RECEIVED
Jan 28 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Jocelyn J. Newman, Circuit Court Judge

DARRELL L. GOSS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001705

PETITION FOR WRIT OF CERTIORARI

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 finding trial counsel provided effective assistance where counsel did not investigate Sharon Goss and provided no reason for failing to investigate this witness?

II.

Whether the PCR court erred in finding trial counsel effective where counsel did not object to the hand of one hand of all charge and did not request a mere presence/mere knowledge/mere association jury charge?

STATEMENT OF THE CASE

On September 10, 2007, petitioner Darrell L. Goss was indicted in Charleston County for kidnapping, armed robbery, and assault and battery with intent to kill. App. 564 – 569. Along with his co-defendant, Joy Mack, Petitioner was tried before the Honorable J.C. Nicholson on February 23-26, 2009. Petitioner was represented by James Smiley. Mack was represented by Alex Apostolou. Trip Lawton and Kevin Hales represented the state. App. 1. The jury convicted Petitioner and Mack as charged. App. 543, l. 14 – 544, l. 2; App. 545, ll. 4-15. Judge Nicholson sentenced Petitioner to twenty years' imprisonment on each conviction, to run concurrently. App. 553. Petitioner's convictions were affirmed by the Court of Appeals. State v. Goss, No. 2011-UP-214 (May 17, 2011).

On May 27, 2011, Goss filed his first PCR application. App. 573 – 579. The state filed a Return in August 2011. App. 580 – 777. On September 16, 2011, a hearing was held before the Honorable Deadra L. Jefferson. App. 585. An order of dismissal was filed on December 1, 2011. App. 585 – 596. Petitioner appealed the order of dismissal and this Court remanded the matter back to the circuit court for a *de novo* PCR hearing on October 17, 2018. App. 597 – 602. The state filed an amended return to Petitioner's PCR application on January 10, 2019. App. 603 – 608. Petitioner, acting in a *pro se* capacity, moved to amend his PCR application on August 6, 2020, August 4, 2021. App. 610 – 662.

The *de novo* PCR hearing was held on December 8, 2021, before the Honorable Jennifer B. McCoy. The state was represented by Samantha Weidauer. Petitioner represented himself *pro se.* App. 663. An order of dismissal was filed on June 15, 2022. App. 745-774. Petitioner subsequently filed another amended application on June 21, 2022, and a Rule 59(e) motion to alter or amend the judgement on June 27, 2022. App. 739-744; App. 775-782. No ruling was initially

made on the Rule 59(e) motion. Petitioner timely filed an appeal, requesting to proceed *pro se* which was denied by order of this Court. The appeal was subsequently dismissed for failing to obtain counsel. App. 898.

Petitioner subsequently filed a second PCR action on September 25, 2023, requesting belated appeal of Judge McCoy's order of dismissal. App. 783 – 789. He amended the application on June 27, 2024, to request he be removed from the sex offender registry because his kidnapping conviction did not include a sexual assault or attempted sexual assault. App. 790 – 798. The state filed a return and motion to dismiss on July 2, 2024, and an amended return and motion to dismiss on July 5, 2024. App. 799 – 816. A conditional order of dismissal was filed on August 6, 2024. App. 817 – 825. Petitioner responded to the conditional order of dismissal on September 19, 2024. App. 826 – 830. An evidentiary hearing was convened before the Honorable Jocelyn Newman on December 17, 2024. Petitioner was represented by Christopher Murphy. The state was represented by Daniel Dixon. App. 831. At the end of the hearing Judge Newman granted Petitioner's request to remove his name from the sex offender registry and denied his belated appeal claim as premature. App. 841, ll. 1-12. An order of dismissal reflecting Judge Newman's oral ruling was filed on January 10, 2025. App. 843 – 849.

Petitioner appealed the dismissal of his belated appeal request. Upon receiving the file, undersigned counsel discovered that the Rule 59(e) motion filed on June 27, 2022, had never been finally ruled upon. A motion to hold the appeal in abeyance and remand for a ruling on the outstanding 59(e) motion was filed on June 25, 2025. App. 850 – 895. On August 14, 2025, this Court dispensed with further briefing and affirmed the order of Judge Newman. App. 896 – 897. Additionally, this Court then recalled the remittitur sent in Petitioner's original PCR appeal and ordered Judge McCoy to rule on the pending motion within thirty days of the order. App. 898-899.

Judge McCoy issued an order denying the Rule 59(e) motion on August 19, 2025. App. 900. Petitioner filed a timely notice of appeal of the denial of his PCR application. This petition for writ of certiorari follows.

STATEMENT OF THE FACTS

Petitioner's co-defendant, Joy Mack, was identified by the proprietor of the Urban Gear clothing store in North Charleston as the armed robber. App. 170, ll. 6-16. Mack was one of five people who robbed the store. App. 169, ll. 2-8. None of the men's faces were covered or masked. App. 96, l. 25 – 97, l. 2. The proprietor, Aytekin Ayazgok, known as "Andy," did not identify Goss as one of the robbers. App. 176, ll. 3-8. When Andy was shown a lineup, he identified Goss as a customer, but not one of his assailants. App. 204, l. 20 – 205, l. 8.

Andy testified that at approximately 7:30 PM, as he was closing the store, he saw five young black males enter the store. App. 169, ll. 2-12. Andy testified that Mack took an AK-47 out of his pants, pointed it at him and told him to get down. App. 171, ll. 14-22. The assailants dragged Andy and another worker who did not testify (David") to the back office and bound them. App. 174, ll. 1-6. Andy and David were both beaten on the back of the head with the butt of the gun. App. 172, ll. 15-24. Andy and David eventually got loose and called 911. App. 175, ll. 17-20. The robbers took their wallets. They also took clothing and shoes from the store, although Andy never made a list of the items that were stolen. App. 198, ll. 18-24.

Andy was shown a photo lineup that included Goss. Andy recognized Goss as a customer who had shopped in his store before the robbery. App. 204, ll. 6-15. Andy did not identify Goss as being in the store during the robbery. App. 205, ll. 6-8. At trial, Andy identified Mack as the assailant with the AK-47.[1] Andy never saw Mack and Goss together. App. 206, ll. 3-5.

In their investigation after the robbery, the police lifted a latent fingerprint from the exterior of the store's glass door. App. 315, ll. 1-8. The police testified that the print was still

---

[1] The sole basis for Mack's conviction was Andy's identification. No physical evidence tied Mack to the crime, to Goss, or to any member of Goss's family.

wet, probably from sweat. App. 315, ll. 1-8. However, they made no attempt to collect any DNA samples from the print. Instead, they fanned the print with a card until it was dry. App. 315, ll. 9-19. The police did not take a photo of the print on the door. App. 304, ll. 1-12. Based on a tip from an informant who evaded a subpoena and did not testify at trial, the police compared the print from the door with Goss's fingerprints. The State's fingerprint identification expert testified that the print matched Goss's prints. The State's fingerprint expert admitted there is no way to tell the age of a fingerprint. App. 331, ll. 12-14.

Based on the fingerprint identification match, the police executed a search warrant at the Goss residence the day after the robbery. App. 363, ll. 15-17. Ten people lived at the Goss residence. App. 462, l. 8 – 464, l. 3. The police found some clothes and tags that resembled items that came from Andy's store. App. 323, ll. 2-12. However, Andy admitted that some of the items and tags found did not come from his store, such as hats and sunglasses. App. 207, l. 19 – 208, l. 10.

In a car registered to Sharon Goss, Petitioner's cousin, the police found other clothing in the trunk and a revolver under the front seat. App. 322, ll. 6-21. The gun was sent to SLED for processing because blood appeared to be inside the barrel. The SLED DNA analyst testified that the blood found in the barrel of the gun came from Andy. It was the mixture of DNA of at least two people. SLED did not have enough DNA information on the second person to develop a profile. App. 403, ll. 16-25. Andy testified that he was only struck with the butt of a rifle and not with a handgun. App. 203, ll. 8-13.

From processing the scene and the evidence collected at the Goss residence, the police found latent prints at the cash register area, the metal display rods, the door frames, the shoeboxes, the grand opening banner, the gun, and a pair of sunglasses found inside the Goss

residence. Out of all these latent prints, the only one that was identified as belonging to Goss was the one from the exterior door. App. 331, l. 15 – 334, l. 15.

The only defense witness who testified was Thomasina Goss ("Thomasina"), petitioner's mother. She testified that she bought the clothes from men who were selling clothing on her street the same afternoon the search warrant was executed. App. 468, ll. 1-21. She bought a lot of pants, some shirts, hats, and gloves for her children. She realized that these clothes were probably stolen. App. 469, ll. 11-22. Thomasina was impeached with two convictions of giving false information to the police and a shoplifting conviction. App. 464, ll. 15-24.

ARGUMENT

"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 him. Id.; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

I.

The PCR court erred in finding trial counsel provided effective assistance where counsel did not investigate Sharon Goss and provided no reason for failing to investigate this witness.

Relevant Facts

A blueish-greenish vehicle was located at the Goss family home and searched during the execution of the search warrant. Under the front passenger seat of the vehicle officers located a revolver. App. 321, l. 17 – 322, l. 14. The revolver was identified as a Colt Tropper Mark III 357 magnum. App. 324, ll. 5-7. A trace of the gun revealed it was legally sold and purchased in Nashville, Tennessee in 1975. App. 352, ll. 2-4. The registered owner of the vehicle[2] where the gun was found was Petitioner's cousin, Sharon Goss. App. 354, ll. 21-23.

Officer Al Hallman testified that when he collected the gun, he noticed several areas that could be blood on the gun. App. 324, ll. 20-21. On cross-examination Hallman clarified that

---

2 An employee of the SC DMV testified that the registration was for 1992 Lincoln four door sedan to Sharon Rasheed Goss. App. 354, ll. 21-23

there appeared to be a small spot of blood on the handle next to a screw that was "very difficult to see" and blood inside the barrel. App. 337, l. 17 – 338, l. 20. Forensic testing of the substance inside the barrel returned a DNA match to Andy. App. 403, ll. 16-25.

At the PCR hearing, Petitioner questioned whether trial counsel had investigated Sharon Goss. Trial counsel responded he did not because he "did not believe that that investigation would be fruitful." App. 725, l. 18 – 726, l. 2. Trial counsel clarified that the investigation "wasn't going [to] change your defense. Our defense was the gun was, that wasn't your gun. I surely didn't expect to go find Sharon Goss and him say, oh, yeah, I bought a gun and it had the DNA all over it." App. 726, ll. 3-12.

Sharon Goss testified at the PCR hearing that he had purchased the gun, along with some clothing and shoes from some guys that had been selling merchandise in the neighborhood. He spent approximately $500 all together and after completing the purchased placed the items in his car which was parked in front of his residence, the house he shared with Petitioner and the other Goss family members. Sharon admitted that at the time of trial he had a pending possession with intent to distribute cocaine from 2008 but maintained he would have testified that the gun was his and he had acquired it "illegally."[3] Sharon confirmed trial counsel never spoke to him during the pendency of the case. App. 731, l. 23 – 732, l. 2.

Regarding overall approach to the case, trial counsel testified

> Let me tell -- and this is probably where some of the confusion is, and I want to make sure that I'm clear on how I handled the case and that Darrell might have misunderstood me, but I want to make

---

[3]Presumably, the state is referring to the purchase of the gun from a private individual as "illegal" because the gun itself was never found to be illegally purchased or sold. App. 352, ll. 12-14. It is not illegal for private, person-to-person gun sales between residents of this state. To the extent the state implied the gun purchase was illegal because Sharon had a pending felony charge at the time of trial, that is simply a misstatement of the relevant law. In no way was the purchase of the firearm "illegal."

> sure we know. I sat down with Darrell at the beginning, talked to him and told him -- he wanted to tell me some things.
> I'm like, Darrell, the way I do this is, I get the State's case and I look at it. If the State can't make up the allegations, you and I aren't ever going to have a talk, all right, about that if I don't need you, quite frankly. Darrell took that he couldn't -- he wasn't supposed to say anything to me, I guess. Because we had discussions, but it was more about tearing apart those specific pieces of evidence because the case against Darrell was circumstantial for the most part. And so that's where I focused my defense, was not -- the State meeting their burden.

App. 705, l. 16 – 706, l. 10. Counsel admitted he rarely talked with Petitioner during the pendency of the case because "he didn't need to. I needed Darrell to be quiet because I had a defense." App. 711, l. 25 – 712, l. 2.

The order of dismissal found that Petitioner "had failed to establish any deficiency in Counsel's preparation for trial" and that counsel was not deficient for failing to interview Sharon Goss because it would not have changed trial counsel's defense. App. 772-773

Discussion

"A criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation." Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986); see also Strickland v. Washington, 466 U.S. 668, 691 (1984). When evaluating the reasonableness of counsel's conduct, "the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, *is to make the adversarial testing process work* in the particular case." Strickland v. Washington, 466 U.S. at 690 (emphasis added). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Therefore, "at a minimum, counsel has the duty to interview potential witnesses and to

make an **independent** investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (emphasis in original).

The jurisprudence of this state has imposed a clear duty on counsel to conduct an independent and reasonable investigation into a case. See Ard v. Catoe, *supra*; Bagwell v. State, 410 S.C. 259, 763 S.E.2d 630 (2014). While counsel's strategic decisions will not be found to be deficient performance if he articulates a valid reason for employing the strategy, counsel's decision to employ a certain 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). [C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions...." Bagwell at 265, 763 S.E.2d at 634 citing Strickland, 466 U.S. at 691. "A blanket statement by counsel at a PCR hearing that he employed "strategy" does not automatically insulate the lawyer from being found ineffective." Gilchrist v. State, 350 S.C. 221, 228, 565 S.E.2d 281, 285, n. 2 (2002)

Trial counsel was deficient in failing to interview and investigate Sharon Goss and he offered no valid trial strategy to excuse his deficiency. The handgun presumably used in the robbery as it had the victim's DNA in the barrel, was a piece of circumstantial evidence that the state was able to tie to Petitioner by arguing the car where the weapon was found was at Petitioner's house. Because a large number of people lived in the home the state was able to speculate that Petitioner had access and use of the car, and thus was connected to the gun. Trial Counsel had an affirmative duty to discovery available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State. See McKnight, *supra*. The most direct evidence to rebut the aggravating evidence that the gun was Petitioner's was to call Sharon Goss to the stand. As Sharon testified, the gun was his and he

had recently acquired it – this was information that was vital for the jury to have as the weapon was found in a car linked to Petitioner's residence.

Further counsel's belief that an investigation would not be fruitful is not a valid trial strategy. Indeed, the only way counsel could reasonably know if an investigation would have produced useful information would have been to conduct the investigation. Instead, trial counsel merely assumed he had all the relevant evidence he needed for "his defense" of Petitioner. Trial counsel's PCR testimony further revealed that despite Petitioner being the person facing significant incarceration, trial counsel did not frequently discuss the matter with Petitioner because he didn't need to. He "needed Darrell to be quiet because I [trial counsel] had a defense." It follows that trial counsel did not even have the relevant and necessary discussions with Petitioner about investigation Sharon Goss but simply determined for himself that it would not likely be fruitful.

Finally, calling Sharon Goss would not have harmed Petitioner's, or trial counsel's, defense in any way. Sharon's testimony that the gun was his and that he had recently acquired it from the individuals selling "merchandise" on the street corroborates the testimony of Thomassina Goss and furthers the defense that not only was the gun "not Petitioner's" but that the gun was never in Petitioner's possession. Trial Counsel was ineffective for failing to investigate and interview Sharon Goss.

II.

The PCR court erred in finding trial counsel effective where counsel did not object to the hand of one hand of all jury charge and did not request a mere presence/mere knowledge/mere association jury charge.

Relevant Facts

During the jury charge the court explained the following to the jury,

> I charge you that it's the law of this state that if a crime is committed by two or more persons who have acted together in the commission of an offense, the act of one is the act of all. By way of illustration, two people can be guilty of killing another of murder only when one of the two had a pistol and only one bullet. If both together, acting together, assisting each other in the crime of the offense, the law says that under those circumstances the act of one is the act of all, and, as it is sometimes said, the hand of one is the hand of all.

App. 529, ll. 8-18. Trial counsel did not lodge any exceptions or objections to the jury charge. App. 541, ll. 2-4. It also does not appear that trial counsel requested, nor did the court charge, any version of mere presence, mere knowledge, or mere association to the jury.

During the PCR hearing Petitioner testified that counsel should have objected to the accomplice liability charge because the state had failed to produce direct or circumstantial evidence of a prior plan or scheme between Petitioner and Mack. App. 699, l. 18 – 702, l. 4. Petitioner also asserted that counsel was ineffective in failing to request a mere presence charge when the evidence in the case supported the charge. App. 727, l. 17- 728, l. 15.

Trial counsel testified that the charge given to the jury did not mention anything about a common scheme or plan as a necessary element. He stated it was the charge that was given at the time of the trial and admitted it was a "bare bones" accomplice liability charge. When asked why he did not object he responded that he did not believe the charge to be objectionable.

However, he confirmed that the state presented no evidence of a common scheme or plan between Petitioner and Mack. App. 709, l. 25 – 710, l. 3. App. 722, l. 8 – 723, l. 2.

The order of dismissal found that counsel was not deficient in failing to object to the accomplice liability charge because there was evidence in the record to support the charge going to the jury. It further found Petitioner could not show prejudice from counsel's failure to object. App. 770 – 771. Regarding mere presence, the court found that trial counsel's defense centered around proving Petitioner was not involved at all in the crimes and that a mere presence charge conflicted with that strategy. Thus, counsel was not deficient, and Petitioner could not show prejudice. App. 743 – 744.

Discussion

Under the doctrine we refer to in South Carolina as "the hand of one is the hand of all," the State proves the defendant guilty by proving he had *a mutual plan or agreement with another* person to commit one crime, and during the course of committing that initial crime, the other person committed a second crime they had not agreed to commit. State v. Sellers, 442 S.C. 140, 148, 898 S.E.2d 116, 120 (2024) (emphasis added). "One combining and confederating with others to accomplish an illegal purpose is criminally liable for everything done by either him or his confederates which follows incidentally in the execution of a common design as one of the probable and natural consequences, *though not intended as a part of the original design or common plan."* State v. Harry, 413 S.C. 534, 540, 776 S.E.2d 387, 391 (Ct. App. 2015), aff'd, 420 S.C. 290, 803 S.E.2d 272 (2017) (emphasis added). "In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties." State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766,

770 (Ct.App.2010). The trial court must determine whether there is any evidence the defendant had a mutual plan or agreement with another person to commit an initial crime. State v. Sellers, at 149, 898 S.E.2d 121.

The defendant is entitled to a mere presence charge if the evidence supports it. State v. James, 386 S.C. 650, 653, 689 S.E.2d 643, 645 (Ct. App. 2010). Mere presence is generally applicable in two circumstances. "First, in instances where there is some doubt over whether a person is guilty of a crime by virtue of accomplice liability, the trial court may be required to instruct the jury that a person must personally commit the crime or be present at the scene of the crime intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act." Id.

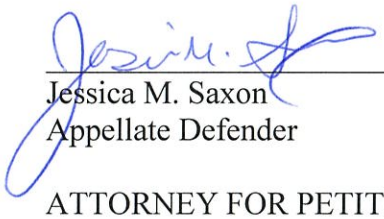
Trial counsel's failure to object to a jury charge can be grounds for ineffective assistance of counsel. See Taylor v. State, 312 S.C. 179, 439 S.E.2d 820 (1993). Similarly, the failure to request a jury charge that is supported by the evidence can be grounds for ineffective assistance of counsel. Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988). To show prejudice, a defendant must show that but for counsel's failure to object to the trial judge's improper instruction or but for counsel's failure to request the jury charge, the outcome of the proceeding would have been different. Id. "In evaluating whether a PCR applicant has suffered prejudice as a result of a jury charge, the jury charge must be viewed in its entirety and not in isolation." Gibbs v. State, 403 S.C. 484, 495, 744 S.E.2d 170, 176 (2013) (cleaned up).

Here the failure to object to the accomplice liability charge and the failure to request a mere presence charge was deficient performance. As stated, there was no direct or circumstantial evidence that Petitioner and Mack had a common plan or arrangement prior to the incident, thus the state failed to present the necessary proof to present accomplice liability to the

jury. The prejudice of the erroneous accomplice liability charge was heightened because counsel failed to request a mere presence charge. The mere presence charge was vital to counter the state's theory that the palm print on the outside of the store door was sufficient evidence of his participation in the incident. The combined errors of failing to object to the improper charge and failing to request the mere presence charge was ineffective assistance of counsel.

CONCLUSION

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



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of January, 2026.