STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Charleston County

Honorable Kristi F. Curtis, Circuit Court Judge

CHAVIAS JAHMAL JENKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000244

BRIEF OF PETITIONER

GARY H JOHNSON
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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ISSUE PRESENTED

Did the post-conviction relief court err in finding trial counsel was not ineffective for failing to object to Travis Repman's alleged improper bolstering and vouching testimony regarding the photographic lineup?

STATEMENT OF THE CASE

Petitioner was indicted by the Charleston County Grand Jury on December 10, 2013, for carjacking, kidnapping, possession of a handgun during the commission of a violent crime, and armed robbery of Maria Davila. App. 550 – 557. Petitioner was tried before the Honorable Kristi Harrington and a Charleston County jury from August 24 through 26, 2016. App. 33. Petitioner was represented by Luke Malloy and Mary Ford, while Nina Savas and Alex Ziegler appeared on behalf of the state. App. 33. Following a guilty verdict, Judge Harrington sentenced petitioner to 22 years for armed robbery, 22 years for kidnapping, 20 years for carjacking, and 5 years for possession of a weapon, all sentences to run concurrently. App. 558 – 561.

On direct appeal, Chief Appellate Defender Robert Dudek filed an Anders[1] brief raising the issue concerning the qualification of Repman as an expert witness as that was the sole objection asserted by trial counsel during trial.[2] The Court of Appeals dismissed the appeal. State v. Jenkins, No. 2016-002191 (S.C. Ct. App. May 1, 2019). Petitioner timely filed an application for PCR. App. 452. The application was amended before the evidentiary hearing to include allegations surrounding counsel's failure to object to the bolstering testimony of Repman. App. 465. An evidentiary hearing was held before the Honorable Kristi Curtis on June 23, 2022. App. 469. James Falk appeared on behalf of petitioner, and Samantha Weidauer represented the state. App. 469. By order dated January 17, 2024, Judge Curtis denied the application for relief. App. 535 - 549.

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[1] Anders v. California, 386 U.S. 738 (1967).

[2] The Anders brief is listed in C-Track under 2016-002191. *See* https://ctrack.sccourts.org/public/caseView.do?csIID=63351.

Originally, appellate counsel filed a petitioner for certiorari under the provisions of Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The case was transferred to this Court by the Supreme Court. By order dated January 7, 2026, this Court granted certiorari review on the issue presented in the Johnson petition for certiorari and denied the motion to be relieved as counsel. This brief of petitioner follows.

STATEMENT OF FACTS

On September 13, 2013, Maria Davila arranged to buy a cell phone on Craigslist. App. 175, l. 19 – 176, l. 14. After arriving at the meeting location, Davila was forced into her vehicle by an armed individual who then drove her around Charleston County at gun point. App. 178, l. 14 – 183, l. 10. After robbing Davila of money and a cell phone, the assailant then abandoned Davila and her vehicle in a rural area. App. 178, l. 14 – 183, l. 10. While no forensic evidence existed connecting petitioner to these crimes, he was charged with armed robbery, kidnapping, carjacking, and possession of a weapon during a violent crime on the strength of Davila's identification of petitioner as her assailant. App. 550 – 557.

Petitioner was originally connected to the crimes through a "tip" that his girlfriend, Candace Singleton, had information about the robbery. App. 263, ll. 13 - 23. Investigators then obtained petitioner's name off a prescription pill bottle they observed while questioning Singleton in the hotel room she shared with petitioner. App. 265, l. 24 – 266, l. 12. Armed with a potential suspect, a photographic lineup was prepared, with Davila being "uncertain" but eventually picking petitioner out as the assailant. App. 250, l. 4 – 255, l. 20. At trial, Davila identified petitioner as her assailant. App. 204, l. 5 – 205, l. 1. However, her original description of the assailant was generic with no reference to hair style, skin tone, complexion, or the shape or feature of his face. App. 214, l. 12 – 215, l. 10. Neither petitioner's fingerprints nor his DNA were recovered from Dalia's vehicle, despite police arriving on scene shortly after the assailant fled the scene and despite the fact that the assailant spent considerable time in the vehicle and occupied the driver's seat. App. 180, l. 4 – 181, l. 22; 340, ll. 3 – 20; 348, l. 23 – 349, l. 17.

During his original trial, officer Travis Repman was allowed to testify that the manner of the photographic lineup presented to the victim was the "most reliable false positive way to show

a lineup." App. 250, ll. 20 – 21. Repman then testified that presenting the photographic lineup in the manner used was "the best chance to have the right person selected." App. 251, ll. 1 – 2. The only objection voiced to this line of questioning was that the state had not qualified Repman as an expert witness. App. 250, ll. 17 – 19.

STANDARD OF REVIEW

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

Criminal defendants are entitled to the effective assistance of counsel pursuant to the Sixth and Fourteenth Amendments to the United States Constitu\tion. "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984). "An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense." Wiggins v. Smith, 539 U.S. 510, 521 (2003). "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Strickland, 466 U.S. at 687-688. Concerning prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

ARGUMENT

The post-conviction relief court erred in finding trial counsel was not ineffective for failing to object to Travis Repman's alleged improper bolstering and vouching testimony regarding the photographic lineup.

A. How the issue was raised at PCR.

During petitioner's original trial, officer Travis Repman testified, without objection, that the photographic lineup presented to the victim was the "most reliable false positive way to show a lineup."[3] App. 250, ll. 20 – 21. Repman then bolstered the photographic lineup further by claiming that the manner used was "the best chance to have the right person selected." App. 251, ll. 1 – 2. Trial counsel also did not object when Repman explained why a witness was not asked about a numeric scale of certainty:

> Because that person is so afraid at the time and when you are looking at these different photos although you may pick the right person out and you feel it's the right person you still may never believe a hundred percent in your head that that's them because you don't a hundred percent know that person.

App. 251, ll. 8 – 13.

At the PCR evidentiary hearing, trial counsel admitted he failed to object to the improper bolstering of the identification by Repman:

> Q. Okay. So your objection was that he was not an expert but he was qualifying, testifying as one?
>
> A. That's correct.

---

[3] Trial counsel's objection during trial regarding this testimony was that Repman had not been qualified as an expert. App. 250, ll. 17 – 18. That objection was in response to Repman's testimony concerning why the photographs were presented one at a time. Petitioner's Anders brief on direct appeal raised the issue of Repman's qualification as an expert to provide this testimony as that was the sole basis for trial counsel's objection. *See* State v. Jenkins, No. 2016-002191 (S.C. Ct. App. May 1, 2019).

> Q. But when Officer Repman said it is believed that this is the most reliable false positive way to show a lineup would you not agree that he is now bolstering the lineup?
>
> A. I agree with that.
>
> Q. Was that covered by, do you think that that's covered by your objection you didn't object to that statement as being bolstering, is that correct?
>
> A. That's correct.

App. 491, ll. 1 – 12.

While this testimony was asserted as prejudicial during petitioner's direct appeal, the basis for the objection was centered on Repman's status as an expert witness since that was the only objection asserted by trial counsel. The bolstering nature of the testimony was not addressed.

B. How the PCR court ruled.

The PCR court ruled that trial counsel's lone objection, that Repman had not been qualified as an expert, sufficiently covered the concerns regarding bolstering. App. 543. In making this ruling, the PCR court cited the deference required when trial counsel articulates a valid strategic reason for a decision. App. 543. The PCR court also noted that trial counsel had a valid strategic reason not to object after receiving a ruling on the initial objection regarding qualification as an expert:

> Counsel testified that he had objected on this issue and he felt that the statement was covered by his objection. He further noted, "I felt like I had already raised the issue to the Court for the Court's consideration. And the court had made its ruling; it overruled the objection. And I felt I would have gotten the same response [if I raised the same objection] to these additional questions. Further, there's an annoyance factor, you potentially annoy the judge and jury [for the same answer]."

> This Court finds Counsel's testimony on this issue credible. Counsel felt the issue was covered by his previous objection, which had just been ruled on, as reflected on line 19 of page 218. The witnesses answer then immediately followed at lines 20-21. Therefore, he did not object again on what he saw as the same point. When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above.

App. 543. Finally, the PCR court also noted a lack of prejudice surrounding the improper bolstering as a basis for denying relief. App. 543.

C. How the PCR court erred.

The PCR court's legal conclusion that the original objection by trial counsel (regarding qualification as an expert) covered the bolstering aspect of Repman's testimony and was a valid trial strategy should be reviewed by this Court de novo. *See* Thompson v. State, 423 S.C. 235, 814 S.E.2d 487 (2018).

The original objection did not cover the bolstering aspect of the testimony.

An objection that a witness has not been qualified as an expert does not cover testimony from the witness that bolsters other testimony or evidence, such as the reliability of a photographic lineup. Trial counsel's objection during trial leading up to the improper testimony, that Repman had not been qualified as an expert, was in response to a question from the solicitor regarding why a photographic lineup was presented "one at a time." App. 250, ll. 14 – 15. While the trial court overruled the objection in relation to that question, the improper bolstering and additional comments regarding the accuracy of the identification were not covered by an objection on Repman's status as either a lay or expert witness. *No witness*, either expert or lay, is allowed to bolster or vouch for the credibility of another witness or evidence. *See* Thompson,

423 S.C. at 245, 814 S.E.2d at 492 (noting that the expert witness "unmistakably conveyed to the jury her belief that Victim was telling the truth about the abuse" and also noted police investigator's testimony "also conveyed to the jury her impression that Victim was telling the truth" and that such vouching "was patently inadmissible, and there was no strategic reason for trial counsel not to object.").

Generally, "the prohibition against bolstering is for the purpose of preventing a witness from testifying whether another witness is telling the truth and to maintain 'the assessment of witness credibility ... within the exclusive province of the jury.'" State v. Taylor, 404 S.C. 506, 514–15, 745 S.E.2d 124, 128 (Ct. App. 2013). Our Supreme Court has warned against the dangers of allowing police officers to interject opinions about credibility or the value of evidence, such as the accuracy of a lineup procedure. *See* State v. Ellis, 345 S.C. 175, 177–78, 547 S.E.2d 490, 491 (2001) (finding error in allowing police officer to provide the jury his conclusion regarding the position of victim at the time of a shooting); *see also* State v. Lindsey, 394 S.C. 354, 360, 714 S.E.2d 554, 557 (Ct. App. 2011) (finding error in the admission of police officer's notes as inadmissible hearsay that improperly bolstered testimony).

By allowing Repman to comment on the quality of the method used in the photographic lineup to eliminate false identification, trial counsel allowed Repman to vouch for the accuracy of Davila's out of court identification. "Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness's veracity[ ] or where a prosecutor implicitly vouches for a witness's veracity by indicating information not presented to the jury supports the testimony." State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001). Thus, allowing an investigator to opine that the methods employed for photographic lineups protect against false identifications and are reliable are improper

bolstering requiring objection. *See* State v. Geter, 434 S.C. 557, 569, 864 S.E.2d 569, 575 (Ct. App. 2021) (holding such a question "serves no other purpose than to bolster [witness]'s trial testimony and puts an improper imprimatur on [witness]'s testimony as truthful.").

In this case, Repman improperly bolstered the out of court identification by Davila. Repman eliminated a "false" identification since he used the "most reliable false positive way to show a lineup." App. 250, ll. 20 – 21. Repman bolstered the photographic lineup in the manner used as it was "the best chance to have the right person selected." App. 251, ll. 1 – 2. Repman completed the job of building up Davila's out of court identification by vouching for its accuracy since Davila was "so afraid at the time" and when she was "looking at these different photos although [she] may pick the *right person out and you feel it's the right person* you still may never believe a hundred percent in your head that that's them because you don't a hundred percent know that person." App. 251, ll. 8 – 13 (emphasis added).

The PCR court erred in finding the original objection of counsel regarding Repman not being qualified as an expert preserved the later improper bolstering comments is a legal conclusion based upon an error of law that this Court should reject.

Failing to objection did not further the defense or trial strategy.

To be a valid strategic decision, it must make some reasonable sense in the context of the trial. A choice to allow testimony that directly contradicts or impedes defense strategy would not be strategic. For instance, failure to call available alibi witnesses would be unsupportable as a valid trial strategy. "Thus, we can conceive of no valid trial strategy supporting trial counsel's failure to call at least one of the alibi witnesses." Weldon v. State, 436 S.C. 69, 84, 870 S.E.2d 183, 190 (Ct. App. 2021). In the same vein, failing to investigate and challenge key forensic

evidence would not be a valid strategic decision. "In sum, we hold counsel's decisions regarding the investigation of, and failure to challenge, the gunshot residue evidence were unreasonable and clearly deficient, especially given the fact that this was a capital case with an arguable defense to the guilt phase." Ard v. Catoe, 372 S.C. 318, 336, 642 S.E.2d 590, 599 (2007).

Here, the PCR court's legal conclusion that trial counsel was pursuing a strategic decision in not objecting to the bolstering aspect of Repman's testimony is an error of law. In a similar setting dealing with vouching, our Supreme Court in Briggs v. State, 421 S.C. 316, 806 S.E.2d 713 (2017) noted that the defense strategy to show "nobody believed the victim, and thus the abuse did not happen, could not have been advanced by allowing [forensic interviewer] to testify she believed [victim]." Id. at 329, 806 S.E.2d at 720. As in Briggs, since trial counsel's trial strategy asked the jury to doubt the identification of petitioner as the suspect, the quality of the out of court identification, and trial counsel's failure to object to the improper bolstering of that identification, was in direct contradiction of this strategy and prejudicial. This is particularly true when this Court considers trial counsel's failure in objecting to Repman's excusing the hesitation of Davila during the lineup process: she was "so afraid at the time" and when she was "looking at these different photos although [she] may pick the right person out and you feel it's the right person *you still may never believe a hundred percent in your head that that's them because you don't a hundred percent know that person.*" App. 251, ll. 8 – 13 (emphasis added).

The PCR court's ruling that there was a valid strategic reason to not object to bolstering is an erroneous legal conclusion that this Court reviews de novo and should reject.

Assuming the trial court would have simply overruled the objection or become annoyed does not equate to a valid trial strategy.

Finally, the PCR court noted that trial counsel's fear of annoying the trial judge and simply being overruled again was a valid reason not to object. Trial counsel's assertion that the trial court would have simply overruled any further objection and potentially become upset does not create a valid strategic reason for not objecting. This supposedly "strategic reason" was reviewed and rejected by our Supreme Court in Stone v. State, 419 S.C. 370, 386, 798 S.E.2d 561, 570 (2017) (noting that the "fact the trial court has such wide discretion does not justify the decision not to object. Rather, the debate that precedes the exercise of that discretion is part of the adversarial process *Ard* and *Strickland* require trial counsel to test.").

As our Supreme Court has noted, "although we do not believe trial counsel was disingenuous in articulating a trial strategy to explain his failure to object to these comments, we find this 'strategy' cannot be construed as a valid one given the evident impropriety of the [evidence]." Brown v. State, 383 S.C. 506, 517, 680 S.E.2d 909, 915 (2009). Here, trial counsel's belief that the trial judge would immediately overrule another objection or become annoyed was not a valid strategic reason to allow bolstering. In some settings, evidence that is not contentious or damaging to defense strategy, a decision not to object on the belief the objection would not be well received or would annoy the trial judge *may* be a valid consideration and thoughtful strategy. For example, objecting to leading a non-key witness who is in the chain or custody may be proper, but may also annoy the trial court or the jury. Not objecting to leading questions during such "routine" matters would be a valid trial strategy. However, failing to object to critical moments, such as improper vouching and bolstering, out of fear of alienating

the trial court would clearly not be a valid trial strategy. *See* Stone, 419 S.C. at 386, 798 S.E.2d at 570.

The PCR court's ruling of a valid trial strategy is a legal conclusion reviewed by this Court de novo. No deference is required. *See* Sellner v. State, 416 S.C. 606, 787 S.E.2d 525, (2016). This Court should reverse the PCR court's error of law and find trial counsel was ineffective in dealing with the improper bolstering of the out of court identification.

D. Prejudice.

This case was entirely based upon Davila's identification. During the photographic lineup, Davila was "uncertain" before eventually picking petitioner out as the assailant. App. 250, l. 4 – 255, l. 20. While Davila identified petitioner as her assailant, such in court identifications are hardly "unsuggestive" and would have been previously tainted by the photographic lineup. App. 204, l. 5 – 205, l. 1. Davila's original description of the assailant was generic with no reference to hair style, skin tone, complexion, or the shape or feature of his face. App. 214, l. 12 – 215, l. 10. Neither petitioner's fingerprints nor his DNA were recovered from Davila's vehicle despite police arriving on scene shortly after the assailant fled the scene and despite the fact that the assailant spent considerable time in the vehicle and occupied the driver's seat. App. 180, l. 4 – 181, l. 22; 340, ll. 3 – 20; 348, l. 23 – 349, l. 17. The solicitor echoed Repman's statements about the reliability of the photographic lineup by calling it the "least suggestive method" during closing argument, further bolstering the out of court identification. App. 383, l. 12 – 15.

The entire defense strategy centered on raising doubt about the accuracy of Davila's identification. App. 503, ll. 5 – 22. The improper bolstering and vouching of the out of court identification, without proper objection or challenge by trial counsel, in a case entirely dependent

upon such identification, was prejudicial. *See* Thompson v. State, 423 S.C. 235, 814 S.E.2d 487 (2018); State v. Barrett, 299 S.C. 485, 386 S.E.2d 242 (1989). To establish prejudice, petitioner must demonstrate "there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). As the Supreme Court of the United States explained in Strickland v. Washington, "the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." Id., 466 U.S. 668, at 695 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016).

Here, as in Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018), there is no physical evidence that connects petitioner with the crimes charged, and his conviction was based solely upon testimony infected with the ineffective assistance of counsel. As this Court noted in Smalls, "for the evidence to be 'overwhelming' such that it categorically precludes a finding of prejudice—as we found it did in *Rosemond* and *Harris*—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." Smalls, 422 S.C. at 191, 810 S.E.2d at 845.

A case that depends on the credibility of the witnesses does not lend itself to a finding of harmless error. The proper question before the PCR court and this Court is whether there is a "reasonable probability the result of the trial would have been different without counsel's error." Smalls, 422 S.C. at 195, 810 S.E.2d at 847. In cases that depend so heavily on credibility, like CSC cases and the present matter, improper bolstering of testimony of the victim raises a

reasonable probability that, had trial counsel been effective and objected to the bolstering, the outcome would have been different. *See* Washington v. State, 445 S.C. 233, 243, 911 S.E.2d 536, 541 (Ct. App. 2025) (finding "counsel's failure to object was prejudicial because there was no physical evidence of the alleged CSC and the only other evidence in the case required an assessment of the relative credibility of the witnesses.").

The state's reliance on the credibility of Davila, and the bolstered out of court identification, was acknowledged by the solicitor during closing argument due to the lack of any physical evidence connecting petitioner to the crime:

> It's my burden to show. Yes, I asked them to re-examine them because it's my burden. It's the State's burden to prove the case, no one else's but mine, and I take that seriously because this is very serious.
>
> We have to try. Juries like all the information possible. I have to present the best case possible, but I can explain to you it doesn't really mean anything. It's not that sufficient because his prints weren't there or his touch DNA weren't there. Don't get distracted by that.

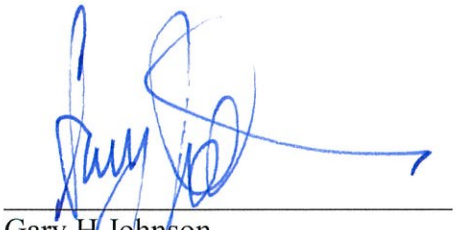
App. 380, ll, 12 – 21.

There is a reason our Supreme Court and this Court have reversed cases based upon improper vouching and bolstering. The assessment of witness credibility is within the exclusive province of the jury." State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012). Therefore, "even though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others." State v. Kromah, 401 S.C. 340, 358, 737 S.E.2d 490, 499 (2013). "This type of bolstering, especially when made by a witness imbued with imprimatur of an expert witness, improperly invades the province of the jury." State v. Chavis, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015).

Here, petitioner's right to a fair trial was undermined by the state's reliance on improper bolstering of the out of court identification by Davila. Trial counsel was ineffective in allowing this bolstering and there is a reasonable probability that the outcome would have been different during a trial free of the improper bolstering taint.

CONCLUSION

Based upon the foregoing, petitioner respectfully requests that this Court reverse the decision of the PCR court and remand this matter to the Charleston County Court of General Sessions for a new trial untainted by the improper bolstering of the state's key witness.



Gary H Johnson
Appellate Defender
Bar # 8898

ATTORNEY FOR PETITIONER

This 6th day of February, 2026.