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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO AIKEN COUNTY
Court of Common Pleas
The Honorable Diane S. Goodstein, Circuit Court Judge
The Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2024-001320

Jamaques Salley,

Petitioner,

v.

State of South Carolina,

Respondent.

AUSTIN V. STATE RETURN

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PETITIONER'S STATEMENT OF THE ISSUES ON APPEAL

I. Whether the PCR court erred in denying Petitioner relief where trial counsel failed to present an alibi witness whose testimony, if believed, would have made Petitioner's participation in the armed robbery impossible?

II. Whether trial counsel was ineffective for failing to fully cross-examine and impeach co-defendant Carlos Williams with evidence of bias and/or motive where Williams's testimony was the only evidence directly connecting Petitioner to the armed robbery of the Quick Cash?

III. Whether the PCR court erred in finding that trial counsel was not deficient for failing to research and hire an expert in digital forensics?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES ON APPEAL

1. The PCR court correctly found Counsel was not ineffective for failing to call Petitioner's stepfather, Timothy Davis, as an alibi witness where Counsel articulated multiple valid strategic reasons not to call Davis and where the PCR court found Davis's testimony was not reasonably likely to have changed the outcome of Petitioner's trial.

2. The PCR court correctly found Counsel was not ineffective for failing to more thoroughly cross-examine Petitioner's co-defendant Carlos Williams, where the PCR court found there was no credible evidence that Williams had been offered a plea deal in exchange for his testimony, where the jailhouse letters purportedly sent by Williams were more likely to hurt Petitioner than to impeach Williams, and where Williams's trial testimony was substantially corroborated by the other evidence presented at Petitioner's trial.

3. The PCR court correctly found Counsel was not ineffective for failing to retain an expert in digital forensics, where Petitioner's expert acknowledged that the cell phone location data he reviewed would not necessarily correspond to Petitioner's location, where the data arguably supported the State's case by showing Petitioner's phone was not in use during the time the crime was being committed, and where Petitioner failed to prove that any additional beneficial evidence could have been obtained from further investigation of the surveillance videos.

STANDARD OF REVIEW

The standard of review in post-conviction relief ("PCR") cases depends on the specific issue before the appellate court. *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). The PCR court's conclusions of law are reviewed *de novo*. *Id.* at 180–81, 810 S.E.2d at 839. On the other hand, the PCR court's findings of fact receive great deference during appellate review and will be upheld if "any evidence of probative value" exists in the record to support those findings. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). In particular, appellate courts "should accord great deference to trial court findings where matters of credibility are involved." *S.C. Dep't of Soc. Servs. v. Forrester*, 282 S.C. 512, 516, 320 S.E.2d 39, 42 (Ct. App. 1984). In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985).

STATEMENT OF THE CASE

Petitioner was indicted at the May 2013 term of the Aiken County Grand Jury for kidnapping (2013-GS-02-00758) and armed robbery (2013-GS-02-00757). Thomas D. Broadwater, Esquire represented Petitioner on the charges. Assistant Solicitor Kevin Molony prosecuted the case. On August 8, 12, and 13, 2013, Petitioner proceeded to a jury trial before the Honorable Doyet A. Early, III, and was found guilty as indicted. On August 13, 2013, Judge Early sentenced Petitioner to thirty years for armed robbery and five years for kidnapping, to run consecutively.

A timely Notice of Appeal was filed on Petitioner's behalf. By Order filed September 30, 2014, the South Carolina Court of Appeals granted Petitioner's request to withdraw his appeal. The Remittitur was issued on October 16, 2014.

On August 14, 2014, Petitioner filed an application for PCR. An evidentiary hearing was convened on May 24 and 25, 2017, before the Honorable Diane S. Goodstein at the Aiken County Courthouse. Following the hearing, Judge Goodstein left the record open to obtain additional testimony. An additional hearing was held on August 14, 2017, at the Dorchester County Courthouse.

On May 2, 2019, the State moved to open the record and submit codefendant Carlos Williams's plea transcript. Judge Goodstein granted the motion and, after consultation with the parties, convened a supplemental virtual hearing on October 6, 2021.

On December 27, 2021, Judge Goodstein filed an order denying Petitioner's PCR application. Petitioner did not file an appeal from that decision.

On August 7, 2023, Petitioner filed a second PCR application alleging he was entitled to seek belated appellate review of the denial of his first PCR application pursuant to *Austin v. State*,

305 S.C. 453, 246 S.E.2d 395 (1991). An evidentiary hearing was convened on July 16, 2024, before the Honorable Brian M. Gibbons. At the conclusion of that hearing, the parties agreed that Petitioner had met his burden of proving he was improperly denied his right to appeal from the denial of his first PCR application. Accordingly, Judge Gibbons issued an order granting belated appellate review pursuant to *Austin* on August 13, 2024.

On November 3, 2025, Petitioner filed his "Petition for Writ of Certiorari Pursuant to *Austin v. State*" with this Court, raising issues concerning the PCR court's denial of his first PCR application. Respondent now submits this *Austin v. State* Return to address those issues.[1] *See King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992) (setting forth the procedure to be followed where the PCR court finds an applicant is entitled to seek belated appellate review pursuant to *Austin*).

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[1] Petitioner has also filed a Petition for a Writ of Certiorari, arguing that Judge Gibbons correctly determined he was entitled to seek belated appellate review of his first PCR case pursuant to *Austin*. Respondent has submitted (contemporaneously with the present *Austin v. State* Return) a letter in lieu of a formal Return to the Petition for a Writ of Certiorari, expressing that Respondent does not contest Judge Gibbons' determination of that issue.

ARGUMENT

1. The PCR court correctly found Counsel was not ineffective for failing to call Petitioner's stepfather, Timothy Davis, as an alibi witness where Counsel articulated multiple valid strategic reasons not to call Davis and where the PCR court found Davis's testimony was not reasonably likely to have changed the outcome of Petitioner's trial.

At the PCR hearing, Petitioner presented the testimony of his stepfather, Timothy Davis. Davis testified that, on the day of the crime, he woke up at approximately 10:00 or 10:30 in the morning. He then began cooking breakfast. While he was cooking breakfast, Petitioner came out of his bedroom. Davis testified he and Petitioner spoke and ate breakfast together until approximately 11:00 or 11:30, whereupon Petitioner returned to his bedroom. (App.pp.291–93).

Petitioner claims the robbery of the Quick Cash occurred at 10:34 a.m., at which time—according to Davis—Petitioner was still at home in his bedroom.[2] Based on this, Petitioner now argues that "Davis's testimony accounted for Petitioner's whereabouts at the time of the robbery, such that it was a physical impossibility that he committed the crimes." (Pet.p.12). For this reason, Petitioner contends Counsel was ineffective for failing to call Davis as an alibi witness at trial.

To establish a right to relief on the ground of ineffective assistance of counsel, a PCR applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v.*

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[2] Contrary to Petitioner's claim, 10:34 a.m. was the time of the 911 call, not the robbery. Penny Guerrieri, the Quick Cash employee who was attacked and knocked to the floor by the robbers, testified that she made the 911 call *after* she noticed the robbers were gone and had locked the front door and hidden under the counter. (App.pp.61–63).

Washington, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*:

First, the applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *See Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

The reviewing court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). When counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective. *Underwood v. State*, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992).

Second, the applicant must prove that counsel's deficient performance prejudiced the applicant's defense, such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117–18, 386 S.E.2d at 625. "The likelihood of a different result must be substantial, not just conceivable." *Harrington*, 562 U.S. at 112. "The prejudice analysis requires the court deciding the

ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

The PCR court found Petitioner had not met his burden of proving Counsel was ineffective for failing to call Davis as an alibi witness. Regarding deficiency, the PCR court noted Counsel's testimony at the evidentiary hearing that he did not believe Davis's testimony would have helped the defense if he had been called as an alibi witness at trial. First of all, Counsel noted that the State had a surveillance video which appeared to show Petitioner at a Roses store using Petitioner's credit card to purchase a backpack. (App.p.360, lines 8–16). The receipt from Roses was introduced at trial; it was signed "Jamaques Salley" and shows that the purchase in question occurred at 10:04 a.m. on February 19, 2013, the day of the robbery. (App.p.139, line 2–p.140, line 20). The cashier who sold the backpack testified at trial and identified Petitioner as the person who purchased the backpack and signed the receipt. (App.p.132, lines 9–22; p.141, lines 3–9). She specifically remembered looking "really carefully" at Petitioner's driver's license and credit card to check the spelling of Petitioner's name, and she testified that the picture on the driver's license matched the face of the person who purchased the backpack. (App.p.133, lines 2–6; p.135, line 20–p.137, line 6). These facts made it impossible for Petitioner to be at Davis's house at 10:00 in the morning on the date in question; together, they cast substantial doubt on Davis's credibility, or at least the accuracy of his timeline. Counsel testified that he discussed the Roses surveillance video with Petitioner, and Petitioner's only explanation was that he had loaned his credit card to one of his co-defendants, which Counsel did not think the jury would find credible. (App.p.360, lines 8–19; p.366, line 18–p.367, line 2).

In addition, Counsel explained that he discussed calling Davis as a potential alibi witness, but Davis was unwilling to testify at Petitioner's trial because he did not want to be cross-examined on his criminal record. Counsel testified that Davis even walked out of the courtroom during the trial to avoid being called to the stand.[3] (App.p.363, lines 8–20). The PCR court found Counsel's decision not to call Davis was a reasonable trial strategy, considering Davis's reluctance to testify. (App.pp.621–22).

The PCR court also noted that Davis was Petitioner's stepfather and could have been impeached for bias, which—along with Davis's criminal record—would further justify Counsel's determination that Davis would not be a credible witness, citing *Maxwell v. Gilmore*, 37 F.Supp.2d 1078, 1089 (N.D. Ill. 1999) ("But Maxwell's attorneys may well have thought—and surely reasonably so—that Maxwell's mother and girlfriend would not be credible alibi witnesses, given their obvious personal interest in his acquittal (certainly less of a problem with the presumably more neutral girlfriend's mother)"), and *Bergmann v. McCaughtry*, 65 F.3d 1372, 1380 (7th Cir. 1995) ("Nor will we second-guess trial counsel's decision not to call Bergmann's step-father . . . to testify that Bergmann's guns were at home at the time of the crime. As a matter of trial strategy, counsel could well decide not to call family members as witnesses because family members can be easily impeached for bias").

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[3] Petitioner argues that Counsel "had a duty to place Davis under a subpoena" to compel him to testify at Petitioner's trial. (Pet.p.12). But this would only be true if Counsel believed Davis's testimony would be beneficial to Petitioner's defense. It was just as much Counsel's duty to evaluate whether Davis would testify truthfully, whether his testimony would match the story he had told Counsel, whether Davis would stick to his story under the pressure of cross-examination, and whether the jury would find Davis credible. It was proper for Counsel to consider Davis's obvious reluctance to testify as a substantial factor in that analysis.

The PCR court also noted there was evidence that Petitioner had texted Davis after the robbery, asking Davis to "tell the cops I've been home all day." (App.p.155, lines 13–16). There was also evidence that Davis had told investigators he was asleep around 10:30 the morning of the robbery and had no way of knowing if Petitioner was home or not. (App.p.207, lines 12–17). These pieces of evidence also would have called into question Davis's credibility if he had taken the stand and attempted to offer an alibi.

Finally, the PCR court expressly found Davis's testimony at the evidentiary hearing was not "convincing." The PCR court's credibility findings are entitled to great deference on appeal, and the Court's impression of Davis's credibility is strongly supported by the evidence in the record. *See Forrester*, 282 S.C. at 516, 320 S.E.2d at 42. The vagueness of Davis's timeline, his reluctance to take the stand in his own stepson's defense at trial, the mountain of evidence from the Roses department store refuting his claim that Petitioner was at home during the morning of the robbery, the evidence that Petitioner had asked Davis for an alibi, the evidence that Davis initially claimed he was asleep and did not know if Petitioner had been home at the time of the crime—all these factors more than justify the PCR court's skepticism of the Petitioner's purported "alibi." In addition, as the PCR court found, they support the reasonableness of Counsel's belief that Davis's testimony would not have been credible to the jury and would not have helped Petitioner at trial. For all these reasons, the PCR court correctly found Counsel was not deficient, nor was Petitioner prejudiced, as to this allegation. Because Petitioner has not established any error in the decision of the PCR court, the State asks this Court to deny the petition for a writ of certiorari on this ground.

2. **The PCR court correctly found Counsel was not ineffective for failing to more thoroughly cross-examine Petitioner's co-defendant Carlos Williams, where the PCR court found there was no credible evidence that Williams had been offered a plea deal in exchange for his testimony, where the jailhouse letters purportedly sent by Williams were more likely to hurt Petitioner than to impeach Williams, and where Williams's trial testimony was substantially corroborated by the other evidence presented at Petitioner's trial.**

Petitioner further argues the PCR court erred in finding Counsel was not ineffective for failing to cross-examine the cooperating co-defendant, Carlos Williams, about whether he was promised a plea deal in exchange for his testimony and about two "jailhouse" letters purportedly sent to Petitioner by Williams while they were in the detention center awaiting trial.

Williams testified at the evidentiary hearing and claimed that he had been promised a ten-year plea deal and a dismissal of his kidnapping charge in exchange for his testimony against Petitioner. (App.p.549, lines 20–25). However, Williams admitted that he was actually sentenced to 13 years and that the kidnapping charge was not dropped. (App.p.549, lines 20–25). Kevin Molony, who prosecuted Williams and Petitioner, testified at the evidentiary hearing and denied making any promises or deals in exchange for Williams' testimony. (App.p.574, lines 17–23). In addition, at Petitioner's trial, Williams himself testified that he had not been promised anything in exchange for his testimony and that no deals had been made. (App.p.89, lines 13–17). The transcript of Williams' guilty plea proceeding was introduced before the PCR court. (App.pp.515–27). That transcript reflects that Williams pled "straight up" to armed robbery and kidnapping, with no negotiations or recommendations as to sentencing, and received a sentence of 13 years'

imprisonment on both the armed robbery and kidnapping charges, to run concurrently. (App.p.524, line 3; p.527, lines 7–9).

Accordingly, the PCR court found Williams's testimony that he had been promised a ten-year plea deal was not credible. This finding is eminently supported by the record, and this Court should defer to it on appeal. *See Forrester*, 282 S.C. at 516, 320 S.E.2d at 42. The PCR court quite properly found Counsel could not have been deficient for failing to cross-examine Williams about a plea deal that did not, in fact, exist.

Petitioner also argues Counsel was ineffective for failing to cross-examine Williams about two "jailhouse" letters, purportedly written by Williams to Petitioner while the two of them were in the detention center prior to trial, which Petitioner claims were "coercive" and "implied Williams lied about Petitioner's involvement." (Pet.p.15; p.17). The first letter reads:

> Jay, you need to let me know everything you told the officers cuz you lookin like you snitched. I already told you I told Mike to disappear so just keep to you story! Write me back asap.

The second reads:

> Man they rippin not giving us a bond. But that let me know you aint telling. The only evidence they got is Mike driving my truck, so we straight cuz he gone. Im [sic] sorry I dragged you into this but shit I can't go down by myself. If I get off, I'll tell the cops I was lying and you ain't have nothing to do with it. You should be straight away cuz you wasn't ever around me when it happened. Just get Tim or you mama to testify. Shit you wuz proley wit Kali. They want me to tell you did everything but I ain't go do you like that. Ima put it on Mike since they can't find him then me and you will be straight. Just keep me informed when they talk to you.

The PCR court found Counsel was not deficient for failing to rely on these letters to attack Williams' credibility. The PCR court noted that the two letters would not have been helpful to Petitioner. The first letter strongly implies that Petitioner possessed substantial knowledge about the crime, which Williams was urging him to conceal. The second applauds Petitioner for not

"telling," suggests that Petitioner should ask Davis or his mother to come up with an alibi, and offers to "put it on Mike since they can't find him," implying that Williams was planning to help Petitioner beat the charges by pinning the crime on the third co-defendant, Michael Quarles. Both letters strongly support the State's theory that Petitioner, Williams, and Quarles were co-conspirators in the crime, and that Petitioner's claim of innocence was just a "story." No reasonable lawyer, representing Petitioner, would have put these incriminating letters before the jury, merely for their marginal value in impeaching Williams' testimony.

Furthermore, the PCR court correctly noted that Petitioner had failed to prove the notes would have been admissible at trial in the first place. The letters themselves were never introduced into evidence; the content of the letters was only put before the PCR court in the form of two incident reports from the Aiken County Detention Center. (App.pp.495–96). Williams was never asked to authenticate the letters, nor was he examined about them at the evidentiary hearing. Therefore, the PCR court held Petitioner had not met his burden of proving that the letters would have been admissible or that they would have materially affected the jury's assessment of Williams' credibility.

Finally, the PCR court found Petitioner had failed to prove he was prejudiced by Counsel's failure to more thoroughly cross-examine Williams. The PCR court noted Williams' trial testimony was significantly corroborated by the rest of the State's evidence. Petitioner testified at trial and denied participating in the robbery. However, he admitted that he knew Williams was planning to rob the Quick Cash. (App.p.187, line 2–p.188, line 6). He also admitted that he accompanied Williams to a flea market in Augusta and a Walmart, where Petitioner purchased the taser and the BB guns used in the robbery. (App.p.191, lines 18–22; p.197, lines 5–12). Petitioner acknowledged that he was carrying on a text conversation with Williams in the days leading up to

the robbery. (App.p.194, line 22–p.195, line 4). That text conversation, which thoroughly implicates Petitioner as an active participant in planning the armed robbery, was entered into evidence at trial. (App.p.152, lines 10–11).

Petitioner claimed he was at home on the couch from 9:00–11:00 a.m. on the day of the robbery. (App.p.185, lines 5–9; p.194, lines 7–11). However, as already discussed, there was overwhelming evidence placing Petitioner at the Roses department store at 10:04 a.m. on that date: Petitioner's credit card was used to purchase a backpack; the cashier identified Petitioner as the individual who purchased the backpack and testified she matched his face to his driver's license photograph; the store's copy of the receipt for that purchase was signed "Jamaques Salley" and reflects that the purchase in question occurred at 10:04 a.m. on February 19, 2013; and the entire incident was captured on the store's surveillance video. The customer's copy of the Roses receipt and the tag for the backpack were found in Williams' truck after the crime. (App.p.114, line 15–p.115, line 22).

Even without Williams' testimony, all of this evidence independently points to Petitioner as one of the men who planned and executed the robbery of the Quick Cash. In addition, the evidence from the Roses store thoroughly discredits Petitioner's claim that he was at home on the couch from 9:00–11:00 a.m. on the morning of the robbery. Williams' testimony was also consistent in every respect with the eyewitnesses to the crime and the objective evidence. The PCR court correctly found that Williams' testimony was so thoroughly corroborated that any attempt to impeach him with evidence of potential bias or dishonesty would likely have been futile. This Court should deny the petition for a writ of certiorari as to this issue.

3. **The PCR court correctly found Counsel was not ineffective for failing to retain an expert in digital forensics, where the expert who testified at Petitioner's PCR hearing acknowledged that the cell phone location data he reviewed did not necessarily correspond to Petitioner's location, where the expert's testimony arguably supported the State's case by showing Petitioner's phone was not in use during the time the crime was being committed, and where Petitioner failed to prove that any additional beneficial evidence could have been obtained from further investigation of the surveillance videos.**

Finally, Petitioner argues Counsel was ineffective for failing to retain the services of an expert in digital forensics to assist in Petitioner's defense. Petitioner claims there was additional forensic evidence available, in the form of cell phone data and video footage, that Counsel failed to make use of at trial.

To prove prejudice from counsel's alleged failure to procure or present evidence, a PCR applicant must present the omitted evidence at the PCR hearing. *Garren v. State*, 423 S.C. 1, 13–14, 813 S.E.2d 704, 711 (2018). Mere speculation and conjecture by the applicant is insufficient to support a finding of prejudice. *Id.* at 13–14, 813 S.E.2d at 711; *see, e.g.*, *Palacio v. State*, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding PCR applicant failed to present any probative evidence of prejudice from counsel's failure to obtain certain documents, where "the contents of these documents were never revealed at the PCR hearing.").

Chris Watkins was qualified as an expert in digital forensics at the PCR hearing. He testified that he obtained cell phone data, including cell site location information ("CSLI") from Petitioner's phone. Watkins testified that the CSLI showed that Petitioner's phone was not at the flea market in Augusta during the time period when Williams claimed he and Petitioner went back

to the flea market to obtain a key for the taser. (App.p.478, lines 18–24). However, he acknowledged that Petitioner's CSLI would only correspond to the location of Petitioner's phone, not Petitioner himself. (App.p.486, line 19–p.487, line 1). Watkins also admitted that Petitioner's cell phone records showed a lapse in activity during the time of the crime. (App.p.482, lines 14–19; p.489, lines 11–24).

The PCR court found Petitioner had failed to prove he was prejudiced by the absence of such testimony at trial. The PCR court noted that, because the CSLI only showed the location of Petitioner's phone, not Petitioner himself, its probative value for the purpose of discrediting Williams' testimony about the flea market was diminished. In addition, the flea market incident was only a small part of Williams' testimony, which did not relate to any element of the charges but simply explained how the robbers activated the taser that was later used in the crime. The PCR court noted that Counsel had investigated the "taser key" issue and determined that the taser could be activated without a key. Finally, the PCR court pointed out that Watkins' own review of the cell phone data showed a suspicious lapse in activity during the time of the robbery, which could have been damaging at trial.[4] Therefore, the PCR court found the additional forensic evidence offered by Watkins would not have changed the result of Petitioner's trial. The PCR court's findings on this issue are amply supported by the evidence and should not be disturbed on appeal.

Watkins also testified that he reviewed the Roses surveillance video introduced at trial and determined that there was some footage missing. (App.p.465, lines 10–25). He also testified that

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[4] Petitioner now contends that the lapse in cell phone activity during the time of the crime arguably "supported his testimony that he was at home asleep on the couch." (Pet.p.19). At trial, however, Petitioner denied being asleep at that time. (App.p.197, line 24–p.198, line 2).

there were video cameras at the Quick Cash, but neither law enforcement nor Counsel requested those videos. (App.p.471, lines 8–13).

The PCR court noted that Petitioner did not introduce any of the missing footage at the evidentiary hearing and, thus, failed to show that any of this omitted evidence would have been beneficial to his defense. Accordingly, the PCR court correctly found Petitioner failed to prove prejudice from Counsel's failure to obtain additional video footage. *See Garren*, 423 S.C. at 13–14, 813 S.E.2d at 711. Additionally, Counsel exploited the lack of additional video evidence as part of his closing argument to the jury, arguing that the State's investigation was incomplete and that the jurors should find reasonable doubt on that basis. (App.pp.213–17).

Finally, Watkins testified that there was a discrepancy between the timestamp on the Roses surveillance video and the time reflected on the Roses receipt for the backpack. (App.p.466, lines 10–13). He testified that, if he had been investigating this case, he would have gone to the store to check whether the camera in question had an inaccurate timestamp. (App.p.466, lines 14–20). Once again, at most, this testimony suggests that there were opportunities for further investigation, but it does not establish that any beneficial evidence would have been discovered thereby.

For all these reasons, the PCR court correctly found Petitioner failed to meet his burden of showing Counsel was ineffective, and this Court should deny the petition for a writ of certiorari on this ground.

CONCLUSION

For the foregoing reasons, this Court should deny this Petition for Writ of Certiorari. Should this Court grant the petition, the State seeks permission to more fully brief the issues herein.

Respectfully submitted,

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