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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO ABBEVILLE COUNTY
Court of Common Pleas
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2025-001346

Karlita Desean Phillips,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

PETITIONER'S STATEMENT OF THE ISSUE PRESENTED ii

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE PRESENTED ii

STATEMENT OF THE CASE 1

STANDARD OF REVIEW 10

ARGUMENT 11

The PCR court did not err in finding Petitioner failed to prove Counsel was ineffective for failing to object to certain portions of the solicitor's closing argument, where the solicitor's comments were not improper, and where the overwhelming evidence of Petitioner's guilt negated any conceivable prejudice. 11

CONCLUSION 20

PETITIONER'S STATEMENT OF THE ISSUE PRESENTED

Whether the PCR court erred in holding that counsel was not ineffective for failing, on several occasions, to object to improper closing argument by the solicitor?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE PRESENTED

The PCR court did not err in finding Petitioner failed to prove Counsel was ineffective for failing to object to certain portions of the solicitor's closing argument, where the solicitor's comments were not improper, and where the overwhelming evidence of Petitioner's guilt negated any conceivable prejudice.

STATEMENT OF THE CASE

Factual Summary

On the night of March 25, 2013, Dale Phillips, Sr. was watching television in his home located in Abbeville, South Carolina, while his wife, Martha Phillips, cooked dinner for Jamil Phillips, one of their three sons. (App. pp. 245-49; pp. 258-61). That night, Jamil was scheduled to finish working at his job in Greenville, South Carolina, at 9:00 p.m., and Martha and Dale, Sr. were expecting him to arrive home around 10:00 p.m. (App. p. 249; p. 262). Likewise, they were expecting one of their other sons, Dale Phillips, Jr., to also arrive home from work around that same time. (App. p. 250; p. 262).

Just after 10:00 p.m., Martha heard one of their sons arrive home and put a key into the door. (App. p. 249; p. 262). Immediately after that, several gunshots rang out, and Martha and Dale, Sr. quickly rushed to their front porch to see what was going on. (App. pp. 249-50; p. 263). When they did so, they found Jamil lying face down on the porch trying to catch his breath and suffering from gunshot wounds.[1] (App. p. 251; p. 263). At that same time, Martha and Dale, Sr. heard someone running away from the home and, shortly after that, observed a car speed off from the area.[2] (App. p. 252; p. 265). Martha then quickly called 911 while Dale, Sr. held Jamil, who was crying and gurgling, and tried to comfort him until help could arrive. (App. p. 251; p. 263).

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[1] Initially, Martha believed Jamil was Dale, Jr. due to the fact Dale, Jr. was going through a contentious divorce at the time. (App. p. 250; p. 263; p. 266).

[2] On the night of the shooting, Martha and Dale, Sr.'s neighbors noticed a light-colored car parked next to a wooded area near Martha and Dale, Sr.'s home and observed the same car speeding away from the area shortly after the shooting occurred. (App. pp. 268-70; pp. 272-79).

However, within just a few minutes, Jamil stopped breathing and died in his father's arms before paramedics were able to make it to their location.[3] (App. p. 251; p. 253; p. 264; p. 266).

Shortly thereafter, law enforcement officers from the Abbeville County Sheriff's Office arrived on the scene along with emergency medical personnel, the scene was secured, and the paramedics unsuccessfully attempted to revive Jamil. (App. p. 282; p. 286; p. 288; p. 290; p. 292). Crime scene investigators then arrived at the scene, discovered and collected fresh cigarette butts that had been left at a nearby wooded area, located tire marks in the same area, and took impressions of those marks. (App. pp. 294-95; pp. 303-05; p. 317; pp. 348-50). Additionally, Detective Nick Marshall from the Abbeville County Sheriff's Office interviewed witnesses and family members at the scene and learned a silver or light-colored car was believed to have been involved in the shooting. (App. pp. 341-45). Furthermore, based on the information he gathered, Detective Marshall determined Karlita Desean Phillips, who was the estranged wife of Dale, Jr., was a person of interest in the investigation based on the fact she drove a car similar to the one observed speeding away from the scene.[4] (App. pp. 344-46; pp. 450-51; p. 509; p. 511).

In response, Detective Marshall travelled to Petitioner's apartment in Greenwood, South Carolina, along with Investigator Michael Collins from SLED. (App. p. 346; p. 448; pp. 451-52). Upon arriving, the investigators observed Petitioner's light-colored Toyota Camry parked in front of her apartment and noticed the vehicle had what appeared to be fresh mud on its wheels and side. (App. p. 306; p. 347; pp. 450-53; p. 457). Additionally, the investigators noticed the lights were

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[3] During trial, Dr. Brett Woodard, the expert forensic pathologist who conducted Jamil's autopsy, testified Jamil had gunshot wounds to his forehead, armpit, and hip. (App. p. 326; pp. 328-30). He further explained the bullet that struck Jamil's armpit travelled through Jamil's lungs and aorta and rapidly led to his death by causing fatal hemorrhaging and blood loss. (App. pp. 333-35).

[4] Petitioner was thirty-nine years old at the time of the shooting. (App. p. 378).

on inside of Petitioner's apartment, but someone turned the lights off shortly after they arrived at the scene. (App. pp. 349-50; pp. 452-53). The investigators then attempted to make contact with whoever was inside, but no one responded to their knocks or requests. (App. pp. 349-50; p. 453). However, shortly thereafter, a local police officer was dispatched to the scene in response to a 911 call placed by Petitioner, and Petitioner allowed the investigators to enter her home once the officer arrived on the scene. (App. p. 350; pp. 453-55). The investigators then informed Petitioner of her rights and spoke with her about the shooting. (App. pp. 351-53; p. 455). During the conversation, Petitioner denied any involvement in Jamil's death and prepared a written statement indicating she did not go to Abbeville on the date of the shooting, she did not have any knowledge of the shooting, and no one borrowed her car that night. (App. pp. 353-54; pp. 456-57; State's Ex. # 1A (Statement)).

Following the interview, the investigators took custody of Petitioner's car and obtained a warrant to search the vehicle. (App. p. 458). Tire impressions were then taken from the car and compared to the tire impressions collected at the scene, and Agent Vickie Hallman, a crime scene investigator from SLED and an expert in tire impressions, determined one of the tire impressions from the scene could have been made by Petitioner's car, which she noticed had mud and dirt on its tires. (App. pp. 294-95; p. 299; pp. 314-17). However, she was unable to conclusively determine Petitioner's car left that impression. (App. p. 318).

Subsequently, the investigation into Jamil's murder continued but did not lead to any arrests until Tavarious Settles, a juvenile who had been involved in a murder in Greenwood a few days after Jamil was shot and killed, was connected to the shooting through a DNA analysis of the

cigarette butts collected from the crime scene.[5] (App. pp. 303-04; pp. 337-39; p. 405; p. 409; p. 412; p. 417; p. 546; p. 547; p. 553). After the connection was made, investigators met with Settles on December 10, 2013, and spoke with him about the crime. (App. pp. 556-57). During the interview, Settles denied any involvement in Jamil's killing but indicated Petitioner had made an offer to him in regard to the crime. (App. pp. 556-57; p. 562). Additionally, Settles insisted he declined the offer and stated he informed a friend about it before providing the friend with Petitioner's contact information. (App. pp. 557-58). Furthermore, Settles stated his friend committed the murder and framed him by planting the cigarette butts at the scene. (App. p. 559).

Based on Settles's statements coupled with the other evidence obtained during the investigation, Petitioner was placed under arrest for using a minor to commit a felony. (App. pp. 460-61). Following her arrest, officers interviewed her for several hours on the afternoon of December 18, 2013. (App. p. 355; p. 359; p. 380). During that interview, Petitioner waived her rights, admitted she knew Settles through her daughter, stated she had told her daughter she wanted Dale, Jr. to be dead, and indicated she let Settles use her car on the night of the shooting while claiming he left in it with an individual named "Mike." (App. p. 383; p. 387; pp. 467-70). Furthermore, Petitioner admitted she had talked to someone about "jumping" Dale, Jr. and indicated she believed her daughter asked Settles to commit the crime. (App. p. 479; p. 481).

Then, on the following morning, officers interviewed Petitioner again and she again waived her rights before speaking with the officers. (App. pp. 471-73). During that interview, Petitioner provided a written statement in which she indicated her car was only used to go to the store on the night of the incident, claimed she had said "things" in "the heat of the moment" but had never

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[5] Settles was sixteen years old at the time of Jamil's killing. (App. p. 377; p. 546).

spoken of them again, denied driving Settles to Abbeville, denied going to Abbeville herself, blamed the incident all on Settles and "Mike," and insisted she never asked Settles to commit murder or do anything that involved going to Abbeville on the date of the incident. (App. pp. 473-76; State's Ex. # 51 (Statement)). However, Petitioner also inconsistently wrote she "took him to house" and "got the ball rolling" while again insisting she did not force or tell Settles to do "anything." (App. p. 476; p. 478; State's Ex. # 51).

Thereafter, on December 20, 2013, Lieutenant Bo Barton from SLED interviewed Petitioner again after reviewing her prior written statements. (App. pp. 484-87). During the interview, Petitioner again waived her rights and provided the investigator with an additional written statement. (App. p. 488; p. 491). In that statement, Petitioner indicated she went to the store, gave her daughter a driving lesson, and got a car wash on the night of the incident. (App. pp. 496-98; State's Ex. # 53 (Statement)). She further insisted both she and her car were in Greenwood as opposed to Abbeville on the date of the shooting. (App. pp. 498-99; State's Ex. # 53). After Petitioner finished her statement, Lieutenant Barton called a number of inconsistencies to her attention. (App. p. 500). Petitioner then prepared a final written statement. (App. p. 488; p. 502). In that statement, Petitioner indicted she believed Dale, Jr. had burglarized her apartment, asked Settles to beat him up in response, provided Settles with directions to Dale, Jr.'s home, and let Settles borrow her car on the night of the incident. (App. pp. 502-04; State's Ex. # 54 (Statement)). After that, Petitioner indicated Settles returned the car and she later learned Jamil had been killed instead of Dale, Jr. (App. p. 504; State's Ex. # 54).

Subsequently, Petitioner was indicted for accessory before the fact to murder and using a minor to commit a felony, and she proceeded forward to trial. (App. p. 110). During trial, Martha and Dale, Sr. recounted the horrific events they experienced on the night of March 25, 2013, and

the investigators and other law enforcement personnel who responded on the night of the shooting discussed the details of their ensuing investigation into Jamil's killing, which culminated in the arrests of Settles and Petitioner for their involvement in the crime after Petitioner gave a number of differing statements. (App. pp. 244-56; pp. 258-66; pp. 282-86; pp. 294-324; pp. 341-94; pp. 403-417; pp. 458-61; pp. 466-81; pp. 484-504). Additionally, two of Settles's cousins indicated Settles was engaged in a sexual relationship with Petitioner around the time of the killing, and, significantly, Ashanti Polk, who formerly dated Settles, recounted Settles admitted to her he was cheating on her with Petitioner and had killed Jamil after "his friend" drove him to the crime scene. (App. pp. 434-45). Furthermore, testimony was presented establishing Petitioner would have received the proceeds from Dale, Jr.'s $500,000 life insurance policy, which Dale, Jr. indicated Petitioner was fully aware of, and personally renewed a $25,000 life insurance policy on Dale, Jr. several months after the two had separated. (App. pp. 509-14; pp. 519-21).

In addition to that testimony and evidence, Settles elected to testify for the prosecution and candidly admitted he shot and killed Jamil on the night of the crime while attempting to kill his intended target, Petitioner's husband, at the request of Petitioner, who was engaged in a sexual relationship with him at the time. (App. pp. 546-48). Regarding his motive for the shooting, Settles indicated Petitioner asked him to kill her husband because she wanted insurance money and offered him $13,000 to commit the killing. (App. p. 548). He further stated Petitioner drove him to the scene of the crime in her car, he waited for his victim to arrive home while hiding in some bushes and smoking cigarettes, and he shot and killed Jamil after Jamil walked onto the front porch of his home. (App. pp. 549-50). After that, he indicated they fled from the area and Petitioner later informed him he killed the wrong person. (App. p. 550).

Procedural History

In May of 2014, the Abbeville County Grand Jury indicted Petitioner for using a minor to commit a felony (2014-GS-01-0212) and accessory before the fact of murder (2014-GS-01-0213).

Assistant Public Defender Patricia Bolen and Circuit Public Defender Janna Nelson (collectively, "Counsel") represented Petitioner. Solicitor David Stumbo and Assistant Solicitor Yates Brown prosecuted the case. On July 20-23, 2015, Petitioner proceeded to trial before the Honorable Frank R. Addy, Jr. The jury found Petitioner guilty as indicted. Judge Addy sentenced Petitioner to imprisonment for concurrent terms of fifteen years for using a minor to commit a felony and life for accessory before the fact.

Petitioner filed a timely notice of appeal, and the South Carolina Court of Appeals affirmed Petitioner's conviction on December 28, 2017. *State v. Phillips*, Op. No. 2017-UP-649 (S.C. Ct. App. filed December 28, 2017). The remittitur was returned to the circuit court on January 18, 2018.

Petitioner filed her initial application for post-conviction relief ("PCR") on February 20, 2018. On March 7, 2022, Petitioner amended her application to allege that counsel was ineffective for the following reasons:

1. Failure to challenge trial court's opening remarks concerning "true facts";
2. Failure to object when Martha Phillips testified she initially thought the victim was her son Dale because Dale "was having a nasty divorce," as speculation by the witness;
3. Failure to object to testimony from Vickie Hallman, the State's expert in tire tread impression comparison, on the ground that the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in his questions, and on the ground of relevancy because Hallman acknowledged the tire tread impression at the crime scene could have come from any car using the same tires as Petitioner's car;
4. Failure to object to evidence obtained pursuant to the "knock and talk" interview conducted by Deputy Marshall and SLED Agent Collins on the ground that those officers lacked "reasonable suspicion" to approach Petitioner's residence as required by *State v. Counts*, 413 S.C. 153, 776 S.E.2d 59 (2015);
5. Failure to object to SLED Agent David Grubbs' authentication of photographs taken

from two cell phones associated with the case, where Agent Grubbs had not been qualified as an expert in cell phone forensics;

6. Failure to object to testimony from SLED Agent Lily Gallman, the State's expert in DNA analysis, on the ground that the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in his questions;
7. Failure to object to testimony from SLED Agent Michelle Eichenmiller, the State's expert in firearms identification, on the ground that the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in his questions, and on the ground of relevancy where Eichenmiller explained testified she could not positively identify whether a gun depicted in a photograph was a .38 special or not;
8. Failure to object to testimony by SLED Agent Bo Barton on the ground that he was never qualified as an expert witness; that "criminal profiling is junk science" according to *State v. Tillman*, 433 S.C. 58, 67, 856 S.E.2d 168, 173 (Ct. App. 2021); and on the ground that he interviewed Petitioner without informing her that she had a right to an appointed attorney prior to any questioning;
9. Failure to move to request a curative instruction, move to strike, or request a mistrial after the trial court sustained Counsel's objection to the solicitor's questioning of Dale Phillips, Jr.—"Who did you believe . . . that bullet was intended for[?]"—as a call for speculation;
10. Failure to move to request a curative instruction, move to strike, or request a mistrial after the trial court sustained Counsel's objection to the solicitor's questioning of the Amanda Fallaw—"Is it common for an employee who is going through a divorce to elect the life insurance on their spouse at that time?"—as a call for speculation;
11. Failure to object to the solicitor's references to "truth," to his comment about Petitioner seeking a life insurance policy on the victim, and to his reference to the "community" of Abbeville County during closing argument;
12. Failure to object to trial judge's jury instructions that used the phrase "until you reach a verdict of guilty" rather than "unless you reach a verdict of guilty," that informed the jury it must find Petitioner guilty if it was "firmly convinced that the Defendant is guilty of the crime charged," that included references to "truth," and that failed to expressly mention Petitioner's right to have an appointed attorney prior to any questioning.

On Augsut 13, 2024, Petitioner again amended her application to allege that counsel was ineffective for "failure to call [Petitioner]'s daughter, Dayleashia Wideman, as an alibi witness."

An evidentiary hearing into the matter was held before the Honorable J. Derham Cole[6] on August 19, 2024, at the Laurens County Courthouse. Petitioner was present at the hearing and

[6] Petitioner mistakenly claims the hearing was held before the Honorable J. Derham Cole, Jr. (Pet.p.6 n.2).

represented by Ashley A. McMahan, Esquire. Assistant Attorney General Zachary W. Jones represented Respondent. At the evidentiary hearing, Petitioner proceeded only on the allegations of ineffective assistance of counsel raised in her amended applications. On June 12, 2025, Judge Cole denied and dismissed Petitioner's application with prejudice.

Petitioner thereafter filed a timely notice of appeal and a petition for a writ of certiorari. This Return 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, 180–81, 810 S.E.2d 836, 839 (2018).

ARGUMENT

The PCR court did not err in finding Petitioner failed to prove Counsel was ineffective for failing to object to certain portions of the solicitor's closing argument, where the solicitor's comments were not improper, and where the overwhelming evidence of Petitioner's guilt negated any conceivable prejudice.

In her amended application for PCR, Petitioner alleged Counsel was ineffective for failing to object to five comments made by the solicitor during his closing argument to the jury:

1. "What we can do is seek justice. We can seek the truth. And we can make sure that the evidence that's been put before you with the people that have sat on the stand have convinced you beyond a reasonable doubt that the person responsible for this nightmare is sitting right over there by her lawyer. Without her none of this happens." (App. p.581, lines 3-8). Petitioner claimed this comment was improper because "[t]he jury's duty isn't to determine the truth. The jury isn't composed of detectives whose job is to solve crimes and determine what happened. The jury's sole duty is to determine whether the State has proved the allegations contained in the indictments beyond a reasonable doubt. The solicitor's statement lowered the State's burden of proof." (App. p.683).
2. "So she's starting to come off with a little bit of truth here." (App. p.589, lines 14-15). Petitioner claimed Counsel should have objected to this comment because "the solicitor is telling the jury what the truth is, when it's not the jury's duty to determine the truth. Also, the solicitor is vouching for and bolstering the Petitioner's credibility." (App.p.683).
3. "So after they're separated and she's filing for divorce she's actively going and getting an insurance policy on her still husband that she's going to benefit from." (App. p.593, lines 18-21). Petitioner complained that this comment was a "misstatement of evidence." (App.p.684).

4. "[W]hat the Judge is going to instruct you on is that when you go back and you reason together as 12 people as the consciousness of this community in Abbeville County, you'll reason together and you will ultimately decide on a verdict in this case." (App.p.594, lines 8-12). Petitioner argued this comment was improper because a "prosecutor may not urge jurors to convict a defendant in order to protect community values, preserve civil order, or deter future lawbreaking. The evil lurking in such prosecutorial appeals is that the defendant will be convicted for reasons wholly irrelevant to the defendant's guilt or innocence." (App.p.684).
5. "And folks, there is absolutely no question what the truth is in this case." (App.p.594, lines 17-18). Petitioner again complained that this comment "lowered the State's burden of proof" by implying it was the jury's job to determine the truth. (App.p.684-85).

At the evidentiary hearing, Petitioner cross-examined Counsel about these comments by the solicitor, and asked whether Counsel had "any independent recollection as to why any of those were not objected to." Counsel responded that she did not remember. (App.p.729, line 4-p.730, line 8).

The PCR court found Counsel was not ineffective because the challenged comments were not improper. Regarding the solicitor's use of the word "truth," the PCR court reasoned:

> Mere isolated uses of the word "truth" do not, by themselves, imply that Petitioner should not enjoy the presumption of innocence, that the State does not bear the burden of proof, or that the jury should apply any standard less stringent than reasonable doubt. Counsel need not reflexively object to every mention of "truth," as though the very concept of truth should be excluded from the jurors' deliberations. In a criminal trial, the jury is the finder of fact and the arbiter of credibility; to exercise those roles appropriately, the jury must consider whether a given evidentiary fact is true, or whether a given witness is telling the truth. These duties are not inconsistent with the jury's ultimate responsibility to determine whether the State has proven guilt beyond a reasonable doubt. The Court finds

> Counsel was not ineffective for failing to object to isolated references to "truth" in the solicitor's closing argument.

(App.pp.753-54). The PCR court also noted that the solicitor himself reminded the jury of the reasonable doubt standard, negating any possibility that the jury might misunderstand his "truth" comments.

The PCR court then found the comment about insurance was not a misstatement of the evidence, but a permissible inference from the evidence that Petitioner had indeed elected a $25,000 life insurance policy on her estranged husband even after she filed for divorce. (App.p.754).

Finally, the PCR court found the solicitor's reference to the jury as the "consciousness of this community in Abbeville County" was not improper. The PCR court first noted that Petitioner's argument about the "evil lurking in such appeals" appeared to be taken verbatim from *United States v. Monaghan*, 741 F.2d 1434, 1441 (D.C. Cir. 1984). The PCR court then observed that *Monaghan* did not actually support Petitioner's argument because, in that case,

> the appellate court held there was no error in the prosecutor's comment urging the jury to issue "a public condemnation of Mr. Monaghan for his behavior with respect to Todd Bart by finding him guilty in a public forum by citizens of his own community of guilt beyond a reasonable doubt on each of the five charges." . . . The court held this comment "clearly lay within the range of advocacy permitted to the prosecutor."

(App.p.755) (quoting *Monaghan*, 741 F.2d at 1441).

The PCR court cited *State v. Durden*, 264 S.C. 86, 212 S.E.2d 587 (1975), as endorsing the view "that appeals to the needs of the community do not, in and of themselves, overstep the legitimate bounds of prosecutorial argument." (App.p.755). Specifically, the PCR court quoted:

> So long as he stays within the record and its reasonable inferences, the prosecuting attorney may legitimately appeal to the jury to do their full duty in enforcing the law, or to return the verdict which he

> conceives it to be their duty to return under the evidence, and may employ any legitimate means of impressing on them their true responsibility in this respect, as by stating that a failure to enforce the law begets lawlessness. Thus, he may in effect tell them that the people look to them for protection against crime, and may illustrate the effect of their verdict on the community or society generally with respect to obedience to, and enforcement of, the law; he has the right to dwell on the evil results of crime and to urge a fearless administration of the criminal law; and he may ask for a conviction, or assert the jury's duty to convict. He may argue with reference to any matter which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider.

(App.p.755) (quoting *Durden*, 264 S.C. at 92, 212 S.E.2d at 590). The PCR court accordingly found the solicitor's isolated reference to the jury as "the consciousness of this community in Abbeville County" was "within the scope of such legitimate subjects of comment" and was not an improper appeal to the passions and prejudices of the jury.

Petitioner now contends the PCR court erred. On appeal, Petitioner again points out five excerpts from the solicitor's closing argument which she contends were improper; however, only *two* of those excerpts were raised in the proceedings before the PCR court. (Pet.pp.4-5).

The only two excerpts Petitioner raises on appeal which were also raised to the lower court are the solicitor's reference to the jury as the "consciousness of this community in Abbeville County" (App.p.594, lines 8-12), and the comment that "there is absolutely no question what the truth is in this case" (App.p.594, lines 17-18). Petitioner then addresses three additional comments by the solicitor, none of which were challenged in the proceedings before the PCR court.

The first, in which the solicitor asked the jury to "come back with a verdict that speaks the truth that Karlita Phillips is guilty" (App.p.596, lines 5-8), again concerns the solicitor's use of the word "truth" in his closing argument. Although this particular comment was never brought to the PCR court's attention, at least the reasoning Petitioner now raises regarding the propriety of "truth"

statements was addressed by the PCR court. However, the two remaining excerpts—"Now, do you think that Ms. Martha Phillips would have been any less distraught if that had been Dale, Jr., laying on that porch?" (App.p.595, lines 22-24) and "It's a nightmare either way, folks. As I said before, we don't have the opportunity . . . to snap our fingers and wake up from this nightmare. But what we do have the opportunity to do here today is to at least have a dawn of a new day for this family where the court part of this is behind them and they can focus on healing and grieving the loss of Jamil" (App.p.595, line 24-p.596, line 5)—are completely unrelated to the issues raised before the PCR court. Those two excerpts were never challenged in Petitioner's initial PCR application, in either of her two amended applications, at the evidentiary hearing, or in any post-judgment motion. Moreover, the reasoning Petitioner now urges for their impropriety—that these remarks supposedly constitute impermissible "Golden Rule" comments—was never argued to the PCR court. Accordingly, Petitioner's current challenge on appeal regarding those portions of the solicitor's closing argument is unpreserved.

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. *Gaddy v. Douglass*, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is "to give the [circuit] court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Through their enforcement and application, the circuit court is guaranteed a chance "to rule properly after it considered all relevant facts, law, and arguments" and the appellate court is provided with everything needed to properly review the ruling within the limits of the applicable standard of review. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

For an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the circuit court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the circuit court with sufficient specificity. *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912–13 (Ct. App. 2004). Based on those requirements, an issue cannot ordinarily be raised or considered on appeal unless it was first presented to and ruled upon by the circuit court judge. *State v. Freiburger*, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005); *see State v. Patterson*, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial.").

Likewise, an appellant is precluded from arguing one ground or theory in support of an issue during the circuit court proceedings and then a different ground or theory in support of the issue on appeal. *See State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (holding a defendant cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court); *State v. Thomason*, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal.").

Petitioner did not mention either of the supposed "Golden Rule" comments in any of the proceedings before the PCR court. In fact, she did not challenge *any* of the solicitor's comments on the ground that they amounted to impermissible "Golden Rule" arguments or evoked undue sympathy for the victims of her crimes. Petitioner should not be permitted to raise these issues for the first time on appeal. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[E]rror preservation has been a critical part of appellate practice in this State for a long time, serving to ensure . . . that we do not reach issues which were not ruled upon by the trial court. . . . If our review of the record establishes that an issue is not preserved, then we should not reach it."); *State v. Head*, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997)

(holding an appellate court "cannot address unpreserved errors"); *Plyler v. State*, 309 S.C. 408, 413, 424 S.E.2d 477, 480 (1992) (holding an issue that was neither raised at the PCR hearing nor ruled on by the PCR court is procedurally barred on appeal), *overruled on other grounds by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019); *Hyman v. State*, 278 S.C. 501, 502, 299 S.E.2d 330, 331 (1983) (holding an issue that was not raised in the PCR application or at the PCR hearing is not properly before the appellate court). The PCR court never had a fair opportunity to address these arguments; consequently, it never issued any rulings on them for this Court to review. *See State v. Stone*, 376 S.C. 32, 36, 655 S.E.2d 487, 488–89 (2007) ("If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call."); *I'On*, 338 S.C. at 422, 526 S.E.2d at 724 ("The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred."); *see also Queen's Grant*, 368 S.C. at 372–73, 628 S.E.2d at 919 ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." (citations omitted)); *cf. Powers v. City of Aiken*, 255 S.C. 115, 117, 177 S.E.2d 370, 371 (1970) ("We have searched the record and agree that the trial judge was not given an opportunity to rule upon this issue, and accordingly, the question is not properly before us. This is a court of review.").

Turning, then, to the two arguments that *were* presented to the PCR court—i.e., the propriety of the solicitor's references to "truth," and his comment that the jury was the "consciousness of this community in Abbeville County"—Petitioner's position on both issues is meritless.

The PCR court reviewed the solicitor's discussion of "truth" and found that the solicitor was clearly not attempting to lower the State's burden of proof. On the contrary, the PCR court

noted, the solicitor himself repeatedly referenced the correct "reasonable doubt" standard. The PCR court also noted that the concept of "truth" is plainly relevant to the jury's duty to ascertain the credibility of witnesses and the weight of the evidence. These duties are components—not opponents—of the jury's overarching duty to determine whether the State has met its burden of proving guilt beyond a reasonable doubt.

The PCR court also determined that the solicitor's "brief, isolated reference" to the jury as the consciousness of the community was permissible under *State v. Durden*. Petitioner now complains that the cited portion of *Durden* relied on by the PCR court was effectively *obiter dictum*, since the *Durden* court did not actually have before it any record of the prosecutor's challenged comments in that case. *Durden* itself, however, contains no indication that its holding was limited to the facts of that case. Moreover, the contrary authorities cited by Petitioner are not binding in South Carolina at all, but are taken from a smattering of other jurisdictions: *e.g., Strickland v. Owens Corning*, 142 F.3d 353, 359 (6th Cir. 1998); *Westbrook v. Gen. Tire & Rubber Co.*, 754 F.2d 1233, 1238 (5th Cir. 1985); *Bigner v. State*, 822 So.2d 342, 352 (Miss. Ct. App. 2002); *Washington v. State*, 13 S.E. 131 (Ga. 1891); *Ferguson v. State*, 49 Ind. 33 (1874); *State v. Evans*, 183 N.C. 758, 111 S.E. 345 (1922). The PCR court plainly did not err by applying on-point South Carolina precedent instead of relying on non-binding cases from other jurisdictions.

Finally, the PCR court noted that the evidence against Petitioner was "overwhelming," such that there was not a reasonable likelihood of a different verdict even in Counsel had successfully objected to *all* of the solicitor's challenged comments:

> Tavarious Settles testified at length that he killed the victim following Applicant's instructions to murder her husband and share in the proceeds from his life insurance policy. Settles claimed Applicant drove him to the scene of the crime in her car, and Settles remained in the car smoking cigarettes and waiting for his target to arrive. Settles' testimony was corroborated by the fact his DNA was

> discovered on cigarette butts found at the scene of the crime, a car that looked like Applicant's car was seen leaving the area shortly after the shots were fired, tire marks left in the mud near the spot where the cigarette butts were found matched the tread pattern on Applicant's car, and police observed fresh mud on the wheels of Applicant's car when they went to her house shortly after the shooting. In addition, Applicant was going through a contentious divorce at the time, and she was the beneficiary of two life insurance policies on her estranged husband. Finally, Applicant gave a series of starkly inconsistent statements during the investigation and, at one point, admitted that she asked Settles to attack her husband, although she claimed she did not want her husband killed.

(App.p.744). The PCR court's finding is clearly supported by ample evidence in the record. Since there is no reasonable probability of a different outcome, Counsel cannot have been ineffective.

Because Petitioner has failed to demonstrate any error in the PCR court's decision, Respondent asks this Court to deny the petition for a writ of certiorari.

CONCLUSION

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

Respectfully submitted,

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