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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Deadra L. Jefferson, Circuit Court Judge

LESLIE DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000587

BRIEF OF PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred by holding that trial counsel could not have known about the potential for bifurcation of Petitioner's trial simply because the trial occurred prior to the Supreme Court's decision in *State v. Cross*, 427 S.C. 465, 832 S.E.2d 281 (2019)?

STATEMENT OF THE CASE

On March 11, 2016, an Horry County grand jury indicted Petitioner for criminal sexual conduct with a minor in the first degree. App. 541-542. On January 7, 2019, Petitioner was tried before the Honorable Benjamin Culbertson and a jury. App. 1. Kia Wilson represented Petitioner; C. Leigh Andrew and Mary-Ellen Walter represented the state. App. 1. Petitioner was convicted and sentenced to thirty years' imprisonment. App. 426, 434. Petitioner's conviction was affirmed by this Court on direct appeal.

On September 26, 2022, Petitioner filed a timely application for post-conviction relief (PCR). App. 436-446. On July 31, 2024, the Honorable Deadra L. Jefferson held an evidentiary hearing on the petition. App. 456. Steven W. Fowler represented Petitioner; Shayla J. Flores represented the state. App. 456. The PCR court denied relief and dismissed the application with prejudice. App. 522. Petitioner noted a timely appeal and filed a petition for a writ of certiorari, raising one issue: "Whether the PCR court erred by holding that trial counsel could not have known about the potential for bifurcation of Petitioner's trial simply because the trial occurred prior to [the Supreme Court's] decision in *State v. Cross*...?" Petition at 1. On January 16, 2026, the Supreme Court transferred this case to this Court. On August 21, 2026, this Court granted certiorari.

This brief follows.

STATEMENT OF FACTS

The state presented no physical evidence against Petitioner. Thus, the case became a classic credibility contest between Petitioner and Minor. However, the state was permitted to present one additional piece of evidence to bolster its case: Petitioner's thirty-three-year-old¹ New York conviction for rape in the first degree.

Background

Petitioner is Minor's biological father. App. 189, ll. 1-4. Petitioner and Minor lived in a mobile home in Conway when Minor was eight years old. App. 189, ll. 1-4. At the same time, Melesa Squires, the granddaughter of Petitioner's landlords, was living a life that "wasn't stable" due to her addiction to opiates and heroin. App. 189, ll. 1-4; 9-15. Squires lived in her father's house, right beside Petitioner's. App. 190, ll. 2-4. Because she was unemployed, she began babysitting Minor. App. 190, ll. 6-13. Minor began exhibiting behavior that Squires found strange, such as always wanting to be fully dressed. App. 191, ll. 15-24.

One morning, Squires found Minor laying face down in bed, naked and vomiting. App. 193, ll. 1-4. With Petitioner's blessing, Squires kept Minor from school that day and took Minor shopping with Squires's friend. App. 193, ll. 6-10. Squires testified at trial that Minor told Squires that she was being sexually assaulted by Petitioner. App. 197, ll. 17-25. Squires called 9-1-1, and Minor was taken to the hospital for a "rape kit." App. 198, ll. 3-5, 17-19.

Minor was examined by Sexual Assault Nurse Examiner (SANE) Janet Moore and emergency physician Carol Rather. App. 258, ll. 1-4; 338, ll. 19-22. Nurse Moore concluded that Minor's labia majora was "reddened" but there were no bruises, cuts, or rashes. App. 260, ll. 16-20. Dr. Rather concluded that Minor "had a totally normal exam." App. 340, l. 4. A DNA

¹ At the time of trial, the conviction was thirty-three years old; it is now forty years old, having occurred in 1986.

analysis performed on samples taken from Minor's vagina and rectum revealed no semen, nor was semen found on a sample of Minor's bed sheets. App. 315, l. 11; 323, ll. 4-6.

Trial

The state alleged that Petitioner committed criminal sexual conduct with a minor, first degree (CSC with Minor First) under S.C. Code Ann. § 16-3-655(A)(2).² App. 541. To prove that charge, the state was required to demonstrate that Petitioner committed a sexual battery against a minor younger than sixteen years old and had a prior conviction under an offense listed in S.C. Code Ann. §§ 23-3-430(C) or (D). To that end, the state presented evidence that Petitioner was convicted of rape in the first degree in New York state in 1986. App. 238.³ The state also presented evidence that, as a result of the conviction, Petitioner was required to register as a sex offender. App. 253, ll. 18-20.

Prior to trial, Petitioner moved to exclude the introduction of the prior rape conviction and the fact of his registry as a sex offender. App. 109. Trial counsel asserted that the statute's inclusion of the prior conviction as an element was unconstitutional as violative of due process. App. 110, ll. 21-25. Trial counsel further asserted that Petitioner and the state should simply stipulate to the fact that Petitioner has some qualifying prior conviction. App. 112, ll. 16-18. Trial counsel's complaint was that the state could have tried Petitioner under subsection (A)(1), which would not have required introduction of the prior conviction; instead, the state chose subsection (A)(2), to allow them to tell the jury about the prior conviction. App. 111, ll. 12-17. However, trial counsel did not move to bifurcate the trial.

² The indictment states the charge as CSC with Minor First under S.C. Code Ann. § 16-3-655(A)(1), however, the body of the indictment states an offense under § 655(A)(2), and Petitioner was sentenced under § 655(A)(2). App. 541.

³ See N.Y. PENAL LAW § 130.35.

Recognizing that trial counsel was arguing against precedent, the trial court denied the motion. App. 115, ll. 22-23. Petitioner was convicted and sentenced to thirty years' imprisonment. App. 426, 434.

Direct Appeal

Petitioner noted a timely appeal. The issue on appeal was whether the trial court erred by admitting the prior rape conviction. *State v. Davis*, 437 S.C. 93, 96, 876 S.E.2d 321, 322 (Ct. App. 2022). This Court held that the state was never required to accept a stipulation of a prior offense. *Id.* at 98, 876 S.E.2d at 323. However, this Court noted that even if the state could be required to accept a stipulation, that stipulation would not have aided Petitioner. *Id.* at 99, 876 S.E.2d at 324. This was because, according to the Court:

[E]ven if this court were to force the State to accept [Petitioner's] offered stipulation, such an agreement would not dampen the prejudicial effect of the prior conviction like bifurcation of the trial. The prior sex crime element...does not involve generic prior convictions; it requires a specific conviction listed under section 23-3-430(C). Even if forced to accept [Petitioner's] stipulation that he was convicted of a specific sex crime, the State could not have proven [Petitioner] guilt of CSCM...using general language about his prior offense. The jury would have known [Petitioner] was guilty of a prior sex crime when the trial court instructed them as to the elements of CSCM...Because [Petitioner] did not seek to bifurcate his trial and a prior sex crime conviction is a statutory element of CSCM...we find the trial court did not err in admitting [Petitioner's] prior conviction for rape in the first degree or evidence that he was required to register as a sex offender.

Id. The Court of Appeals denied rehearing. App. 523.

Post-conviction Relief Proceedings

Petitioner then filed a timely application for post-conviction relief. One of Petitioner's allegations was that trial counsel should have moved to bifurcate the trial. App. 439. During the evidentiary hearing, the PCR court stated that it was "a little confused as to what [Petitioner]

means by bifurcate.” App. 462, ll. 9-11. The PCR court also stated: “Bifurcating, what is that? You don’t bifurcate in a criminal trial.” App. 464, ll. 1-2. At this point, the assistant attorney general attempted to articulate Petitioner’s argument, stating:

Please do not let me, you know, put words in the applicant’s mouth about what his allegation is because that is his prerogative. But the state’s understanding of this allegation was tied more to the argument made on appeal in this case where there was an argument that the jury should have been bifurcated relating to the – the implication of a prior conviction for [CSC] first leading to and tied directly into the statutory requirements for his current charge that he’s incarcerated on.

App. 465, ll. 13-21. The PCR court clarified, “Just like burglary?” App. 468, l. 22. The assistant attorney general, and eventually PCR counsel, answered in the affirmative. App. 465, l. 23; 466, ll. 4-5. Trial counsel testified that she did not raise the issue of bifurcating the trial because bifurcation was “not an answer that [she] had available to [her] at the moment that [she] tried this case.” App. 496, ll. 6-7.

Trial counsel further testified that she felt as though she was fighting “an uphill battle” after the previous rape conviction was introduced, something that she could tell by viewing “the expression on the juror’s faces.” App. 502, ll. 11, 22-23.

The PCR court denied relief and dismissed the Petition with prejudice. App. 522. In its written order, the PCR court found that *State v. Cross* had not been decided at the time of Petitioner’s trial, and that trial counsel was not deficient for failing to be “clairvoyant.” App. 530-31.

STANDARD OF REVIEW

This court will defer to the PCR court's findings of fact if there is any evidence supporting them but will review questions of law *de novo*. *Smalls v. State*, 422 S.C. 174, 180-81, 810 S.E.2d 836, 839 (2018).

ARGUMENT

The PCR court erred by holding that trial counsel could not have known about the potential for bifurcation of Petitioner's trial simply because the trial occurred prior to the Supreme Court's decision in *State v. Cross*, 427 S.C. 465, 832 S.E.2d 281 (2019).

In its published opinion concerning Petitioner's direct appeal, this Court heavily implied that bifurcation of Petitioner's trial would have been the proper procedure to follow.⁴ Petitioner, therefore, alleged that his trial counsel was ineffective for failing to follow this procedure. The PCR court denied relief, holding that Petitioner's trial was before the Supreme Court's decision in *State v. Cross*, and therefore trial counsel would have needed to be "clairvoyant" to move the trial court to bifurcate Petitioner's trial. Not so. Bifurcation has existed in some form since before the founding of this Nation. And, in any event, the *Cross* Court itself went to great lengths to stress that it was not creating a new rule of law. Further, Petitioner can demonstrate prejudice, both through the similarities between his case and *Cross*, and the affirmative evidence of prejudice that he presented to the PCR court. Contrary to the PCR court's decision, therefore, trial counsel rendered ineffective assistance of counsel. This Court should reverse the PCR court and remand for a new trial.

Ineffective assistance of counsel has two elements: deficiency and prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Trial counsel is deficient when her "representation fell below an objective standard of reasonableness." *Smalls*, 422 S.C. at 181, 810 S.E.2d at 840 (quoting *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005)). Whether trial

⁴ See *State v. Davis*, 437 S.C. 93, 98, 876 S.E.2d 321, 323 (Ct. App. 2022) ("In this case, [Petitioner] did not seek to bifurcate his trial into two proceedings like the defendant in *Cross*...."); see also, *id.* at 99, 876 S.E.2d at 324 ("even if this court were to force the state to accept [Petitioner's] offered stipulation, such an agreement would not dampen the prejudicial effect of the prior conviction like bifurcation of the trial").

counsel's representation fell below that standard is determined by the "objective standard of reasonableness" that existed at the time of the error. *Pantovich v. State*, 427 S.C. 555, 561, 832 S.E.2d 596, 599 (2019). This means that trial counsel is not required "to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial." *Gilmore v. State*, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994), *overruled in part on other grounds by Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839. On the other hand, an attorney renders deficient performance for failing to object when the attorney "should have known to object." *Chappell v. State*, 429 S.C. 68, 80, 837 S.E.2d 496, 502 (Ct. App. 2019).

A. Deficiency

The first prong of the *Strickland* test is deficiency. Because bifurcation is not a novel concept, trial counsel should have known that bifurcation was an available option. Her failure to move to bifurcate Petitioner's trial constitutes deficient performance.

The concept of bifurcation predates the United States of America. Bifurcation of a trial was recognized as an authority of the trial court at English common law. Derek A. Shoemaker, *Bifurcation: A Powerful but Underutilized Tool in South Carolina Civil Litigation*, 59 S.C. L. REV. 433, 443 & n. 107 (2008) (citing 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 164); *Simon v. Philip Morris, Inc.*, 200 F.R.D. 21, 25-26 (E.D.N.Y. 2001) (discussing English history of bifurcation). While originally used exclusively in civil cases, the concept of bifurcating criminal cases has existed, at least in some jurisdictions, for more than one hundred years. *See, e.g., State v. Ferrone*, 113 A. 452, 457 (Conn. 1921) ("If the verdict on the principal issue be guilty, then the second issue may be submitted to the jury."). Bifurcation has always been within the broad discretion of the trial court. *Simon*, 200 F.R.D. at 25. Thus, while bifurcation has always existed, it has never been required. *Spencer v. Texas*, 385 U.S. 554, 568

(1967) (“Two-part jury trials are rare in our jurisprudence; they have never been compelled...as a matter of constitutional law....”); *Chubb v. State*, 303 S.C. 395, 397, 401 S.E.2d 159, 161 (1991) (“a bifurcated proceeding is not required in a non-capital case”); *but see id.* at 398, 401 S.E.2d at 161 (Gregory, C.J., concurring in part and dissenting in part) (“While there is no requirement...that a bifurcated proceeding be held, we have never held it is *improper* to allow one.” (emphasis in original)). In more recent cases, however, bifurcation in criminal cases has been described as “common practice.” *Apprendi v. New Jersey*, 530 U.S. 466, 521 n.10 (2000) (Thomas, J., concurring); *Erlinger v. United States*, 602 U.S. 821, 847 (2024) (describing bifurcation as “common” and “often fairest practice”).

Ultimately, the issue in this case is whether *State v. Cross* presented the first opportunity for trial counsel to learn of the potential avenue for bifurcation. The PCR court believed that trial counsel was not ineffective because Petitioner’s trial occurred prior to *Cross* decision. App. 530-531. Therefore, a closer look at *Cross* is required.

James Cross was indicted for CSC with Minor First, after he allegedly committed lewd act on a minor, and had a prior conviction for a qualifying offense. *Cross*, 427 S.C. at 469-70, 832 S.E.2d at 283. Like this case, *Cross* was a classic credibility contest; there was no physical evidence of sexual assault. *See id.* (“The pediatrician testified at trial that Minor ‘had basically a normal physical exam for a child.’”). Cross moved pre-trial to bifurcate, which the trial court denied. *Id.* at 470, 832 S.E.2d at 284. The Supreme Court reversed and ordered a new trial. *Id.* First, the Supreme Court held that the trial court’s analysis under Rule 403, SCRE, must focus on whether the evidence is substantially more prejudicial than probative *at the time* it is introduced. *Id.* at 477, 832 S.E.2d at 287. Turning to bifurcation, the *Cross* court recognized that bifurcating proceedings was “rare” and never “required.” *Id.* at 478, 832 S.E.2d at 288. Despite that,

however, the *Cross* Court held that bifurcation was within the trial court's Rule 611(a), SCRE authority, and that the trial court in that case had erred by not bifurcating the trial. *Id.* at 479, 832 S.E.2d at 289 (*quoting* Rule 611(a), SCRE).

What is important about *Cross*, however, is what else it said. The *Cross* Court was very clear that it was not “adop[ting] or sponsor[ing]...a new rule of procedure.” *Id.* Rather, to recognize that bifurcation was one of the trial court's powers under Rule 611(a) was “simply a plain reading of the English language.” *Id.* at 480, 832 S.E.2d at 289. According to the Court, it was only holding that “the drafters of Rule 611(a)(1) recognized an inherently procedural component of the mode and order of presenting evidence.” *Id.* The *Cross* Court “simply recogniz[ed] what has been there all along.” *Id.* To that end, the *Cross* Court cited to two cases from other states that had recognized bifurcation as a viable avenue in criminal cases. *Id.* at 480-81, 832 S.E.2d at 289-90 (*citing* *People v. Calderon*, 885 P.2d 83 (Cal. 1994) and *State v. Wareham*, 772 P.2d 960 (Utah 1989)).

Here, trial counsel testified that she was simply not aware of the potential to bifurcate Petitioner's trial. However, because of bifurcation's long history, and the *Cross* Court's recognition that bifurcation had always been within the trial court's authority under Rule 611(a), SCRE, this explanation compels a finding of deficiency. Petitioner is not asserting that trial counsel should have “anticipate[d] *changes* in the law.” *Gilmore*, 314 S.C. at 457, 445 S.E.2d at 456 (emphasis added). *Cross*, by its own terms, did not *change* the law at all. *Cross*, 427 S.C. at 479, 832 S.E.2d at 289. The idea of bifurcation was not created in *Cross*. *Cross* may have made it more likely that a trial court would *grant* a motion to bifurcate, but it did not change the law or

create any new procedure that trial counsel would be justified in not being previously aware of.⁵ Simply, trial counsel should have “recogniz[ed] what has been there all along.” *Cross*, 427 S.C. at 480, 832 S.E.2d at 289.

Chappell is illustrative on this point. In that case, a PCR applicant alleged that his trial counsel was ineffective for failing to object to improper bolstering testimony. 429 S.C. at 74, 837 S.E.2d at 499. The testimony in question came from an independent expert on child sexual abuse and treatment, who had testified: “Children don’t often lie about sexual abuse incidents.” *Id.* At the time of Chappell’s trial, South Carolina’s appellate courts had never “considered an improper bolstering case involving an independent expert.” *Id.* at 79, 837 S.E.2d at 502. However, in the first case where the courts did, they “did not establish a new legal principle or change the existing law.” *Id.*; accord, *State v. Brown*, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015). Thus, the *Brown* Court had simply “applied the existing law to a new set of facts.” *Id.* Therefore, trial counsel should have known to object to the bolstering testimony. *Id.* at 80, 837 S.E.2d at 502. Similarly, the *Cross* Court did not create or change law; it simply applied existing law, Rule 611(a), SCRE, to a new factual scenario. *Cross*, 427 S.C. at 479, 832 S.E.2d at 289.

On the other hand, in *Thornes v. State*, the Supreme Court did bar a PCR claim on the ground that it would have required trial counsel to be clairvoyant. 310 S.C. 306, 310, 426 S.E.2d 764, 766 (1993). In that case, the PCR applicant alleged his trial counsel was ineffective for failing to interview a state’s witness before advising him to plead guilty. *Id.* However, that

⁵ In his separate dissent in *Cross*, Justice Few seemed to suggest that a non-capital, criminal case had never been bifurcated in the history of this state. *Cross*, 427 S.C. at 487, 832 S.E.2d at 292 (Few, J., dissenting) (“and the history of the state indicates has never been taken”). Respectfully, this statement does not appear to be wholly accurate. In fact, the *Cross* petitioner pointed out a criminal trial that had been bifurcated by a circuit court judge in 2013. See Brief of Petitioner at 7-8 in *State v. James Scott Cross*, App. Case No. 2016-001939. Bifurcation is not an unheard-of procedure.

witness had already given a statement, which was not at all favorable to the defense. *Id.* Therefore, the attorney would have needed clairvoyance to determine that the witness's future statements would benefit the defense. *Id.* However, this case is distinguishable. Trial counsel never had affirmative evidence that bifurcation was improper, *see Chubb*, 303 S.C. at 398, 401 S.E.2d at 161 (Gregory, C.J., concurring in part and dissenting in part) (the Supreme Court has never prohibited bifurcation), she just failed to make the argument because the Supreme Court had not ever required it.

This case is more like *Chappell* than *Thornes*. In *Chappell*, this Court acknowledged that it had never applied the law of bolstering to the specific factual situation that presented itself in that case. 429 S.C. at 79, 837 S.E.2d at 502. However, this Court still found that trial counsel should have known to object, because existing law could have been easily extended to the new set of facts. *See id.* In this case, bifurcation and Rule 611(a), SCRE, had existed for decades before the trial. Had this Court or the Supreme Court previously held that bifurcation was *improper*, similar to how the favorable witness had already made an unfavorable statement in *Thornes*, then Petitioner's argument would fail. However, bifurcation has never been held improper. Taking the *Cross* Court at its word, bifurcation is a perfectly logical extension of Rule 611(a), SCRE, which can be accomplished by undertaking a "plain reading of the English language." *Cross*, 427 S.C. at 480, 832 S.E.2d at 289. Whatever can be said of "prevailing professional norms" for attorneys, *see Strickland*, 466 U.S. at 690, they must include the ability to read English.

The state asserted at the certiorari stage that "even if [trial counsel's] decision to seek a stipulation to the prior conviction instead of bifurcation was not ideal, her performance was still constitutionally effective since the Sixth Amendment requires *competent* representation not

perfect representation.” Return at 7 (emphasis in original). However, this argument ignores several key facts. For one, to the extent that the state is asserting that trial counsel’s decision to seek a stipulation *rather than* bifurcation was a strategic decision, that is belied by the record. Trial counsel did not seek bifurcation because she did not know she could, not because she thought another avenue would work better. Further, no reasonable attorney would have believed that asking the trial court to force the state to accept a stipulation would be a winning argument, since this state’s appellate courts have repeatedly held that the state is never required to accept such a stipulation. *State v. Hamilton*, 327 S.C. 440, 443, 486 S.E.2d 512, 513 (Ct. App. 1997); *State v. Anderson*, 318 S.C. 395, 399, 458 S.E.2d 56, 58 (Ct. App. 1995); *State v. James*, 355 S.C. 25, 34, 583 S.E.2d 745, 749 (2003); *Davis*, 437 S.C. at 98, 876 S.E.2d at 323; *Cross*, 427 S.C. at 476, 832 S.E.2d at 287. Further still, even if trial counsel had convinced the trial court to violate the law and force a stipulation upon the state, this Court held in this case that such a stipulation would not have helped Petitioner. *Davis*, 437 S.C. at 99, 876 S.E.2d at 324.

Petitioner’s prior conviction was enormously prejudicial. A reasonably competent trial counsel would have made every effort to keep that fact away from the jury’s ears. But the state is entitled to present “evidence of its own choosing.” *James*, 355 S.C. at 34, 583 S.E.2d at 749. Thus, bifurcation was the only avenue that would have prevented the jury from hearing about Petitioner’s prior conviction, at least until after the jury had determined he was guilty of the sexual battery—if the jury made that determination at all. Since bifurcation has existed and has been a recognized power of the trial court for centuries and since trial counsel should have known it was an option in this case, trial counsel rendered deficient performance. Accordingly, this Court should award Petitioner with a new trial.

B. Prejudice

Further, the similarities between Petitioner's case and *Cross*, and the affirmative evidence that Petitioner presented to the PCR court, demonstrate prejudice. Accordingly, this Court should reverse and remand for a new trial.

Petitioner demonstrates prejudice if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Smith v. State*, 386 S.C. 562, 566, 698 S.E.2d 629, 631 (2010).

Petitioner's case was a pure credibility contest. There was no physical evidence that he had sexually assaulted Minor. In this way, Petitioner's case is extraordinarily similar to *Cross*. Compare *Cross*, 427 S.C. at 469, 832 S.E.2d at 283 ("The pediatrician testified at trial that Minor 'had basically a normal physical exam for a child.'"), with App. 340, l. 4 (Minor "had a totally normal exam."). Therefore, the harmless error analysis in *Cross* is instructive here. The *Cross* Court recognized that the admission of a prior conviction for a sex crime carried with it "overwhelming danger of unfair prejudice." *Cross*, 427 S.C. at 482, 832 S.E.2d at 290 (emphasis added). That "case came down to the jury's evaluation of witness credibility" and the Court was "unwilling to assume a jury would have the ability to limit its consideration of such prejudicial evidence to the state's need to prove the prior conviction element of the crime charged." *Id.* at 483, 832 S.E.2d at 290-91. Moreover, the *Cross* Court recognized that bifurcation would have totally eliminated any unfair prejudice that arose from the introduction of the prior conviction. *Id.* at 483, 832 S.E.2d at 291. Based on the similarities between this case and *Cross* alone, there

is a “reasonable probability that... the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Further, Petitioner presented additional evidence of prejudice to the PCR court. Trial counsel testified that she felt as though she was fighting “an uphill battle” after the previous rape conviction was introduced, something that she could tell by viewing “the expression on the juror’s faces.” App. 502, ll. 11, 22-23. This first-hand account of the trial counsel’s contemporaneous observations of the jury further bolsters prejudice. The jury was far more receptive to the possibility that Petitioner was innocent before hearing the evidence than they were after. For these reasons, Petitioner has demonstrated prejudice.⁶

Therefore, trial counsel rendered ineffective assistance of counsel. This Court should reverse the PCR court’s contrary decision.

⁶ At the certiorari stage, the state asserted that Petitioner could not show prejudice from the failure to bifurcate because “the state proved Petitioner’s prior rape conviction.” Return at 8. That argument is too clever by half. It does not matter that the state proved Petitioner’s prior rape conviction. The fact of that conviction was never in dispute. In fact, Petitioner attempted to so stipulate. The issue in this case is whether the jury chose to believe Minor. The jury hearing that Petitioner had previously committed a sex crime made that calculus significantly easier, whether that type of reasoning is proper or not.

CONCLUSION

For the foregoing reasons, this Court should reverse the PCR court's denial of relief and remand this case to the Horry County Court of General Sessions for a new trial.



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ATTORNEY FOR PETITIONER

This 27th day of August, 2026.

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Aug 27 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Deadra L. Jefferson, Circuit Court Judge

LESLIE DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000587

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Brief of Petitioner in the above-referenced case has been served upon D. Russell Barlow, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); this 27th day of August, 2026.



W. Chandler Norville
Appellate Defender

ATTORNEY FOR PETITIONER