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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Kristi F. Curtis, Circuit Court Judge

LARRY DURANT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001799

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

I.

Did the PCR court err in finding counsel provided effective assistance of counsel where trial counsel failed to fully investigate, interview, and call Ronald McRae as a witness during the defense's case?

II.

Did the PCR court err in finding Petitioner received effective assistance of counsel where Counsel Kent advised Petitioner to waive his right to testify on an improper basis and this prevented Petitioner from taking the stand to refute the testimony of the state's witnesses?

III.

Did the PCR court err in finding counsel provided effective assistance where trial counsel failed to object to the testimony of Natalie Kelly, whose testimony improper bolstered that of Minor, A.R., T.H., and D.B., violating the spirit of Rule 801(d)(1)(D)?

STATEMENT OF THE CASE

Petitioner Larry Durant was the pastor of Word International Ministries. He is legally blind and has had both legs amputated below the knee. App. 696. Due to his physical disabilities, Petitioner had “armor bearers” – individual church members who volunteered to assist Petitioner throughout his daily duties, helping him navigate the world, and keeping him safe. App. 628-629. After holding services, Petitioner, with the assistance of his armor bearers, would return to his office where he would meet with individuals that wanted to speak with him. Occasionally he would request specific people be brought to his office. However, after the majority of church services, Petitioner was often too worn out to meet with anyone. App. 630. When meetings did occur with Petitioner, they lasted no longer than five-to-ten minutes. Armor bearers always waited outside of Petitioner’s office during meetings. The door to the office was unlocked, and people often would walk into the office even if Petitioner was in a meeting. App. 632.

According to Petitioner’s doctor, Petitioner suffered from chronic knee pain which had an impact on his sexual life with his wife. He often developed knee effusions and had to have his knee drained. He was also being treated for erectile dysfunction – a diagnosis he received in 2007-2008. Petitioner was additionally being treated for a chronic sexually transmitted disease that remains active in his body which was diagnosed in 2009. App. 697-699.

On May 21, 2013, a report was filed with the Sumter Police Department accusing Petitioner of sexually abusing a minor. App. 243, ll. 2-7. The investigation revealed that four young women, Minor, A.R., T.H., and D.B., claimed Petitioner sexually assaulted them when they were teenagers. The abuse was alleged to have occurred primarily at the church Petitioner

presided over – Word International Ministries.¹ Minor was living with her grandmother, Lizzie Johnson, her aunt, Ulanda McRae,² and her cousin, A.R. (McRea’s daughter). The allegations came to light when McRae purportedly overheard a conversation between Minor and A.R. She confronted Minor and A.R. about the conversation, and both girls disclosed that Petitioner had sexually assaulted them. App. 293; App. 308. D.B. had lived at the residence, and T.H. visited regularly. App. 301. The four young women were known to be very close. App. 302; App. 633.

Petitioner was indicted in October 2014 by a Sumter County grand jury for one count of criminal sexual conduct with a minor (CSCM) in the second degree relating to the alleged assault of Minor. App. 1187-1188. The state, represented by Assistant Attorneys General Kinli B. Abee and David Fernandez, called the case to trial on May 23, 2016, before the Honorable Roger M. Young, Sr. and a jury. Petitioner was represented by Shaun Kent, Cameron Blazer, and J. David Weeks. App. 1. Over objection, the trial court allowed the testimony of A.R., T.H., and D.B. to come in under State v. Lyle and State v. Wallace.^{3, 4}

Minor had been a member of the church since she was five years old and would attend when she visited the area with her father. App. 283. She would attend church with McRae, Johnson, and A.R. On Tuesdays and Wednesdays, the church hosted bible study; Friday nights

¹ The church had two buildings – a smaller building at 710 Manning Avenue and the “big church” at 1010 North Guinyard. App. 283. The abuse was alleged to have occurred at both locations. Additionally, A.R. accused Petitioner of assaulting her at his home. App. 318.

² Ulanda McRea is repeatedly referenced to throughout the trial as Ulanda Riley. App. 413.

³ State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923); State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009)

⁴ On direct appeal, this Court affirmed the admission of the testimony of A.R., T.H., and D.B. pursuant to State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020) which was released in conjunction with the direct appeal opinion in this case and overruled Wallace, 384 S.C. 428, 793 S.E.2d 275 (2009).

were joy night; Sundays they had service starting around eight in the morning and ending anywhere from noon to three or four in the afternoon. App. 284. Minor moved into the residence with McRae, Johnson, and A.R. in July 2012. App. 304. Minor alleged that when she was thirteen in December of 2012, one of Petitioner's armor bearers would summon her to Petitioner's office. App. 293. Once there, he would have her lock the door⁵ so they could pray for her to "not lik[e] girls and not contract[] STDs." App. 288; 299. She alleged the "praying" consisted of Petitioner digitally penetrating her when at the small church on Wednesdays and sexual intercourse at the large church on Fridays or Sundays. App. 288-89. She purported that she would bend over the desk while Petitioner stood behind her during intercourse and that the "prayers" lasted ten-to-fifteen minutes. App. 291. The alleged abuse ended in May 2013. App. 293. Minor admitted that she was lying "real bad" during this time in her life but claimed to have lied only about having a cellphone and about her grades. App. 292.

A.R. began attending the church at age four with her mother and grandmother. App. 315. She alleged that when she was eighteen in December of 2012, Petitioner would "call her over the mic," tell her himself, or have an armor bearer come find her for private prayer sessions. She asserted the door was locked by her at Petitioner's request. App. 326. She stated Petitioner would pray that she would not get pregnant and not get any diseases by penetrating her with his fingers. This progressed to sexual intercourse where she purported to be bent over his desk in his office. App. 318-320.

⁵ In her statement to law enforcement, Minor stated the door did not lock. At trial, she testified she was referring to the door to the office at the smaller church (701) where she alleged the digital penetration occurred and that the door to the office at the larger church did lock. App. 299-300.

T.H. had been a member of the church since she was four years old and attended with her parents.⁶ App. 360. She alleged that when she was sixteen years old in 2012, Petitioner's armor bearers would come find her for private prayer to prevent "sexual diseases [and] breast cancer." App. 363-364. She too stated she locked the office door behind her at Petitioner's request when she came in for the meetings. App. 364. During the meetings, she was fondled on her breasts and vagina while she was in front of Petitioner's desk; however, she maintained that Petitioner did not penetrate her with his fingers. App. 365; App; 368-369. She did not make any allegation of intercourse occurring. T.H. allegedly disclosed the abuse to her mother in February 2013, at which point her mother spoke with Petitioner, and she was told she did not have to attend private prayer sessions. App. 366.

D.B. recalled that she was very young when she began attending Petitioner's church with her mother. App. 396. She stated when she was thirteen-to-fourteen, Petitioner had one of his armor bearers get her to come see him. She stated Petitioner would pray for her bladder problems to be healed by sticking his fingers in her vagina. She became pregnant from another individual,⁷ and she purported that Petitioner told her he would "bump the seed out of" her. App. 399. As with the other girls, she reported that she was bent over Petitioner's desk during the assaults, and he was standing behind her. App. 400.

None of the girls claimed that Petitioner wore a condom during intercourse. App. 624. None of the girls tested positive for STDs. App. 298; App. 329; App. 369. Additionally, none of the girls underwent any therapy. App. 624. Minor, A.R., and D.B. maintained that they had never seen photographs of or discussed Petitioner's penis with anyone, yet each stated his penis

⁶ T.H.'s father was Minor's Godfather. App. 369

⁷ Investigator Williams with the Attorney General's Office testified that she questioned D.B. about her pregnancy and was only informed that the father was another teenager. App. 482.

was pigmented “pink and skin tone.” App. 295; App. 325-326; 401-402. A.R. reported Petitioner would ejaculate in his hand and ask for a napkin and hand sanitizer or alcohol to clean up. App. 321. Minor reported that after intercourse, she would take towels to the bathroom to clear herself up. App. 291. Minor described Petitioner’s prosthetics as starting at his knee when they started at the base of his thigh next to his penis. App. 298; App. 724. She also described his underwear as white boxer briefs. App. 294. A.R. described Petitioner’s underwear as “Fruit of the Loom, like little-boy-style underwear.” App. 325.

In addition to the testimony of Minor and the Lyle witnesses, the state called Ulanda McRea and Lizzie Johnson. McRea was an active member of the church with many roles, including armor bearer. App. 304-305. As the outcry witness, she purported that she had come home from the store when she overheard her daughter A.R. and her niece Minor discussing generalized sexual assault occurring at the church. App. 306-307. She then confronted A.R. and Minor in the kitchen where they allegedly disclosed the abuse. App. 308-309.

McRea told Johnson of the allegations, and Johnson called Petitioner. App. 413-416. Johnson testified she spoke with Petitioner on the phone by herself before meeting with him in person. App. 417. McRea stated she was part of the phone call, listening to the conversation on the other line, and that Petitioner also spoke to Minor and A.R. on the phone. App. 310. Johnson additionally testified to her history with Petitioner. She met Petitioner in 1995 when both were attending the Love Center church. During this time, they had a romantic and sexual relationship that lasted approximately a year, with Johnson living with Petitioner in his home on Perry Boulevard. App. 420. They decided to open a church together, and in 1998, they opened the Miracle Deliverance Temple which was eventually renamed Word International. App. 411-

412. However, prior to opening the church that would become Word International, Petitioner ended the romantic relationship with Johnson. App. 421.

She moved out of Petitioner's Perry Boulevard home and into another home ("the residence") that he owned. Johnson purported that Petitioner deeded the residence⁸ to her on September 16, 2009, because "the Lord said for him [Petitioner] to give me a house." App. 421-424; App. 441. The deed was filed with the county on November 4, 2009. App. 444. When she went to obtain a copy of the deed, she discovered the deed of the residence had been transferred back to Petitioner on November 1, 2009. She maintained she had not signed the second deed but that she had signed the first deed in the presence of Petitioner and a notary. App. 429; 435; 443. The second deed transferring the property back to Petitioner was filed on May 31, 2013. App. 445. At the time of trial, Johnson and Petitioner were embroiled in a civil suit over the residence, and Petitioner had been charged with forgery in connection with the case. App. 424-425. Johnson was impeached with her prior breach of trust conviction from 1989 and a subsequent investigation by federal authorities of Johnson for theft. App. 413; 433-434.

There was minimal forensic evidence presented to the jury. Two items that were sent for testing were a blue polka dot dress that Minor believed she had worn during an incident and a hand sanitizer bottle from Petitioner's office. App. 349. No areas of biological fluorescence were found on the dress. App. 353. The hand sanitizer bottle had a high concentration of acid phosphatase on it which indicated the possibility of semen. App. 351. Testimony was elicited that acid phosphatase is also found in vaginal fluids, fecal matter, spermicides, feminine hygiene products, and saliva. App. 355. Semen was not discovered on the hand sanitizer – thus no DNA profile was able to be developed. App. 377. Sexual assault examinations were performed on

⁸ Petitioner had purchased the home for approximately \$23,000. At the time the deed was purportedly transferred to Johnson, it was worth \$112,000. App. 423

Minor, A.R. and T.H. Only T.H.'s exam showed signs consistent with past penetration. App. 459-460.

The defense case was focused on the impossibility of Petitioner abusing the girls based on his physical limitations and the incident location, combined with the assertion that the allegations were fabricated to help Johnson secure the residence. The defense presented expert witness Marvin Dawson who testified that Johnson's signature on both deeds was likely made by the same individual. He testified that the notary's signature from deed one and deed two were made by different people but that the block of text above the notary signature was written by the same person. Most importantly, he testified it was most probably that Petitioner did not sign deed one or deed two, thus indicating he had never deeded the property to Johnson. App. 598-602.

Counsel Kent called Myer Whack and Elvin Vaugh to testify about being armor bearers and the various forms of assistance that are provided to Petitioner. Whack testified the church building was a brick building that you could hear everything in and that it was not soundproof. He confirmed armor bearers always waited outside of Petitioner's office to assist him and that he had never overheard anything improper happening. If meetings lasted more than ten minutes, he would "find out what's going on" because there were always other people waiting to see Petitioner. He never heard the office door lock, and if he did, it would have raised suspicion in him. He also confirmed people would come and go into Petitioner's office without restriction. App. 625-632. He testified that Petitioner had a driver's license but that he has never driven a vehicle. App. 645. Vaugh similarly testified that armor bearers always accompanied Petitioner, that the walls were paper thin, that meetings lasted a short period of time, that people came and

went from Petitioner's office freely, and that Petitioner had a driver's license but did not drive. App. 649-655.

Keshona Edwards, cousin of T.H. and D.B., friend of Minor and A.R., and a member of Word International testified that she was in the car with T.H. when A.R. called. She overheard A.R. and T.H. playfully talking about the allegations against Petitioner before he had been charged in connection with the case. App. 663. Keshona maintained that Petitioner had never spoken to her or touched her in an inappropriate manner. App. 664-665. She also testified to a Twitter account she believed to be A.R.'s. The account had posted what appeared to be unserious tweets about the sexual allegations surrounding Petitioner. App. 665-669; 677-678.

Petitioner did not testify. App. 704-706. The jury began deliberations at 2:16 p.m. Three hours later, the court received a jury note stating after four attempts the jury was deadlocked, with one juror not participating in the vote at all. After discussion by the parties, the trial court issued an Allen charge, over objection of defense counsel. App. 759-765. At 5:55 p.m., the jury returned with its verdict. Petitioner was convicted as indicted, and sentenced to twenty years' incarceration. App. 766; 785-786.

Petitioner timely filed a notice of appeal which was perfected by E. Charles Grose, Jr. App. 819. The case was certified to the South Carolina Supreme Court on motion of Petitioner. App. 928. After holding oral argument, the South Carolina Supreme Court affirmed Petitioner's conviction and sentence in a published opinion on May 6, 2020. State v. Durant, 430 S.C. 98, 844 S.E.2d 49 (2020). Counsel Grose petitioned the United States Supreme Court for certiorari which was denied on February 22, 2021. App. 1023.

Petitioner timely filed an application for post-conviction relief on June 22, 2021. App. 1024-1031. The state filed a return on October 5, 2021. App. 1032-1045. PCR Counsel C.

Rauch Wise filed an amended PCR application on January 24, 2022, raising eight claims of ineffective assistance of trial counsel, one claim of ineffective assistance of appellate counsel, and one claim of new evidence related to the jury's use of the Lyle evidence entered in the case. App. 1046-1054.

An evidentiary hearing was convened before the Honorable Kristi F. Curtis on November 22, 2024. The state was represented by Assistant Attorney General T. Cruise Mitchell. Petitioner was represented by Counsel Wise. App. 1059. At the start of the hearing, Petitioner, through counsel, withdrew two claims regarding trial counsel, the claim regarding appellate counsel, and the claim regarding the jury. App. 1064-1065. Petitioner testified on his own behalf, and Counsel Wise called Ronnie McRae and Jeremiah Durant as witnesses. The state called Counsel Kent to testify. App. 1060. On July 1, 2025, an order of dismissal was filed finding Petitioner had failed to meet his burden of showing deficient performance that prejudiced his trial outcome. App. 1155-1180. Counsel Wise filed a motion to reconsider pursuant to Rule 59(e), SCRCP, on July 14, 2025. App. 1181-1184. An order denying Petitioner's Rule 59(e) motion was filed on August 29, 2025. App. 1185-1186.

This petition for writ of certiorari follows.

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

I.

The PCR court erred in finding counsel provided effective assistance of counsel where trial counsel failed to fully investigate, interview, and call Ronald McRae as a witness during the defense's case.

Relevant Facts

Immediately after the conclusion of Petitioner's trial, Counsel Kent received a phone call from Ronald McRea demanding to know why Counsel Kent had not called him as a witness during the trial. Ronald also expressed shock that his ex-wife Ulanda McRea, the outcry witness, had been able to testify without any mention of her prior criminal record. Counsel said that he did not think McRea had a prior record, to which Ronald responded that he knew for a fact she did. App. 789-790.

Following that conversation, Counsels Kent and Blazer ran a SLED catch with McRae's date of birth and social security number that had been included on a witness statement in the

discovery. They discovered McRea had a lengthy criminal record dating back to 1991. Of particular importance was McRea's 2004 conviction for obtaining signature under false pretenses for which McRea served a six-year sentence. 790-792. Counsel Kent filed a motion for a new trial alleging that the state had withheld McRea's criminal record in violation of Brady v. Maryland.⁹ He argued that McRea's record, in particular the conviction on obtaining signature under false pretenses, was material evidence to Petitioner's defense because it tied into the forgery allegation made against Johnson at trial. He further argued that the state ably countered the defense of fabrication by arguing that McRea, the outcry witness, must be believed because she merely overheard the initial disclosure. Thus, not being able to attack McRae's credibility as the material outcry witness was prejudicial. App. 792-797. The trial court ultimately denied the motion for a new trial finding the testimony of McRea's credibility was not material to the case and would have merely been impeachment evidence. App. 811.

On direct appeal, this Court held that the state was in possession of McRae's criminal background information and failed to accurately disclose it in violation of Brady. However, this Court held the failure to accurately disclose the information was not prejudicial because the defense never suggested McRea forged the deed. Further, there was not a reasonable probability that the result of the proceedings would have been different given the cumulative evidence in the form of the girls' testimony. State v. Durant, 430 S.C. 98, 110, 844 S.E.2d 49, 55 (2020).

At the PCR hearing, Petitioner testified that he met with Counsel Kent and Ronald at the church, so that they could show counsel the layout of the church and where everything was situated. Ronald testified he met with Counsel Kent at the big church to discuss the case. Ronald told Counsel Kent about the other rooms adjoining Petitioner's office, in particular a

⁹ 373 U.S. 83 (1963)

small store that was open before and after services that was always occupied. The canteen store area was connected to Petitioner's main office, and the door between the two rooms did not lock. App. 1084-1090. Ronald was surprised when he was not called as a witness at trial and maintained he had discussed McRae's background with Counsel Kent at their meeting. App. 1092.

When Counsel Kent took the stand, he testified to the following:

Q: And Mr. Kent, do you remember interviewing Ronald McRae prior to the trial?

A: I do.

Q: And was that -- will you explain that?

A: Yeah. And that is -- and I think I've told you. I've told Mr. Wise. I've told everybody who will listen. That -- and I will scream this from the top of the rooftop. Like that is a mistake myself and Ms. Blazer wholeheartedly believe that we made in this situation.

Ronald McRae -- and I look back at my notes. I have a copy of them. Ronald McRae -- and this is what made it strange -- Ronald McRae was interviewed specifically about the church, where -- where Mr. Durant would have met, things of that nature. I don't remember anything about the second door. I'll be honest. I'll say that I don't remember the second door, but my notes even reflect that we talked about the church, talked about the -- how it was set up, things of that nature.

The first line of the notes when we talked to Mr. McRae specifically was about -- *about the fact that he knew about the accusations, his ex-mother-in-law, his ex-wife, and the fact that they had done this to somebody before in the past. And he discussed this with me. It was a brief conversation, but he discussed it with me.*

I'll be very -- after the trial -- I will never forget the conversation. After the trial, me and Mr. -- I was driving back to go back to my office. I received a call from Mr. McRae. He asked me what happened. He said, "How come you did not call me to testify?" I told him -- because I was focused on the armor-bearer situation -- just, like, I didn't think that would be necessary because we already had that out -- because I was very distraught about -- about him

being convicted. And before he got off the phone, he made a comment. *He said, "She's going to get away with it again."*

And I said, "What are you talking about?" Because he was ready to get off the phone. I was like, "What are you talking about?"

And he mentioned the witness who testified, who's been the source of all of this information. And he said, "How was she able to get" - - and he brought it up -- "how was she able to get on the stand without having a criminal record?"

And I said, "What are you possibly talking about? She doesn't have a criminal record."

He said, "Mr. Kent, you're just wrong on that one." And Mr. McRae and I become very close on that situation.

I called Cameron Blazer. Cameron Blazer did a SLED catch. She went -- she saw that this person had a record. And so that's when all of this -- the Supreme Court matter started.

The reason I felt personally that we made a mistake was very simple. *Had I done a better job, had I done a more thoughtful interview with Mr. McRae, had I sat down with Mr. McRae and talked to him in full detail, I believe he would have given me more background on the witness. I would have known about her prior criminal record.* Knowing about her prior criminal record, I believe the strategy at -- because remember, the strategy at trial -- and the trial -- I disagree; the trial went very well. I think we did a very good job.

However, *that one simple strategy over this witness could have been controlling these girls and getting them to say things has always bothered me because I believe if I was able -- if I would have talked to Mr. McRae in more detail, I would have had that information, would have been able to cross-examine her in more detail, and would have changed her entire strategy.* So yes, I think that went a little more than you asked for, but --

Q: No. No. No. I always like when witnesses expound. Now, just -- just for clarification, the mistake you think you made pertaining to the prior convictions of Ms. Yolanda McRae, a witness for the state, correct?

A: The prior conviction -- and that's the one thing I keep saying -- and I -- I've read the Supreme Court opinions. I think everybody focuses on the prior conviction; *what I'm focused on is the interview of Mr. McRae. Had I sat down and interviewed Mr. McRae, I would have known more of the background of the prior conviction. Because the prior conviction, to me, was the entire gravamen of why we thought this witness was lying, and how she put these girls up, and why she would have put these girls up to lie.*

And when it was a close trial anyway, and the jury had to get an Allen charge, I believe had I been able to interview -- not had I been able to -- *had I interviewed Mr. McRae in more detail, I think that would have changed -- and I can't even say the strategy, because that was our strategy, so I can't sit here and would have changed it -- but it would have made it make more sense to the jury. It would have gone to questions that Mr. Wise was asking, "Why would these witnesses lie?" Well, we had the reason why they would have lied. This woman has done it once before with these specific girls.*

App. 1104-1108 (emphasis added). On cross-examination, Counsel Kent summed up his investigation into Ronald McRae as “not enough.” His notes reflected a bare bones conversation with Ronald about his ex-wife and ex-mother-in-law, and he conceded he should have further questioned Ronald regarding Ulanda McRae’s background stating “not to throw myself under the bus, the most basic lawyer should have done better than what I did in that situation.” Counsel Kent testified he was likely not totally unaware that Ulanda McRea had done something similar before, but he did not have the details necessary to cross-examine her about her past due to his failure to fully interview Ronald. App. 1119-1121.

The PCR court found Counsel Kent was not deficient for relying upon the state’s assertions that McRea did not have a criminal record based on this Court’s holding on direct appeal that the defense did not have the burden to independently investigate the criminal background of each of the state’s witnesses. The PCR court relied on the direct appeal opinion to dispose of the prejudice prong as well.

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. “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.

“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.”).

Counsel Kent candidly informed the PCR court that he failed to adequately interview and call Ronald McRae as a defense witness. During his initial meeting with Ronald, he learned that his ex-wife Ulanda McRea had a criminal background. Knowing that McRae was the outcry witness, it was paramount that her credibility be called into question – the individual with the most information about McRae’s credibility would have been her ex-husband Ronald. Fully interviewing Ronald would have established that McRea had a criminal background *and* that she had previously engaged in a similar scheme to accuse someone of a crime. Counsel Kent had no strategic reason for failing to fully interview Ronald and did not offer any reason for his failure –

he in fact admitted that he should have handled the investigation more thoughtfully. This was deficient performance.

Petitioner was prejudiced by this performance because the credibility of the outcry witness was never attacked. This case was about credibility and who the jury chose to believe – the witnesses for the state or the defense. A primary component of the defense case was that Johnson and McRae had fabricated the allegations to distract from the forgery of the deeds. Had counsel fully interviewed Ronald, he would have been able to effectively cross-examine and impeach McRea during her testimony. Moreover, he could have called Ronald to testify in the defense case to further attack the credibility of McRea, strengthen the defense’s case that the allegations were fabricated, and testify as to the full layout of the office where the assaults allegedly occurred – testimony that was nowhere in the original trial.

Further, the results of Petitioner’s direct appeal do not bear on this matter. On direct appeal, the Court was concerned with a violation of Brady and whether that violation was harmless beyond a reasonable doubt. Currently, the Court is concerned with Counsel Kent’s assistance of counsel and whether his *investigation* and subsequent actions passed constitutional muster – in this matter, they did not. It was improper of the PCR court to rely on the direct appeal opinion in disposing of this issue. Counsel Kent provided ineffective assistance of counsel in failing to fully interview Ronald McRae prior to trial and in failing to call Ronald McRae at trial.

II.

The PCR court erred in finding Petitioner received effective assistance of counsel where Counsel Kent advised Petitioner to waive his right to testify on an improper basis and this prevented Petitioner from taking the stand to refute the testimony of the state’s witnesses.

Relevant Facts

After jury selection but prior to the start of trial, the court engaged in a colloquy with Petitioner about his right to testify. During the discussion, the state agreed that Petitioner did not have any relevant prior convictions that could be used for impeachment. App. 212-216. After the state rested, the court again engaged Petitioner about his right to testify, explaining that when they returned from lunch Petitioner would be asked about his decision to testify. App. 559-560. After the defense had presented its witnesses, the court inquired whether Petitioner would testify and was informed that he would not take the stand. The court then clarified with Petitioner that he would not testify in the case. App. 703-704.

At the PCR hearing, Petitioner testified that he wanted to testify but did not take the stand because Counsel Kent informed him the state would “bring up a whole bunch of women” claiming to have had a sexual relationship with Petitioner. Petitioner said the testimony that he cried when confronted with the allegations was an outright lie that was never addressed by the defense. He testified that upon hearing the allegations, he requested that Johnson, McRae and the girls all come to the church to discuss it and “get it cleared away.” App. 1073-1074. On cross-examination, Petitioner stated he did not waive his right to testify. When confronted with the trial transcript, he stated he did not remember it occurring, but if it was there “I guess that’s what it was. I probably done blacked out by then.” App. 1081.

Counsel Kent testified that Petitioner had wanted to testify and that they had prepared Petitioner to testify. During the trial, the state “made it clear that they were going to make some allegations that he had had relationships with other individuals inside of the church.” The state had also investigated his eyesight and discovered Petitioner had a driver’s license and were going to argue the defense was overexaggerating his blindness. Based on those considerations,

Petitioner did not testify. App. 1133. On cross-examination, Counsel Kent conceded that the state would have only been able to introduce the evidence of extramarital affairs with adults if Petitioner had opened the door to the testimony. App. 1129-1130.

The order of dismissal found that Counsel's advice against testifying was reasonable given that the state intended to bring out harmful information about extramarital relationships if he took the stand. The court noted that the evidence was not admissible on its face but found it was a significant risk and a valid reason to advise Petitioner not to testify. The court found Petitioner waived the right to testify voluntarily and with the advice of counsel. Further, the court found Petitioner's testimony that he did not cry when confronted with the allegations would not have created a reasonable probability that the outcome of the trial would have been different. App. 1171-1173.

Discussion

The right of a criminally accused to testify or not to testify is fundamental. Rock v. Arkansas, 483 U.S. 44, 52 (1987) (“[F]undamental to a personal defense ... is an accused's right to present his own version of the events in his own words”) (internal citations omitted). “Every criminal defendant is privileged to testify in his own defense, or to refuse to do so.” Id. at 53. “The right to testify on one's own behalf at a criminal trial has sources in several provisions of the Constitution.” Id. at 51. “It is *one of the rights that are essential to due process of law* in a fair adversary process.” Id. (emphasis added). “The right to testify is also found in the Compulsory Process Clause of the Sixth Amendment, which grants a defendant the right to call ‘witnesses in his favor,’ a right that is guaranteed in the criminal courts of the States by the Fourteenth Amendment.” Id. at 52. “The opportunity to testify is also a necessary corollary to the Fifth Amendment's guarantee against compelled testimony.” Id. “The choice of whether to

testify in one's own defense ... is an exercise of [that] constitutional privilege.” Id. at 53 (internal quotations removed). Stated plainly, “[a] person's right ... to be heard in his defense—a right to his day in court—[is] basic in our system of jurisprudence; ...” Chambers v. Mississippi, 410 U.S. 284, 294 (1973) (internal quotations removed).

“Defense counsel bears the primary responsibility for advising the defendant of his right to testify or not to testify, the strategic implications of each choice, and that it is ultimately for the defendant himself to decide.” United States v. Teague, 953 F.2d 1525, 1533 (11th Cir. 1992) citing Johnson v. Zerbst, 304 U.S. 458, 464 (internal quotations removed). “This advice is crucial because there can be no effective waiver of a fundamental constitutional right unless there is an intentional relinquishment or abandonment of a *known* right or privilege.” Id. (emphasis in original) (internal quotations removed). “The defendant can then make the choice of whether to take the stand with the advice of competent counsel.” Id. Where counsel’s advice is premised upon an unsubstantiated legal assumption, counsel is under a duty to move the court for a ruling either confirming or invalidating that assumption. See Horton v. State, 306 S.C. 252, 254-255, 411 S.E.2d 223, 224 (1991).

As the PCR testimony revealed, the state threatened to bring up evidence of extramarital affairs Petitioner had with other adult women if he took the stand to testify in his own defense. Despite there being no legal basis for the admission of such evidence on its face, Counsel Kent advised Petitioner not to testify because of the threat of the potential evidence. This was improper. Counsel Kent recognized that the evidence was not admissible and likely would only be admissible if Petitioner opened the door. The advice to Petitioner was that he should not testify because that evidence would come in was an incorrect statement of the law. Counsel Kent wholly failed to bring this matter to the attention of the trial court and to obtain a ruling on the

admissibility of the potential rebuttal evidence. Counsel Kent should have clearly explained that there was a mere possibility the state could potentially get into that evidence, and he should have sought a ruling from the court on the admissibility of the evidence. Petitioner waived his Sixth Amendment right to testify based on improper legal advice that was based upon an unverified assumption. This was deficient performance. See Horton v. State, 306 S.C. 252, 254-255, 411 S.E.2d 223, 224 (1991).

Petitioner was prejudiced by the deficient performance in numerous ways. He waived a constitutionally guaranteed right. See Rock v. Arkansas, 483 U.S. 44, 51 (1987) (holding a criminal defendant has a constitutional right to testify in his own defense). His right to testify was fundamental and necessary to the due process of law, particularly in a case where he is the *only* individual who could refute the allegations. His testimony would have refuted the claim that he was “crying” in response to the allegations. The PCR court found this was not material evidence. However, Johnson, McRae, and A.R. all testified that Petitioner cried upon being accused, and it was patent that testimony was to imply guilt. It was not one mere mention that Petitioner cried but repeated references by different witnesses. It was imperative for Petitioner to take the stand as he was the only individual that *could* rebut this damaging testimony. Further, his testimony would have detailed the office space, which included access through a canteen store door that was not locked, as well as a room his children regularly occupied with a TV and couch. This testimony necessarily supported the defense theme that Petitioner could not have abused the girls in his office as they alleged. Counsel’s advice to Petitioner and his failure to call him as a witness was ineffective assistance of counsel.

III.

The PCR court erred in finding counsel provided effective assistance where trial counsel failed to object to the testimony of Natalie Kelly, whose testimony improperly bolstered that of Minor, A.R., T.H., and D.B., violating the spirit of Rule 801(d)(1)(D).

Relevant Facts

The first witness called at trial was Natalie Kelly, a detective with Sumter Police Department. After establishing Kelly's law enforcement background, the state asked, "What *first* made you conduct an investigation into Larry Durant?" The witness responded that a report had come into the office, so she had contacted Minor for an interview. She testified to the time and place disclosure made by Minor, as well as those by A.R., T.H., and D.B. Kelly testified that the girls were set up for forensic medical exams, that search warrants were executed at the two church locations and at Petitioner's residence, and that Petitioner "respectfully" denied the allegations when questioned by her. The state finished the questioning by asking what Kelly charged Petitioner with, to which she stated: "criminal sexual conduct with a minor second degree." App. 242-249. Counsel Kent did not lodge any objection to the questions or responses during the direct examination of Kelly.

At the PCR hearing, Counsel Kent testified that he did not see anything objectionable in the testimony of Kelly at the time. Examining it "through a different lens," someone could see it differently, but he did not find it objectionable. App. 1111-1112. On cross-examination, he conceded that the testimony could be interpreted to mean that each girl told Kelly that Petitioner had assaulted them and that was backdooring hearsay evidence; however, Counsel Kent did not think the testimony "hurt him." App. 1132-1134.

The order of dismissal found that the testimony at issue was not bolstering. Further, the court found that because Petitioner was on trial for CSCM, testimony that he was charged with CSCM after talking to the girls was not prejudicial. App. 1164-1166

Discussion

“The primary method of providing corroborating testimony regarding an alleged sexual assault is through the specific rule created for CSC cases—Rule 801(d)(1)(D), SCRE.” State v. Simmons, 423 S.C. 552, 563, 816 S.E.2d 566, 572 (2018). “This rule ‘limits corroborating testimony ... to the time and place of the assault(s)’ and considers it to be nonhearsay whereas ‘any other details or particulars, including the perpetrator’s identity,’ are generally considered hearsay and must be excluded unless they fall within an exception.” Id. citing Thompson v. State, 423 S.C. 814, 814 S.E.2d 487 (2018) (citation omitted). Pursuant to Rule 801(d)(1)(D), SCRE, “consistent with the declarant’s testimony in a criminal sexual conduct case or attempted criminal sexual conduct case where the declarant is the *alleged victim* and the statement is limited to the time and place of the incident.”

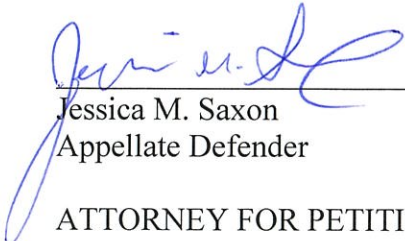
The testimony in this case appeared to be Rule 801(D)(1)(d) testimony, however the state made the testimony improper by beginning the questioning with asking the witness when she *first* began to investigate Petitioner and with concluding the questioning by inquiring as to exactly what Petitioner was arrested for. Kelly’s answers about a report from a victim, combined with the subsequent “time and place” disclosures, very clearly tied Petitioner to the assault. By ending the questioning with the information that a warrant for CSCM was obtained was further in violation of Rule 801(D)(1)(d). See State v. Smith, 522 S.C. 161, 767 S.E.2d 323 (S.C. App. 2014)(The rule of evidence that sexual assault victim’s prior consistent out-of-court statements limited to time and place of alleged incident are not hearsay, if victim testifies at trial and is

subject to cross-examination, *does not allow a witness to testify as to identity of alleged perpetrator*) (emphasis added). Counsel Kent was deficient for not objecting to the testimony of Kelly, as it included other details that turned the disclosure statements into improper bolstering of the alleged victims through improper corroboration. Counsel’s “strategy” of not finding the questioning objectionable was not reasonable under prevailing professional norms.

The testimony was prejudicial to Petitioner. As the parties at trial agreed, this case hinged on credibility. The testimony of Kelly that corroborated the testimonies of Minor, A.R., T.H. and D.B. beyond what Rule 801(D)(1)(d) allowed was improper hearsay that bolstered the victims. It was “precisely this cumulative effect which enhances the devastating impact of improper corroboration,” *Thompson v. State*, 423 S.C. 235, 249, 814 S.E.2d 487, 494 (2018), particularly in a case where there was not overwhelming evidence of guilt. Petitioner received 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 these issues.



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Appellate Defender
ATTORNEY FOR PETITIONER

This 23rd day of March, 2026.