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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge

CLARENCE W. JENKINS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002211

PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX	i
ISSUE PRESENTED	1
STATEMENT	2
ARGUMENT	
The PCR court erred by finding that trial counsels were not ineffective for failing to call several witnesses on Petitioner's behalf that, while not establishing the defense of alibi <i>in toto</i>, could have created reasonable doubt by accounting for Petitioner's whereabouts for some of the alleged time-frame and by contradicting several parts of the state's most important witness's testimony.	13
A. Trial counsels rendered deficient performance	14
B. Petitioner was prejudiced by trial counsels' deficiency	18
CONCLUSION	21

ISSUE PRESENTED

Whether the PCR court erred by finding that trial counsels were not ineffective for failing to call several witnesses on Petitioner's behalf that, while not establishing the defense of alibi *in toto*, could have created reasonable doubt by accounting for Petitioner's whereabouts for some of the alleged time-frame and by contradicting several parts of the state's most important witness's testimony?

STATEMENT

Petitioner and his wife Carmen Jenkins (“Carmen”) were charged with the murder of Mekole Harris (“Decedent”). Petitioner and Carmen were in an unconventional, three-way relationship with Grace Davis (“Davis”). The three of them lived together, along with the Jenkins’ children and Davis’s children. However, in March of 2008, the Department of Social Services removed Davis’s children from her care. To regain custody of her children, Davis left the Jenkins’s home to go live with family. The state’s theory at trial was that Petitioner and Carmen committed a gruesome murder as part of a hare-brained scheme to force Davis to return to their home.

Background

At one point during Petitioner, Carmen, and Davis’s cohabitation, Petitioner was required to serve a ninety-day prison sentence for driving under suspension. App. 263, ll. 1-5. While Petitioner was in prison, Carmen and Davis began a romantic relationship. App. 263, ll. 8-13. Carmen fell in love with Davis and wanted Petitioner “out of the picture” so that she could be with Davis. App. 521, ll. 12-14. When Petitioner returned from prison, he signed an “intimate covenant” with Carmen and Davis, essentially marriage vows between the three of them. App. 265, ll. 7-9.

After DSS removed Davis’s children from her custody, Davis determined that she needed to leave her living situation to have her children returned to her. App. 267, ll. 2-13. She left the Jenkins’s home on March 16, 2008. App. 268, ll. 2-3. The state’s theory of prosecution was that in an effort to force Davis to return to them, Petitioner and Carmen used Decedent to send threatening messages to Davis’s family; when that failed, Petitioner and Carmen murdered

Decedent, dismembered her body, and left pieces of her body along with threatening messages for Davis's family to find.

Trial

Petitioner was tried for the murder and kidnapping on April 9-13, 2012, before the Honorable Edward W. Miller and a jury. App. 1. Appointed counsels John Mauldin, Susannah Ross, Mark McDougal, Conner Mullin, Katherine Creely, and Katherine Williams represented Petitioner. App. 1. Solicitor W. Walter Wilkins, III, Betty C. Strom, and George Campbell represented the state. App. 1. The state served Petitioner with notice of its intent to seek the death penalty. However, the state withdrew its notice to seek the death penalty prior to trial.

On April 7, 2008, police found a threatening letter and suspicious package left outside the apartment of Davis's aunt, Sue Bostic. App. 94, ll. 20-24. The bag contained severed human remains. App. 100, ll. 11-25. The letter was addressed to Davis. App. 110, ll. 4-7. It referenced "some debt owed to someone and someone was in trouble." App. 132, ll. 8-10. The letter also referenced "protection" from "an organization." App. 132, ll. 10-11. Davis's mother, Judon Burnside, got a similar letter. App. 134, ll. 5-11. The severed body parts were matched by fingerprint to Decedent. App. 220, l. 19.

Vivian Young testified that on April 1, 2008, she saw Decedent sitting on Petitioner's lap at Labor Finders, where Petitioner found work. App. 242, ll. 7-9. Two days later, on April 3, Young saw Decedent go into the bathroom with Petitioner around 3:00 or 4:00 p.m., which is the last time Young ever saw Decedent. App. 243, ll. 19-25.

Carmen Jenkins testified at trial as a state's witness against Petitioner. App. 424. Before Petitioner's trial, she pleaded guilty to murder and was sentenced to fifty years' incarceration. She testified that the prosecutor would seek a sentence reduction on her behalf if she testified

against Petitioner. App. 424.¹ Carmen testified that during the first month of their three-way relationship with Davis, Petitioner was controlling and “verbally abusive” to both of them. App. 433, ll. 3-4. She testified that Petitioner was angry when Davis left because Davis “knew too much about the organization that he was in” and that “the organization would kill all of [them] if [Davis] didn’t come back.” App. 441, l. 21 – 426, l. 1. Around March 20, 2008, Petitioner began drafting threatening letters in an effort to get Davis to come back. App. 442, ll. 6-22. Petitioner handwrote the letters, and Carmen typed them. *Id.* The pair then printed the letters at the library and mailed them to various members of Carmen’s family. App. 443, ll. 15-25.

Carmen testified that on April 3, 2008, she dropped Petitioner off at Labor Finders. Later that day, Petitioner called Carmen and told her to clean the house because he was bringing someone home. App. 453, ll. 1-8. Petitioner arrived home with Decedent, who came into the house voluntarily. App. 453, ll. 14-15. Petitioner told Carmen that he found Decedent by asking someone at Ingles to help him find a prostitute. App. 453, ll. 17-19. Petitioner took Decedent into the bedroom and closed the door. Later, he asked Carmen to come in, where she found Decedent naked and handcuffed on the floor. App. 454, ll. 8-11. Petitioner told Decedent that he and Carmen were police officers, that they were arresting Decedent for prostitution and possession of crack, and that the only way for Decedent to get out of the arrest was to help them with a case. App. 454, ll. 14-18. Decedent agreed to help, and Petitioner wrote a script for her to read over the phone in a call to Davis’s family. App. 454, l. 23 – 439, l. 1. Petitioner and Carmen took

¹ It appears that the state made good on this promise. According to the public index, Carmen is now serving a forty-year prison sentence, rather than fifty. *See State v. Carman Major Jenkins*, Indictment No. 2008-GS-23-08408 (Greenville Cnty.), <https://www2.greenvillecounty.org/SCJD/PublicIndex/CaseDetails.aspx?County=23&CourtAgency=23001&Casenum=I475289&CaseType=C&HKey=7210211710611347848874821195487474710148579950561218449109848576112725797100878755116819712110185107> (last accessed June 23, 2026).

Decedent to a pay phone where she made calls to Davis's aunt and mother. App. 457, l. 20 – 442, l. 12.

When the three returned home, Petitioner handcuffed Decedent to a chair. App. 461, ll. 20-21. Carmen testified that on Saturday, April 4, 2008, Petitioner's sister Janese Gibbs came by their trailer around noon. App. 462, ll. 6-11. That night, Petitioner crushed up sleeping pills and mixed them with ice cream that he fed to Decedent. App. 463, l. 25 – 448, l. 1. However, Decedent did not eat enough of the ice cream for the drugs to have any effect. App. 464, ll. 3-7.

Carmen testified that, the next morning, Petitioner ordered her to kill Decedent. App. 465, ll. 23-25. Petitioner tied Decedent to a chair. App. 466, ll. 7-8. Carmen tried to strangle her but was unable to. App. 467, ll. 1-2. Petitioner then suffocated Decedent with a garbage bag. App. 467, ll. 4-6. Afterwards, Petitioner and Carmen placed Decedent's body into their shower where they dismembered it. App. 471, ll. 3-25. They hid the remainder of her body near a golf course on Paris Mountain, where they also lit the body on fire. App. 473, ll. 4-11. Carmen personally delivered the bags containing parts of Decedent's body and the threatening letters for Davis's family to find. App. 458, ll. 8-25. Carmen was seen doing so on video; Petitioner was not. App. 476, ll. 2-9.

After disposing of the body, Carmen and Petitioner used a combination of bleach and ammonia to clean the bathroom. App. 477, l. 21. Eighteen months later, while in pre-trial detention, Carmen informed police of the location of Decedent's body. App. 483, ll. 1-23. This was part of a negotiated deal which resulted in the solicitor's office withdrawing its notice to seek the death penalty against her. *Id.*²

² Due to the passage of time, and the state of the remains, the state's forensic pathologist was unable to determine a cause of death. App. 660, ll. 13-16.

Trial counsel Mauldin handled Carmen's cross-examination. He pointed out that Carmen was significantly more educated than Petitioner. App. 495-497. Carmen was happy during the time that Petitioner was in prison for driving under suspension and she was with Davis. App. 503, ll. 5-9. Carmen wanted Davis to come back. App. 505, ll. 19-24. Mauldin also confronted Carmen with several lies (or perceived lies) that she had told throughout the course of the police investigation and during her testimony. For example, Carmen testified that Petitioner was in the house when police first came to speak with her, however, police surveilled the house immediately after leaving and never saw Petitioner. App. 515, ll. 9-15. Further, Carmen testified during her plea colloquy that nothing had been promised to her in exchange for her guilty plea, which was not true because the state had promised to seek a sentence reduction. App. 520, ll. 14-23.

Another witness, Brandi Bolt, testified that she saw Petitioner feeding an odorous flame on his grill. App. 527, ll. 21-22. When she asked Petitioner whether there was a fire, Petitioner replied in the negative and claimed to be having a cookout. App. 529, l. 24 – 513, l. 1.³ Police located ashes and melted plastic in the grill. App. 535, ll. 17-24. Inside the home, police also found handcuffs and a "special police badge." App. 578, ll. 11-12. Police also located Petitioner's fingerprints on an empty bottle of lighter fluid and a hand-written note that began "Hi, my name is Mekole." App. 619, ll. 1-11, 21; 626, ll. 11-12, 17-18.

The state's theory was that Petitioner and Carmen committed this murder together to make Davis come back to them but that Petitioner was the controlling force behind the murder. *See, e.g.*, App. 704, ll. 14-16. Petitioner's theory was that Carmen was the murderer and mastermind. App. 728, l. 16. Petitioner pointed out in closing arguments that only Carmen was

³ Bolt was not able to identify Petitioner at trial. App. 528, l. 2.

seen dropping the letters and bags containing Decedent's body off. App. 742, ll. 15-25. Further, Petitioner argued that Carmen had motive, means, and opportunity to murder Decedent. App. 741, ll. 14-16.

The jury began its deliberations at 4:45 p.m. App. 768, ll. 13-14. It asked three questions of the trial court: two about the law of murder and accomplice liability, and the third a request for a printed copy of the jury instructions which the trial court provided. App. 770-774. After slightly more than three hours of deliberation, the jury informed the trial court it had a unanimous verdict on one charge but was deadlocked on the other. App. 774, ll. 14-18. The jury was dismissed for the night. The next morning, the trial court read an *Allen*⁴ charge to the jury. App. 785-787. Around eighty-three minutes after the *Allen* charge, the jury returned a verdict of guilty on both counts. App. 788. During mitigation, Petitioner continued to deny he played any part in the murders but admitted helping Carmen dispose of the body. App. 794, l. 1. The trial court sentenced Petitioner to life imprisonment. App. 797, ll. 1-2. Petitioner appealed, and the Court of Appeals affirmed in a published opinion. *State v. Jenkins*, 408 S.C. 560, 759 S.E.2d 759 (Ct. App. 2014). App. 875-887. This Court denied certiorari.

Post-Conviction Relief Application

Petitioner filed a timely application for post-conviction relief (PCR) on March 18, 2015. App. 889-898. An evidentiary hearing was held on January 30-31, 2023, before the Honorable G.D. Morgan, Jr. App. 911. Sarah Henry represented Petitioner; Taylor Zane Smith represented the state. App. 911. Petitioner alleged, *inter alia*, that his trial counsels rendered ineffective assistance by failing to investigate and call various "alibi" witnesses and by failing to call witnesses to impeach Carmen's testimony and call the state's timeline into question. App. 909.

⁴ *Allen v. United States*, 164 U.S. 492 (1896).

Petitioner first called Laverne Mitchell, who testified that, during April 2008, he lived at the Shady Rest Motel which was right behind a Hot Spot gas station. App. 922, ll. 22-23; 923, l. 8. He told police that he saw Decedent at the Hot Spot gas station on a Friday afternoon around 5:30 p.m. App. 923, ll. 18-21. Mitchell was confident that it was a Friday, but he was not sure whether it was April 3 or April 4, 2008. App. 930, ll. 22-25.

Petitioner testified that Decedent was already dead when he arrived at the trailer. App. 969, ll. 10-14. He reacted by attempting to burn evidence of drug dealing that he had been engaged in at the time. App. 970, ll. 11-24. Carmen threatened to report his crimes which led Petitioner to help Carmen cover up Decedent's murder. App. 972, ll. 10-23; 973, ll. 14-20. Petitioner testified that he provided his attorneys with the names of witnesses to call in his defense. App. 989, ll. 16-18.

Petitioner's sister Jamesse Gibbs testified regarding the timeline of events during the weekend of Decedent's murder. She testified that on Friday, April 4, 2008, she went to work at 5:00 a.m. and got back at either 3:00 or 5:00 p.m. App. 1055, ll. 7, 13. Petitioner was at her house when she returned home. App. 1055, ll. 19-23. Petitioner did not leave the house and was still there when Gibbs went to bed around 7:00 p.m. App. 1057, ll. 1-5. On Saturday, April 5, 2008, Gibbs worked the same hours and did not remember whether Petitioner was there when she returned home. App. 1057, ll. 12-21. When asked about Carmen's testimony that Gibbs went by the trailer around noon on April 5, Gibbs testified that she did not, and due to her work hours, such a trip would have been impossible. App. 1058, ll. 5-9. On Sunday, April 6, 2008, Gibbs had the day off work. App. 1058, ll. 16-17. Petitioner came over at around 2:00 p.m. when Carmen dropped him off and remained there the remainder of the day. App. 1059, ll. 1-3, 14-25; 1071, ll.

8-9. Gibbs further testified that she never saw Petitioner be controlling or abusive toward Carmen. App. 1068, ll. 9-11.

Petitioner's sister Shanek Robinson testified that Petitioner typically stayed at Gibbs's house with the children while Gibbs was at work. App. 1079, ll. 8-10. On April 4, 2008, Robinson went by Gibbs's house at approximately 11:30 a.m., and Petitioner was there sleeping. App. 1084, l. 5. Robinson testified that she knew of no instances where Petitioner was violent or abusive towards Carmen; however, she knew of at least one instance where Carmen was violent toward Petitioner. App. 1087, ll. 12-14; 1088, ll. 8-25. She recounted a story where Petitioner was given a black eye by Carmen. *Id.* Robinson also testified that Petitioner faints at the sight of blood, and because of that, she does not think it is possible that Petitioner committed Decedent's murder. App. 1090, l. 11 – 1091, l. 15; 1092, ll. 5-6.

Trial counsel Mauldin testified that he and the other attorneys split up their responsibilities at Petitioner's trial. Initially, Mauldin was responsible for handling Carmen's testimony and the death penalty sentencing phase. App. 1103, ll. 22-23. McDougal's responsibility was any forensic or scientific evidence, and McDougal gave the opening statement. App. 1102, ll. 23-24. Ross dealt with Petitioner and his family directly. App. 1103, ll. 13-16. Mauldin testified that he and the other trial counsels had concerns with the legitimacy of Petitioner's alibi defense; however, Mauldin's main concern was that the "alibi" defense would discredit their sentencing-phase mitigation. App. 1114, ll. 1-20; 1115, ll. 3-8. Mauldin did not find Petitioner's sisters' testimonies to be credible because the sisters did not share their statements with trial counsels until one-and-a-half years into the case, and had the sisters known Petitioner was somewhere else, they would have said so immediately. App. 1116, ll. 3-12. Further, trial counsels did not believe that the sisters provided "worthwhile" impeachment of

Carmen's testimony. App. 1119, ll. 2-3. Mauldin further stated that he hoped Petitioner would not testify because he worried that Petitioner would be impeached by letters that he wrote while incarcerated. App. 1119, ll. 14-17.⁵

Trial counsel McDougal testified that he said Petitioner was prone to create "fanciful stories" in his opening to show that Petitioner was not dangerous. App. 1184, ll. 21-23. He meant to portray Petitioner as "harmless." App. 1185, ll. 4-5. McDougal did not remember why they had not called Petitioner's sisters as witnesses. App. 1187, ll. 3-6.

Trial counsel Ross testified that she and an investigator with the public defender's office spoke with Gibbs at her home. App. 1194, ll. 11-22. Ross's notes from this meeting indicated that Gibbs told her that she did, in fact, go over to Petitioner's home on Saturday, April 5. App. 1197, ll. 1-9. She believed that Petitioner's sisters would have been effectively cross-examined by the solicitor because their testimonies did not establish that Petitioner was with them *all* weekend. App. 1207, ll. 2-13. She did not believe that the letters Petitioner wrote her while incarcerated were incriminating. App. 1210, ll. 10-13. Ross believed that Petitioner would have been a terrible witness; she believed that Petitioner was very compelling but also believed that he would have been fully impeached. App. 1210, l. 13 – 301, l. 15.

Ross did not believe that Petitioner's sisters would have effectively impeached Carmen's testimony. App. 1217, ll. 14-20. Ross added that the sisters would have been important witnesses "if [Ross] didn't think it could go wrong." App. 1231, ll. 4-5. "[B]ut I don't remember what exactly those witnesses would have said and didn't think that would be helpful to the case to put up those witnesses. And that's why we didn't do it." App. 1231, ll. 7-11. Ross testified that, if trial counsels had put up the sisters to testify, the state would have called a number of witnesses

⁵ However, it appears that these letters were written to trial counsel Ross. App. 1120, ll. 1-17.

showing that Petitioner was trying to manipulate a case and manufacture an alibi. App. 1232, ll. 1-4. However, Ross added that she believed the sisters “would be fine witnesses.” App. 1233, l. 5.

Petitioner argued that all of the evidence that could have been used to discredit Petitioner’s sisters was already in evidence at his trial. App. 1240, ll. 22-23. Further, he added that his sisters and Mitchell could have been called to discredit Carmen’s timeline. App. 1241, ll. 4-5.

The PCR court denied relief and dismissed the application with prejudice. App. 1263. As to the allegation that trial counsels were ineffective for failing to call certain witnesses, the PCR court found that trial counsels had made a valid strategic decision not to present the evidence at trial. App. 1282. The PCR court found that Petitioner’s sisters’ testimonies did not form a “complete alibi.” App. 1281. Further, since there was physical evidence at trial that proved Petitioner was at the trailer at least at some point during the weekend, the “alibi” testimony would have been refuted. App. 1282. As to the related allegation that trial counsels were ineffective for failing to call Petitioner’s sisters to impeach certain parts of Carmen’s testimony, the PCR court found that the sisters’ testimonies would have “offered little toward impeachment of any value.” App. 1285. As to Robinson’s testimony that Carmen once gave Petitioner a black eye, the PCR court found that such testimony was likely inadmissible anyway, and in any event, the evidence went to Carmen’s propensity for violence, not truthfulness, and was thus ineffective as impeachment evidence. App. 1287 (*citing, inter alia*, Rule 404(b), SCRE). Further, the PCR court found the sisters’ testimonies would have been “cumulative or otherwise of little if any impact given the totality of the evidence at trial concerning the events of the murder.” App.

1287-1288. Specifically, the PCR court pointed to evidence of what it called Petitioner's "deep involvement in this crime...." App. 1289.

As to the allegation that trial counsels were ineffective for failing to call Mitchell to testify that he saw Decedent on Friday evening, the PCR court found that it was "likely either that the team had identified or interviewed Mr. Mitchell but did not consider the information of note, or that they did not identify or interview Mr. Mitchell but his evidence would not have prompted further necessary investigation...." App. 1284. However, the PCR court found that it was unnecessary to make a more specific factual finding, because Mitchell's testimony was simply of "no significant value," due to the fact that the time of death was "not specific." App. 1284.

This petition follows.

ARGUMENT

The PCR court erred by finding that trial counsels were not ineffective for failing to call several witnesses on Petitioner's behalf that, while not establishing the defense of alibi *in toto*, could have created reasonable doubt by accounting for Petitioner's whereabouts for some of the alleged time-frame and by contradicting several parts of the state's most important witness's testimony.

At trial, the state presented no direct—and little circumstantial—evidence that Petitioner actually murdered Mekole Harris, other than the testimony of Carmen Jenkins. Carmen's testimony could have been contradicted in several key ways by the credible testimonies of Petitioner's sisters which were presented at the PCR hearing. The PCR court found that trial counsels articulated a valid strategic reason for failing to call these witnesses at trial. That was error. Trial counsels should have presented the favorable testimonies of Petitioner's sisters that very well could have been the difference in this already close case. Because trial counsels did not do so, they rendered ineffective assistance to Petitioner. This Court should grant certiorari and reverse.

To establish ineffective assistance of counsel, a PCR applicant must make a twofold showing: (1) counsel's representation fell below "an objective standard of reasonableness;" and (2) but for counsel's errors, there is a reasonable probability that the result of the proceeding would have been different. *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002); accord, *Strickland v. Washington*, 466 U.S. 668 (1984). An objective standard of reasonableness includes the "duty" of criminal defense attorneys "to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60,

64 (2011) (*citing, inter alia, Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)). If counsel's decisions are part of "sound trial strategy," those decisions are "virtually unchallengeable." *Strickland*, 466 U.S. at 690. "Sound trial strategy" means that trial counsel must "articulate a *valid* reason for employing a certain strategy." *Ingle*, 348 S.C. at 470, 560 S.E.2d at 402 (emphasis in original). Put another way, while courts should make "every effort...to eliminate the distorting effects of hindsight..." *Strickland*, 466 U.S. at 689, courts should not indulge in "post hoc rationalization[s] of counsel's conduct..." *See Wiggins v. Smith*, 539 U.S. 510, 526-27 (2003); *see also, Griffin v. Warden*, 970 F.2d 1355, 1358 (4th Cir. 1992) ("courts should not conjure up tactical decisions an attorney could have made but plainly did not").

Failing to call witnesses favorable to the defense is ineffective assistance of counsel in the absence of a valid strategic rationale. *See generally, e.g., Weldon v. State*, 436 S.C. 69, 870 S.E.2d 183 (Ct. App. 2021). For example, this Court held in *Thomas v. State*, that a trial counsel rendered ineffective assistance by failing to call a witness "who would have *cast doubt* on the sole witness' identification of the petitioner." 308 S.C. 123, 124, 417 S.E.2d 531, 532 (1992) (emphasis added). In other words, it is not necessarily a requirement that the witness would have, if believed, established innocence, only that the witness's testimony would have "cast doubt" on a crucial piece of the state's evidence. *See id.*; *see also, Cherco v. State*, 309 S.W.3d 819, 825 (Mo. Ct. App. 2010) (petitioner must show that "the witness's testimony would have *aided* in his defense." (emphasis added)).

A. Trial counsels rendered deficient performance

Trial counsels did not articulate a valid strategic reason for failing to call Petitioner's sisters—who would have testified favorably to Petitioner—as witnesses. Therefore, trial counsels

rendered deficient performance to Petitioner. The PCR court erred in concluding otherwise, and this Court should grant certiorari and reverse.

Trial counsel Mauldin testified that he and the other attorneys had concerns with the legitimacy of Petitioner's alibi defense. However, Mauldin's main concern was that presenting an "alibi" defense would discredit their sentencing-phase mitigation case. Mauldin also did not believe the sisters to be credible and did not believe that the sisters provided worthwhile impeachment of Carmen's testimony. Trial counsel Ross testified that she believed the sisters would have been effectively cross-examined because Petitioner was not with them *all* weekend. However, Ross also added that she could not remember exactly what Petitioner's sisters would have testified to, just that she did not think it would have been helpful to the case. Ross also testified that she was concerned that the state would have put up a number of witnesses to prove that Petitioner had manufactured an alibi.

Essentially, trial counsels articulated four reasons for not calling Petitioner's sisters as witnesses: (1) presenting an alibi case would harm the credibility of Petitioner's sentencing-phase defense; (2) the sisters were not credible; (3) the sisters could not provide a complete alibi; and (4) the state could have rebutted the sisters' testimony with witnesses proving that Petitioner had manufactured an alibi. None of the four are valid reasons for failing to call Petitioner's sisters.

First, at the time of trial, Petitioner's case was not a capital case. The state had withdrawn its notice to seek the death penalty against him. Thus, there was no need to worry about the credibility of his sentencing-phase case. There would be no sentencing phase. Thus, this rationale is not a valid strategic reason.

Second, it is not immediately clear why Mauldin believed the sisters would not be credible. To start, Mauldin acknowledged that defense attorneys should not necessarily be in the business of making credibility determinations. He further offered that Petitioner's sisters did not come forward to Petitioner's attorneys right away, but only after a year-and-a-half had gone by. However, it is not clear how the state would have known when and how Petitioner's sisters came forward so as to present that information to the jury. It is understandable why Petitioner's sisters did not come forward immediately, as neither purported to offer a complete alibi. Because Petitioner's sisters did not claim to offer a complete alibi, the value of their testimonies may not have been immediately apparent to them. The thrust of their testimonies was to impeach Carmen. Further, neither of Petitioner's sisters appear to have independent credibility problems. Both are gainfully employed mothers. In fact, Robinson is a nursing professor at Midlands Technical College. And while the state would have been able to suggest that Petitioner's sisters were biased by nature of their familiar relationship with Petitioner, family status alone does not form such insurmountable bias that a witness should be discarded entirely. *See, e.g., Lopez v. Comm'r of Corr.*, 330 A.3d 933, 950-51 (Conn. App. 2025). It cannot be said on this record that Petitioner's sisters had "serious credibility questions." *See Weldon*, 436 S.C. at 83, 870 S.E.2d at 190 (*quoting Edwards*, 392 S.C. at 458, 710 S.E.2d at 65 (emphasis in *Weldon*)). Because there is no clear reason why Petitioner's sisters would not have been credible as impeachment witnesses, the PCR court erred in finding this to be a valid strategic reason.

Third, while it is true that the sisters could not provide a complete alibi for Petitioner, this does not mean that their testimonies were not favorable. Again, the most favorable aspect of Petitioner's sisters' testimonies was to impeach Carmen. Both sisters testified that they saw Petitioner at some point during the weekend, while Carmen testified that Petitioner was with her

all weekend and did not leave the trailer without her. Further, Gibbs contradicted Carmen's testimony that Gibbs came to the trailer on Saturday. Trial counsel Mauldin testified that the overall trial strategy was to discredit Carmen. If that is true, it makes little sense not to call available witnesses who would have discredited even greater parts of Carmen's testimony. The sisters' testimonies did not need to form a complete alibi, they only needed to "cast doubt" on Carmen's testimony. *See Thomas*, 308 S.C. at 124, 417 S.E.2d at 532. Any inconsistencies as to Carmen's timeline, the gravamen of her testimony, could have caused at least one juror to disbelieve her. Therefore, this is not a valid strategic reason.

Fourth, it is not at all clear what witnesses the state could have called to, as trial counsel Ross stated, show that Petitioner attempted to manufacture an alibi. In fact, if the state had such evidence, it could have presented it during its case-in-chief. *Cf. State v. Edwards*, 383 S.C. 66, 72, 678 S.E.2d 405, 408 (2009) ("witness intimidation evidence, if linked to the defendant, may be admitted to show a consciousness of guilt"). Further, the only evidence that was specifically referred to at the PCR hearing was a letter addressed to trial counsel Ross. A letter by Petitioner to his attorney would be inadmissible as protected by attorney-client privilege. Further, it is not at all clear that the state was aware of the existence of this letter at the time of trial. In the absence of any evidence of what the state could have presented to rebut Petitioner's sisters' testimonies, it was not reasonable to refuse to call them as witnesses.

For these reasons, trial counsels articulated no valid strategic reason for failing to call Petitioner's sisters.

B. Petitioner was prejudiced by trial counsels' deficiency

Further, there is a reasonable probability that the sisters' testimonies would have led to a different outcome. Accordingly, Petitioner was prejudiced by trial counsels' deficient failure to call them as witnesses. This Court should grant certiorari and reverse.

To establish prejudice, Petitioner must show that, "but for counsel's errors, there is a reasonable probability the result would have been different." *Martinez v. State*, 304 S.C. 39, 41, 403 S.E.2d 113, 114 (1991). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* (quoting *Strickland*, 466 U.S. at 694). "In rare cases, using 'overwhelming evidence' as a categorical bar to preclude a finding of prejudice is not error." *Smalls v. State*, 422 S.C. 174, 190, 810 S.E.2d 836, 844 (2018) (emphasis added). But, for evidence to be "overwhelming...the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of 'a reasonable probability...the factfinder would have had a reasonable doubt' cannot possibly be met." *Weldon*, 436 S.C. at 82, 870 S.E.2d at 189. "Additionally, the strength of the state's evidence should be viewed in light of trial counsel's errors such that there 'is no reasonable probability [counsel's errors] contributed in any way to [the applicant's] convictions.'" *Id.* (quoting *Martin v. State*, 427 S.C. 450, 456, 832 S.E.2d 277, 280 (2019) (alterations in original)).

As the PCR court noted, the state presented some evidence of Petitioner's involvement in the crime, such as evidence that Petitioner helped prepare the threatening letters to Davis's family and evidence that Petitioner attempted to destroy evidence to cover up the murder (namely, Bolt's testimony that Petitioner was fanning an odorous flame on his grill and Petitioner's fingerprints being found on an empty bottle of lighter fluid). However, the only

significant evidence that Petitioner *murdered* Decedent came from Carmen's testimony. Carmen was the only person on video delivering the bag containing Decedent's body. Carmen was the one with the stronger motivation to get Davis to move back in. Carmen was the one who confessed to police. Carmen's credibility was central to the state's case.

There are several pieces of Carmen's testimony that could have been impeached by the testimony of Petitioner's sisters, but two stand out. *First*, Carmen testified that Petitioner did not leave the trailer all weekend and that Carmen was with Petitioner all weekend, with the sole exception of when Carmen went to pick up food from a local restaurant on Saturday. Petitioner's sisters would have testified that Petitioner was at Gibbs's house at several points during the weekend which would have contradicted Carmen's testimony on a massively important point: Petitioner's location during the ongoing kidnapping. *Second*, Carmen testified that Petitioner was abusive and controlling which aided the state's ultimately theory that, while Carmen and Petitioner committed the crime together, Petitioner was the mastermind and controlling force behind it. However, Petitioner's sisters would have both testified that they never witnessed Petitioner exhibit any such behavior, and in fact, if anyone was ever violent in Petitioner's relationship, it was Carmen. Considering Carmen's testimony was the most major part of the state's evidence, it follows *a fortiori* that further contradiction of her testimony would have created reasonable doubt in the mind of at least one out of twelve jurors.

Even with Carmen's testimony, this was not an open-and-shut case. The jury asked several questions of the trial court and required an *Allen* charge before reaching a unanimous verdict. To the extent that the PCR court held that the sisters' testimonies were overcome by overwhelming evidence, *see* App. 1288, the jury itself plainly did not agree with that assessment. *See, e.g., Lounds v. State*, 380 S.C. 454, 463, 670 S.E.2d 646, 651 (2008) ("the jury's questions

during deliberations indicate it also struggled with whether petitioner was guilty....”). The evidence here was far from overwhelming. Again, the only evidence that firmly connected Petitioner to the murder and kidnapping, as opposed to mere accessory after the fact, was Carmen’s testimony.

For these reasons, trial counsels rendered deficient performance by failing to call Petitioner’s sisters as witnesses in the absence of a valid strategic reason. Further, Petitioner was prejudiced by trial counsels’ deficiency. Therefore, trial counsels rendered ineffective assistance of counsel to Petitioner. This Court should grant certiorari and reverse the PCR court’s contrary decision.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari.



W. Chandler Norville
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of August, 2026.