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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Richland County
Honorable Robert E. Hood, Trial Judge
Honorable George M. McFadden, Jr., Post-Conviction Relief Judge

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Appellate Case No. 2023-001267

TRENTON M. BARNES, #362454,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S ISSUE PRESENTED

Did a prior holding by the Court of Appeals on direct appeal of harmless error regarding the impact of the testimony from prison informants regarding the identity of the "Trigg and Trap" assailants involved in a murder does not prevent the assertion of ineffective assistance of counsel on handling that improper admission of the testimony when it was both inadmissible as hearsay and improper under Rule 602, SCRE, when additional evidence is submitted during the PCR evidentiary hearing

RESPONDENT'S COUNTERSTATEMENT OF ISSUES PRESENTED

Whether the post-conviction relief court correctly determined Petitioner failed to establish Trial Counsel's representation was deficient or establish the requisite prejudice necessary to reverse his conviction and grant him a new trial based on Trial Counsel's handling of prison informants' testimony identifying Petitioner and his brother as the individuals co-defendant Young referred to as "Trigg" and "Trap," where Trial Counsel made timely hearsay objections that preserved the core admissibility issue for direct appeal, the Court of Appeals held any error in admitting the identity testimony harmless in light of overwhelming independent evidence of guilt, and the additional evidence presented at the remanded evidentiary hearing failed to undermine that determination or demonstrate a reasonable probability that the result of the proceeding would have been different.

STATEMENT OF THE CASE

Petitioner Trenton M. Barnes is presently confined in the South Carolina Department of Corrections. Petitioner was indicted at the February 2014 term of the Court of General Sessions for Richland County for second-degree burglary (2014-GS-40-0755), attempted armed robbery (2014-GS-40-0756), criminal conspiracy (2014-GS-40-0757), kidnapping (2014-GS-40-0754), and murder (2014-GS-40-0752). Petitioner was represented by Mark Schnee (Trial Counsel). Assistant Solicitors Dolly Garfield, Kathryn Luck Campbell, and Nicole Simpson, Esquires, prosecuted the case.

Petitioner proceeded to a jury trial on November 10 – 19, 2014, before the Honorable Robert E. Hood. The jury convicted Petitioner as indicted. Without objection, Judge Hood granted deferred sentencing of Petitioner due to the recent Aiken v. Byars[1] decision. On December 12, 2014, Judge Hood sentenced Petitioner to confinement for concurrent terms of fifteen years for second-degree burglary, twenty years for attempted armed robbery, and fifty years for murder.[2] Petitioner's kidnapping conviction remained in place; however, pursuant to S.C. Code Ann. § 16-3-910, the sentence for kidnapping was vacated.[3]

A timely Notice of Appeal was filed on Petitioner's behalf, and an appeal was perfected by W. Joseph Maye, Esquire. On June 7, 2016, Petitioner filed a Final Brief of Appellant in the South Carolina Court of Appeals. The State filed its Final Brief of Respondent on May 24, 2016. Following oral arguments, the South Carolina Court of Appeals affirmed Petitioner's convictions

[1] 410 S.C. 534, 765 S.E.2d 572 (2014)
[2] The State did not proceed on the criminal conspiracy charge at trial.
[3] As Judge Hood explained, "a case that involves kidnapping and murder in the same incident, then the sentences are not allowed to run together, and the sentence must be vacated, so I'm beginning by vacating the kidnapping [sentence]." (App'x p. 1848).

and sentences. State v. Barnes, 421 S.C. 47, 804 S.E.2d 301 (Ct. App. 2017). The Remittitur was issued on September 5, 2017.[4]

Petitioner then filed an application for Post-Conviction Relief on June 12, 2018. Respondent made its Return and Motion to Dismiss on September 10, 2018. Applicant, through counsel, filed an amended application for Post-Conviction Relief on November 19, 2021. An evidentiary hearing into the matter was convened on May 26, 2022, at the Richland County Courthouse before the Honorable George M. McFaddin, Jr. Ola A. Johnson, Esquire, represented Petitioner. Josh Edwards and D. Russell Barlow, II, Esquires, of the South Carolina Attorney General's Office, represented Respondent. Petitioner testified on his own behalf, as did former Assistant Solicitor Dolly Garfield, who prosecuted Petitioner's case.[5] By written order filed July 26, 2023, the post-conviction relief court denied relief and dismissed the application with prejudice.

Petitioner filed a timely notice of appeal. On February 15, 2024, Petitioner filed his petition for writ of certiorari. On July 10, 2024, Respondent filed its motion to remand because pages from the original post-conviction relief application were not provided by the clerk's office, including an allegation that was presented to the post-conviction relief court but not properly ruled upon. On August 13, 2024, this Court remanded the matter to the lower court to determine whether Trial Counsel was ineffective for failing to object to the introduction of testimony from two prison informants as inadmissible under Rule 602, SCRE.

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[4] On June 2, 2017, prior to the issuance of the opinion, Appellate Counsel Maye moved to be relieved. On June 19, 2017, the Court of Appeals granted the motion, and Appellate Defender Susan B. Hackett was substituted as Appellate Counsel.

[5] Counsel for the State explained that Mr. Schnee is no longer a member of the South Carolina Bar, lives out of state, beyond the reach of traditional subpoena power, and has previously been unresponsive.

On January 26, 2025, a supplemental evidentiary hearing was held at the Sumter County Courthouse before Judge McFaddin. Petitioner was present and represented by Appellate Defender Gary H. Johnson, II. Senior Assistant Deputy Attorney General D. Russell Barlow, II represented Respondent. On August 20, 2025, Judge McFaddin issued the supplemental order of dismissal denying and dismissing the application in full. On August 22, 2025, Petitioner filed a Rule 59(e), SCRCP, motion to reconsider. On October 30, 2025, the post-conviction relief court issued an order denying Petitioner's motion to reconsider. On November 17, 2025, Petitioner filed his notice of appeal. On February 5, 2026, Petitioner filed his petition for writ of certiorari.

This return to petition for writ of certiorari follows.

STATEMENT OF THE FACTS

In the early morning of July 1, 2013, Theresa Baskin (Baskin) heard the screams of terror from thirty-three-year-old Kelly Hunnewell (Victim), who worked the early morning shift in the off-site bakery for the Carolina Café. (App'x pp. 495, l. 13 – 496, l. 20). Baskin, who lived across the street from the bakery on Tommy Circle, heard the dying words of the mother of four after she was shot by Lorenzo Young (Young) and his co-defendant Petitioner in a robbery. (App'x p. 495, ll. 21-23; p. 496, ll. 15-20).

Victim arrived every morning at 3:00 am to make the bagels and sandwiches for the popular downtown deli. (App'x pp. 600, l. 2 - 601, l. 6). Victim would typically work until 11:00 am so she could go home and care for her four young children. (App'x p. 601, ll. 1-18). On the morning of the murder, Petitioner and Young intended to rob the nearby Original Ale House. (App'x p. 491, ll. 2-16). When they realized the bar was closed, Petitioner and Young chose the next most convenient victim. Victim was in the bakery next door with the lights on and the door propped open. (App'x p. 496, ll. 3-6). The men approached Victim, who was working at the stove, and had her back to the door. (App'x pp. 1337, l. 20 – 1338, l. 2). The suspect in the red hoodie pointed his gun at her head. (App'x pp. 1338, l. 19 – 1339, l. 19). After a struggle in which Victim tried to defend herself, the men shot her multiple times. (App'x pp. 1339, l. 17 – 1340, l. 24). Victim collapsed on the floor with a bullet lodged in her back, drowning in her own blood. (App'x p. 1245, ll. 16; p. 1252, ll. 2-21).

Victim's neighbor heard her screams and called the police. (App'x p. 497, ll. 1-8). The police arrived within minutes and found Victim dead on the floor. (App'x p. 497, ll. 9-10; pp. 484, l. 14 -486, l. 11; p. 498, ll. 15-20). The police processed the scene, collecting four .45 Glock Automatic Pistol (G.A.P.) shell casings and two .40 caliber Smith and Wesson casings, projectiles,

and video surveillance footage. (App'x pp. 488, l. 5 - 489, l. 9; p. 517, ll. 3-11; p. 518, ll. 10-14; p. 543, ll. 20-25; pp. 562, l. 16 - 563, l. 11; pp. 1517, l. 22 – 1519, l. 10). The bakery's security cameras recorded the murder from several different views. (App'x pp. 624, l. 6 – 625, l. 4). In the video, Victim is working at the stove when two suspects, one in a red hoodie and one in a grey hoodie, enter the bakery. (App'x pp. 682, l. 9 – 683, l. 3). The suspects point guns at her and shoot her. A third suspect comes to the door as the shooting begins, and the three suspects flee. (App'x p. 683, ll. 20-24).

Investigators canvased the area around the bakery to look for witnesses. (App'x pp. 655, l. 21 – 658, l. 13). The police released the video to the media in an effort to gain more information about the perpetrators. (App'x pp. 1336, l. 21 – 1337, l. 9). Police received tips identifying Petitioner, his brother Troy Stevenson (Stevenson), and Lorenzo Young as the men who committed the crime. (App'x pp. 645, l. 14 – 646, l. 14; pp. 656, l. 4 – 658, l. 4; pp. 1339, l. 21 – 1340, l. 21; p. 1344, ll. 6-18). All three suspects lived near the bakery. (App'x p. 847, ll. 12-17; p. 1329, ll. 15-24; pp. 1385, l. 11 – 1386, l. 20).

Donald Moore (Moore), a friend of Petitioner and Stevenson, testified for the State. (App'x pp. 804, l. 1 – 805, l. 22). Though he recanted his story later, he testified that he contacted the police after he saw the story about the murder on television. (App'x pp. 806, l. 10 – 807, l. 15). Moore told police that Young and Stevenson talked about robbing the Ale House before the murder. (App'x p. 808, ll. 9-15). Moore also told police he saw Young showing off a Glock gun prior to the murder, and he told Young to put the gun away because of the nearby children. (App'x pp. 809, l. 17 – 811, l. 17). Moore also identified Young in the video as the man wearing the red hoodie. (App'x pp. 812, l. 19 – 813, l. 23).

Based upon Moore's information, the police obtained and executed a search warrant for Young and his girlfriend, Rolanda Coleman's (Coleman) home, in which they found ammunition of the same caliber as that found near the body of Victim. The search produced live round bullets from a .40 caliber Smith and Wesson, a 9 mm Luger, and a .45 G.A.P. (App'x pp. 972-975). Crime scene analysts also found a Glock magazine in Coleman's purse and several pairs of black gloves. (App'x pp. 970-971). The police also confiscated a pair of black Nike shoes, a scan disc, a camcorder, a laptop, and two cell phones. (App'x pp. 982-985). Testing later revealed gunshot residue on the black gloves. (App'x pp. 986, ll. 7-14).

Coleman told police he spent the evening before the murder with Stevenson, and he called his mother the morning after to pick him up from Stevenson's home. (App'x pp. 713, l. 18 – 716, l. 25). Young returned home the morning of the murder with his firearm, wrapped it in his shirt, and hid it in a crib. (App'x p. 707, ll. 17-24; pp. 717, l. 21 – 718, l. 24). Coleman overheard a conversation between Young and his mother shortly after seeing a news video about the murder, in which his mother told him to get rid of the gun. (App'x p. 724, ll. 1-9). Coleman also recognized the man wearing the grey hoodie in the video as Petitioner. (App'x pp. 724, l. 10 – 725, l. 15).

Petitioner's mother testified that her sons were with Young at her house the night of the murder. (App'x p. 839, ll. 1-24). She testified that Young and Petitioner left the house around midnight. (App'x p. 840, ll. 5-14). Around three in the morning, she received a phone call from Young, who asked to speak with another man staying at the house. (App'x pp. 841, l. 14 – 842, l. 8). Cell phone records confirmed these calls. (App'x pp. 1283, l. 8 – 1284, l. 3). The second time Young called, Ms. Barnes told him to send Petitioner home. (App'x pp. 842, l. 21 – 843, l. 7). After a few minutes, she sent her other son, Stevenson, to locate the men to bring his brother home. (App'x p. 844, ll. 2-20). Ms. Barnes testified that Young was wearing a red hoodie when he left

the house, and Petitioner was wearing a grey hoodie, which she could identify from a tear in the fabric. (App'x p. 846, ll. 3-19). When Stevenson left to look for his brother, he was wearing a dark jacket. (App'x pp. 846, l. 23 – 847, l. 8).

After Petitioner was arrested, he wrote a letter to his mother implicating himself and Young in the crime:

> Your Son
>
> Trenton. B
>
> Wassup Ma they got me in lock up for 25 days for some crazy stuff they was go let me stay in the dorm but I came down here so I can talk to troy. I'm down here with troy and renzo. I talk to troy about the case. I'm ready to talk back with them people and tell them the truth ma tell that troy ain't had nothing to with it I should of told them that troy really came down there to get me. Ma what really happen was I was on the phone with Ty indika lul sis and renzo was on the phone with his baby mama we was the only two up and he got off the phone was like let me talk tew you when you done. Then he was like I got this lul lick and then I was like I don't know bruh I'm koolin talking to my lady and he was like money come first. I ain't tell him yea or no yet. So I woke troy up and ask him what should I do and he said hell no don't go with dat man and he whent back to sleep. I whent back in my room renzo was back on the phone then Ty had text me renzo got off the phone and was like you ready and I told him I'm koolin then he started talking bout how much money was go be there then he said let's go scoope it out we ain't got to do nothing then we went outside and I said bruh I ain't tryna go to jail and he said on my baby you ain't going to jail lul bruh he ask me do I have a gun and I said no but I know way one at he said way at and I said **I know way Shorty be putting his gun at out side** so I took him to it and he pulled out his gun and said which one you won't and **I said the small one** then we started back walking then I said what type of lick is it because I don't be on that other stuff I just take moped' s and dirt bikes and he was like just a lul lick so we was at the bar down the street from the house it started raining hard and I was like I'm bout to go home and he said hold on lul bruh then he was like damm they closed so I said come on let's go back to my house then he said you see that lady over there. I said I don't see nobody he was like come on then we was by the door and **I seen a lady walk pass** and I looked back and seen troy waveing his hand telling me to come back then renzo walk into the place and I went behind him then he grabed her and put the gun to her head and told me to get in front of her and **she swang at me and I closed my and jump I got scared ma I didn't want to do it.** I'm sorry. I said it was troy because I was scared to go to jail with renzo by myself im sorry ma ma. I just wanna come home. I'm be good mama I promise. I miss you mama. **I should never listen to renzo.** I just wanna come home and be with you people keep telling me **im going to prison for a long time** love you mama

I just wanna come home real soon not no grown man.

Love You MAMA

Your BaBy Boy

Trenton

(App'x p. 853, ll. 1-22, State's Exhibit 404) (excerpt verbatim) (emphasis added). In his letter to his mother, Petitioner admits telling Young where he can find a gun ("I know way Shorty be putting his gun out side"); he admits choosing which gun he wants to use in the robbery ("the small one"); he admits he knows the victim is inside the bakery ("I seen a lady walk pass"); and he admits shooting the victim after she resisted him ("she swang at me and I closed my and jump I got scared ma I didn't want to do it"). Petitioner also admits he was complicit in Young's actions ("I should never listen to Renzo"), and he recognized the likely consequences of his actions ("im going to prison for a long time").

Mary Brown (Brown), a neighbor and acquaintance of Petitioner, Young, and Stevenson, also saw the men wearing the red-and-grey hoodie on the night of the robbery. (App'x pp. 1082-1085). Brown saw the video released to the news media and recognized Petitioner and his codefendant, but did not know their names. (App'x pp. 1087, l. 6 – 1090, l. 18).

Following Young's arrest, he approached inmate Dominique Wright (Wright) to assist him in the defense of his case. (App'x pp. 934, l. 17 – 935, l. 10). Wright was helping another inmate with some legal work, and Young overheard the men discussing the "stand your ground law." (App'x p. 937, ll. 7-10). Young told Wright he and two other men intended to rob a club, but because the club was closed, they went next door to a bakery. (App'x p. 936, ll. 5-13). Young told Wright that when the woman in the bakery resisted, he shot her twice. (App'x p. 936, ll. 10-13). Wright testified that Young sought his advice on how he could use the victim's efforts to defend herself to reduce his charge. (App'x p. 937, ll. 13-15). Wright documented what Young told him

and sent the information to an investigator, who passed it on to the solicitor's office. (App'x pp. 938, l. 19 – 939, l. 5).

Another inmate, Michael Peterson (Peterson), testified that Young discussed the murder with him while they were in the law library together. (App'x pp. 1023, l. 11 – 1024, l. 8). Young heard Peterson was familiar with the law and asked for help. (App'x p. 1024, ll. 7-10). Young explained to Peterson that he "went on this lick." (App'x p. 1024, ll. 18-19). When Peterson asked Young if he meant the bakery job on Beltline, Young confirmed, saying, "yeah, it was all over the news." (App'x p. 1024, ll. 18-20). Young told Peterson he shot the victim when she acted like she was about to use her phone to call the police. (App'x p. 1025, ll. 1-4). Young told Peterson, "Yeah, my homies must have seen the blood and started running, so I turned around and started running, too." (App'x p. 1025, ll. 8-10). Young told Peterson he was not concerned because the police only found shell casings and identified him from the clothing he wore that night. (App'x pp. 1026, l. 7 – 1027, l. 1). Peterson later overheard Stevenson and Young discussing the robbery in the prison showers. (App'x p. 1033, ll. 1-11). Peterson said Young was nervous and reassured Stevenson that the police only had shell casings. (App'x p. 1033, ll. 1-25).

Michael Schaefer (Schaefer), another inmate at Alvin Glenn Detention Center, testified he had several opportunities to speak with Young while they were housed together in the same dorm. (App'x pp. 918, l. 13 – 919, l. 19). Schaefer and Young discussed their respective cases, and Schaefer testified to the following:

> Okay, he said him and two other people by the name of Trap [Stevenson] and Trigg [Barnes] went out to rob a nightclub in the area, but it was closed. They saw the bakery was opened. They took that as an opportunity to go in.
>
> The woman was in there. He said she went for a knife she was struggling so he shot her twice. He fled the scene. He said he was wearing a red hoodie and jeans.

(App'x p. 1110, ll. 10-17; p. 1111, ll. 7-15). Schaefer told his lawyer about the exchange, and his lawyer advised him to turn the information over to the solicitor's office. (App'x p. 1113, ll. 11-24). Schaefer also testified that he spoke to Young around the holidays, expressing remorse for his crime of robbing a bank. Young responded, "Well, I shouldn't have shot that bitch." (App'x p. 1114, ll. 1-7).

Samples taken from the crime scene and the victim's body did not produce a large enough DNA sample suitable for comparison to a complete DNA profile. (App'x pp. 1150 – 1177). However, a small portion of DNA found on the front of the large metal spoon Victim used to defend herself could not exclude the DNA of Young and Barnes. (App'x p. 569, ll. 12-17; p. 1164, ll. 8-18).

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is any probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180–81, 810 S.E.2d at 839–40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). Appellate courts give great deference to a PCR court's credibility findings because appellate courts lack the opportunity to directly observe the witnesses. Foye v. State, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180–81, 810 S.E.2d at 839–40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court correctly determined Petitioner failed to establish Trial Counsel's representation was deficient or establish the requisite prejudice necessary to reverse his conviction and grant him a new trial based on Trial Counsel's handling of prison informants' testimony identifying Petitioner and his brother as the individuals co-defendant Young referred to as "Trigg" and "Trap," where Trial Counsel made timely hearsay objections that preserved the core admissibility issue for direct appeal, the Court of Appeals held any error in admitting the identity testimony harmless in light of overwhelming independent evidence of guilt, and the additional evidence presented at the remanded evidentiary hearing failed to undermine that determination or demonstrate a reasonable probability that the result of the proceeding would have been different.

Petitioner contends that the post-conviction relief court erred in denying his claim that Trial Counsel was ineffective for failing to object to prison informants' testimony identifying Petitioner and his brother as the individuals co-defendant Young referred to as "Trigg" and "Trap." He further argues that the Court of Appeals' determination on direct appeal that any error was harmless does not preclude an ineffective assistance claim when additional evidence is presented during PCR proceedings. However, the post-conviction relief court, after conducting a full evidentiary hearing and a second evidentiary hearing on remand, correctly applied Strickland v. Washington, 466 U.S. 668 (1984), and found that Trial Counsel's performance was not deficient and that Petitioner failed to prove prejudice. While an ineffective assistance claim based on counsel's failure to object is not categorically barred by a prior direct appeal ruling, the post-conviction relief court properly considered the Court of Appeals' harmless error determination as highly relevant to the prejudice inquiry. Furthermore, the post-conviction relief court's findings are fully supported by the record and consistent with this Court's precedents. Accordingly, this Court should deny certiorari.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the

Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id. Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

I. Petitioner failed to carry his burden and prove that Trial Counsel's representation was deficient.

Trial Counsel made timely and repeated hearsay objections at the precise moments witnesses Alfred Dominique Wright and Michael Schaefer began relating what Young had told them about the robbery and murder. (App'x pp. 935; 1110). Those objections preserved the fundamental claim that the testimony identifying "Trigg" and "Trap" was inadmissible hearsay as to Petitioner. The objections were sufficient to allow the Court of Appeals to conduct a full merits review under Rule 804(b)(3), SCRE, and to flag the additional Rule 602, SCRE, personal-knowledge problem in footnote 1 of its opinion. State v. Barnes, 421 S.C. 47, 55–56 & n.1, 804 S.E.2d 301, 306 & n.1 (Ct. App. 2017). The core hearsay objection was therefore effective in

preserving the claim for appellate review.[6] The post-conviction relief court, which had the benefit of the full trial transcript, live testimony from two evidentiary hearings, correctly found that Trial Counsel's performance was not deficient.

Trial Counsel is not constitutionally required to make every conceivable or additional objection, such as a separate Rule 602, SCRE, objection, once a timely and appropriate hearsay objection has been lodged and overruled. See Strickland, 466 U.S. at 689 (strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; strategic choices after reasonable investigation are virtually unchallengeable). Requiring Trial Counsel to anticipate and invoke every possible rule of evidence simultaneously would convert Strickland's performance prong into an impossible standard of perfection rather than the objective reasonableness standard the Supreme Court actually adopted. The post-conviction relief court, which had the benefit of the full trial transcript and observed live testimony at both evidentiary hearings, found Trial Counsel's overall performance in this complex, multi-day trial competent and well-prepared. (App'x. p. 2102). Trial Counsel's handling of this specific line of testimony was "imperfect but competent." That finding is entitled to great deference and is amply supported by the record.

Petitioner's suggestion that Trial Counsel's performance was *per se* deficient because Trial Counsel was later disbarred for unrelated misconduct is unavailing. That fact was never presented to the post-conviction relief court. Post-conviction review evaluates Trial Counsel's performance under the standards in effect at the time of trial, judged by an objective standard of reasonableness rather than through the lens of later professional discipline imposed for other matters. The post-

[6] Contrary to Petitioner's assertion in his petition, the Court of Appeals did not find that this was not preserved for appellate review.

conviction relief court's finding that Trial Counsel was effective in this case stands on its own record-supported merits.

Accordingly, this Court should deny certiorari.

II. Petitioner failed to prove any prejudice from the alleged deficiency.

Even assuming *arguendo* that Trial Counsel's performance was deficient for failing to make an additional Rule 602, SCRE, objection when the identity testimony followed, Petitioner cannot demonstrate prejudice under Strickland. The post-conviction relief court, after conducting two evidentiary hearings, correctly found that Petitioner failed to prove a reasonable probability that the result of the trial would have been different. While an ineffective assistance claim based on counsel's failure to object is not categorically barred by the Court of Appeals' direct appeal ruling, that Court's determination that any error was harmless is highly relevant to the Strickland prejudice inquiry.[7] The evidence the post-conviction relief court relied upon remains powerful and was not materially undermined by the testimony presented on remand.

First, Petitioner's own handwritten letter to his mother (State's Exhibit 404), authenticated by handwriting analysis linking it to him, was introduced at trial and contained multiple detailed inculpatory admissions. In the letter Petitioner admits: (1) telling Young where to find a gun: "I know way Shorty be putting his gun out side"; (2) choosing which gun to use: "the small one"; (3) knowing the victim was inside the bakery: "I seen a lady walk pass"; (4) going inside behind Young; and (5) shooting the victim after she resisted: "she swang at me and I closed my and jump I got scared ma I didn't want to do it". Petitioner also admits complicity: "I should never listen to Renzo," and that he expected to go to prison for a long time. This letter is powerful, independent

[7] "Even if Wright and Schaefer's testimony had been limited to Young's self-inculpatory statements, the State overwhelmingly proved Barnes was one of the people who entered the kitchen and shot at Victim." Barnes, 421 S.C. at 56, 804 S.E.2d at 306.

evidence of guilt that does not depend on the informants' testimony. Petitioner's post-conviction explanation, that he wrote the letter, or that Troy told him what to write, under family pressure to protect his older brother and under a youthful belief that his age would insulate him, does not render the letter non-inculpatory or establish a reasonable probability of acquittal. The letter was used against him at trial; his brother's acquittal in a separate proceeding does not prove Petitioner's innocence.

Second, while Petitioner's mother denied telling law enforcement, on a recorded phone call, that the individual in the video wearing the gray sweatshirt was Petitioner, that portion of the call was played for the jury. (App'x pp. 850–853; 876–877; 1376–1377). At the remand evidentiary hearing, Petitioner's mother testified about the video's "quality" and alleged coercion by authorities. The post-conviction relief court watched the video (State's Exhibit 323), heard the testimony, and found it insufficient to overcome Strickland in conjunction with the direct appeal's harmless-error determination. (App'x p. 2101 n.1; pp. 2102–2103). The post-conviction relief court was in the best position to assess the video's probative value and the credibility of the later testimony. The post-conviction relief court's finding is entitled to deference.

Third, the "hand of one is the hand of all" theory was supported by the record, independent of the informants' testimony regarding their identities. The State's closing arguments referenced the "Trigg and Trap" testimony but also relied heavily on the other overwhelming evidence, including the video showing three perpetrators, the letter, the mother's identification, GSR evidence, and the timeline. (App'x pp. 1745–1747).

Fourth, the broader trial record contains substantial additional corroborative evidence that independently establishes Petitioner's guilt: surveillance video from inside the bakery (State's Ex. 439 and related exhibits) showing the victim working and the perpetrators entering and shooting

her; GSR evidence on gloves and clothing; paramedic Mary Ellen Swain's scene testimony that victim was found under a table in a large pool of blood from a head gunshot wound, pronounced dead at the scene with no transport; autopsy and projectile recovery; timeline evidence from Petitioner's mother's testimony and cell phone records; and other witness testimony to include Moore, Brown, and Coleman placing Petitioner with Young and Stevenson that night and identifying him in the video. (App'x pp. 501 *et seq.*, 1001 *et seq.*, 1501 *et seq.*). This combination of physical, video, forensic, and testimonial evidence is exactly the type of "strong corroborating evidence" contemplated by this Court in Smalls v. State, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018).

Under Smalls, "overwhelming evidence" that can preclude a prejudice finding must be strong and corroborative, such as a confession, DNA, or a combination of physical and other evidence so strong that the prejudice test cannot possibly be met. 422 S.C. at 189–192, 810 S.E.2d at 844–845. The evidence here easily meets that standard even without the informants' identity testimony. Petitioner's reliance on the *new* post-conviction relief evidence, such as his mother's testimony about video quality and alleged coercion, or Petitioner's explanation of the letter, largely repackages facts that were already before the jury or the Court of Appeals and does not rise to the level that would undermine confidence in the outcome or demonstrate a reasonable probability of a different result.

Notably, at the first post-conviction relief evidentiary hearing, Petitioner denied authorship of the highly inculpatory letter to his mother that was introduced against him at trial, and he claimed that Trial Counsel failed to adequately challenge its validity or its admission. (App'x p. 1963). Yet at the remand evidentiary hearing, Petitioner reversed course and admitted that he wrote the letter, while claiming it contained Troy's words and that he prepared it at his brother's direction

under the belief that, as a sixteen-year-old, he would be treated leniently as a juvenile. (App'x pp. 2051–2059). This material inconsistency in Petitioner's own testimony regarding a central piece of evidence severely undermines his credibility. The letter was authenticated at trial through his own mother's testimony that it was Petitioner's own writing. Further, the letter contained detailed, first-person admissions of his knowing participation in the crime, including directing Young to the gun, choosing which weapon to use, entering the bakery, and shooting the victim after she resisted. The post-conviction relief court correctly determined that the testimony offered on remand did not establish a reasonable probability that the outcome of the trial would have been different under Strickland.

Finally, contrary to Petitioner's assertions, the post-conviction relief court did not treat the direct-appeal harmless-error holding as an absolute *res judicata* bar preventing any analysis of ineffective assistance of counsel. The post-conviction relief court correctly conducted the full Strickland inquiry after receiving the expanded record on remand, made findings on both deficiency and prejudice, and considered, or appropriately limited, the new evidence. See Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) (holding that post-conviction relief courts must address all properly raised issues with findings of fact and conclusions of law). Here, the post-conviction relief court did exactly what the law requires: it re-examined the claim on the expanded record and still correctly found no Strickland prejudice.

Accordingly, this Court should deny certiorari.

CONCLUSION

For the reasons stated above, this Court should affirm the post-conviction relief court's order. Should this Court grant Certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

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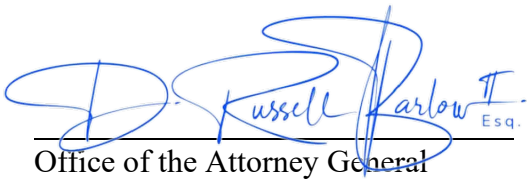
BY: 

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