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STATE OF SOUTH CAROLINA

S.C. SUPREME COURT

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Heath P. Taylor, Circuit Court Judge

JAMAR A. HUGGINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2024-002167

REPLY BRIEF OF PETITIONER

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ARGUMENT IN REPLY

I. The State's argument that trial counsel's failure to introduce evidence connecting Jasmine Mitchell and Deaungela Shanta Montgomery was a valid trial strategy and the omission of such evidence was not prejudicial is without merit.

The State's Brief of Respondent excuses trial counsel's performance behind his dubious assertion of a trial strategy and ignores the prejudicial impact of trial counsel's failure to introduce the evidence he admitted having that connected the state's star witness with another, similar looking individual with a similar sounding nickname: Jasmine Mitchell a/k/a Juice. App. 584-85. Petitioner has addressed the alleged trial strategy of trial counsel in his principal Brief but will address the State's summary assertion that there was no prejudice in trial counsel's failure to introduce evidence connecting Mitchell and Montgomery. According to the State:

The evidence that Petitioner produced at the PCR hearing—testimony from Mitchell Phillips, Matthew Thornton, and Natasha Hanna—consisted of evidence that was either not relevant, speculative, or related to the immaterial identity of a later identified third party. Petitioner has not shown a likelihood that had trial counsel made a different opening argument, or alternatively elicited testimony and presented evidence to fully support his opening argument as given, that the outcome of the trial reasonably would have been different.

Brief of Respondent, p. 17.

To the contrary, Hanna testified at length regarding the evidence and information supplied to the trial judge at the hearing on his Rule 29, SCRCrimP, motion for a new trial. App. 285, l. 19 – 287, l. 2. The facts from the State's own criminal investigation showed connections between Adrian Moore (Drake or Dre and Eckler's companion who lived in her home until just before the home invasion) and Mitchell, Montgomery, and Tyjuan Mckeithan. App. 98, ll. 14 – 22; 103, l. 9 – 17; 285, l. 19 – 287, l. 2; 293, l. 25 – 294, l. 2; 535-542. These connections

included cell phone communications and an outstanding debt owed by Moore. App. 286, l. 5 – 287, l. 2; 535-542. These connections were confirmed by the investigator Hanna retained, Mathew Thornton. Thornton confirmed the nexus connecting Moore, Mitchell, Montgomery, and Mckeithan from review of the police investigative files on the home invasion. App. 311, l. 2 – 317, l. 13; 343, ll. 4 – 21. Finally, Thornton confirmed the suspicious level of activity surrounding the location of the home invasion. App. 265, ll. 1 -25.

Importantly, at the hearing on Petitioner's new trial motion, the State took the position that all of this information – the cell phone connections and interactions between Moore, Mitchell, Montgomery, and Mckeithan were known before trial and did not support granting a new trial:

We believe that everything that Ms. Hanna has brought up has already been tried. The photo lineup that was presented to the jury, the stuff about Dre, that was presented to the jury or was available way beforehand, and the phone records were available way beforehand, wasn't presented. Now, of course, there for Mr. Huggins or anyone else to get a new trial there's three ways to do it; Appellate Court, which has upheld the jury's verdict; then there's PCR, which is still pending; and then this Hail Mary way of doing it is to come in and ask for a new trial based on newly discovered evidence.

App. 215, ll. 7 – 17.

This position, that the connections between Moore, Mitchell, Montgomery, and Mckeithan were available during trial and that trial counsel could have introduced and explored those connections was the basis for denying Petitioner a new trial. "Well, to me it, it's sounding more like it is a PCR issue, ineffective assistance of counsel is what you're saying is that the Defense didn't present evidence that they should have presented." App. 225, ll. 21 – 24. Trial counsel even admitted knowing the existence of these connections before trial. App. 349, l. 15 – 352, l. 12

According to the State, a case that barely survived directed verdict at trial was so overwhelming that Petitioner can not show prejudice for trial counsel's failure to do what he both was able to do and what he told the jury he would do in opening (show a connection between Moore, Mitchell, Montgomery, and Mckeithan). This assertion of a lack of prejudice by trial counsel's alleged trial strategy to place all of his faith on the jury accepting Montgomery's failure to stick with her pre-trial identification of Petitioner as one of two men who conducted the home invasion is best addressed by the trial court's ruling on trial counsel's motion for a new trial following the verdict:

Just like directed verdict, I go with whether or not the existence of evidence to justify the jury's verdict, and they, they just believed Ms. Montgomery's prior statement and didn't believe her testimony at trial. So I think there is evidence to justify the jury's verdict. So I'm going to deny your motion. Anything else?

MR. LONG: Nothing. I would submit formal notice of appeal, but I would like to state for the record we will be appealing the motion for direct verdict that was denied.

THE COURT: And I understand, *and that is a close call*, and you may very well prevail on that. I just have to make a ruling the way I, the way I read it.

App. 176, ll. 10 – 21 (emphasis added).

Petitioner would point out that the source of the connections between Moore, Mitchell, Montgomery, and Mckeithan could have been established at trial without reliance on Montgomery. Mitchell's visit to Eckler's home on the day of the crime looking for Moore would have been confirmed through Eckler herself since the car she described matched that of Mitchell.¹ Jasmine Mitchell, Moore, and Mckeithan were known to investigator Martin as detailed in his investigative report. App. 535 – 542. Investigator Martin had obtained their cell

¹ See Applicant's Exhibits 2 App. 530.

phone records showing communication. App. 535 – 542. Since Eckler had testified there were two men involved in the home invasion, the connections between Mitchell, Mckeithan and Moore, if presented to the jury together with Montgomery's inconsistent testimony as to Petitioner's participation, would have excluded Petitioner as a participant. *See State v. Burgess*, 391 S.C. 15, 23, 703 S.E.2d 512, 516 (Ct. App. 2010) (finding third party guilt evidence admissible if inconsistent with the guilt of the accused rather than mere conjecture).

Moreover, since Montgomery had changed her testimony and asserted Petitioner did not look like the person who committed the home invasion, trial counsel knew she had given contradictory declarations before trial and was subject to being impeached with her prior inconsistent testimony as well as the potential change in physical appearance of Petitioner between the night of the crime and the day of trial. A trial strategy that ignores these distinct problems would not be valid. *See Washington v. State*, 440 S.C. 550, 574, 891 S.E.2d 668, 681 (Ct. App. 2023) ("Trial counsel here believed the solicitor's comments were egregious enough that a mistrial would be granted; therefore, this situation is closer to *Brown*, in that counsel should have known that refusing a curative instruction was not a valid trial strategy."). As in Washington, trial counsel should have known that the jury was free to believe Montgomery's pretrial version of events, negating any strategy of ignoring the very evidence that supported her trial testimony that Petitioner was not involved in the home invasion through the connections between Montgomery, Mitchell, Mckeithan and Moore.

This Court should consider the alleged valid strategic decision in failing to present the evidence trial counsel admitted having that would have bolstered the defense presented during trial: that Montgomery was wrong about who participated in the home invasion with her. In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), this Court addressed trial counsel's

decision not to present available evidence that directly supported the theory of the defense. As this Court noted in Lounds:

In the instant case, however, Newell did not articulate a strategy because he did not testify at the PCR hearing. Although Newell did state to the trial court he believed the witnesses would not add much to petitioner's defense, we find this was not objectively reasonable given the defense theory of the case. The only defense Newell presented to the jury was that petitioner and Garrett knew each other through drug dealing. If witnesses other than petitioner were willing to testify to this fact, certainly that would have added significantly to the credibility of petitioner's case. Thus, we find the PCR court erred in finding that Newell offered an objectively valid strategic reason not to call these witnesses.

Id., 380 S.C. at 462, 670 S.E.2d at 650.

Trial counsel was ineffective in failing to address the evidence that connected Moore, Mitchell, Montgomery, and Mckeithan (including that Mitchell resembled Petitioner). Since the trial court acknowledged that the issue was a close one on the record trial counsel did create, depriving the jury of these connections was certainly prejudicial and warrants a finding of both ineffective assistance of counsel and prejudice under Strickland v. Washington, 466 U.S. 668 (1984).

CONCLUSION

For the reasons set forth in his principal Brief and this Reply, Petitioner asks that this Court reverse the PCR court and find trial counsel was deficient and he suffered prejudice justifying a new trial.



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This 27th day of August, 2026.