

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Laurens County

Honorable B. Alex Hyman, Circuit Court Judge

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CHRISTOPHER JERMAINE WELLS,

RESPONDENT

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2025-001566

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RETURN TO PETITION FOR WRIT OF CERTIORARI
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QUESTIONS PRESENTED

I.

Whether the PCR court correctly found that trial counsel was ineffective for failing to investigate or discover additional evidence in respondent's case because respondent presented several pieces of evidence that could have been discovered had trial counsel performed an adequate investigation and where trial counsel's deficient performance prejudiced respondent?

II.

Whether the PCR court correctly found that trial counsel was ineffective for failing to more thoroughly cross-examine and impeach Kelly Ball, a critical state witness, with her inconsistent statements and evidence of her mental health records in order to attack her credibility and where trial counsel's deficient performance prejudiced respondent?

STATEMENT OF THE CASE

In April 2015, the Laurens County grand jury indicted respondent for possession of a weapon during commission of a violent crime, armed robbery, criminal conspiracy, and murder. App. 562-63, 567-68. On April 25, 2017, respondent proceeded to a jury trial before the Honorable Frank R. Addy, Jr. App. 1. Rodney Richey represented respondent. App. 1. Warren Mowry and Ruston Neely represented the state. App. 1. The jury acquitted respondent of murder but found respondent guilty as indicted for the remaining charges. App. 383, ll. 13-25. Judge Addy imposed a life sentence as to the armed robbery under S.C. Code Ann. § 17-25-45, and five years as to the criminal conspiracy charge, set to run concurrently. App. 390, ll. 9-19; 576-78. Respondent filed a timely notice of appeal, and his convictions and sentences were ultimately affirmed.

On February 14, 2019, respondent filed an application for post-conviction relief (PCR). App. 392-445. On June 3, 2019, the state filed a return, motion for more definite statement, and partial motion to dismiss. App. 450-460. Thereafter, on November 20, 2023, Ashley A. McMahan filed an amended PCR application on behalf of respondent. App. 446-449.

On November 28, 2023, an evidentiary hearing was held before the Honorable B. Alex Hyman. App. 461-530. Ashley McMahan represented respondent, and Zachary Jones represented the state. App. 461. On July 8, 2024, Judge Hyman entered an order granting post-conviction relief. App. 531-43. On July 29, 2024, the state filed a motion to alter or amend the order granting PCR pursuant to Rule 59(e), SCRPC. App. 545-59. On July 7, 2025, Judge Hyman denied the motion to reconsider. App. 560. The state appealed and filed a petition for writ of certiorari on December 5, 2025.

This return follows.

STANARD OF REVIEW

A PCR court's factual findings and conclusions regarding ineffective assistance of counsel will be sustained where there is any probative evidence to support those findings. *Jackson v. State*, 329 S.C. 345, 348, 495 S.E.2d 768, 769 (1998) (citing *Skeen v. State*, 325 S.C. 210, 481 S.E.2d 129 (1997)). Questions of law are reviewed *de novo*. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014)).

ARGUMENTS

I.

The PCR court correctly found that trial counsel was ineffective for failing to investigate or discover additional evidence in respondent's case because respondent presented several pieces of evidence that could have been discovered had trial counsel performed an adequate investigation and where trial counsel's deficient performance prejudiced respondent.

Relevant facts

Trial

On October 31, 2013, officers with the Laurens County Sheriff's Department answered a 911 call in reference to shots fired on River Hill Road in Enoree. App. 103, ll. 21-23; 168, l. 19 – 169, l. 3; 189, ll. 11-21; 203, ll. 2-9.¹ When the officers arrived at the scene they found David Lee Walker outside of the trailer and the deceased inside of his trailer. App. 172, l. 11 – 173, l. 23. Both men had been shot. App. 168, l. 1 – 174, l. 25. The scene was “total chaos.” App. 174, l. 21. Investigator Marty Crain testified that the deceased told him that Walker shot him. App. 182, ll. 7-16. According to Investigator Bryant Cheek, Walker stated that he had been attacked by two guys he did not know. App. 284, ll. 5-20. The deceased later died as a result of blood loss from a gunshot wound to the abdomen. App. 271, ll. 1-4. Walker survived.

Toris Moore testified that on Halloween night she saw respondent, Walker, and Saxon together. App. 109, ll. 17-24. Walker was her uncle. App. 110, ll. 4-5. She testified that Walker told her they were going to rob somebody, and they needed another gun. App. 110, ll. 6-12. She testified that Walker said, “he was about to go rob an old man that stayed with a white lady.” App. 110, ll. 13-18. Walker said the only gun he had was respondent's gun. App. 111, ll. 2-4. Moore told Walker that her gun was not available. App. 111, ll. 8-19. She testified that the

¹ Respondent's co-defendants were Johnny Lee Saxon and David Walker.

three men got there in respondent's car which was a gray color on Halloween night. App. 112, ll. 1-13. On cross-examination, Moore agreed that Wells was not a large guy and was not dark-skinned. App. 113, l. 14 – 114, l. 4.

The state presented testimony from Kelly Ball,² who explained that sometime between 10:30 p.m. and 11:00 p.m. on the night of October 31, 2013, she was with the deceased inside of his trailer when someone knocked on the door. App. 126, l. 2 – 127, l. 23. She described that she heard a verbal altercation, gunshots, called 911, and found the deceased and Walker lying outside. App. 121, l. 14 – 146, l. 10. Ball claimed to have seen another individual standing in the driveway that night and told police that the person in the driveway resembled Ty, a large, dark skinned Black male.³ App. 143, l. 2 – 144, l. 10.

During the investigation, Investigator Crain explained that after Ball calmed down, she showed him where the weapon the deceased had possessed was. App. 174, ll. 15-18. She directed him to the bedroom, and the weapon was between the mattress. App. 177, ll. 17-24. On cross-examination, Investigator Crain agreed that as a law enforcement officer you do not want anybody to move evidence. App. 184, ll. 5-7. He agreed that evidence being moved interfered with the investigative process. App. 184, ll. 16-18. Steven Sweat then testified that a 380 caliber shell casing was recovered and a 380 Lorcin handgun was found outside on the ground. App. 195, l. 15 – 196, l. 2. The handgun was beside the SUV. App. 196, ll. 24-25. The gun was found a long way from where Walker was found. App. 199, ll. 10-11. Deputy Taylor confirmed that two spent 380 caliber shell casings were recovered in the yard. App. 205, ll. 6-11. He

² Ball's trial testimony is discussed in further detail below in Issue 2.

³ It should be noted that several witnesses, including Investigator Cheek, admit that respondent is not dark-skinned, and a search of the Department of Corrections website lists respondent's complexion as medium brown. *See* App. 300, l. 20 – 301, l. 5.

confirmed that a revolver was found inside the residence under the mattress of the deceased's bedroom. App. 207, ll. 1-5. The revolver held five slots and had one empty. App. 208, ll. 1-5.

Andrew Ashley testified that he received a description of a car suspected to be involved in a shooting. App. 213, ll. 7-10. The car was an older model, box-style, dark blue car. App. 213, ll. 12-14. He saw a car matching the description. App. 213, ll. 17-19. He began following the car. App. 214, ll. 20-22. He lost sight of the car when it made a right-hand turn on Goose Way. App. 216, ll. 14-16. He met with Deputy McMahan who arrived in "[p]robably less than three" minutes. App. 217, ll. 1-8. Deputy McMahan was able to locate the car in the driveway of a residence. App. 218, ll. 2-16. They went to the front door and the individual who opened the door said the car was respondents. App. 218, l. 19 – 219, l. 3. They asked respondent if they could search his car, and he consented. App. 219, ll. 15-16. Nothing of evidentiary value was recovered. App. 219, ll. 17-21. Deputy Ashley testified on cross-examination that the car was dark blue and if someone said the car was brown that would not be the truth. App. 224, ll. 14-25.

Antonio Morris testified that in early November of 2013 he found a wallet on the corner of Highway 101 South and Pleasant View while he was walking to the Dollar Store. App. 275, ll. 7-17, 21-23. The wallet contained the deceased's identification, a dollar, and "a bunch of other little cards." App. 276, ll. 15-21. He tossed the wallet in the field near the Dollar Store. App. 277, ll. 1-4. He eventually led Investigator Cheek to the wallet, and Cheek took possession of the wallet. App. 277, l. 19 – 278, l. 13. Investigator Cheek then testified that the distance between where respondent was approached on Jones Hill Road was not a long way from the corner of 101 and Pleasant View. App. 290, ll. 2-21. He testified that the corner of 101 and Pleasant View was eight to twelve miles from the incident location in Enoree. App. 290, ll. 22-25. Cheek also testified that co-defendant Saxon had relatives that lived on Pleasant View. App.

294, ll. 2-7. On cross-examination, Cheek admitted that the only information about where the wallet was recovered was from Morris and he had no independent evidence. App. 313, ll. 2-4.

Respondent was ultimately acquitted of murder but found guilty as indicted for the remaining charges. App. 383, ll. 13-25. Judge Addy imposed a life sentence as to the armed robbery under S.C. Code Ann. § 17-25-45, and five years as to the criminal conspiracy charge, set to run concurrently. App. 390, ll. 9-19; 576-78.

Evidentiary hearing

During his evidentiary hearing, respondent testified that trial counsel did not investigate the evidence in his case despite his request for trial counsel to do so. App. 472, ll. 16-18. He testified that no body-worn cameras were shown during his trial. App. 480, ll. 19-20. He explained that he was not made aware of the body-worn camera footage or the deceased's cell phone until recently and that those pieces of evidence were not brought up during his trial. App. 480, ll. 22-25. He clarified that a cell phone was seized from the deceased, but he did not have any information about that cell phone. App. 481, ll. 1-6. Similarly, he did not have any of the body-worn camera footage. App. 481, ll. 7-9. Respondent further explained that a statement referred to a 32 automatic firearm but that was not in his trial. App. 481, l. 12 – 482, l. 8.

Respondent then presented testimony from Aimee Zmroczek, counsel for co-defendant Saxon. App. 488, ll. 5-16. She described that she went to the scene and was surprised to learn how far back from the road the trailer was. App. 489, ll. 13-19. It was her opinion that there was no way anyone could have seen what they said they saw. App. 489, ll. 19-20. She explained that she visited the incident location at night. App. 489, l. 24 – 490, l. 5. She stated that it was so dark she could not “even see in front of [her] face.” App. 490, ll. 13-16. She testified that the

streetlights did not go as far back as some of the people were seeing and that there were no floodlights present. App. 490, ll. 20-25.

Regarding the discovery in this case, she explained that although she had the benefit of both co-defendants having already gone to trial she went “through everything like it’s the first time I have ever seen anything.” App. 491, ll. 17-23. While reviewing the discovery, Zmroczek noticed there were key items that she needed to go forward with the case. App. 491, ll. 23-25. She testified that there were cell phones that had “a lot of information and I think persuaded the jury.” App. 492, ll. 1-2. She hired her own expert related to the cell phones. App. 492, ll. 6-13. Applicants Exhibits 1 and 2 were entered into evidence which showed texts to the deceased and a report showing calls on the deceased’s phone, none of which were provided by the state. App. 493, ll. 5-24. Zmroczek filed multiple motions to compel the phones. App. 494, ll. 2-5. She testified that there were text messages on the deceased’s phone from a lady threatening the deceased. App. 494, ll. 6-11. The phone extraction revealed the senders name as Teresa, and Tersea sent a message to the deceased which said, “you’re going down.” App. 495, ll. 2-11. Zmroczek also described a map that she created to demonstrate different incident locations and show how far all of the locations were from each other. App. 501, l. 15 – 502, l. 4.

Zmroczek further testified that the body-worn camera footage was not initially received from the solicitor, instead she noticed in the crime scene photos that were provided that the officers uniforms were equipped with body-worn cameras. App. 503, ll. 7-18. She was repeatedly told the footage did not exist but eventually received body-worn camera footage from the state. App. 503, ll. 19-23. She testified that she received footage from Crane, Timmons, and Sweat, and used the footage at trial. App. 503, l. 24 – 504, l. 5. The footage showed an officer finding another gun laying out in the dirt and showed an officer picking up a gun and wiping it

off. App. 504, ll. 21-25. She described that she was able to cross-examine the officers about how they handled the evidence. App. 505, ll. 1-7. On cross-examination, Zmroczek clarified that the texts were received by the decedent. App. 508, ll. 14-16. She explained that the language of the texts was “certainly something I think reasonable that a jury can consider either way.” App. 509, ll. 19-20. On re-direct examination, she described the “You’re going down,” text as reasonable doubt. App. 515, ll. 3-5.

Trial counsel then testified that “[t]he problem in this case is [respondent] is very difficult to represent,” because he was combative. App. 516, ll. 16-20. He testified that he went to the jail and “went over the evidence extensively.” App. 519, ll. 5-6. He testified that respondent’s cooperation level impeded any investigation. App. 520, ll. 11-12. As to disclosure of evidence, trial counsel testified that he does “a basic discovery motion minimum in every case.” App. 522, ll. 14-19. On cross-examination, trial counsel testified that he “got the discovery in the case and [he] was satisfied with the information that [he] got.” App. 523, ll. 6-8. He testified that he put the case together himself because he had no beneficial client assistance. App. 524, ll. 1-3.

Evidentiary hearing exhibits

Applicant’s exhibit 1 reflects several text messages recovered on the deceased’s phone. (Applicants Exhibit 1). One message read, “Hey this is Teresa you don’t have to lie if you with your lil ho Kelly just be a man about it and tell me so don’t be scared love you.” (Applicants Exhibit 1). Another text message, sent at 9:38 p.m. on October 13, 2013, read, “You going down.” (Applicants Exhibit 1). Finally, a message sent at 10:07 p.m. on October 13, 2013, read “The truth will set you feel love you and sick of the games your playing with me.” (Applicants Exhibit 1). Applicant’s exhibit 2 is the communications report for the deceased’s phone and shows the date and time that several texts were incoming from Teresa. (Applicants Exhibit 2).

Applicant's exhibit 6 shows a map that was prepared by Zmroczek to demonstrate the distance between the events of Halloween 2013 and the routes taken. (Applicants Exhibit 6). Applicant's Exhibit 8 is a photograph of gun on the ground that officers were seen racking on the body-worn camera footage. (Applicants Exhibit 8).

Finally, Applicant's Exhibit 7 is comprised of body-worn camera footage from Crain, Sweat, and Timmons. (Applicants Exhibit 7). The body-worn camera footage from Crain and Timmons shows the state of the scene on the night of the incident: how dark it was outside, where the streetlights were, the officer's handling of evidence, their interactions with Kelly Ball, and Ball's telephone conversation while law enforcement was arriving on the scene. (Applicants Exhibit 7). The Crain footage shows interactions with the deceased and his description of what his gun looked like. (Applicants Exhibit 7; Crain, 11:58:35 – 11:58:55). On Timmons's body-worn camera footage he states that Sweat found a gun and told him to stand with it. (Applicants Exhibit 7; Timmons, 11:58:00 – 11:58:10). On Sweat's body-worn camera footage, he can be seen in the grass outside. (Applicants Exhibit 7; Sweat). The Timmons footage shows him talking with co-defendant Walker. (Applicants Exhibit 7; Timmons, 12:00:06 – 12:03:20).

The PCR court's ruling

The PCR court, in its order granting relief to respondent, noted that it reviewed the testimony presented at the evidentiary hearing, observed the witnesses, and weighed the testimony. App. 535. In addition, the court explained that it had the opportunity to observe each testifying witness and closely pass upon their credibility. App. 535.

In addressing respondents' allegation of ineffective assistance of counsel for his failure to investigate, the PCR court noted that it interpreted his allegation as trial counsel's inadequate investigation of respondent's case and failure to review the discovery "in-depth that was made

available to [trial counsel] or requesting further evidence from the State that would have been obvious to request based on the Discovery given to [trial counsel].” App. 539. In evaluating this allegation, the PCR court observed that trial counsel did not have a case file with him at the evidentiary hearing. App. 540. Conversely, the PCR court noted that Zmroczek, who represented co-defendant Saxon and testified at respondent’s evidentiary hearing, had her case file available during the evidentiary hearing. App. 540. The court continued that Zmroczek testified that she reviewed crime scene photos in her representation of Saxon where she noticed the presence of body-worn cameras, so she requested the missing footage. App. 540. The PCR court noted that Zmroczek did not initially receive body-worn camera footage and followed up with the assigned solicitor to request that footage. App. 540.⁴ When reviewing the footage from the body-worn cameras, Zmroczek noticed a gun that was found in grass. App. 540. Additionally, she realized that there was a cell phone in custody belonging to the deceased, requested the cell phone, and had an expert extract the messages from the phone which revealed messages “that could be considered threatening in nature to the [deceased] in this case.” App. 540. Therefore, the PCR court explained that “[a]long with the issue related to the gun in the grass, these messages are reasonable doubt and could have changed the outcome of [respondent’s] trial.” App. 540.

The PCR court continued that Zmroczek testified that she went to the scene and took photographs. App. 540. She testified that it was incredibly dark and there was “no way Kelly Ball could have seen anyone up on the hill or in the street, let alone the person driving the car.” App. 540. Zmroczek made a map to show the path of the car during the incident and the

⁴ The PCR court further noted that an affidavit from the assigned solicitor, O. Warren Mowry, supported Zmroczek’s statement. App. 540. In addition, Mowry was also the solicitor assigned to respondent’s case. App. 566.

locations of other individuals supposedly involved in the crime. App. 540. Considering the exhibits respondent presented and the efforts made by Zmroczek, the PCR court explained that they showed “reasonable doubt that [trial counsel] did not explore in the trial of [respondent].” App. 540. The PCR court thus concluded that “[t]aking in all the evidence that Ms. Zmroczek had that [trial counsel] likely would have realized was missing had an adequate investigation been conducted,” relief should be granted to respondent on this allegation. App. 541.

Discussion

The PCR court correctly found that trial counsel was constitutionally ineffective for failing to conduct a reasonable investigation as trial counsel did not independently investigate the facts and circumstances of respondent’s case. In turn, as a result of trial counsel’s deficient performance, and the evidence respondent presented at his evidentiary hearing, there is a reasonable probability that the result of the proceeding would have been different. Accordingly, this Court should deny certiorari and affirm the PCR court’s decision.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. A petitioner must prove “that counsel’s performance was deficient” and fell below reasonable professional norms, and that the deficient performance prejudiced the petitioner. *Strickland*, 466 U.S. at 687-88. Under the second prong, it must be shown “there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different.” *Cherry v. State*, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing *Strickland*, 466 U.S. at 688). “A reasonable probability is a probability sufficient to undermine confidence in the

outcome of the trial.” *Thompson v. State*, 423 S.C. 235, 245, 814 S.E.2d 487, 492 (2018) (citing *Rutland v. State*, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016)).

Under the deficiency prong, “the performance inquiry must be whether counsel’s assistance was reasonable considering all the circumstances.” *Strickland*, 466 U.S. at 688. “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). Moreover, “strategic choices made by counsel after an incomplete investigation are reasonable only to the extent that reasonable professional judgment supports the limitations on the investigation.” *Id.* at 45, 661 S.E.2d at 360 (citing *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004) and quoting *Wiggins v. Smith*, 539 U.S. 510, 533, 123 S. Ct. 2527 (2003)) (internal quotation marks omitted). Further, “at a minimum, counsel has the duty to interview potential witnesses and to make an *independent* investigation of the fact and circumstances of the case.” *Lounds v. State*, 380 S.C. 454, 460, 670 S.E.2d 646, 649 (2008) (emphasis in original).

Trial counsel’s failure to conduct a reasonable investigation of respondent’s case or adequately review the discovery constituted deficient performance. *Strickland*, 466 U.S. at 688. The PCR court heard testimony from co-defendant Saxon’s counsel, Zmroczek, who discovered several additional pieces of evidence from reviewing the discovery, including: body-worn camera footage, the deceased’s cell phone, and a gun found in the grass. App. 491, l. 23 – 495, l. 11; 503, l. 7 – 505, l. 7. Additionally, Zmroczek testified concerning her investigation of the scene and its dark conditions on the night of the incident and a map of the path of the car during the incident and the locations of other individuals supposedly involved in the crime. App. 489, l.

13 – 190, l. 25; 501, l. 15 – 502, l. 4. The state faults the PCR court’s analysis for evaluating trial counsel’s investigation as based on Zmroczek’s decisions made with the benefit of hindsight. PWC at 11. However, this contention is without merit. First, Zmroczek explained that while she had the benefit of being the last co-defendant to proceed to trial, she went through the discovery as if it were the first time she had seen anything. App. 491, ll. 17-23. The additional evidence she was able to uncover from her review of the discovery was available to trial counsel and had trial counsel conducted a sufficient review of the discovery he too could have noticed that law enforcement officers were wearing body-worn cameras or that a cell phone was recovered from the deceased. *See Stone v. State*, 419 S.C. 370, 383, 798 S.E.2d 561, 568 (2017) (“A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.”). The PCR court properly evaluated trial counsel’s conduct from his perspective at the time of his representation of respondent, given that trial counsel had access to respondent’s discovery, and thus, the PCR court’s ruling was thus unaffected by the effects of hindsight. App. 539-41.⁵ Further, this contention also falls flat where respondent was tried *after* co-defendant Walker, and like Zmroczek’s representation of Saxon, had the benefit of knowing the result of a co-defendant’s trial.

⁵ The state also takes issue with the PCR court’s lack of discussion of the factual differences between respondent and his co-defendant Saxon’s case and characterizes the evidence against respondent as “far stronger.” PWC at 8-11. The fact that the evidence against Saxon somewhat differed from the evidence of respondent does not make the evidence Zmroczek was able to identify from reviewing the discovery “totally irrelevant.” PWC at 10. Had trial counsel sufficiently reviewed the discovery that was made available to him and conducted an adequate investigation, he too could have realized that additional evidence was missing. That the state’s case against respondent differed from Saxon’s is of no consequence, and the PCR court properly pointed to the specific pieces of evidence that could have been discovered after an adequate investigation.

In addition, the PCR court also properly noted that trial counsel merely articulated that respondent was a “difficult and combative client,” and that he would not give him any information that would have helped him in his representation of respondent. App. 540. Regardless of respondent’s cooperativeness, trial counsel had a duty to make an independent investigation of the facts and circumstances of the respondent’s case. *Lounds*, 380 S.C. at 460, 670 S.E.2d at 649. Any attempt to justify the decision not to request body-worn camera footage or the deceased’s cell phone from the state as a strategic choice would have been made after an incomplete investigation. *McKnight*, 378 S.C. at 46, 661 S.E.2d at 360. Even further, trial counsel merely testified that after he received discovery, he was satisfied with the information he received, which reveals neither a strategic decision nor a reasonable investigation or review of the discovery that was provided to him. App. 523, ll. 6-8; *see also Hillerby v. State*, 431 S.C. 323, 333, 847 S.E.2d 500, 505 (Ct. App. 2021) (citing *Gilchrist v. State*, 350 S.C. 221, 226-27, 565 S.E.2d 281, 284 (2002) (“Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.”)). The PCR court was therefore correct by determining that had trial counsel conducted an adequate investigation to discover the evidence that he “likely would have realized was missing,” he rendered ineffective assistance of counsel. App. 541.

The PCR court also correctly found that respondent was prejudiced by trial counsel’s deficient performance. Concerning prejudice, “when a defendant’s conviction is challenged, the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt.” *Lounds*, 380 S.C. at 459, 670 S.E.2d at 649 (citing *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) and quoting *Strickland*, 466 U.S. at 695)) (internal quotation marks omitted). “A reasonable probability is less than a

preponderance of the evidence . . .” *Bagwell v. State*, 410 S.C. 259, 264, 763 S.E.2d 630, 633 (Ct. App. 2014). First, the state’s argument that the PCR court committed an error of law by applying the incorrect *Strickland* standard for assessing prejudice is without merit. PWC at 11-12. In the PCR court’s order, it outlines the *Strickland* analysis it must apply and specifically identifies that counsel’s deficient performance must prejudice respondent such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” App. 535-36. It is certain that the PCR court understood what the standard for prejudice is. Despite the state’s arguments to the contrary, the PCR court faithfully applied *Strickland* and made no error, much less an error of law, by determining that the specific pieces of evidence presented were “reasonable doubt.” App. 540-41. Particularly, the PCR court properly identified that the exhibits entered at respondent’s evidentiary hearing would have presented the factfinder with a reasonable doubt as to respondent’s guilt, and thus, correctly assessed prejudice under *Strickland*. App. 540-41; *Lounds*, 380 S.C. at 459, 670 S.E.2d at 649. That the PCR court explained how certain pieces of evidence could have created reasonable doubt is not an application of an improper standard but rather support for the conclusion that respondent suffered prejudice as a result of trial counsel’s failure to conduct a reasonable investigation or sufficiently review the discovery.

Turning to the prejudice prong, respondent identified several pieces of evidence at his evidentiary hearing that could have been discovered had trial counsel conducted a reasonable investigation. (Applicants Exhibits 1, 2, 7, 8); *but see Skeen*, 325 S.C. at 213-15, 481 S.E.2d at 131-32 (holding where petitioner fails to establish what evidence he could have procured had counsel moved for a continuance, he fails to establish how he was prejudiced by counsel’s incomplete preparation). The PCR court properly determined that the body-worn camera footage

demonstrated reasonable doubt that trial counsel did not explore. App. 540. The footage entered depicted the state of the scene on the night of the incident, the officer's handling of the investigation, and the discovery of a gun in the grass. (Applicants Exhibit 7).⁶

Moreover, the evidence from the body-worn camera footage was not merely cumulative as it would have allowed the jury to see and hear critical aspects of the scene and introduced the discovery of a piece of evidence. (Applicants Exhibits 7, 8); *see Edwards v. State*, 392 S.C. 449, 459, 710 S.E.2d 60, 65 (2011) (“We previously have held where evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel’s failure to bring it forward.”). Specifically, on Timmons’s body-worn camera footage, he can be heard stating that Sweat found a gun and told Timmons to stand with it. (Applicants Exhibit 7; Timmons, 11:58:00 – 11:58:10).

In addition, Zmroczek testified that as a result of the body-worn camera footage, she was able to cross-examine officers about how they handled evidence in this case. App. 505, ll. 1-7. Thus, the PCR court properly found that the body-worn camera footage introduced reasonable doubt and demonstrated additional issues that, if explored by trial counsel, provided a reasonable probability that the result of the proceeding would have been different. App. 540-41. In addition, the state improperly relies on the purported “substantial evidence of respondent’s guilt,” to contend that he was barred from suffering prejudice, but this is misplaced where substantial evidence of respondent’s guilt did not exist. *See Weldon v. State*, 436 S.C. 69, 82, 870 S.E.2d 183, 189 (Ct. App. 2021) (“For the evidence to be overwhelming such that it categorically precludes a finding of prejudice . . . the evidence must include something

⁶ At respondent’s trial, the guns entered into evidence were State’s Exhibit 25, which was a revolver identified as the deceased’s gun, and State’s 26 which was a chrome Lorcin 380-semi automatic handgun found by the SUV. App. 137, ll. 29-25; 203, l. 24 – 205, l. 3.

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.”) (alterations and internal quotations omitted). Instead, the state’s case was based on circumstantial evidence to link respondent to the incident, a questionable identification by Ball, and the testimony of Moore who relayed a conversation with Walker that implicated respondent and Saxon as being involved with a plan to rob the deceased. The State’s evidence was not overwhelming.

The PCR court also correctly pointed out that there was a cell phone in law enforcement custody containing text messages that could be considered threatening. App. 540. The text messages, which were sent to the deceased on the day of the incident, included language like “you going down,” and expressed displeasure about the deceased’s relationship with Ball. (Applicants Exhibits 1, 2). The PCR court correctly determined that these text messages, had they been obtained and presented by trial counsel, would have presented the fact finder with reasonable doubt. *Lounds*, 380 S.C. at 459, 670 S.E.2d at 649. Importantly, in considering respondent’s case, the PCR court did not speculate as to what might have occurred had counsel conducted an independent investigation into the facts and circumstances of respondent’s case because respondent presented evidence of what counsel would have discovered had any investigation taken place through the cell phone extraction, body-worn camera footage, photographs, and testimony. *But see Kibler v. State*, 267 S.C. 250, 256, 277 S.E.2d 199, 202 (1976) (explaining that the PCR court will not speculate concerning what might have occurred if counsel had conducted further investigation). Therefore, trial counsel’s failure to conduct a reasonable, independent investigation prejudiced respondent as the threatening text messages

presented at the evidentiary hearing undermines the confidence in the outcome of the trial. *Thompson*, 423 S.C. at 245, 814 S.E.2d at 492; *see also* App. 492, ll. 1-2 (Zmroczek testifying that the cell phones had “a lot of information and I think persuaded the jury.”).

Finally, the PCR court’s conclusion that the additional exhibits demonstrated how dark it was on the night of the incident and the map Zmroczek made provided reasonable doubt that trial counsel did not explore in respondent’s trial is supported by the totality of the evidence. App. 540; (Applicants Exhibit 6, 7). Trial counsel made no independent investigation into the visibility on the night of the incident despite Ball’s claim that she saw respondent’s face in the driveway from eight to ten feet away. App. 133, ll. 7-9. Although trial counsel need not explore every possible argument, it was nonetheless unreasonable for trial counsel to neglect to investigate the conditions on the night of the incident which would have impacted the reliability of the state’s only eyewitness identification of respondent. *Strickland*, 466 U.S. at 687-88. Therefore, had trial counsel further investigated and more thoroughly challenged witnesses as to the dark conditions on the night of the incident,⁷ there is a reasonable probability the jury would have had reasonable doubt as to whether respondent was guilty of the charged offenses. *Cherry*, 300 S.C. at 117-118, 386 S.E.2d at 625; *Thompson*, 423 S.C. at 245, 814 S.E.2d at 492.

Accordingly, the PCR court correctly determined that trial counsel rendered constitutionally deficient performance by failing to adequately review respondent’s discovery or conduct a reasonable, independent investigation which prejudiced respondent, evidenced by the various specific pieces of evidence that respondent presented during his evidentiary hearing that

⁷ The body-worn camera footage, albeit not of a high-quality, illustrate the dark conditions on the night in question. (Applicants Exhibit 7). The footage also depicts where the porch and streetlights were located. (Applicants Exhibit 7). Importantly, the footage shows that how dark the scene was, especially outside, even when the surrounding lights were activated. (Applicants Exhibit 7).

trial counsel would have been able to discover had he conducted a sufficient investigation. App. 540-41; *Strickland*, 466 U.S. at 687-88. The result is that but for counsel's deficient performance there is a reasonable probability that the outcome of the proceeding would have been different. *Strickland*, 466 U.S. at 687-88. Therefore, this Court should deny the petition for certiorari and affirm the PCR court's order granting relief as to this allegation.

II.

The PCR court correctly found that trial counsel was ineffective for failing to more thoroughly cross-examine and impeach Kelly Ball, a critical state witness, with her inconsistent statements and evidence of her mental health records in order to attack her credibility and where trial counsel's deficient performance prejudiced respondent.

Relevant facts

Trial

During trial, the state called Kelly Ball, who testified as follows. She was best friends with the deceased and met him through drug use. App. 121, ll. 16-23. The deceased sold her drugs. App. 121, ll. 24-25. She explained that on Halloween night of 2013 the deceased picked her up from a friends, they went to Waffle House to get food, and they went directly back to the deceased's home. App. 122, l. 21 – 123, l. 3. She testified that she drove to Waffle House, and the deceased gave her money to go in and pay for the food. App. 124, ll. 13-18. She identified the deceased's wallet and testified that he normally carried a couple thousand dollars. App. 125, ll. 1-17. Within five minutes of returning to the deceased's home, there was a knock on the door. App. 126, ll. 20-23. The deceased opened the door and stepped outside, which Ball found to be unusual. App. 127, ll. 8-10. She could not see who knocked on the door, but she heard a verbal altercation. App. 127, ll. 18-23. Ball testified that she heard an individual say, "I'm here to rob you." App. 128, l. 9. She stated that there were at least two, possibly three, people outside. App. 128, l. 13. She heard a gunshot, and then about ten to fifteen seconds later, she heard three to five more gunshots. App. 129, ll. 5-6. She called 911. App. 129, ll. 19-22.

When asked how the lighting was outside on the night of the incident, Ball responded that it was "[n]ot very good, but, I mean, good enough to where, you know, you could see who was

who.” App. 130, ll. 20-22. She explained that there was a motion light in the yard and at the top of the hill there was a mercury light or a florescent streetlight. App. 130, l. 23 – 131, l. 3. Ball then began trying to move the deceased into the house and noticed another body, which she later learned was Walker, lying near the car. App. 131, l. 21 – 132, l. 6. When she got closer to the yard where the deceased was there was someone in the driveway who turned and ran up the hill. App. 132, ll. 12-17. She testified that person was eight to ten feet away from her and the motion sensor light was on. App. 132, ll. 18-23. She saw the individual for “maybe 15 seconds.” App. 132, ll. 24-25. She testified that a car was parked initially, but when respondent started running up the driveway, the car started moving. App. 134, ll. 6-10. In her written statement after the event, she described the car she saw as brown, older model, and box-style. App. 134, l. 24 – 135, l. 5. Respondent jumped into the back set on the passenger side of the car, and the car sped away. App. 135, ll. 13-25.

Ball then testified that the deceased was armed on the night of the incident and that he normally carried a gun. App. 136, ll. 21-25. She believed he normally carried a revolver. App. 137, ll. 1-5. She explained that after she pulled the deceased back into the home, he gave her the gun. App. 137, l. 24 – 138, l. 3. After she got back inside the house, Walker knocked on the door. App. 139, ll. 2-11. The deceased told Ball that was who shot him. App. 139, ll. 12-20. She testified that she picked up the gun and put it under the deceased’s mattress. App. 140, l. 24 – 141, l. 3. She further testified that when she got to the deceased his wallet, which usually had a “good stack of cash in there,” and his keys were gone. App. 141, ll. 16-23. She spoke with law enforcement once they arrived that night. App. 142, ll. 8-9. She made a written statement and described as much as she could at that time. App. 142, ll. 16-19. A few days later she spoke with Detective Cheek and made another written statement where she tried to go into more detail.

App. 142, l. 23 – 143, l. 5. She described the man in the driveway as a large Black male and mentioned another individual, Ty, to explain the build of the person she saw. App. 143, ll. 6-19. She testified that roughly one and a half months later Detective Cheek and other investigators came to see her, asked her if she recognized anyone from a lineup, and she selected respondent. App. 144, l. 11 – 147, l. 5.

On cross-examination, she explained that she hid the deceased's gun because he asked her to put it where it went. App. 148, ll. 5-8. She testified that she told law enforcement where the gun was when they arrived. App. 149, ll. 9-12. She explained that she called 911 before she went into the yard where the deceased was. App. 149, ll. 20-25. She agreed that the deceased had large sums of money which was consistent with someone dealing large sums of drugs. App. 150, ll. 1-5. She agreed that no one forced the deceased outside. App. 150, ll. 17-23. She agreed that Ty was a "dark-skinned, large man." App. 152, ll. 1-5. She agreed that "dealing this dope in the volume" the deceased was dealing was dangerous. App. 153, ll. 5-7. She agreed that "these guys out there he's buying drop from" are all dangerous and could be deadly if "you get in an argument with them." App. 155, ll. 11-16. She agreed the deceased shot somebody on the night of the incident. App. 156, ll. 6-10. Ball agreed that she gave two statements and in the first she did not say anything about robbery. App. 157, ll. 22-25. She testified that the car looked brown due to the lighting at the top of the hill. App. 159, ll. 1-3. She testified that she saw respondent's face before he started running up the hill and agreed that she saw a large build. App. 161, ll. 2-7. On re-direct examination, she clarified she gave a second statement to law enforcement on November 5th. App. 163, ll. 14-18. She reiterated that she heard someone say, "I am here to rob you." App. 165, ll. 3-4. On re-cross examination, Ball testified that she had done drugs before. App. 166, ll. 1-3.

Evidentiary hearing

During his evidentiary hearing, respondent testified that trial counsel did not adequately cross-examine the witnesses regarding their inconsistent statements. App. 473, ll. 7-9. Regarding Ball's testimony, respondent testified that all of her statements were inconsistent with each other and trial counsel did not adequately address those inconsistencies with Ball. App. 479, ll. 8-11. He did not question Ball as to whether she was on drugs on the night of the incident, about her medical records, or her stay at Marshall Pickens. App. 479, ll. 15-25. He did not question her about statement given to medical personnel. App. 479, ll. 22-25. He did not ask her about a statement given to medical personnel that four people came and killed the deceased. App. 480, ll. 1-4.

Respondent then presented testimony from Zmroczek. She explained that she asked Ball about Teresa during co-defendant's trial and questioned her about her arrest and conviction based on an interaction she had with Teresa. App. 495, ll. 12-21. She testified that she could tell from reading the discovery and with "very minimal effort" who Ball was, and that she had made many statements. App. 495, l. 21 – 496, l. 1. She continued that before trial she obtained records from mental hospitals that Ball stayed at. App. 496, ll. 1-4. She obtained medical records from the ER and Marshall Pickens, which was a mental health rehabilitation hospital. App. 496, ll. 5-12. She explained that Ball had given approximately seven statements, some of which came from the medical records. App. 496, ll. 19-25. PCR counsel then entered Applicant's Exhibit 3, which was an excerpt of Ball's trial testimony during co-defendant Saxon's trial. App. 497, ll. 1-11. Zmroczek then testified that she would describe Ball as a "mentally ill, self-medicating female." App. 498, ll. 7-8. The records she obtained reflected that Ball had been diagnosed with bipolar. App. 498, ll. 9-12.

During Zmroczek's cross-examination of Ball, Ball admitted she had done drugs earlier in the day of the incident, she was self-medicating, and she got drugs from the deceased. App. 498, ll. 13-21. She explained that the goal of her cross-examination was to elicit that Ball was "mentally unstable," a "drug addict," and that she could not have possibly seen all the things in her inconsistent statements. App. 499, ll. 5-13. She testified that "it all came down to credibility." App. 499, ll. 13-14. She testified that when people's words are blatantly untrue it can affect the outcome. App. 499, ll. 15-18. Zmroczek testified that Ball gave multiple statements that did not match the evidence like her statement to medical personnel that four people attacked the home and that Walker banged on the door screaming that he was going to kill the deceased. App. 499, l. 19 – 500, l. 4. She explained that Ball was on the phone during the incident and her statement was belied by the body-worn camera footage and the 911 call. App. 500, ll. 1-4. She testified that there was no way Ball could have seen what she claimed to on the night of the incident, particularly that Ball could not have seen respondent. App. 501, ll. 3-9. Zmroczek explained that the body-worn camera footage, in addition to Ball's testimony and the 911 call, were available to her and used for impeachment. App. 504, ll. 6-10. On cross-examination, Zmroczek explained that the importance of the evidence showing a rivalry between Ball and Teresa was to attack Ball's credibility. App. 513, ll. 6-16.

Trial counsel then testified that he did not recall his cross-examination of Ball. App. 522, ll. 6-9. When asked on cross-examination if he would have used Ball's statement from the body-worn camera he explained that "there was no question in [his] mind that [respondent] was there." App. 523, ll. 14-18. He testified that it was "kind of a slippery slope theme that I'm going to impeach her on stuff that I know not to be true. You know, that's the hard thing to do." App. 523, ll. 17-22.

Evidentiary hearing exhibits

Applicant's Exhibit 3 is an excerpt of testimony from co-defendant Saxon's trial. (Applicants Exhibit 3). During her direct examination, she testified that she received psychiatric counseling and admitted herself to the Marshall Pickens Psychiatric Hospital in Greenville. (Applicants Exhibit 3, p. 55, ll. 18-23). Her stay at Marshall Pickens was due to the Halloween 2013 incident. (Applicants Exhibit 3, p. 56, ll. 1-2). On cross-examination, Zmroczek elicited that Ball was not clean, and she got drugs from the deceased. (Applicants Exhibit 3, p. 102, ll. 2-5). Ball described a 2013 breach of peace arrest which involved Teresa, who Ball believed was jealous of her because of her relationship with the deceased. (Applicants Exhibit 3, p. 102, l. 23 – 103, l. 21). She testified that Teresa did not like her. (Applicants Exhibit 3, p. 104, ll. 6-7).

Ball agreed that she had given more than one statement in this case. (Applicants Exhibit 3, p. 105, ll. 1-2). She agreed she gave a statement to Investigator Crain, which was recorded on his body-worn camera that she had since seen. (Applicants Exhibit 3, p. 106, ll. 2-18). She gave a written statement on November 1, 2013. (Applicants Exhibit 3, p. 108, ll. 1-16). She gave another written statement on November 5, 2013, at the Sheriff's Office. (Applicants Exhibit 3, p. 109, ll. 3-11). She agreed that she was in the hospital from December 6 to December 16, and she spoke with medical professionals about what occurred. (Applicants Exhibit 3, p. 109, ll. 12-25). Ball agreed that, including her sworn trial testimony, she had provided approximately nine statements. (Applicants Exhibit 3, p. 110, ll. 2-20). She agreed that when she went to the ER after this incident they did a drug screen which showed cocaine, amphetamines, marijuana, opiates, and benzodiazepines in her system. (Applicants Exhibit 3, p. 124, l. 8 – 125, l. 2). Ball agreed that she had been diagnosed with bipolar. (Applicants Exhibit 3, p. 125, ll. 3-5). Ball agreed that she told everyone in group therapy at Marshall Pickens that four men broke into her

best friend's house and murdered him. (Applicants Exhibit 3, p. 129, l. 23 – 130, l. 1). She then clarified that she said she saw two men and there had to be a third man in the car. (Applicants Exhibit 3, p. 130, ll. 8-11). She agreed that she had stolen from her mother a number of times to support her drug habit. (Applicants Exhibit 3, p. 130, ll. 18-20). Ball further testified that Investigator Cheek drove to Marshall Pickens on December 16th to speak with her. (Applicants Exhibit 3, p. 131, ll. 8-10). Ball agreed that 911 calls and body-worn camera recall what happened and what was said. (Applicants Exhibit 3, p. 137, ll. 12-23).

The PCR court's ruling

In its order, the PCR court explained that trial counsel testified that he did not recall Ball's cross-examination but had no question that respondent was present at the scene which made attempting to impeach Ball on that point risky. App. 541. The PCR court pointed to Zmroczek's testimony that Ball had been in and out of mental hospitals and obtained her mental health records from the ER and Marshall Pickens. App. 541. The PCR court noted that Zmroczek testified that her impression of Ball was that she was mentally ill, self-medicating, and had been diagnosed as bipolar. App. 541. Additionally, Ball had stated she was using drugs the day of the incident and had given multiple inconsistent statements. App. 541. The PCR court further noted that Zmroczek testified that her goal cross-examining Ball was to show that she was "a drug addict and unstable, because her credibility was important . . ." App. 542. The PCR court pointed to Zmroczek's testimony that Ball's statements did not conform to the evidence, that Ball was on the phone during the incident with not just 911 but also her mother, and the body-worn camera footage obtained contained a statement from Ball that contradicted her statements given later and what she said on the phone call. App. 542.

The PCR court continued that this allegation related to trial counsel's failure to investigate. App. 542. The PCR court determined that "[h]ad [trial counsel] obtained Ms. Ball's mental health records and had her statements given on the BWC, [trial counsel's] cross-examination of Ms. Ball would have been more thorough and possibly changed the outcome of [respondent's] trial." App. 542. The PCR court further stated that trial counsel was unable to articulate any strategic decisions on the way he cross-examined Ball. App. 542. Thus, the PCR court concluded that relief should be granted as to this allegation. App. 542.

Discussion

The PCR court correctly found that trial counsel was constitutionally ineffective for failing to cross-examine more thoroughly and impeach Kelly Ball, a critical state witness, with her inconsistent statements and evidence of her mental health records in order to attack her credibility. Because of trial counsel's deficient performance in his cross-examination of Ball, and the evidence presented during the evidentiary hearing concerning Ball's inconsistent statements and mental health records, there is a reasonable probability that, but for trial counsel's errors, the result of the proceeding would have been different. Therefore, this Court should affirm the PCR court's order granting respondent relief.

"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, 810 S.E.2d 836, 840 (2018) (citing *State v. Brown*, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991)) (internal quotation marks omitted). Particularly, "[b]ias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." Rule 608(c), SCRE. "The purpose of impeachment is not to show

the witness is a bad person but rather to show background facts which impact the witness's credibility." *Greene v. State*, 440 S.C. 165, 176-77, 889 S.E.2d 636, 642 (Ct. App. 2023) (citing *State v. Robinson*, 426 S.C. 579, 597-98, 828 S.E.2d 203, 212) and quoting *State v. Black*, 400 S.C. 10, 21, 732 S.E.2d 880, 886 (2012)).

As to deficient performance, the PCR court properly noted that trial counsel testified that he did not recall his cross-examination of Ball but that he had no question respondent was present at the scene so trying to impeach Ball as to that point would have been risky. App. 541. Refusing to more thoroughly cross-examine Ball or impeach her because of his belief that respondent was present on the night of the incident is not a valid strategic decision. App. 523, ll. 14-22; *see e.g., Stone*, 419 S.C. at 387, 798 S.E.2d at 570 (explaining that counsel's belief the court would overrule his objection and counsel's concern that the jury might think was trying to hide something were not valid strategic decisions). Other than testifying that impeaching her would have been a "slippery slope," trial counsel fails to articulate a valid reason underlying his decision, especially considering that Ball's credibility was critical and he did cross-examine Ball on the color of the car she identified, which was linked to respondent, and her description of the individual she identified as resembling Ty, a dark-skinned Black man. App. 151, l. 11 – 152, l. 17; 157, l. 3 – 161, l. 7; *see also* App. 523, ll. 17-22. His belief that respondent was present during the crime did not make his decision not to investigate Ball in order to impeach her credibility and more thoroughly cross-examine her objectively reasonable where Ball had already placed respondent at the scene by testifying that she identified respondent from a lineup and believed she saw his face from eight to ten feet away. Therefore, the PCR court's conclusion that trial counsel failed to articulate any strategic decision as to his cross-examination of Ball is supported by the record. App. 541-42. Trial counsel's performance was deficient.

The PCR court also properly determined that respondent was prejudiced by trial counsel's deficient performance. At his evidentiary hearing, respondent presented testimony from Zmroczek concerning her cross-examination of Ball and entered an excerpt of co-defendant Saxon's trial to include Ball's testimony as an exhibit. (Applicants Exhibit 3). Zmroczek testified about several areas of cross-examination she was able to explore with Ball, including: Ball's arrest and conviction from an interaction with Teresa, records from the ER and a mental hospital Ball stayed at following the incident, numerous statements Ball had given, and Ball's history using drugs.⁸ App. 495, l. 12 – 499, l. 13. She also explained she was able to impeach Ball with statements given on the body-worn camera footage. App. 504, ll. 6-10. As discussed, trial counsel failed to conduct a reasonable investigation which would have led to obtaining the body-worn camera footage and the deceased's cell phone which contained threatening texts from Teresea. Trial counsel likewise failed to investigate any means to impeach Ball as he neither questioned her about her prior conviction nor delved into her inconsistent statements, which could have been discovered with "very minimal effort," and reading the discovery, as Zmroczek explained. App. 495, l. 21 – 496, l. 1; *see e.g., Hoots v. Allsbrook*, 785 F.2d 1214, 1221 (4th Cir. 1986) ("We agree that defense counsel ordinarily has a duty to investigate possible methods for impeaching prosecution witnesses. That obligation was breached by Weldon, who did not even

⁸ Notably, Zmroczek was able to cross-examine Ball on her several inconsistent statements, her mental health records, including a diagnosis for bipolar, and her propensity to self-medicate and engage in drug use, all of which was relevant to cast doubt on her ability to tell the truth. *See United States v. George*, 532 F.3d 933, 936-37, 382 U.S. App. D.C. 332, 335-36 (D.C. Cir. 2008) (explaining that mental illness is only relevant where it may reasonably cast doubt on the ability or willingness of a witness to tell the truth and that "[m]ental illness is most highly relevant when the witness exhibited a pronounced disposition to lie or hallucinate, or suffered from a severe illness . . . that dramatically impaired her ability to perceive and tell the truth." The United States Court of Appeals for the District of Columbia further explained, however, that "[m]ental illness is not a generic badge of incompetence or dishonesty," and thus "some indication is needed that a particular witness's medical history throws some doubt on the witness's competence or credibility.") (internal quotations omitted).

attempt to search out Roark's criminal record, which would have been easily discoverable. In some cases, such deficient performance might be so prejudicial to a criminal defendant that the *Strickland* standard for ineffective assistance of counsel would be satisfied.").

To that end, respondent presented evidence of how Ball could have been more thoroughly cross-examined on her inconsistent statements, history of drug use, and mental health diagnoses. (Applicants Exhibit 3). For example, Ball agreed that a drug screen taken at the hospital following the incident showed cocaine, amphetamines, marijuana, opiates, and benzodiazepines in her system, that she had stolen from her mother a number of times to support her drug habit, and that she was not clean. (Applicants Exhibit 3, p. 102, ll. 2-5; p. 124, l. 8 – 125, l. 2; p. 130, ll. 18-20). Ball also testified as to her several statements she had given over the duration of the case. (Applicants Exhibit 3, p. 105, ll. 1-2; p. 106, ll. 2-18; p. 108, ll. 1-16; p. 109, ll. 3-11; p. 109, ll. 12-25; p. 110, ll. 2-20). All of these points would have gone to the jury's consideration of Ball's credibility as a witness, and although trial counsel cross-examined Ball on a few aspects of her trial testimony and agreed that she had done drugs before, *see generally* App. 148-161; 166, ll. 1-3, trial counsel's cross-examination was relatively brief and failed to thoroughly attack Ball's credibility, *but see Legare v. State*, 333 S.C. 275, 282, 509 S.E.2d 472, 475 (1998) (reversing PCR court granting relief that trial counsel was ineffective for failing to impeach a State's witness by attacking her credibility because the witnesses' criminal record was not in the record and the record did not contain evidence of a relied upon letter from the witness explaining her motivations for testifying on behalf of the state). The PCR court thus correctly found that respondent was prejudiced because had trial counsel obtained Ball's records and body-worn camera footage, trial counsel's cross-examination would have been more thorough, and thus,

presented a reasonable probability that the result of the proceeding would have been different. App. 542; *Strickland*, 466 U.S. at 687-88.

Moreover, in addition to the fact that Ball's credibility was critical to the state's case, the jury sent a note to the trial court requesting a copy of Ball's testimony. App. 378, l. 24 – 379, l. 2. Specifically, the jury asked to hear the portion of her testimony just after she placed the 911 call and went into the yard. App. 379, ll. 10-14. The jury's request to re-hear a portion of Ball's testimony suggests that the testimony was highly scrutinized by the jury. It is also worth noting that the body-worn camera footage depicts Ball on the phone and giving statements to law enforcement, none of which was available to respondent's jury because of trial counsel's ineffective assistance. (Applicants Exhibit 7). Considering this, the record supports the PCR court's conclusion that respondent was prejudiced by trial counsel's ineffective cross-examination of Ball as he failed to attack Ball's credibility on several critical points.

Therefore, but for trial counsel's deficient performance by failing to impeach and more thoroughly cross-examine Ball, there is a reasonable probability that the result of the proceeding would have been different. *Cherry*, 300 S.C. at 117-118, 386 S.E.2d at 625; *Thompson*, 423 S.C. at 245, 814 S.E.2d at 492. The PCR court properly applied *Strickland* to determine that relief should be granted as to this allegation, and thus, this Court should deny the petition for certiorari and affirm the PCR court's order.

CONCLUSION

Based on the foregoing arguments, respondent respectfully requests that this Court deny certiorari and affirm the PCR court's ruling.



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Appellate Defender

ATTORNEY FOR RESPONDENT

This 8th day of April, 2026.