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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to the Court of Common Pleas
Appeal from Spartanburg County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2023-000378

GABRIEL RIOS,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

BRIEF OF PETITIONER

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Did the post-conviction relief judge reversibly err by granting a new trial based on newly-discovered evidence when the specific newly-discovered evidence involved, which consisted of an allegation an investigator involved in Rios's home invasion case committed misconduct when seeking a search warrant years after Rios's trial in a totally-unrelated case, merely could have been used as impeachment evidence and was not material to Rios's guilt or innocence and, thus, was not sufficient to satisfy the well-established legal requirements that must be met in order for a new trial based on newly-discovered evidence to be warranted?

STATEMENT OF THE CASE

In August of 2010, Respondent Gabriel Rios was arrested following an investigation into a home invasion that occurred earlier on the same date. In November of 2010, the Spartanburg County Grand Jury indicted Rios for first-degree burglary, armed robbery, kidnapping, first-degree assault and battery, possession of a weapon during the commission of a violent crime, and grand larceny. On February 26, 2013, a jury trial was commenced on all the indicted charges except grand larceny in the Spartanburg County Court of General Sessions with the Honorable R. Lawton McIntosh, circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Rios as indicted. Following the verdict, Judge McIntosh sentenced Rios to concurrent terms of imprisonment of forty years for first-degree burglary, thirty years for armed robbery, thirty years for kidnapping, and ten years for first-degree assault and battery along with a consecutive term of imprisonment of five years for possession of a weapon during the commission of a violent crime. Rios then timely filed and perfected an appeal.

On appeal, the Court of Appeals—following briefing—unanimously affirmed Rios's convictions through an unpublished opinion. State v. Rios, Op. No. 2015-UP-135 (S.C. Ct. App. filed Mar. 11, 2015). Thereafter, on April 10, 2015, remittitur was issued.

Subsequent to the issuance of the remittitur, Rios timely filed an application for post-conviction relief ("PCR"), and, in response, the State filed a return requesting an evidentiary hearing. On January 30, 2017, an evidentiary hearing was conducted in the Spartanburg County Court of Common Pleas with the Honorable Edward W. Miller, circuit court judge, presiding. At the conclusion of the hearing, Judge Miller denied the application, and that ruling was later confirmed through an order filed on March 27, 2017. Rios then timely filed a motion to alter or amend pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and Judge Miller

again denied relief through an amended order of dismissal filed on June 29, 2017. Once again, Rios then timely filed and perfected an appeal.

On appeal, the matter was transferred to the Court of Appeals, and the Court of Appeals denied Rios's petition for a writ of certiorari. Roughly two weeks later, remittitur was issued.

Following that, on July 17, 2019, Rios submitted another PCR application raising—amongst other things—a claim predicated upon newly-discovered evidence. A little over a month later, Rios submitted a document entitled "Amended P.C.R. Supplement."[1] Thereafter, on October 15, 2020, Rios filed a petition for a writ of mandamus with the Supreme Court. Following a request for a return, the State submitted both a return to the petition for a writ of mandamus and a return, motion to dismiss, and motion to file out of time in connection to Rios's second PCR application.

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[1] Around the same time, Rios submitted a petition for a writ of habeas corpus in the United States District Court for the District of South Carolina predicated—in part—upon a claim of newly-discovered evidence, and the State responded by filing a return and motion for summary judgment. On May 19, 2020, the Honorable Shiva V. Hodges, United States Magistrate Judge, issued a report and recommendation recommending the State's motion for summary judgment be granted and Rios's petition be dismissed with prejudice. Rios v. Williams, No. CV 1:19-2329-SAL-SVH, 2020 WL 5984694 (D.S.C. May 19, 2020), report and recommendation adopted, No. 1:19-CV-02329-SAL, 2020 WL 3958262 (D.S.C. July 13, 2020). In offering such a recommendation, the magistrate judge found Rios's newly-discovered evidence claim lacked merit as the "arrest and firing [of Investigator Lorin Williams] occurred almost a decade after the events in question in this case and occurred in connection to a case unrelated to" Rios's. Id. Subsequently, on July 13, 2020, the Honorable Sherri A. Lydon, United States District Judge, issued an order accepting the report and recommendation in its entirety, granting the State's motion for summary judgment, and denying Rios's petition with prejudice. Rios v. Williams, No. 1:19-CV-02329-SAL, 2020 WL 3958262 (D.S.C. July 13, 2020). In doing so, Judge Lydon noted Rios's "newly-discovered evidence [wa]s entirely unrelated to [his] case" and he "failed to present any evidence that documents were falsified or that there was otherwise inappropriate behavior by the investigator in his case." Id. Following that ruling, Rios sought reconsideration or amendment, and his motion was denied on October 5, 2020. Rios v. Williams, No. 1:19-CV-02329-SAL, 2020 WL 6588551 (D.S.C. Oct. 5, 2020). Rios then attempted to appeal from those rulings, but the Fourth Circuit Court of Appeals declined to issue a certificate of appealability and dismissed Rios's appeal through an unpublished per curiam opinion issued on April 20, 2022. Rios v. Williams, No. 20-7667, 2022 WL 1172168 (4th Cir. Apr. 20, 2022).

On April 5, 2021, a virtual hearing was conducted in connection to the State's motion to dismiss in the Spartanburg County Court of Common Pleas with the Honorable Grace Gilchrist Knie, circuit court judge, presiding. At the conclusion of the hearing, Judge Knie took the matter under advisement, and she subsequently denied the State's motion through an order issued on April 26, 2021.

Thereafter, on October 18, 2022, another evidentiary hearing was conducted in the Spartanburg County Court of Common Pleas with the Honorable Brian M. Gibbons, circuit court judge, presiding. At the conclusion of the hearing, Judge Gibbons took the matter under advisement. Subsequent to that, Judge Gibbons issued an order on January 6, 2023, granting Rios's request for a new trial based on newly-discovered evidence. The State then timely filed a motion to reconsider, and a hearing was held on the motion on February 13, 2023, in the Spartanburg County Court of Common Pleas with Judge Gibbons again presiding. At the conclusion of the hearing, Judge Gibbons declined to reconsider his earlier ruling, and he confirmed that ruling through a written order issued later on the same date. The State then timely filed a notice of appeal.

After initiating the appeal, the State filed a petition for a writ of certiorari in the Supreme Court, and the Supreme Court transferred the matter to the Court of Appeals. Subsequently, on February 21, 2025, the Court of Appeals granted the State's petition.

STATEMENT OF FACTS

Summary of Rios's Crimes and the Evidence Discovered During the Ensuing Investigation

On the morning of August 14, 2010, Gail Holt ("Victim") was in bed at her residence located in Spartanburg, South Carolina, with only her daughter's dog—a small terrier—there to keep her company. (App'x p. 109; pp. 145-146). By that point, her husband, Phillip Holt ("Phillip"), had already headed out earlier that morning to go to work. (App'x p. 109; p. 150).

Around 7:30 a.m., Victim woke up for the day. (App'x p. 109). A little bit after that, Victim began preparing to take the dog outside, and, as she did, she was startled by what sounded like glass breaking in the home.[2] (App'x pp. 109-110). Shockingly, when she went to investigate the sound, she ran into an unmasked man in her hallway that she *immediately* recognized as "Gabe," an individual who had done contracting work for her husband's company on and off in the past and whom she had been around on multiple earlier occasions. (App'x pp. 109-111; pp. 150-152; p. 158).

Upon unexpectedly encountering one another, "Gabe," who had no legitimate reason to be inside the Holts' residence at the time, quickly grabbed Victim, forced her to turn around, and put something sharp up to her neck. (App'x p. 111; p. 156). He then forced Victim into her husband's office, directed her to open the closet, and demanded she open the safe hidden inside. (App'x pp. 111-112). However, Victim did not know the safe's combination, and she relayed that information to "Gabe." (App'x pp. 112-113).

Upon learning he would not be able to gain access to the safe, "Gabe" aggressively and hurriedly forced Victim to her bedroom and ordered her to get onto the floor. (App'x pp. 113-114). Victim complied with his commands, and "Gabe" bound her hands behind her back with

[2] Later on during trial, Victim explained the incident occurred at some point between 7:30 a.m. and 8:00 a.m. (App'x p. 118).

tape.[3] (App'x pp. 113-114). Once Victim was secured, "Gabe" then retrieved Phillip's handgun from a nearby holster and demanded Victim's purse at gunpoint. (App'x pp. 113-114; p. 153). Following that, "Gabe" proceeded to steal cash from Victim's purse, some of her jewelry, her cell phone, and her car keys. (App'x p. 115). He then absconded from the scene in Victim's car and took Phillip's handgun along with him. (App'x pp. 115-116; p. 153).

After she was sure "Gabe" was gone, Victim broke free from her bindings. (App'x p. 116). She then quickly called her husband in a panic and alerted him of what had occurred. (App'x p. 151). In response, he called the police and rushed home. (App'x p. 151; p. 132).

A short time later, Deputy David Welch from the Spartanburg County Sheriff's Office arrived at the Holts' home, and he initially spoke with Phillip, who was not present at the time of the incident and indicated he did not know who the perpetrator was at that time. (App'x p. 132; p. 151; p. 266). Deputy Welch then spoke with Victim, who provided a description of her assailant. (App'x pp. 266-267). However, at that time, she apparently did not provide her assailant's name. (App'x p. 142; p. 268).

A little bit after that, Investigator Lorin Williams of the Spartanburg County Sheriff's Office arrived on scene, and he, too, spoke with Victim about what had occurred. (App'x pp. 177-178). During that conversation, Victim, who was still very upset, identified the perpetrator as "Gabe" and explained he had worked for her husband in the past. (App'x p. 133; p. 142; pp. 179-180; p. 192). Investigator Williams then spoke with Phillip, who confirmed "Gabe" was actually Rios. (App'x p. 185). Based on that, Investigator Williams obtained a computer-generated photographic lineup containing a number of photos, including one of Rios. (App'x p.

[3] "Gabe" used painter's tape to bind Victim's hands, and the Holts had the exact same kind of tape stored in their home at the time of the incident. (App'x p. 154; p. 159). Notably, Rios had been to the Holts' home at some point prior to the incident to perform work that included painting. (App'x p. 110).

180). He then showed that lineup to Victim within just a few hours of the incident, and she rapidly identified Rios as the perpetrator without any hesitation. (App'x pp. 133-136; p. 140; pp. 147-148; pp. 180-183).

As the investigation into the incident continued, Rios was tracked down and arrested later on the same date. (App'x pp. 183-184). A few hours after that, Victim's vehicle was found abandoned roughly a quarter of a mile away from where Rios was apprehended. (App'x pp. 189-190). Subsequent to his arrest, Rios's fingerprints were collected and compared to a fingerprint found on a triangular shard of glass recovered from the Holts' home after the incident. (App'x p. 227; p. 229). Unsurprisingly, the fingerprint from the glass shard was determined to be a match for Rios's right thumbprint. (App'x pp. 236-237; p. 240; p. 243).

Relevant Details from Rios's Trial

Toward the outset of Rios's ensuing trial on charges—including first-degree burglary, armed robbery, and kidnapping—that stemmed from the incident, defense counsel moved to suppress the evidence related to Victim's identification of Rios as the individual who committed the home invasion in August of 2010. (App'x p. 10; p. 20; pp. 27-38; pp. 40-43; p. 48; pp. 52-53; pp. 565-574). However, after conducting an in limine hearing on the matter, the trial judge denied that motion. (App'x p. 50; pp. 52-53).

As the trial proceeded forward, Victim recounted the terrifying details of her experiences on the date of the incident, identified Rios as the person who broke into her home and robbed her, and expressed complete certainty in that identification. (App'x pp. 108-148). In addition to her testimony, Phillip testified about his own experiences on the date of the incident, and he confirmed Rios was known as "Gabe," had worked for him in the past for a number of years, had been around Victim as a result of that work, and had even helped install the safe at their

residence. (App'x pp. 150-163). Likewise, Investigator Williams testified about his response to the incident, Victim's identification of the perpetrator as "Gabe," and her subsequent identification of Rios from the photographic lineup he presented to her. (App'x pp. 177-192). Regarding that verbal identification, Investigator Williams explained Victim made it without hesitation and without any suggestion from anyone. (App'x pp. 181-183). Furthermore, testimony was presented about the discovery of Rios's fingerprint on the shard of glass recovered at the crime scene and about the discovery of Victim's stolen vehicle in close proximity to where Rios was taken into custody. (App'x pp. 184-185; p. 212; p. 229; pp. 236-237; p. 240; p. 243).

Once that testimony and evidence was presented, the State rested its case, and Rios elected not to testify in his own defense. (App'x p. 256; pp. 259-260). However, defense counsel did present testimony from Deputy Welch establishing neither Phillip nor Victim identified the perpetrator by name when he first spoke with them after the incident. (App'x pp. 266-268). Likewise, Estar Byrd, a resident of Spartanburg, testified on behalf of the defense and indicated she did not actually know Rios. (App'x pp. 269-270). However, Byrd further stated she did let Rios use her home phone from time to time in August of 2010 after he asked her if she would permit him to receive calls on it, but she indicated she did not have any recollection of seeing Rios on the date of the incident. (App'x pp. 269-272). In addition to that, Rios's wife, Sonia Rios ("Sonia"), attempted to offer an alibi for Rios. (App'x pp. 273-281). In doing so, Sonia, who had previously been convicted of giving false information to law enforcement a few years before the incident, claimed Rios was living with her in August of 2010 but was "[s]taying at [Byrd's] house" on the date of the incident, Rios called her that morning around 7:25 a.m. using Byrd's phone, and Rios spoke with her for some unspecified period of time. (App'x p. 273; pp. 278-279; p. 281). Following the presentation of that claim, Curtis Jones, an investigator

for the Seventh Circuit Public Defender's Office, testified about his own personal experiments travelling from Byrd's house to the Victim's address, and he alleged it took him roughly sixteen minutes to get from one location to the other. (App'x pp. 282-284).

Following the presentation of that testimony and evidence, the defense rested, and the parties presented their closing arguments to the jury. (App'x p. 285; pp. 305-326). As part of his closing argument, defense counsel—amongst other things—vigorously challenged the reliability of Victim's identification of Rios as the perpetrator by pointing out neither she nor Phillip initially named him to law enforcement despite Victim claiming to have immediately recognized him as the home invader as the incident was occurring. (App'x pp. 308-309). Ultimately though, the jury convicted Rios as indicted. (App'x p. 352; pp. 370-371).

Summary of the Most-Recent Post-Conviction Relief Proceedings in Rios's Case

Following an unsuccessful appeal, an unsuccessful attempt to obtain a new trial through the filing of his first PCR action, and an unsuccessful appeal of the denial of relief, Rios initiated a successive PCR action in July of 2019. (App'x pp. 383-441; pp. 484-485; pp. 490-534; pp. 548-564; pp. 575-592; pp. 615-643). Through that successive action, Rios claimed he was entitled to a new trial based on—amongst other things—newly-discovered evidence. (App'x pp. 620-621). More specifically, Rios contended he now had evidence establishing Investigator Williams was fired in January of 2019—which was more than eight years after the incident and more than five years after Rios's trial—for allegedly falsifying documents to frame defendants and obtain warrants. (App'x pp. 626-627). Based on that, Rios surmised Investigator Williams "clearly framed" him, too, and must have convinced Victim to accuse him of being the culprit. (App'x pp. 626-627). And, as support for that claim, Rios included print-outs of several news stories that indicated: (1) Investigator Williams had been fired from the Spartanburg County

Sheriff's Office based on an accusation he used false information about a confidential informant to obtain a search warrant on January 11, 2019; (2) no criminal charges had been filed against him as a result of the allegation; and (3) an investigation and review of his work in earlier cases was being initiated due to the nature of the allegation involved. (App'x pp. 637-639). Through one of his filings, Rios also presented a letter from Solicitor Barry J. Barnette providing the following summary of the basis for Investigator Williams's termination:

> "On January 11, 2019 you (Inv. Williams) were issued a search warrant on CRI information. This warrant was executed on January 15, 2019. In the affidavit, you swore to the facts that the information came from a confidential reliable informant and this CRI had provided information in the past to law enforcement that has been verified as truthful and has led to the seizure of illegal narcotics as well as the arrest of persons involved in illegal narcotics sales. This is not accurate, as this person claimed to be a CI was never signed up for that purpose. You neglected to confirm this information before using this person's information to secure a search warrant.
>
> This is a serious violation of Sheriff's Office Policy and has potential for other serious repercussions. It is a very unfortunate situation as this is going to result in the termination of your employment. The SO is also required to report this to the SCCJA and your certification is in jeopardy."

(App'x p. 656).

In response to Rios's newly-discovered evidence claim, an evidentiary hearing was conducted. (App'x p. 702). At the outset of that hearing, PCR counsel noted Investigator Williams had been involved in Rios's case and had later been fired for presenting false evidence to a magistrate to obtain a warrant. (App'x p. 702). Based on that, PCR counsel indicated Rios was alleging Investigator Williams fraudulently coerced Victim into identifying him and they intended to attempt to prove the identification was falsely given. (App'x pp. 702-703).

As the hearing proceeded forward, Rios testified on his own behalf. (App'x pp. 704-720). During his testimony, Rios acknowledged he had been to the Holts' house in the past and confirmed they knew him and would be able to recognize him instantly. (App'x p. 705). However, due to their failure to identify him in the 911 call placed by Phillip, he opined Investigator Williams must have suggested or given his name to Victim as the perpetrator. (App'x pp. 705-713; p. 718). As to how he arrived as such a conclusion, Rios explained:

> Well, we know that [Investigator Williams] would breech his duty to tell the truth under oath. He -- he will go in front of Your Honor and -- and breech his duty to get a warrant from Your Honor to have people arrested, convicted, and sentenced to prison. He has a track record of this; that's why we are going back now, 20 years, on all of his cases. This man . . . credibility cannot be -- it's no good in a court of law or in anywhere, because we -- when he ain't, because he's known to breech his duties and they terminated him from the Spartanburg County Sheriff . . . Office doing so.

(App'x pp. 716-717). Furthermore, as to why the investigator might have wanted to frame him personally, Rios indicated he thought he may have had one or two occasions where he "r[a]n across" Investigator Williams in the past. (App'x pp. 717-718).

In addition to Rios's own testimony, PCR counsel elicited testimony from both Victim and Phillip. (App'x pp. 722-736). Through their testimony, both confirmed they were not told by any law enforcement officers at any point to identify Rios as the person who committed the home invasion. (App'x p. 730; p. 735). Meanwhile, PCR counsel did *not* present any testimony from Investigator Williams himself. (App'x pp. 702-754).

After all the testimony and evidence was presented, PCR counsel asserted it was Rios's position "something happened with these officers out there" based on the evidence indicating Victim and Phillip did not initially name Rios as the perpetrator. (App'x pp. 740-741). In making such an argument, PCR counsel never once directly referenced the newly-discovered

evidence related to Investigator Williams's termination. (App'x pp. 740-741). Likewise, PCR counsel never explained how the evidence concerning Investigator Williams was not merely impeaching. (App'x pp. 740-741; pp. 751-753). Conversely, counsel for the State asserted the new information related to Investigator Williams was not sufficient to satisfy the requirements for a new trial based on newly-discovered evidence because it was not material, was merely cumulative or impeaching, and was not something that would probably change the result of the trial. (App'x pp. 743-745). Upon hearing the arguments of counsel, the PCR judge took the matter under advisement. (App'x p. 754).

Subsequently, the PCR judge issued an order granting Rios a new trial based on newly-discovered evidence. (App'x pp. 756-761). Notably, in doing so, the PCR judge expressly found the evidence related to Investigator Williams's termination for dishonesty was not simply impeaching. (App'x p. 761). However, the PCR judge then inconsistently found Investigator Williams's *credibility* could have impacted the outcome of Rios's case and he "could have been *impeached* in a way that could have changed the outcome of trial" based on the newly-discovered evidence. (App'x p. 761) (emphasis added).

Following that, the State sought reconsideration due to the fact the newly-discovered evidence was, at best, merely impeaching, and the PCR judge convened a hearing in response. (App'x pp. 762-769). During the hearing, counsel for the State noted no connection had been established between Rios's case and Investigator Williams's subsequent conduct in the unrelated matter that occurred years after Rios's trial. (App'x p. 775). Due to that, counsel for the State indicated the newly-discovered evidence could *only* be used for impeachment purposes in Rios's case. (App'x p. 775). In response, the PCR judge suggested Williams's termination could potentially "score points" with a jury and would be something that would *impeach* or taint his

testimony, and counsel for the State aptly noted that meant it was, in fact, just impeachment evidence. (App'x p. 776). The PCR judge then pivoted to discussing defense counsel's failure to play the 911 recording during trial, which—as counsel for the State accurately noted—was a matter that had already previously been fully litigated in Rios's case. (App'x pp. 530-531; pp. 557-558; pp. 586-588; p. 615; pp. 777-778). The PCR judge then sought PCR counsel's position on the matter, and he responded:

> Your Honor, this conduct by [Investigator Williams] in itself brings into question this conviction. Because the way we have to look at this is, it's disinformation was evolved at the time of trial. This officer is in the middle of this case. Then I would think there would be an issue of whether the State would even try the case.

(App'x p. 779). Without explanation or evidentiary support, PCR counsel further claimed Investigator Williams's "conduct" supposedly went "back a couple of years" even though he was fired well after Rios's trial. (App'x pp. 779-780). Ultimately, upon hearing the arguments of counsel, the PCR judge denied the State's reconsideration motion, and that ruling was confirmed through a written order that summarily affirmed his previous ruling granting a new trial in Rios's case. (App'x p. 782; p. 785).

ARGUMENT

The post-conviction relief judge reversibly erred by granting a new trial based on newly-discovered evidence because the specific newly-discovered evidence involved, which consisted of an allegation an investigator involved in Rios's home invasion case committed misconduct when seeking a search warrant years after Rios's trial in a totally-unrelated case, merely could have been used as impeachment evidence and was not material to Rios's guilt or innocence and, thus, was not sufficient to satisfy the well-established legal requirements that must be met in order for a new trial based on newly-discovered evidence to be warranted.

In the case sub judice, the PCR judge ruled Rios was entitled to a new trial based on newly-discovered evidence. In granting such relief, the PCR judge concluded the identified newly-discovered evidence—which consisted of information establishing Investigator Williams had been terminated from his employment at the Spartanburg County Sheriff's Office years after Rios's trial based on an allegation he engaged in misconduct when obtaining a search warrant in a totally-unrelated case—met all the necessary requirements that must be satisfied in order for a new trial based on such evidence to be warranted, including the requirements it was material and was not merely impeaching. However, inconsistent with that conclusion, the PCR judge went on to find the newly-discovered evidence solely could have been used to *impeach* Investigator Williams's testimony, and he did not identify—or attempt to identify—any other manner in which that evidence could have legitimately been used. Critically, since the newly-discovered evidence concerning Investigator Williams's unrelated termination years after Rios's trial could merely—as the PCR judge himself appeared to recognized—have been used as impeachment evidence and was not material to Rios's guilt or innocence since it had nothing to do with his case, Rios did not and could not meet his burden of establishing he was entitled to a new trial based on that newly-discovered evidence. As a result, the PCR judge erred as a matter of law by reaching a contrary conclusion, and his ruling granting Rios a new trial was legally erroneous and without factual support. The PCR judge's ruling granting relief should be reversed.

Standard of Review

In PCR cases, the standard of review to be applied on appeal is directly dependent on the specific issues raised. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing a PCR judge's factual findings on appeal, the appellate court will defer to those findings and uphold them if they are supported by any evidence of probative value appearing in the record. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); see Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018) ("Under the proper standard of review, the appellate court's 'view' must be limited to whether there is probative evidence to support the PCR court's factual findings."). Contrastingly, when reviewing a pure question of law, an appellate court will consider such a matter de novo and is not required to give deference to the PCR judge's rulings. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014). Ultimately, if the PCR judge's decision is controlled by an error of law, an appellate court will reverse that decision on appeal. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

Meanwhile, regardless of the venue involved, a decision as to whether to grant or deny a new trial based on newly-discovered evidence rests in the sound discretion of the circuit court judge. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977); see State v. Prince, 316 S.C. 57, 63, 447 S.E.2d 177, 181 (1993) ("It is well settled that the grant or refusal of a new trial is within the discretion of the trial judge and will not be disturbed on appeal absent a clear abuse of that discretion."). On appeal, an appellate court will not reverse a circuit court judge's ruling on a new trial motion absent a clear abuse of discretion. See State v. Wells, 162 S.C. 509, __, 161 S.E. 177, 187 (1931) ("[T]he granting or refusing of new trials, on the ground of after discovered evidence, is within the discretion of the trial judge, and this court will not interfere with that discretion, unless it manifestly appears that there was an erroneous exercise of it."); see

also State v. Corn, 224 S.C. 74, 81, 77 S.E.2d 354, 357 (1953) ("In an appeal from an order denying a motion for a new trial, it is settled by numerous cases that this Court may not nicely weigh the testimony upon which such a motion is based; that power rests in the Circuit Court, for it has at hand the instrumentalities with which to exercise the power, and that Court's settled judgment ought not to be impeached except for errors of law, or for an abuse of its discretion.").

Law Applicable to New Trial Claims Predicated Upon Newly-Discovered Evidence

Newly-discovered or after-discovered evidence is "evidence of facts existing at time of trial of which [the] aggrieved party was excusably ignorant." State v. Haulcomb, 260 S.C. 260, 270, 195 S.E.2d 601, 606 (1973). To obtain a new trial based on newly-discovered evidence, a party must demonstrate the evidence: (1) would probably change the result of the proceedings if a new trial is granted; (2) was discovered after the trial ended; (3) could not have been discovered prior to trial; (4) was material to the issue of guilt or innocence; and (5) was not merely cumulative or impeaching. State v. Taylor, 333 S.C. 159, 176, 508 S.E.2d 870, 879 (1998). When deciding whether to grant a new trial based on newly-discovered evidence, the circuit court judge is tasked with weighing the evidence and determining whether a new trial is warranted under the circumstances presented. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011). Importantly though, the granting of a new trial based on newly-discovered evidence is disfavored in South Carolina, and, thus, a party seeking a new trial based on such evidence must satisfy a *heavy* burden in order to be entitled to one. State v. Needs, 333 S.C. 134, 158, 508 S.E.2d 857, 869 (1998); see State v. Irvin, 270 S.C. 539, 545, 243 S.E.2d 195, 197-198 (1978) ("The granting of a new trial because of after-discovered is not favored, and this Court will sustain the lower court's denial of such a motion unless there appears an abuse of discretion."); see also United States v. Wilson, 624 F.3d 641, 660 (4th Cir.

2010) (explaining new trials based on newly-discovered evidence should only be granted *sparingly* and in the *rare* circumstance the evidence weighs heavily against the jury's verdict).

Application of the Relevant Law to Rios's Case

In his order granting relief in Rios's case, the PCR judge—after correctly reciting the relevant factors applicable to an analysis of a newly-discovered evidence claim—concluded Rios was entitled to a new trial based on the newly-discovered evidence that had been presented concerning Investigator Williams's years-later misconduct and firing. (App'x pp. 760-761). More specifically, the PCR judge ruled:

> [Rios] discovered that investigator Lorin Williams had been fired because of dishonesty. He discovered the information after his trial and initial post-conviction relief case. This information was not discoverable at the time of his trial, nor could he have discovered it with due diligence. This information is material and *not simply cumulative or impeaching*. Further, the Court finds that the newly discovered evidence as to the investigator, Lorin Williams credibility is of the nature that it could have affected the outcome of the case. The investigator *could have been impeached* in a way that could have changed the outcome. Thus, the Court finds that [Rios]'s claim of newly discovered evident must be granted.

(App'x p. 761) (emphasis added).

As previously noted, a party seeking the grant of a new trial based on newly-discovered evidence must—pursuant to the long-established analysis applicable to such claims in South Carolina—demonstrate the evidence upon which the motion is based: (1) was something that would probably change the result of trial if a new trial was granted; (2) was discovered subsequent to trial; (3) could not have been discovered prior to trial through the exercise of due diligence; (4) was material to the issue of guilt or innocence; and (5) was *not* merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 387-388, 434 S.E.2d 266, 267 (1993); see State v. Pierce, 263 S.C. 23, 32, 207 S.E.2d 414, 419 (1974) (describing the five factors of the analysis

for newly-discovered evidence claims as "well established requirements"). Therefore, newly-discovered evidence must be—amongst other things—not merely impeaching and material to guilt or innocence in order to be legally sufficient to warrant the grant of a new trial. Clark, 315 S.C. at 387-388, 434 S.E.2d at 267.

Notably, in United States v. Robinson, 627 F.3d 941, 945 (4th Cir. 2010), the Fourth Circuit Court of Appeals was—much like the PCR judge in Rios's case—confronted with a newly-discovered evidence claim predicated upon officers engaging in unrelated misconduct. In that case, Robinson was arrested as the result of a lengthy multi-agency narcotics investigation, charged with numerous offenses, and ultimately convicted of a variety of drug and firearm crimes in federal court. Id. at 945-946. Shortly after Robinson's trial, one of the investigators involved in the matter revealed he and a few other officers from the Aiken County Sheriff's Office's Narcotics Division had engaged in unrelated misconduct around that time. Id. at 946. More specifically, the misconduct involved: (1) the use of "buy money" to purchase alcoholic drinks, pay dancers at a club, and rent a hotel room; (2) the improper disposal of cocaine purchased by an informant; (3) the failure to log cocaine as required; (4) the personal use of alcohol purchased in underaged alcohol buys; (5) drinking on the job; and (6) the failure to properly record underaged alcohol buys. Id. at 946-947. Based on that misconduct, the involved officers—who were all connected to Robinson's case in some fashion—resigned or were terminated. Id. Thereafter, upon discovering that misconduct, Robinson sought a new trial based on newly-discovered evidence. Id. at 948. Initially, the district court granted Robinson's motion for a new trial in its entirety but later limited the relief to only the charges that stemmed directly from the Narcotic Division's portion of the investigation. Id. Robinson then appealed. Id. On appeal, the Fourth Circuit Court of Appeals affirmed. Id. at 945. In doing so, the Court

of Appeals first found the newly-discovered misconduct evidence was "as textbook an example of impeachment evidence as there could be" since its planned use was to cast doubt on the testimony of the involved officers along with the evidence they helped to collect and, thus, was merely impeaching. Id. at 949. Second, the Court of Appeals found the evidence was not material as it had little to do with Robinson's guilt or innocence under the circumstances involved. Id. at 949-950. Finally, the Court of Appeals concluded Robinson could not demonstrate the newly-discovered evidence would likely produce an acquittal if introduced during trial due to the other evidence that existed and the limited effect the unrelated misconduct could have on it. Id. at 950. Accordingly, for all those reasons, the Court of Appeals concluded Robinson could not satisfy the requirements for a new trial based on newly-discovered evidence. Id. at 951.

Here, just like in Robinson, the newly-discovered evidence of Investigator Williams's alleged misconduct in an unrelated case had value solely as impeachment evidence in Rios's case. At best, Investigator Williams's years-later misconduct in obtaining an unrelated search warrant could only have been used to attack the credibility of his testimony and the evidence he uncovered.[4] Cf. id. at 949 ("If Robinson is . . . contending that the misconduct evidence serves

[4] Moreover, since Investigator Williams was not called to testify during the PCR hearing, it remains entirely unclear *how* he would have responded to any question about the unrelated misconduct, which—pursuant to our evidentiary rules—was something Rios would not be able to prove through extrinsic evidence under the circumstances involved. See Rule 608(b), SCRE ("Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified."); see also Mizell v. Glover, 351 S.C. 392, 400-401, 570 S.E.2d 176, 180 (2002) ("Rule 608 permits questioning about the underlying event from the actor in the event, not rumors or reports of what others perceived about the event. . . .

some purpose other than impeachment, we are at a loss as to what that purpose could be. Unlike the evidence in those few cases in which we have ordered or allowed a retrial, the misconduct evidence does not directly support some alternate theory of the crimes, nor does it provide any legal justification for Robinson's actions. Instead, the evidence is offered to cast doubt on the testimony of the dismissed officers and the evidence they helped to collect, about as textbook an example of impeachment evidence as there could be." (citation omitted)); United States v. Garcia, 13 F.3d 1464, 1472 (11th Cir. 1994) (concluding a new trial was not warranted based on newly-discovered evidence establishing one of the prosecution witnesses—FBI Agent Putnam—had been under investigation in connection to an unrelated out-of-state murder at the time of Chaves's and Garcia's trial because such evidence could *only* have been used to impeach Putnam and, thus, was insufficient to satisfy the requirements for a new trial based on newly-discovered evidence since it was merely impeaching). Indeed, the PCR judge seemed to recognize that exact fact since he explicitly found Investigator Williams "could have been impeached" with the newly-discovered evidence while failing to identify any *other* manner in which that evidence could conceivably have been used. See United States v. Vitrano, 746 F.2d 766, 770 (11th Cir. 1984) ("Since the newly discovered evidence goes solely to impeachment, Vitrano is not entitled to a new trial."). Under such circumstances, Rios was simply not entitled to the grant of new trial because newly-discovered evidence that is solely useful for impeachment purposes cannot

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Essentially, Rule 608(b) allows specific instances of conduct to be *inquired into* on cross, but does not allow those instances of conduct *to be proved* by extrinsic evidence." (footnote omitted)); State v. DuBose, 288 S.C. 226, 231, 341 S.E.2d 785, 788 (1986) ("[W]here . . . a witness denies an act involving a matter collateral to the case in chief, the inquiry ends. The inquiring party is not permitted to introduce evidence in contradiction or impeachment."); cf. Vanover v. State, 433 S.C. 31, 44, 856 S.E.2d 160, 167 (Ct. App. 2021) ("We have no idea what Daughter's answer or explanation for the Doe allegation would have been. . . . We do not see how we could find this alleged deficiency to be prejudicial without some sense of what Daughter's explanation would have been.").

constitute a valid basis for a grant of a new trial when the proper analysis applicable to newly-discovered evidence claims is conducted. Cf. State v. Adams, 430 S.C. 420, 438, 845 S.E.2d 217, 226-227 (Ct. App. 2020) ("At best, victim's mother's eavesdropping was pure impeachment evidence, which can *never* justify granting a new trial." (emphasis added)).

Likewise, much like in Robinson, the newly-discovered evidence related to Investigator Williams was in no way material to Rios's guilt or innocence since it related to *subsequent* misconduct that was committed in a case *other than* Rios's. See United States v. McClaren, 13 F.4th 386, 416-417 (5th Cir. 2021) ("Newly discovered evidence is not material if its only evidentiary purpose is to impeach trial testimony."); cf. People v. Williams, 173 N.Y.S.3d 645, 649 (N.Y. App. Div. 2022) ("After the trial, the assistant district attorney (hereinafter ADA) in this action informed defense counsel that one of the prosecution's witnesses was found to have given false testimony in an unrelated action prosecuted by a different ADA. Even assuming that the knowledge of the prior ruling in the unrelated action can be imputed to the ADA in this action, the newly discovered evidence did not entitle the defendant to a new trial because the evidence was *merely impeaching*, would not have changed the outcome of the trial, and was not material to the defendant's defense that one of his passengers put the gun in the glove box." (emphasis added)). Under such circumstances, the newly-discovered had no direct connection to Rios's case of any kind and, resultantly, was not sufficient to satisfy the materiality requirement of the applicable analysis.[5] See Clark, 315 S.C. at 387-388, 434 S.E.2d at 267 (instructing a

[5] During the PCR hearing, Rios—who had earlier convictions for burglary, robbery, and battery—personally suggested Investigator Williams's unrelated misconduct was relevant to his case because the fact the investigator was not truthful at the time of the unrelated misconduct meant he must *also* have been untruthful during the investigation of the incident. (App'x pp. 374-375; pp. 702-703; p. 707; pp. 716-717). However, just as evidence of Rios's prior convictions for burglary, robbery, and battery could not validly be used against him as propensity evidence during his trial, the evidence of Investigator Williams's misconduct years after trial in

party seeking a new trial based on newly-discovered evidence *must* show the evidence was—amongst other things—"material to the issue of guilt or innocence").

Accordingly, because Rios did not and could not satisfy the necessary requirements of the applicable analysis for evaluating newly-discovered evidence claims, the PCR judge erred as a matter of law by finding Rios was entitled to a new trial under the circumstances involved, and his ruling granting such relief was legally and factually erroneous. See United States v. Champion, 813 F.2d 1154, 1171 (11th Cir. 1987) ("Newly discovered impeaching evidence is insufficient to warrant a new trial."); see also Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (recognizing a PCR judge's decision will be reversed when it is controlled by an error of law); cf. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (reversing a PCR judge's grant of a new trial based on newly-discovered evidence because all the requisite factors were not established). The PCR judge's ruling granting relief should be reversed.

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an unrelated case likewise could *not* permissibly be used as proof the investigator had a propensity to or did engage in similar misconduct in Rios's case. See Rule 404(b), SCRE ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith."); see also Johnson v. State, 433 S.C. 550, 555, 860 S.E.2d 696, 699 (Ct. App. 2021) (explaining other bad act evidence is "not admissible unless its proponent can demonstrate it has a legitimate purpose, i.e. the evidence does something more than prove a person has a propensity to commit crimes").

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the post-conviction relief judge's grant of relief should be reversed.

Respectfully submitted,

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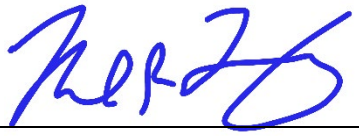
BY: 
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ATTORNEYS FOR PETITIONER

February 24, 2025

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to the Court of Common Pleas
Appeal from Spartanburg County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2023-000378

GABRIEL RIOS,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Brief of Petitioner on Respondent by sending an electronic copy via email to the address listed in AIS for the following individual:

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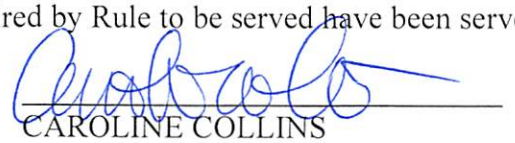
I further certify that all parties required by Rule to be served have been served.
This 24th day of February, 2025.



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