December 1, 2016, petitioner filed a timely application for post-conviction relief (PCR), raising several claims of ineffective assistance of counsel including that trial counsel failed to perfect his appeal. App. 505-513. On September 15, 2017, the state filed a return. App. 515-519. A continuance of the evidentiary hearing was ordered by Judge McIntosh on February 9, 2018, because the court reporter received an extension to produce the trial transcript. App. 520. Thereafter, on August 20, 2018, counsel Susannah Ross, on behalf of petitioner, filed an amended application raising several additional claims of ineffective assistance of counsel and due process violations. App. 521-22. Ross also moved for discovery relevant to the PCR action which the circuit court granted. App. 523-25. On July 24, 2019, the circuit court ordered a

continuance of petitioner's evidentiary hearing because trial counsel was unavailable. App. 526-27. Then on March 2, 2020, the circuit court ordered that PCR counsel was authorized to expend a reasonable sum for the services of an investigator with expertise in the area of cellular phones. App. 528-29. On October 21, 2021, the circuit court entered a continuance order of petitioner's evidentiary hearing because a material witness needed more time to prepare to testify. App. 530-31. On February 25, 2022, the circuit court again continued petitioner's evidentiary hearing. App. 532. Further continuances were ordered on March 2, 2022, and on March 2, 2023. App. 534, 536. Then on August 21, 2023, the state filed an amended return. App. 537-56.

On August 22, 2023, an evidentiary hearing was held before the Honorable Daniel D. Hall. App. 557-677. Susannah Ross represented petitioner, and Donald J. Zelenka represented the state. App. 557. On May 29, 2025, Judge Hall signed an order finding petitioner entitled to belated review under *White v. State* and denying all of his other claims and dismissing petitioner's application with prejudice. App. 679-758.

This petition follows with a contemporaneously filed Brief of Petitioner pursuant to *White v. State*.

ARGUMENTS

I.

The PCR court correctly granted petitioner a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), where the parties agree he did not knowingly and voluntarily waive his right to a direct appeal.

Relevant facts

On August 24, 2015, trial counsel filed a timely notice of appeal on behalf of petitioner. App. 491-493. After receiving correspondence from the South Carolina Court of Appeals that the Court had not received notification that counsel failed to receive the transcript, trial counsel wrote a letter to the Court explaining that petitioner was "having difficulty coming up with the cost of the transcript." App. 496-501. Thereafter, on October 14, 2016, the Court dismissed the appeal because trial counsel failed to provide proof that the transcript had been delivered, as required by Rule 207 of the Sout Carolina Appellate Court Rules. App. 504.

During petitioner's PCR evidentiary hearing, he testified that he desired to appeal his case, and his family retained trial counsel Robinson for the appeal. App. 590, ll. 9-11. Ross showed petitioner a letter that petitioner received from Robinson. App. 590, ll. 12-19. The letter from trial counsel to petitioner explained that petitioner's direct appeal was dismissed due to the inability of his family to pay for the transcript. App. 678. The letter was entered into evidence as Applicant's Exhibit 1. App. 616, ll. 1-6. Petitioner further testified that Robinson never perfected his direct appeal because he failed to order the transcript. App. 590, ll. 20-24. He confirmed that he wanted an appeal, asked for an appeal, but his case was never appealed. App. 591, ll. 10-13. Petitioner called Daniel Tally who testified that he handled everything with Robinson concerning payments. App. 617, ll. 1-10. Tally testified that he gave Robinson $10,000 for trial and $5,000 for the appeal. App. 617, ll. 11-13. He testified that he went to

Robinson's office after trial and gave him the $5,000 for the appeal, but nothing was done after that. App. 617, ll. 16-21.

The state conceded that petitioner should be entitled to a belated direct appeal because he always wanted an appeal, never wavered from that appeal, and expected the appeal to go forward. App. 668, ll. 7-19. The state noted that petitioner was not aware of the issue with his family members not being able to pay for the transcript, and thus, was entitled to the opportunity for review of his case. App. 668, ll. 13-19. Ross agreed regarding the belated appeal issue. App. 668, ll. 21-23. She reiterated her request for a belated appeal under *White v. State*. App. 672, ll. 23-24. The PCR court noted that, as both sides agreed, it would find that petitioner never voluntarily or intelligently abandoned his appeal. App. 675, ll. 14-18.

In its order of dismissal, the PCR court concluded that the record indicated that petitioner asked trial counsel to appeal the conviction, which he did, but trial counsel failed to perfect the appeal due to his inability to secure funding for the trial transcript. App. 749-50. The PCR court noted that petitioner never abandoned his desire to appeal his conviction, and thus, found that petitioner did not knowingly or voluntarily waive his right to appellate review of his conviction. App. 750. The PCR court granted belated review of petitioner's direct appeal issues pursuant to *White v. State*. App. 750.

Discussion

"Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." *Simuel v. State*, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (citation omitted). "In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967)." *Id.* "To waive a direct appeal, a defendant must make a knowing and

intelligent decision not to pursue the appeal." *Sheppard v. State*, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004) (citing *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986) (mem.)).

In *Davis*, this Court ordered that where the PCR court finds a defendant did not knowingly and intelligently waive his right to direct appeal, "the applicant must petition this Court for a *White v. State* review." 288 S.C. at 291 n.1, 342 S.E.2d 60. The PCR court cannot itself grant relief by ordering belated appellate review. *Id.* The order further directed: "On the date the Petition is served, Petitioner shall also serve and file a brief addressing all direct appeal issues." 288 S.C. at 291, 342 S.E.2d 60; *see generally* Rule 243(i), SCACR (providing procedure for seeking *White v. State* review).

Here, as the PCR court found, petitioner testified that he desired to appeal his case, and his family retained trial counsel for the appeal, but trial counsel never perfected the appeal because the transcript was never paid for. App. 590, ll. 9-11, 20-24. In addition, petitioner's family member testified that trial counsel was paid $5,000 for the appeal. App. 617, ll. 11-21. Although trial counsel filed a timely notice of appeal, the record establishes that he failed to order the transcript which resulted in petitioner's appeal being dismissed by the South Carolina Court of Appeals. App. 491-504; App. 678. The state conceded that petitioner should be entitled to an appeal because he always wanted an appeal, never wavered from that appeal, and expected the appeal to go forward. App. 668, ll. 7-19. The PCR court therefore correctly found petitioner did not voluntarily waive his right to direct appeal, and a belated appeal is now appropriate. App. 749-50.

II.

The PCR court erred by refusing to find trial counsel ineffective for failing to object to conclusory statements made by Detective Barton concerning petitioner's cellphone and where petitioner was prejudiced by trial counsel's deficient performance.

Relevant facts

Trial

During petitioner's trial, the state argued that petitioner and several co-defendants were involved in the kidnapping, armed robbery, and subsequent death of C.J. Patel. The state presented evidence that petitioner's girlfriend and co-defendant Kyndra Howell told law enforcement that Patel called her the day he went missing and offered her money to have sexual intercourse with him. App. 102, ll. 2-14. Law enforcement located Patel's vehicle on July 2, 2012, in a heavily wooded area but could not locate Patel. App. 105, l. 9 – 106, l. 20. Patel's body was discovered on July 11, 2012, in a heavily wooded area, because co-defendant Zachary Gantt took law enforcement to the body. App. 111, ll. 15-24.

Gantt testified as follows. He pled guilty to murder, possession of a weapon during the commission of a violent crime, armed robbery, and kidnapping and had yet to be sentenced. App. 117, l. 18 – 118, l. 3.[1] He admitted that he was involved in the death of Patel and testified that three people were involved in the robbery, kidnapping, and ultimate murder of Patel. App. 118, ll. 10-18. He named those individuals as Howell, Jeremiah Johnson,[2] and petitioner.[3] App.

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[1] Solicitor Lambert-Campbell testified during petitioner's evidentiary hearing that when Gantt was sentenced, the decision was made to revise his plea and allow him to plead to voluntary manslaughter instead of murder. App. 650, l. 21 – 652, l. 23. He was also offered a lesser sentence because he cooperated, was 18 years old, and took law enforcement to the body. App. 652, ll. 1-5. Solicitor Lambert-Campbell also testified that Gantt did not plan the crime, did not pull the trigger, testified in two trials, and did the most to help the state. App. 652, ll. 5-21.

[2] Johnson went by "Munn" or "Tree." App. 119, l. 24 – 120, l. 5.

118, ll. 19-24. He testified that he saw Patel on July 1, 2012. App. 122, ll. 2-4. He had been at Howell's house in the morning and came back later in the day when he saw Howell sitting in a black Honda with Patel. App. 124, ll. 5-24. He explained Howell and Johnson called him back to Howell's house and were talking about Patel having money and that they wanted to rob him. App. 126, l. 22 – 127, l. 11. Gantt agreed to the plan to rob Patel. App. 127, ll. 20-22.

After the others took money off Patel, asked for PINs, and beat him, Gantt testified that petitioner came over while Patel was being held. App. 127, l. 22 – 132, l. 6. He testified that petitioner saw Patel who had his hands tied behind his back. App. 134, ll. 2-20. Petitioner started beating Patel's head, stuck a heated knife in his stomach, and used bug spray on Patel. App. 135, l. 14 – 136, l. 13. Gantt explained that they kept asking Patel for his PIN, but he would not give it to them, so they "just decided to take him out." App. 138, ll. 18-21. They took Patel to his car. App. 139, ll. 23-25. They drove to a heavily wooded area. App. 142, ll. 18-24. Johnson and petitioner took Patel to the woods once they stopped driving. App. 143, ll. 22-25. They all walked to the woods, and Patel and petitioner were walking ahead of everyone. App. 144, ll. 19-25. Petitioner asked Patel again for his PINs, he did not respond, and petitioner asked Johnson to step back. App. 145, ll. 10-14. Gantt testified that petitioner shot Patel. App. 145, ll. 14-15. Everyone walked back to the car and drove back to Howell's house. App. 147, ll. 6-12. When they got back to Howell's house, an individual named "Bug"[4] came over to buy drugs and they had him clean the black Honda. App. 148, l. 15 – 149, l. 22. Gantt testified that petitioner was not at the house at that time as he had gotten in his car and left. App. 150, ll. 6-8. He testified that petitioner kept the gun. App. 153, ll. 18-21.

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[3] Petitioner's street name or nickname was "Quavo." App. 120, ll. 13-15.

[4] Johnathan Johnson, who later testified in petitioner's trial, went by the nicknames "Bug" or "BJ." App. 184, ll. 20-24.

On cross-examination, Gantt agreed that the plan to rob Patel was Howell's. App. 167, ll. 11-17. He agreed that he did not name petitioner in his first statement to law enforcement. App. 170, ll. 2-20.

The state's expert in forensic pathology conducted an autopsy of Patel and determined that Patel's body was in an advanced stage of decomposition. App. 201, ll. 2-5. He determined that the cause of death was a gunshot wound to the head and classified the death as a homicide. App. 213, ll. 2-14. The classification of homicide was based on observations that Patel's hands were restrained behind his back and that the gunshot wound to the head could not be self-inflicted because the hands were restrained. App. 202, l. 16 – 203, l. 4.

Detective Barton, the lead detective, testified concerning his involvement with the disappearance and death of Patel. App. 225, ll. 19-22. As relevant, he testified that as part of the investigation, they attempted to get petitioner's phone records as he had a cellphone when he was arrested. App. 309, ll. 3-9. Barton testified that from petitioner's cellphone records he learned that on

> [t]he day of the incident, he and Kyndra Howell had had contact about all day long. The contact kind of stopped right around, right before or right around the time this incident happened. During – when the incident was occurring, there was a few more texts and phone calls made between Kyndra and Ezra.

App. 309, ll. 12-19. Petitioner's trial counsel made no objection to Barton's testimony concerning his cellphone records and Barton's interpretation of his phone contact with Howell on the day of the incident. *See generally* App. 309. After Barton's testimony, the state rested. App. 376, l. 1.

During its closing argument, the state emphasized Barton's testimony concerning petitioner's phone records. App. 424, ll. 5-9. Specifically, the state argued that although Howell

conceived of the plan, petitioner "knew exactly what was going on," and pointed to the numerous phone calls and texts that were testified to by Barton concerning petitioner's phone records. App. 424, ll. 5-9.

During deliberations, the jury sent a note asking what to do if they were unable to reach a verdict. App. 451, ll. 8-14. The court asked the forelady if the jury was hopelessly deadlocked, and the forelady responded, "I really don't know." App. 452, l. 17 – 453, l. 13. The court determined that an *Allen*[5] charge was appropriate, and the parties agreed. App. 453, ll. 18-24. The court gave the jury an *Allen* charge. App. 454, l. 1 – 456, l. 20. Approximately an hour later, the jury sent another note explaining that they were confused if they could "go with our gut" and requested another explanation on how to view circumstantial evidence. App. 457, ll. 5 – 13. The court recharged the jury with its general charge and on the jury's consideration for deliberations. App. 461, l. 3 – 477, l. 2. The jury returned to its deliberations and returned with a verdict of not guilty as to murder and a guilty verdict as to the remaining charges. App. 478, l. 9 – 479, l. 12.

During the sentencing hearing, the court imposed a total sentence of 55 years comprised of a 30-year sentence as to the armed robbery charge, a consecutive 25-year sentence for the kidnapping charge, and a concurrent 5-year sentence for the weapons charge. App. 489, ll. 13-22.

Evidentiary hearing

During his post-conviction relief evidentiary hearing, petitioner testified that there were a lot of phone records in his case and a lot of calls from him to Howell. App. 593, l. 23 – 594, l. 4. He testified that the majority of the calls were under 32 seconds. App. 594, ll. 5-7. He testified

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[5] *Allen v. United States*, 164 U.S. 492, 17 S. Ct. 154, 41 L.Ed. 528 (1896).

that the testimony from Barton at page 309 of his trial transcript that he had contact with Howell all day where the phone calls that were under 32 seconds or were not answered. App. 598, ll. 19-25. He agreed that he went to Howell's house that night and parked his car behind the house. App. 611, ll. 13-24.

Rame Lambert-Campbell, a solicitor who prosecuted petitioner's case, testified that he met with petitioner's trial counsel on several occasions and reviewed evidence. App. 629, l. 23 – 630, l. 2. He explained that petitioner and Howell's phone records were pulled, however, they were dealing with 2012 technology. App. 640, ll. 19-25. He further explained that, due to technology at the time, they could not pinpoint petitioner's location as all they had was a geographical location. App. 641, ll. 1-11. Campbell testified that they chose not to use the cellphone pinging, cellphone records, or triangulation data in the state's case in chief because it did not pinpoint petitioner to the incident location. App. 641, l. 11 – 642, l. 13. He explained that when Barton made comments about cellphone pinging, he did not feel he had an obligation to clarify the testimony. App. 642, l. 14 – 643, l. 5. Regarding Barton's testimony at page 307 of the trial transcript, Lambert-Campbell testified that his intention in asking the question was to have the detective summarize how he made charges against petitioner. App. 646, ll. 1-18.

The PCR court's ruling

In its order of dismissal, the PCR court addressed petitioner's allegation that trial counsel was ineffective for failing to object to prejudicial conclusory statements made by Detective Barton in his testimony, specifically his testimony concerning petitioner's cellphone and his contact with Howell the day of the incident. App. 733. The PCR court concluded that trial counsel's failure to object to Detective Barton's testimony related to the assertion that petitioner and Howell had contact all day but not during the time of the incident was deficient because the

testimony could have been subject to a hearsay objection or a confrontation clause objection. App. 738. The PCR court noted that it was unclear from the record any strategic reason why an objection was not made. App. 738. The PCR court stated, however, that the record showed that trial counsel elicited testimony on cross-examination that the record did not show that petitioner was "at the scene." App. 738.

The PCR court then found that, although counsel's performance was deficient for failing to object to the testimony, petitioner could not meet the prejudice prong under *Strickland* because he could not show a reasonable probability that the outcome would have been different. App. 739. Particularly, the PCR court determined that the testimony was very limited, and Barton conceded that the phone records did not show conclusively that petitioner was at the scene. App. 739. Moreover, the PCR court pointed to Gantt's testimony that petitioner came over to Howell's trailer, engaged in beating Patel, and shot Patel. App. 739. The PCR court concluded that there was no testimony that petitioner made any calls during the incident, and thus, he failed to prove prejudice related to the limited phone testimony. App. 740.

Discussion

The PCR court erred by refusing to find trial counsel ineffective for failing to object to conclusory statements made by Detective Barton concerning petitioner's cellphone contact on the day of the incident because petitioner was prejudiced by trial counsel's deficient performance.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of

counsel. A petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and that the deficient performance prejudiced the petitioner. *Strickland*, 466 U.S. at 687. Under the second prong, petitioner must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different." *Cherry v. State*, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing *Strickland*, 466 U.S. at 688). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." *Thompson v. State*, 423 S.C. 235, 245, 814 S.E.2d 487, 492 (2018) (citing *Rutland v. State*, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016).

Generally, a lay witness may not offer opinion testimony unless it is limited to "opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training." Rule 701, SCRE. Rule 702 provides, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. Further, "although Rule 702 states an expert witness may testify about matters involving scientific, technical, or specialized knowledge," our courts have "held on several occasions that expert testimony is required when the subject matter of the testimony falls outside the realm of ordinary lay knowledge." *State v. Gibbs*, 438 S.C. 542, 550-51, 885 S.E.2d 378, 382 (2023).

In addition, "[e]vidence is not hearsay unless it is an out of court statement offered to prove the truth of the matter asserted." *State v. Brown*, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994) (citing *State v. Sims*, 304 S.C. 409, 405 S.E.2d 377 (1991)). In some cases, "an out of

court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken." *Id.* (citing *United States v. Love*, 767 F.2d 1052 (4th Cir. 1985). While it "is widely recognized there can be a legitimate purpose for explaining events that occurred or did not occur in the course of an investigation," *see State v. Middleton*, 441 S.C. 55, 66, 893 S.E.2d 279, 284 (2023) (citing *Brown*, 317 S.C. at 63, 451 S.E.2d at 894), explaining the course of an investigation is not always relevant and probative, *see, e.g.*, *State v. King*, 422 S.C. 47, 66-68, 810 S.E.2d 18, 28-29 (2017) (citing *Ruiz v. Commonwealth*, 471 S.W.3d 675, 681 (Ky. 2015)). Thus, our Supreme Court explained in *King* that while testimony may be "couched in terms of explaining an officer's conduct during an investigation, it may not be used to offer the substance of an out-of-court statement that would otherwise violate our state's rules against hearsay." *King*, 422 S.C. at 68, 810 S.E.2d at 29.

As the PCR court correctly found, trial counsel's performance was deficient because Barton's testimony concerning petitioner's cellphone contact with Howell on the day of the incident could have been subject to a hearsay objection or a confrontation clause objection. App. 738. In addition, as the PCR court noted, the record does not demonstrate a clear basis for the strategic reason that an objection was not made. App. 738. Instead, the solicitor who prosecuted the case explained why the phone records were not entered into evidence and his reasoning for why he asked Barton certain questions during trial. App. 640, ll. 19-25; 641, ll. 1-11; 641, l. 11 – 643, l. 5; 646, ll. 1-18. Particularly, because trial counsel could have raised numerous objections to Barton's testimony including, but not limited to, relevance, hearsay, improper lay witness testimony, and the confrontation clause, his failure to raise any objection was deficient. *Strickland*, 466 U.S. at 686-87.

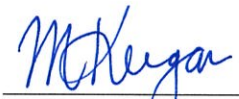
In petitioner's case, the testimony concerning petitioner's cellphone was neither relevant nor probative to Barton's investigation and instead appeared to be used by the state to circumvent the rules against hearsay, especially in light of the solicitor's testimony at the evidentiary hearing explaining why the cellphone records were not entered into evidence. *King*, 422 S.C. at 66-67, 810 S.E.2d at 28 (explaining that "it is necessary to caution prosecutor against using 'investigative information'" when it appears to be an attempt to circumvent the rules of hearsay); App. 737. Moreover, testimony interpreting cellphone records may have required special knowledge, skill, training, or experience, which the state did not establish that Barton had during his testimony at petitioner's trial, and trial counsel did not raise an objection to Barton's lay opinion testimony. *But see State v. Ostrowski*, 435 S.C. 364, 387, 867 S.E.2d 269, 281 (Ct. App. 2021) (explaining that "[c]ourts have frequently held that law enforcement officers can offer their opinion on certain aspects of drug trade based on their *personal experience or knowledge* regarding the *particular investigation* at issue, or how those experiences and knowledge shaped their contemporaneous perceptions of what they saw *while acting in the course of an investigation*.") (emphasis in original); *see also Gibbs*, 438 S.C. at 550, 885 S.E.2d at 382 (clarifying that "a witness's personal knowledge cannot remove testimony requiring scientific, technical, or specialized knowledge from the scope of Rule 702.")). Therefore, because Baton's testimony could have been subject to an objection on several grounds, the PCR court correctly found that trial counsel's performance was deficient. App. 738; *Strickland*, 466 U.S. at 686.

Petitioner was also prejudiced by trial counsel's deficient performance. While the PCR court is correct that the testimony concerning the petitioner's phone records was limited, that alone does not foreclose petitioner from establishing prejudice. App. 739-40. During

petitioner's trial, the state relied heavily on the testimony of petitioner's co-defendant Gantt and maintained that law enforcement was able to corroborate the statement he gave to law enforcement. App. 355, ll. 4-11 (Barton testifying that law enforcement was able to substantiate most of the details in Gantt's statement). Trial counsel's failure to object to Barton's testimony that petitioner and Howell had phone contact all day long on the day of the incident allowed the state to discuss petitioner's phone records without admitting the phone records into evidence for the jury's consideration. App. 309, ll. 12-19; 641, l. 11 – 642, l. 13. Despite the PCR court's finding that Gantt placed petitioner at Howell's house on the day of the incident and detailed petitioner's involvement in Patel's death, Gantt's testimony did not negate the prejudice resulting from trial counsel's failure to object to the improper testimony the state elicited from Barton. App. 738-40. Specifically, the unchallenged testimony allowed the state to corroborate the testimony of its key witness and advance arguments about petitioner's knowledge of the plan and whereabouts on the day of the incident. Petitioner was further prejudiced by trial counsel's deficient performance because the state emphasized the un-objected to testimony in its closing to argue that petitioner knew what was going on because his phone records showed the contact between petitioner and Howell on the day of the incident. App. 424, ll. 5-9. Thus, there is a reasonable probability that but for counsel's errors, the result of petitioner's trial would have been different. *Thompson*, 423 S.C. at 245, 814 S.E.2d at 492. Accordingly, the PCR court erred by finding that petitioner did not meet the prejudice prong under *Strickland*. App. 739-40; *Strickland*, 466 U.S. at 688.

CONCLUSION

For the foregoing reasons, as to Issue I, petitioner respectfully requests this Court grant his petition and allow his belated *White v. State* appeal. As to Issue 2, petitioner respectfully requests this Court grant the petition for writ of certiorari to allow full briefing on the issue.



Molly M. Keegan
Appellate Defender

ATTORNEY FOR PETITIONER

This 31st day of December, 2025.