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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Clarendon County
Court of Common Pleas
The Honorable Grace Gilchrist Knie, Circuit Court Judge
Appellate Case No. 2025-000405

JONATHAN CODY NEWMAN,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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II. Did the PCR Court err in finding Trial Counsel provided effective assistance when Counsel failed to object to the Prosecutor's comments during opening statement that referenced the Trial Court's remarks reminding the jury that this is "search for the truth" and closing argument that the jury "reach a verdict that speaks the truth"?

III. Did the PCR Court err in finding Trial Counsel provided effective assistance when Counsel failed to object to the Prosecutor's comments during opening statement that "my job as an Assistant Solicitor is to represent the interest of this community to represent your interest" and "to seek justice"?

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I. Did the PCR Court err in finding Counsel was not ineffective for failing to object to the Trial Court's and Solicitor's "search for the truth" remarks where the remarks were not improper at the time of the trial and Petitioner has failed to prove he was prejudiced by these remarks?

II. Did the PCR Court err in finding Counsel was not ineffective for failing to object to the Solicitor's remarks that his job "is to represent the interest of this community to represent your interest" where the Solicitor never urged the jury to convict Petitioner on that basis nor informed them to disregard the reasonable doubt standard?

III. Did the PCR Court err in finding Counsel was not ineffective for failing to object to co-defendant's testimony that he was scared of Petitioner because he had previously assaulted him, as this was offered for a proper non-propensity purpose, and nonetheless, Petitioner has failed to demonstrate prejudice arising from any alleged deficiency in failing to object.

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. Petitioner was indicted at the February 2014 term of the Clarendon County Grand Jury for murder and first-degree burglary (2013-GS-14-0293). Petitioner was represented by Eleazer R. Carter, Esquire ("Counsel"). On January 9, 2015, Petitioner proceeded to a jury trial before the Honorable W. Jeffrey Young. The jury found Petitioner guilty as indicted. Judge Young sentenced Petitioner to thirty years imprisonment for burglary and thirty-five years for murder, to run concurrently.

A timely Notice of Appeal was filed on January 20, 2015. Chief Appellate Defender Robert M. Dudek (Appellate Counsel) of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders[1] brief and a motion to be relieved as counsel. The South Carolina Court of Appeals dismissed the appeal and granted Appellate Counsel's motion to be relieved. State v. Newman, Op. No. 2015-UP-140 (S.C. Ct. App. filed April 5, 2017). The Remittitur was sent April 28, 2017.

On June 12, 2018, Petitioner filed this post-conviction relief action. On June 26, 2019, Petitioner filed his first amended post-conviction relief application. On February 10, 2020, Respondent filed a return and motion to dismiss. On March 5, 2020, Petitioner filed a reply brief and motion to deny Respondent's proposed order. On March 19, 2020, the Honorable Kristi F. Curtis ordered an evidentiary hearing be convened on Respondent's motion to dismiss. An evidentiary hearing was held on November 2, 2022, before the Honorable Edward W. Miller. Following the hearing, Judge Miller denied Respondent's motion to dismiss and ordered an evidentiary hearing be convened on Petitioner's allegations of ineffective assistance of counsel.

[1] Anders v. California, 386 U.S. 738 (1967).

On October 24, 2023, Petitioner filed his second amened PCR application, raising the following allegations relevant to this appeal:

1. Trial Counsel failed to move for a mistrial and/or a curative instruction when Applicant's co-defendant testified that Applicant was violent, had previously assaulted him and other people, and that he was afraid of Applicant. At a minimum, Trial Counsel should have objected to this inadmissible propensity evidence where its probative value is substantially outweighed by its prejudicial effect.
2. Trial Counsel failed to object when the Trial Court improperly told the jury that a trial is a "search for the truth" and that the jury is seeking to "reach a fair and just verdict" during the Court's opening remarks. See State v. Alexsky, 343 S.C. 20, 538 S.E.2d 248 (2000); State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012); State v. Beaty, 423 S.C. 26, 813, S.E.2d 502 (2018).
3. Trial Counsel failed to object when the Prosecutor referenced the Trial Court's statement that "this was a search for the truth".
4. Trial Counsel failed to object when the Prosecutor improperly stated, "my job as an Assistant Solicitor is to represent the interest of this community to represent your interest."
5. Trial Counsel failed to object when the Prosecutor told the jury to "reach a verdict that speaks the truth" during his closing argument.

On July 25, 2024, an evidentiary hearing was convened before the Honorable Grace Gilchrist Knie at the Sumter County Courthouse. Petitioner was present and represented by Counsel, Dayne C. Phillips, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. At the hearing, testimony was taken from Petitioner, At the conclusion of the hearing, Judge Knie requested proposed orders be submitted by both parties. After review of the testimony, record, and proposed orders, Judge Knie issued an order denying and dismissing Petitioner's application with prejudice on October 7, 2024.

On October 18, 2024, Petitioner filed a Rule 59 (e), SCRCP motion to reconsider and to alter or amend. A hearing on this matter was convened on January 31, 2025. On February 14, 2025, Judge Knie filed an order denying Petitioner's motion to reconsider.

This appeal follows.

STANDARD OF REVIEW

The post-conviction relief 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 the lower court's findings. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Questions of law are reviewed de novo, and appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Id; Smalls v. State, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839 (2018).

ARGUMENT

I. The PCR Court did not err in finding Counsel was not ineffective for failing to object to the Trial Court's and Solicitor's "search for the truth" remarks because the remarks were not improper at the time of the trial and Petitioner has failed to prove he was prejudiced by these remarks

Petitioner contends the PCR court erred by finding Counsel was not ineffective for failing to object to the trial court's and the solicitor's "search for the truth" remarks. This argument is without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668 (1984). Where, as in this case, a PCR Petitioner alleges ineffective assistance of counsel as a ground for relief, the Petitioner 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. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland: first, the Petitioner 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.

Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different." Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. "A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed." Strickland, 466 U.S. at 670. The Petitioner bears the burden of proving the allegations in his application by a preponderance of the evidence. Butler, 286 S.C. at 442, 334 S.E.2d at 814; Rule 71.1(e), SCRCP.

During its opening remarks, the Court made this statement:

> This is a real trial which is a fundamental part of our democracy and it is a search for the truth in a effort to make sure justice is done. In searching for the truth and ensuring justice is done is often slow, deliberate, and repetitive. The exact opposite of what you may have seen on television, seen in movies, or read in books...Ladies and gentlemen in determining what the true facts are in this case you must decide whether or not the testimony of a witness is believable. It will be my responsibility to rule as a matter of law whether certain testimony is admissible, but once testimony is admitted whether or not you decide to believe it is solely for you to determine...Ladies and gentlemen please do not let your thoughts wonder, but give strict attention to the testimony in this case so at the end of all the testimony, after the argument of council, and the charge on the law by me. You will then be in a position to determine what the true facts are and to apply the law to those facts and thus render a true and just verdict.

(App. pp. 10–17).

During the State's opening statement, Solicitor made the following remarks:

> I am Assistant Solicitor here in Clarendon County. It is my pleasure to present this case with the duly elected appointed Solicitor Chip Finney. I work here in Clarendon County and my job as an Assistant Solicitor is to represent the interest of this community to represent your interest, and is to represent the interest of the state of South Carolina. The Supreme Court has said that our job as prosecutors is not to just seek convictions but to ensure that justice is reached, to see justice, and make no mistake about it that is your goal. Justice is the goal in this case and that is what the Judge just told you a few minutes ago. He told that your job was to, was to render a verdict that speaks justice. That this was a search for the truth and that is what it is. The burden is on the State in this case to prove the evidence of the crimes charged beyond a reasonable doubt.

(App. p. 18).

During his closing argument, Solicitor again requested the jury "reach a verdict that speaks the truth." (App. p. 438).

Petitioner alleges the PCR court erred in finding Counsel was not ineffective for failing to object to the above "search for the truth" remarks. Petitioner cites to Beaty in support of his argument Counsel was ineffective; however, Petitioner's trial occurred before the opinion in Beaty was published. Only law that existed at the time of Petitioner's trial may be used to determine whether Counsel was deficient for failing to object. See, e.g., Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) ("We have never required an attorney to be clairvoyant or anticipate changes in the law . . . ." (citing Thornes v. State, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993))), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999); Thornes, 310 S.C. at 309–10, 426 S.E.2d at 765 ("This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.").

At the time of Petitioner's trial, State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000) was the controlling precedent. The Court in Aleksey held that "instruction telling jury its 'one single objective' was 'to seek the truth' did not violate defendant's due process rights by shifting the burden of proof and diluting the reasonable doubt standard, as instruction was not part of the reasonable doubt or circumstantial evidence charges but was part of the instructions on witness credibility, and instruction was followed by additional exhortation to bear in mind the state's heavy burden of proof". Id.

Here, the alleged improper remarks were not made in the context of reasonable doubt or circumstantial evidence, and, therefore, were not improper under the law that existed at the time

of Petitioner's trial. Thus, the PCR court did not err by finding Counsel was not deficient for failing to object to these remarks.

Furthermore, Petitioner has failed to demonstrate prejudice. The trial court informed the jury in its opening remarks that the State bore the burden of proving Petitioner's guilt beyond a reasonable doubt. (App. p. 12). During jury instructions, the trial court gave a thorough and comprehensive instruction on reasonable doubt. (App. pp. 482–484). The PCR court correctly found the jury was properly instructed on reasonable doubt which rendered any alleged impropriety in these remarks harmless. Therefore, Petitioner has failed to prove these remarks unconstitutionally shifted the burden of proof or had any meaningful impact on the outcome of the trial. Thus, the PCR Court did not err in finding no prejudice.

Accordingly, the Petition for Writ of Certiorari should be denied.

II. The PCR Court did not err in finding Counsel was not ineffective for failing to object to the Solicitor's remarks that his job "is to represent the interest of this community to represent your interest" because the Solicitor never urged the jury to convict Petitioner on that basis nor inform them to disregard the reasonable doubt standard

Petitioner contends the PCR court erred when Counsel failed to object to this portion of the solicitor's opening statement:

> I work here in Clarendon County and my job as an Assistant Solicitor is to represent the interest of this community to represent your interest, and is to represent the interest of the state of South Carolina. The Supreme Court has said that our job as prosecutors is not to just seek convictions but to ensure that justice is reached, to seek justice, and make no mistake about it that is your goal. Justice is the goal in this case and that is what the Judge just told you a few minutes ago.

(App. p. 18).

In support of his argument, Petitioner cites to State v. Liberte, 336 S.C. 648, 521 S.E.2d 744 (1999). In that case, the solicitor argued that the reasonable doubt standard "is . . . being used as a sword to attack law and order, to attack law enforcement, to attack people who are trying to

keep drugs off our streets." Id. at 652, 521 S.E.2d at 746. The Liberte court held those comments improper because they "invited the jury to convict the Defendants, even if the evidence did not prove their guilt beyond a reasonable doubt, in order to keep the streets safe from the scourge of drugs." Id. at 653, 521 S.E.2d at 747.

The solicitor's comments in the present case came nowhere near the outrageous comments condemned in Liberte. In this case, the solicitor emphasized that the jury must base its decision on whether the State has proven its case beyond a reasonable doubt by the evidence presented at trial. Although the solicitor mentioned at the beginning of his opening statement that his job is to "represent the interests of this community" and "is not to just seek convictions but to ensure that justice is reached," it is, in fact, the duty of a solicitor "not to convict a defendant but to see justice done." State v. Linder, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981). The solicitor never urged the jury to convict Petitioner in order to protect the community or serve community interests. Instead, the solicitor repeatedly emphasized that the State bore the burden of proving Petitioner's guilt beyond a reasonable doubt. (App. p. 18; 428). Viewed in this context, the remarks did not encourage the jury to base its verdict on anything other than the evidence or unconstitutionally shift the burden of proof. See United States v. Robinson, 485 U.S. 25, 33 (1988) (instructing "prosecutorial comment must be examined in context."). Thus, the PCR court did not err in finding the remarks were proper and not objectionable.

Moreover, Petitioner has failed to prove he was prejudiced by these remarks. The trial court informed the jury in its opening remarks that the State bore the burden of proving Petitioner's guilt beyond a reasonable doubt and that statements made by the attorneys during opening statements are not evidence. (App. p. 12; 15). During jury instructions, the trial court gave a thorough and comprehensive instruction on reasonable doubt. (App. pp. 482–484). Additionally, these alleged

improper remarks occurred during the solicitor's opening statement, where any prejudicial effect was substantially diminished. The solicitor's brief and innocuous reference to representing the community was made before any evidence was presented and was not repeated. Given the nature of the remarks and the context in which they were made, they did not render Petitioner's trial fundamentally unfair or otherwise improperly impact the outcome of the proceeding. See Darden v. Wainwright, 477 U.S. 168, 181, 106 S.Ct. 2464, 2471, 91 L.Ed.2d 144 (1986) ("it is not enough that the prosecutors' remarks were undesirable or even universally condemned. The relevant inquiry is whether the prosecutors' comments so infected the trial with unfairness as to make the resulting conviction a denial of due process"); See Fortune v. State, 428 U.S. 545, 549, 837 S.E.2d 37, 39 (2019) ("To find whether the assistant solicitor's comments in closing argument violated the defendant's due process rights, we must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial.").

Accordingly, the Petition for Writ of Certiorari should be denied.

III. The PCR Court did not err in finding Counsel was not ineffective for failing to object to co-defendant's testimony that he was scared of Petitioner because he had previously assaulted him, as this was offered for a proper non-propensity purpose, and nonetheless, Petitioner has failed to demonstrate prejudice arising from any alleged deficiency in failing to object.

Petitioner contends Counsel was ineffective for failing to object to the following testimony elicited by the solicitor during his cross examination of co-defendant, Letroy Samuels ("Samuels"):

Q. And is it not true that you are afraid of Jonathan Newman?

A. I will not say afraid. I would say more cautious.

Q. Ok why are you cautious?

A. Because I have seen him hit some people and I know he is a fighter.

Q. He has hit you before has he not?

A. Yes he has.

(App. p. 387)

Petitioner argues this testimony constitutes inadmissible prior bad act evidence in violation of Rule 404; thus, Counsel was deficient for failing to object. This is without merit. "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." Rule 404(b), SCRE. However, the above testimony was elicited not to demonstrate Petitioner's propensity for violence or to commit assaults. Rather, it was introduced to explain the co-defendant's state of mind following the murder and to show why he initially lied to law enforcement when he claimed that he did not witness Petitioner strike the victim.

At Petitioner's trial, testimony was presented that Samuels initially told law enforcement he did not witness Petitioner strike the victim. For example, during the direct examination of Lt. Sonia Daniels:

Q. During the talks that you had with Letroy Samuels did he say that he had been at the house during the time actually talking to Mr. Wimberly?

A. Yes he stated that he was there throughout the day.

Q. Did he say that he saw the attack or assault of Mr. Wimberly that day?

A. Not in the first interview but throughout the interviews he did state that he saw.

(App. p. 222).

Later, during the cross-examination of Lt. Daniels by Counsel:

Q. You asked [Samuels], did he see that attack or the assault on Mr. Wimberly the first time and his answer was no, correct?

A. That is correct.

Q. You asked him in a second interview and his answer was no, correct?

A. I would say yes.

(App. p. 231)

Likewise, during the cross examination of Investigator Rosdail:

Q. Letroy told you and Investigator Daniels that he never saw any punch from Mr. Newman, J. White, Mr. Newman. He told you that a couple of time quite a bit of times correct?

A. Initially yes I believe that is true.

Q. Initially?

A. Yes.

(App. p. 281).

Based on the above testimony, the record reflects that the solicitor elicited the challenged testimony in connection with Samuel's false initial statement to law enforcement that he did not witness Petitioner hit the victim.

Furthermore, immediately following the alleged inadmissible testimony, Samuel's testified to this event following the murder:

Q. And is it not true even when you saw Jonathan Newman and Montag Webb after this incident that they told you they would kill you if you said anything?

A. Yes, well he pointed the gun at me and said I better not say anything.

Q. They did not say they would kill you?

A. He just said you better not say anything.

Q. Did you not tell the police that they told you they would kill you?

A. Because when he pointed the gun at me that is what I took it as, a threat of him saying I will kill you because I knew what it meant.

Q. Is it not true that you also told police that you were afraid of Jonathan Newman

because he would do what he said?

A. Yes.

(App. pp. 387–388).

In this context, the testimony regarding the prior assault was offered to explain Samuel's fear of Petitioner and to show that Petitioner's above threat was credible. Thus, the evidence demonstrated Samuel's state of mind at the time he first spoke with law enforcement. This was clearly a non-propensity probative purpose for eliciting this testimony. Thus, this is not a violation of Rule 404 and Counsel was not deficient for failing to object.

Additionally and importantly, Counsel testified at the PCR evidentiary that he did not object to this testimony because he did not want to draw the jury's attention to it. (App. p. 797). This is a valid reason for not objecting. See Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) ("[W]hen Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel."). Accordingly, Counsel was not deficient because he provided a valid reason for not objecting, regardless of the statement's admissibility.

Petitioner alleges the PCR Court erred by finding he was not prejudiced by Counsel's failure to object to this prior bad act testimony. As the PCR court correctly noted, the clearly admissible testimony that Petitioner implicitly threatened to kill Samuels if he spoke to law enforcement was significantly more damaging to the defense than the alleged prior bad act testimony. Moreover, this testimony was presented directly after the alleged inadmissible statement, further diminishing its prejudicial effect. Samuels lengthy testimony at trial severely implicated Petitioner in the murder. Specifically, Samuels testified he witnessed Petitioner hit the victim and, later that night, saw Petitioner with the gun he stole from the victim. (App. p.382;

p.387). Additionally, Samuels testified Petitioner pointed the gun at him and told him not to say anything, implying that Petitioner would kill him if he talked to law enforcement. (App. pp.387–388; p.390). Samules further testified he heard Petitioner and Montag Webb discussing whether they should burn their clothing. (App. p.390). Viewed in the context of Samuels testimony as a whole, the brief reference to the fact Petitioner had "hit some people" and "know he is a fighter" was a comparatively insignificant portion of his testimony against Petitioner. Thus, the PCR court did not err in finding Petitioner has failed to prove a reasonable probability the result of his trial would have been different had Counsel objected to the alleged inadmissible prior bad act evidence.

Accordingly, the Petition for Writ of Certiorari should be denied.

CONCLUSION

For the reasons stated above, this Court should deny certiorari. However, if this Court decides to grant the Petition of Writ of Certiorari, Respondent respectfully requests permission to more fully brief the issues herein.

Respectfully Submitted,

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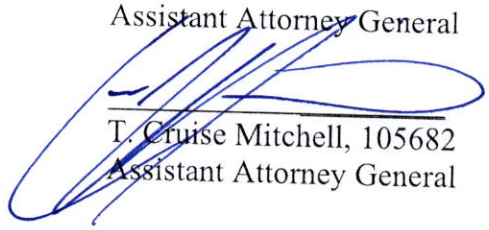

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This 11th day of June 2026.