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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM
PICKENS COUNTY

The Honorable Patrick C. Fant, III
Circuit Court Judge

Case No. 2020-CP-39-0617

Suzanna Brown Simpson, # 368727

Petitioner,

v.

State of South Carolina

Respondent.

REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI

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Introduction

The State's Return attempts to reframe trial counsel's failures as reasonable strategy. However, the record and the State's own analysis demonstrate otherwise. At trial, the only disputed issue was whether Anna Simpson possessed the capacity to distinguish right from wrong. Three forensic experts, including a court-appointed psychiatrist, concluded she did not. Yet the jury rejected that consensus after hearing from a single rebuttal witness with a different opinion, her treating psychiatrist, Dr. Jeffrey Smith. The record reveals why: trial counsel failed to investigate Dr. Smith, failed to impeach his testimony on the grounds that his own treatment decisions may have contributed to Anna's psychosis, and failed to present the lay testimony necessary to contextualize Anna's insanity defense. Dr. Smith's unexamined conflict of interest sets this case apart. Counsel's failure to impeach his testimony for potential bias was a catastrophic mistake for which justice begs a remedy.

The State's attempt to recast these failures as "strategy" misapplies *Strickland v. Washington*, 466 U.S. 668 (1984), which requires that strategic decisions be informed by reasonable investigation. Here, they were not. The relevant question is not whether counsel made a strategic choice, but whether counsel conducted the investigation necessary to inform any such choice. Under *Strickland*, strategic decisions are reasonable only to the extent they are based on adequate investigation. 466 U.S. 668, 690-91 (1984).

Unable to defend those omissions on the merits, the State resorts to procedural deflection, arguing Anna's claims are not preserved. This preservation argument is a distraction from a fundamental constitutional failure. Counsel failed to investigate the State's most critical witness, failed to develop available medical evidence, and failed to present testimony essential to contextualizing the insanity defense. Because these failures undermined confidence in the outcome on the sole contested issue, certiorari is warranted.

Argument

I. Counsel was ineffective for failing to investigate and prepare for Dr. Smith.

A. Counsel failed to conduct the minimum investigation required under *Strickland*.

The State contends that counsel satisfied their duty by obtaining records and relying on Dr. Price's conversation with Dr. Smith. That argument misstates the law. South Carolina courts require that counsel conduct a reasonable investigation that "at a minimum includes interviewing potential witnesses and making an independent investigation of the facts." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011).

Here, counsel did not interview Dr. Smith. (PCR Tr. 30:17-25; 31:01-02.) They instead relied on Dr. Price's informal summary of a single conversation, which proved inaccurate. (PCR Tr. 75:05-15.) This is precisely the type of incomplete investigation deemed deficient in *Council v. State*, where counsel presented expert testimony but failed to develop the underlying facts necessary to support it. 380 S.C. 159, 170, 670 S.E.2d 356, 362 (2008). This Court and others have consistently rejected such secondhand investigation. *See Hoots v. Allsbrook*, 785 F.2d 1214, 1219-20 (4th Cir. 1986) (failure to interview key witnesses cannot be justified as strategy); *Hinton v. Alabama*, 571 U.S. 263, 274-75 (2014) (duty extends to proper preparation of expert issues). Furthermore, this Court made it clear that strategic decisions are valid only when supported by reasonable professional judgment grounded in adequate investigation. *Von Dohlen v. State*, 360 S.C. 598, 606, 602 S.E.2d 738, 742 (2004). Here, counsel's decision was not a well-considered strategic plan; it was a mistaken and unverified assumption about the most important witness in the case.

B. Counsel's reliance on Dr. Price's secondhand information regarding Dr. Smith was objectively unreasonable.

Counsel's reliance on Dr. Price's conversation with Dr. Smith was an unjustified shortcut, not a strategy. Counsel admitted this on cross-examination. (PCR Tr. 77:07-09; 77:14-19; 101:13-16.) This Court has rejected precisely this type of omission. In *McKnight v. State*, counsel was found ineffective for failing to investigate and present available evidence to challenge expert testimony. 378 S.C. 33, 45-46, 661 S.E.2d 354, 360 (2008). Here, the consequence of that failure was foreseeable. Counsel misjudged Dr. Smith's role entirely and were caught unprepared when he ultimately testified for the State. Where a case turns on a critical issue that requires expert testimony, counsel's failure to investigate and secure a competent expert addressing that issue constitutes unreasonable performance. See *Hinton v. Alabama*, 571 U.S. 263, 273-75 (2014) (holding counsel was deficient where he failed to obtain an adequate expert necessary to rebut the State's central forensic evidence).

South Carolina precedent confirms that ineffective assistance is often found where counsel adopts an overly narrow theory of the case and fails to investigate alternative or supporting evidence. *Council*, 380 S.C. at 170, 670 S.E.2d at 362. This is what occurred here. Counsel adopted a purely expert driven defense and then failed to examine the factual basis underlying their opinion and failed to anticipate obvious rebuttal evidence.

C. Trial Counsel's last-minute preparation underscores the deficiency.

The State's reliance on counsel's "overnight" preparation is telling. That fact does not show diligence and instead shows surprise. *Strickland* requires reasonable preparation before trial decisions are forced upon counsel. 466 U.S. at 691. Preparing for a critical witness the night before testimony confirms what the record already shows: counsel failed to reasonably prepare.

D. Prejudice is established by the central role of Dr. Smith’s testimony.

The State argues the verdict proves lack of prejudice. However, that argument is circular. Prejudice exists where there is a reasonable probability that the jury would have reached a different conclusion. *Edwards*, 392 S.C. at 459, 710 S.E.2d at 66. Here, Dr. Smith provided the only testimony supporting criminal responsibility. Had counsel investigated Dr. Smith, the trial would have looked fundamentally different.

Furthermore, the State frames prejudice narrowly, asking whether Dr. Smith’s testimony alone would have changed the outcome. However, under *Strickland*, prejudice exists where counsel’s errors undermine confidence in the outcome, not just isolated pieces of evidence. 466 U.S. 668, 669, 104 S. Ct. 2052, 2055–56, 80 L. Ed. 2d 674 (1984). South Carolina cases reinforce that prejudice should be evaluated in terms of how the omitted evidence would have reshaped the jury’s understanding of the case. *See Rosemond v. Catoe*, 383 S.C. 320, 326, 680 S.E.2d 5, 8 (2009) (analyzing how omitted mental health evidence could have altered the jury’s perception of culpability); *Weik v. State*, 409 S.C. 214, 239, 761 S.E.2d 757, 770 (2014) (emphasizing that additional contextual evidence would have changed the way jurors interpreted the defendant’s behavior.) The prejudice in this case is not simply that counsel failed to impeach Dr. Smith. It is that the jury heard a fundamentally distorted narrative which the only treating physician was unchallenged in his role in Anna’s mental deterioration.

II. Counsel was ineffective for failing to develop the medication mismanagement theory.

A. The State improperly reframes the issue as “Adderall-induced psychosis.”

The State argues that no expert established “Adderall-induced psychosis.” This argument misconstrues the claim. The Petition is not seeking to prove causation beyond dispute – that is not, and never has been, Anna’s burden to bear. Anna’s claim in her petition is simply that the trial

record is uncontroverted that Adderall was contraindicated for psychotic patients, and Anna exhibited psychotic symptoms. Dr. Smith's decision to continue prescribing her Adderall placed her at risk of worsening psychosis. Every expert, including Dr. Smith, recognized these risks. (PCR Tr. 33:12-33:15; 36:13-22; 122:18-23; 139:06-15; 141:23-25.). And yet counsel failed to develop or present this evidence, or to impeach Dr. Smith before the jury for his obvious conflict of interest and potential bias. This was not a speculative theory and instead was a known issue before trial that counsel "never focused" on. (PCR Tr. 78:14-79:04; 81:04-10.)

B. The PCR court applied the wrong legal standard.

The PCR court required Anna to prove she "actually suffered" an induced psychosis. However, the relevant standard under *Strickland* is not whether counsel proved causation. It is whether counsel investigated and presented plausible explanations of Anna's mental state capable of raising reasonable doubt. *See Strickland*, 466 U.S. at 694. Requiring proof of causation improperly shifts the burden from deficient performance to outcome certainty which *Strickland* rejects.

South Carolina courts have held that counsel must develop medical evidence explaining how and why a defendant's condition manifested. In *Von Dohlen*, the Court found ineffective assistance where counsel presented limited or inaccurate diagnoses but failed to investigate and develop the underlying evidence necessary to explain the defendant's true mental condition. 360 S.C. at 606. Similarly, in *McKnight* the court emphasized counsel's duty to investigate and develop evidence necessary to explain and effectively challenge expert testimony. 378 S.C. at 46. Here, counsel failed to present available support of how Anna's condition deteriorated and what role medical treatment played in that deterioration.

C. The State’s argument that presenting multiple expert opinions should have been sufficient ignores the reality of jury decisions.

The State’s argument assumes that presenting multiple expert opinions could not have been deficient. However, expert testimony does not operate in a vacuum. Jurors evaluate expert testimony based on credibility, factual grounding, and coherence with over evidence. South Carolina courts recognize that expert opinion must be supported by an evidentiary foundation to carry persuasive weight. *See Council*, 380 S.C. at 170 (rejecting incomplete development of mental health evidence). By failing to develop the medical evidence, counsel deprived the expert’s testimony of a necessary foundation. The jury predictably rejected three experts because their conclusions lacked a compelling factual narrative.

Furthermore, the State argues that counsel was not deficient because these “experts did not rely on” or emphasize the medication mismanagement issue. That argument inverts the requirements of *Strickland*. Counsel’s duty is not to passively accept expert conclusions. It is to actively investigate facts that may strengthen or explain expert conclusions. As this Court recognized in *Von Dohlen* that effective representation requires independent investigation beyond what experts provide. 360 S.C. 598, 606, 602 S.E.2d 738, 742 (2004). Counsel had access to facts in the medical records and evidence of prior episodes. The failure was not that the experts “did not rely” on or emphasize the issue. Counsel instead never developed this theory.

D. Counsel’s failure to impeach Dr. Smith for bias was independently deficient.

Counsel’s failure to develop the medication issue also contributed to their failure to impeach Dr. Smith for his obvious and material conflicts of interest. This Court has recognized that “[a]ny fact may be elicited which tends to show interest, bias, or partiality of the witness.” *Smalls v. State*, 422 S.C. 174, 182–83, 810 S.E.2d 836, 840 (2018); Rule 608, SCRE. Dr. Smith acknowledged in his testimony that he prescribed a contraindicated stimulant, knew of Anna’s

prior episodes, and anticipated scrutiny of his treatment after the crime. (PCR Tr. 33:15-25; 32:19-21; 20:08-20; 20:03-07.) Despite this, counsel failed to explore whether his opinion was influenced by a desire to minimize his own responsibility. At Anna’s PCR hearing, counsel provided no reasonable excuse for this decision. (PCR Tr. 79:13-18; 78:21-25; 101:113-20; 77:06-10.) This was an extraordinary failure and far below the professional standard of a reasonable trial attorney.

E. Prejudice from these failures is overwhelming.

If Counsel had presented the medication evidence, the jury would have heard a coherent explanation for Anna’s psychosis. Furthermore, if counsel had presented this medication evidence, Dr. Smith’s credibility would have been significantly undermined, and the defense experts’ opinion would have been strengthened. As the Petition demonstrated, this evidence reframes the case from one of malice to one of medical causation. That shift alone establishes a reasonable probability of a different outcome.

III. Counsel was ineffective for failing to present character and lay witness testimony.

A. The State improperly characterizes the omitted lay testimony.

The State inaccurately treats the omitted evidence as generic “good character” testimony. These witnesses would have described Anna’s mental deterioration and provided context necessary for the jury to understand her actions. It would have also provided testimony from witnesses who could corroborate the other expert’s testimony. (PCR Tr. 81:21-24; 82:01-08.) The fact that Dr. Smith was the treating psychiatrist arguably gave his testimony real-life support. If the witnesses could have testified it would have given similarly much needed support to the other expert’s testimony. Such testimony has been recognized as relevant to insanity. *See State v. Lewis*, 328 S.C. 273, 278. 494 S.E.2d 115, 117 (1997) (“A defendant may rely on lay testimony to establish insanity.”)

The State also argues that they lay testimony would have been irrelevant or cumulative. However, South Carolina precedent holds that lay testimony is an essential component of insanity determinations. *Lewis* recognized that a defendant “may rely on lay testimony” to establish insanity. 328 S.C. at 278, 494 S.E.2d at 117 (1997) (citing *State v. Hinson*, 253 S.C. 607, 172 S.E.2d 548 (1970); see also *State v. Grier*, No. 2021-000444, 2023 WL 3491202, at *1 (S.C. Ct. App. May 17, 2023) (citing *State v. Lewis*, 328 S.C. at 278, 494 S.E.2d at 117.). Furthermore, insanity is a fact-intensive inquiry into behavior, not just a purely clinical question. The State’s attempt to characterize this testimony as mere “good character evidence” ignores reality.

Furthermore, this court recognized in *Weik* that contextual and social history evidence is critical because it allows jurors to connect clinical diagnoses to real-world behavior. 409 S.C. at 222-24, 761 S.E.2d at 761-62 (2014). Here, counsel presented an abstract and clinical defense. That failure prevented the jury from understanding Anna’s case.

B. Counsel conceded the omission of lay testimony was not strategic.

Both attorneys admitted during the PCR trial that there was no strategic reason for failing to present this evidence. (PCR Tr. 83:03-05; 182:11-183:22; App. 1217, 1316-17.) This Court has held that strategy must be supported by a “valid reason.” *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). However, there was clearly no strategy here.

The State also contends that presenting character evidence would have “opened the door” and allowed it to introduce damaging rebuttal evidence. However, South Carolina law makes clear that strategic decisions must be grounded in reasoned judgment, not generalized fear. *Ingle*, 348 S.C. at 470, 560 S.E.2d at 402. Furthermore, it would not have opened the door, because some favorable testimony was already admitted and the State’s alleged “rebuttal” evidence was very limited. (PCR Tr. 82:21-23; 83:03-09; 83:16-17.) Speculation about possible rebuttal cannot justify failing to present critical defense evidence. *Williams v. Taylor*, 529 U.S. 362, 396, 120 S. Ct. 1495,

1514, 146 L. Ed. 2d 389 (2000) (rejecting the State’s claim that counsel’s failure to present mitigating evidence was strategic, and holding that “the failure to introduce the comparatively voluminous amount of evidence that did speak in [the defendant’s] favor was not justified by a tactical decision,” even though some evidence was unfavorable). Moreover, *Council* warns against “all-or-nothing” defenses that exclude available evidence without justification. 380 S.C. at 175, 670 S.E.2d at 364 (2008). Here, counsel admittedly did not strategically weigh competing risks and simply did not present this testimony.

C. The resulting prejudice was profound.

Trial counsel themselves described the defense as “clinical” and “cold.” (PCR Tr. 201:07-17.) In a case involving the killing of children, that presentation left the jury with abstract expert opinions and an emotionally compelling narrative from the State. Lay witness testimony would have humanized Anna and provided the missing link between diagnosis and her behavior. This would have been sufficient under *Strickland*. 466 U.S. at 694, 104 S. Ct. at 2068 (1984).

D. *Pantovich* supports the broader principle that juries must receive meaningful context.

The State dismisses *Pantovich v. State*, 427 S.C. 555, 832 S.E.2d 596 (2019), as irrelevant because it does not involve mental illness. That argument ignores the principle for which the case is cited. *Pantovich* recognizes that character evidence can be critical to how juries evaluate intent and culpability. Its reasoning applies broadly: juries do not evaluate mental states in a vacuum. They look to contextual evidence about the defendant’s behavior and character. Similarly, in *Von Dohlen*, the Court emphasized the importance of contextual mental-health evidence at sentencing, holding that counsel’s failure to present such evidence deprived the jury of information necessary to meaningfully evaluate mitigating circumstances. 360 S.C. at 606, 602 S.E.2d at 742. Therefore, *Pantovich* is consistent with this case and not inapposite.

E. *Weik* confirms that narrative context is not optional.

The State tries to limit *Weik v. State* to death-penalty sentencing cases, but the decision shows a broader concern with a failure to investigate and present evidence bearing on a defendant's mental condition. 409 S.C. at 223, 761 S.E.2d at 762. Although the holding arises in the at sentencing or the guilt phase, its reasoning underscores the importance the jury must understand who the defendant was and how mental illness transformed them. The absence of this context is exactly what made the defense in this case "clinical" and deficient.

F. South Carolina law explicitly recognizes the role of lay testimony in insanity determinations.

The State's contention that lay testimony is irrelevant is contrary to controlling law. A defendant may "rely on lay testimony to establish insanity," and the jury "may disregard expert testimony" on the issue of sanity. *State v. Lewis*, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997).

Likewise, lay testimony regarding a defendant's behavior and demeanor can create a jury question as to mental capacity. *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007) (recognizing that the jury evaluates the totality of evidence bearing on the defendant's mental state, not expert testimony alone). Thus, South Carolina law does not limit the inquiry to expert opinion, but permits the jury to consider lay and expert evidence together in assessing criminal responsibility.

IV. The State's Preservation arguments misstate the record and are a transparent attempt to avoid a review of the merits.

The State's preservation argument is not a serious procedural defense because it is a tactic designed to divert the Court from the substance of Anna's constitutional claims. Properly understood, the record and controlling law make clear that the issues presented are preserved, properly before this Court, and within its certiorari jurisdiction.

A. South Carolina law requires preservation of the core issue, and it does not require identical phrasing to preserve an issue.

This Court has emphasized that preservation depends on whether the issue presented on an appeal rests on the same underlying ground raised below, even if articulated differently, as “[a] party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground.” *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). South Carolina appellate courts do not require litigants to use particular magic words to preserve an issue; rather, preservation turns on whether the argument was fairly raised to and ruled upon by the trial court.

Consistent with that principle, the South Carolina Supreme Court has made clear that preservation turns on the substance of the objection, not its form. An objection is preserved so long as it is stated with sufficient clarity to apprise the trial court of the issue, even if counsel does not invoke the precise doctrinal label or preferred terminology. *See Cone v. State*, 443 S.C. 487, 493-94, 905 S.E.2d 368, 372 (2024). Accordingly, appellate courts must avoid applying preservation rules “in a technical manner as if this is some sort of game of ‘gotcha’ elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.” *Id. citing Morales v. State*, 439 S.C. 604, 609, 889 S.E.2d 554, 556 (2023) (citations omitted).

The PCR court ruled on counsel’s failure to investigate and develop evidence regarding Dr. Smith’s prescribing decisions, the contraindicated medications, and the role of those decisions in Anna’s mental health. The argument is therefore preserved.

B. The State’s reliance on *State v. Bailey* is unsound and inapplicable to this case.

The State’s reliance on *State v. Bailey*, 298 S.C. 1, 377 S.E.2d 581 (1989), is misplaced and reflects a category error. *Bailey* governs the preservation of directed verdict motions at trial, not constitutional claims raised in PCR proceedings. PCR litigation operates under a fundamentally different framework. As this Court has explained, preservation turns on whether the issue was

fairly presented and ruled upon not whether it was framed with technical precision or particular terminology. *See Cone v. State*, 443 S.C. 487, 493-94, 905 S.E.2d 368, 372 (2024) (holding preservation turns on whether the trial court understood and ruled on the substance of the objection, not on rigid or technical phrasing). Accordingly, *Bailey* is inapposite to the PCR context.

C. The bias-impeachment argument is inherently preserved within the ineffective assistance claim.

The State’s attempt to parse out bias impeachment as a separate “unpreserved” issue ignores how ineffective assistance is analyzed. Under *Strickland*, courts must evaluate “the totality of the evidence.” 466 U.S. at 695; *see also Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Anna’s claims regarding counsel’s failure to investigate and prepare for a witness necessarily includes failure to develop impeachment evidence and failure to expose bias. As *Smalls* emphasizes, cross-examination for bias is a core component of effective representation, and failure to pursue available bias evidence may constitute deficient performance. 422 S.C. at 182-84, 810 S.E.2d at 840-41. The issues were raised, litigated, and ruled upon in substance. This Court should reject the State’s misdirection and address the constitutional deficiencies on the merits.

Conclusion

The record establishes that counsel failed to investigate the State’s most important witness, failed to develop a known and viable defense theory, and failed to present available evidence central to the insanity defense. These were not strategic choices. They were omissions that deprived the jury of the information necessary to fairly decide the only issue in the case. Because there is a reasonable probability that the outcome would have been different absent these errors, Petitioner respectfully requests that this Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

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