

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Marion County

Honorable George M. McFaddin, Circuit Court Judge

SHAHEED HAYES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-001270

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

I.

Whether the PCR court erred in finding that trial counsel was not ineffective for failing to object to the trial court's erroneous attempted murder charge where trial counsel should have known that any attempt crime necessarily included an element of specific intent?

II.

Whether the PCR court erred in finding that trial counsel was not ineffective for failing to object to Investigator Watson's testimony that vouched for the credibility of Willie Bethea?

STATEMENT

Background

On April 12, 2012, police responded to a call about a shooting at a trailer home. App. 103, ll. 13-20. Police found several bullet holes in the trailer and shell casings on the highway. App. 105, ll. 6-18. Christian Drawhorn, a/k/a "Murder," was mortally wounded in the shooting; no other person was harmed. App. 104, ll. 10-17.

In total, five men were inside the trailer that night, including Gavin Graves, Drawhorn, Derrick Wilson, Christopher Kollock, and Darrell Davis. App. 360, ll. 22-24. Shortly after midnight, the men heard a soft knock at the door. App. 367, ll. 20-24. When they looked, no one was at the door. App. 368, ll. 1-10. About three minutes later, several bullets were fired into the trailer. App. 368, ll. 1-10. None of the men inside the trailer saw the shooting and could not identify any of the assailants or any vehicle involved in the shooting. App. 459, ll. 17-21.

At some point during the investigation, the police came to believe that a person named Willie Bethea was involved in the shooting. App. 227, ll. 4-11. Bethea spoke with police, and he admitted his involvement in the shooting. App. 228, l. 16 – 230, l. 17. As a result of this conversation, Bethea was arrested along with Petitioner, Blaton Smith, and Jamie Williams. *Id.* Williams and Bethea would both testify at trial that Petitioner and Williams shot numerous times into the trailer while riding in a car down the adjoining highway.

Trial

The February 2013 term of the Marion County grand jury indicted Petitioner, Blaton Smith, Willie Bethea, and Jamie Williams for murder, discharging a firearm into a dwelling, four counts of attempted murder, and possession of a weapon during the commission of a violent crime. App. 915-17. Trial began on August 6, 2014, before the Honorable D. Craig Brown and a

jury. App. 1. Petitioner and Blanton Smith were tried together. App. 1. H. Steven DeBerry, IV,¹ represented Petitioner; Solicitor E.L. Clements, III represented the state. App. 1.

During trial, investigator Charlie Watson testified about a conversation between himself and Willie Bethea. App. 230. Specifically, Watson testified as follows:

[SOLICITOR]: Okay. When you talked to Willie Bethea, can you describe for us what was his demeanor and how did he act?

[WATSON]: Mr. Willie Bethea was very cooperative. Out of all the co-defendants involved in this, he was probably the only person that I can give an honest opinion of 18 years of law enforcement to be sincere and apologetic and remorseful for what happened.

App. 230, ll. 9-15. Trial counsel did not object to this testimony.

After the conclusion of evidence, the trial court and the parties held a charge conference. App. 623-26. Petitioner objected to the trial court's decision to remove "identification as being part of a charge" from the jury charge but made no other objections. App. 623, l. 24 – 624, l. 4. As it related to the definition of attempted murder, the trial court told the jury that malice had the same definition as it had previously charged when charging the definition of murder. App. 687, ll. 8-11. The trial court then charged the jury as follows:

A specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury. Intent means intending the result which actually occurs; not accidentally or involuntary. Intent may be shown by acts and conduct of the defendants and other circumstances from which you may naturally and reasonably infer intent.

After the charge on the law, trial counsel noted no objections. App. 691, l. 3. The jury convicted Petitioner as indicted. App. 692-693. The trial court sentenced Petitioner to life imprisonment for murder, thirty (30) years' imprisonment for each attempted murder, ten (10) years' imprisonment

¹ Trial counsel has since been elected circuit court judge and served in that role at the time of the PCR evidentiary hearing.

for discharging a firearm into a dwelling, and five (5) years' imprisonment for possession of a weapon during a violent crime, all to run consecutively. App. 708.

Post-Conviction Relief Proceedings

Petitioner filed a timely application for post-conviction relief (PCR), which he amended through counsel on December 4, 2018 and on August 31, 2021. He alleged *inter alia* that trial counsel was ineffective for failing to object to the trial court's improper attempted murder charge and for failing to object to the improper vouching testimony of Investigator Charlie Watson. App. 762-786; 797-98; 804. An evidentiary hearing was held on Petitioner's PCR application on April 18, 2022, before the Honorable George M. McFaddin, Jr. App. 805. Johnathan Waller represented Petitioner; Joshua Edwards and D. Russell Barlow, II represented the state.

When asked whether trial counsel recalled any strategic reason for not objecting to Investigator Watson's vouching testimony, trial counsel simply stated "I don't have any recollection of that." App. 817, l. 14 – 818, l. 2. Counsel for Petitioner did not question trial counsel regarding his failure to object to the attempted murder charge.

The PCR court denied relief and dismissed the application with prejudice. App. 855-913. As to the allegation that trial counsel failed to object to the trial court's attempted murder charge, the PCR court found that trial counsel was not deficient because Petitioner's trial was held prior to the Court of Appeals' decision in *State v. King*, and therefore, the jury charge "was a correct statement of law at that time." App. 875.

As to the allegation that trial counsel failed to object to Investigator Watson's testimony, the PCR court found that Watson's testimony did not constitute improper bolstering or vouching. App. 882. This was because, according to the PCR court, Watson's testimony was about Bethea's "demeanor" rather than "his overall truthfulness or credibility." App 883.

Petitioner filed a timely motion to alter or amend pursuant to Rule 59(e), SCRCP, which was denied. App. 911-13; 914.

ARGUMENTS

I.

The PCR court erred in finding that trial counsel was not ineffective for failing to object to the trial court's erroneous attempted murder charge where trial counsel should have known that any attempt crime necessarily included an element of specific intent.

The PCR court found that trial counsel was not ineffective for failing to object to the trial court's attempted murder charge simply because Petitioner's trial was before the Court of Appeals' decision in *State v. King*, 412 S.C. 403, 411, 772 S.E.2d 189, 193 (Ct. App. 2015), *aff'd as modified* 422 S.C. 47, 810 S.E.2d 18 (2017). Therefore, according to the PCR court, the trial court's attempted murder charge was correct at the time it was given. Because the trial court's instruction was not, in fact, correct at the time it was given, and because trial counsel should have known that attempted murder was a specific intent crime, trial counsel was ineffective. The PCR court's contrary order should be reversed.

Ineffective assistance of counsel has two elements: (1) trial counsel rendered deficient performance, and (2) that deficiency prejudiced Petitioner. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Prejudice occurs when "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). The relevant inquiry is whether trial counsel's performance was deficient under professional norms at the time of the trial. *Pantovich v. State*, 427 S.C. 555, 562-63, 832 S.E.2d 596, 600 (2019). "Clairvoyance," or "anticipat[ion] of changes in the law" is not required of trial counsel. *Gilmore v. State*, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994),

overruled on other grounds, Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). In other words, trial counsel need not “foresee successful appellate challenges to *novel questions of law*.” *Teamer v. State*, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016) (emphasis added).

At the outset, the trial court’s attempted murder instruction was erroneous as a matter of law. Specific intent to kill is, in fact, an element of attempted murder. *King*, 422 S.C. at 55, 810 S.E.2d at 22. The PCR court held that, since Petitioner’s trial was before the Court of Appeals—and later this Court’s—decisions in *King*, the trial court’s charge was correct at the time of Petitioner’s trial. However, for the reasons that follow, that decision is incorrect.

King’s holding was not that attempted murder contained a specific intent element from that moment forward, it was, like in most statutory interpretation cases, that attempted murder had contained that element from the moment the General Assembly drafted the statute. The *King* Court began its analysis by stating the general rule that all attempt crimes contain an element of specific intent. *Id.* at 56, 810 S.E.2d at 22-23. This is because “criminal attempt focuses on the dangerousness of the actor, not the act.” *Id.* The Court recognized that, while South Carolina did not recognize the offense of attempted murder until the General Assembly codified it in 2014, the Supreme Court previously analyzed a case where the state attempted to bring a charge for common-law attempted murder. *Id.* at 55-56, 810 S.E.2d at 22. In that case, the Supreme Court expressly stated: “Attempted murder would require the specific intent to kill and conduct towards that end.” *State v. Sutton*, 340 S.C. 393, 397, 523 S.E.2d 283, 285 (2000).

Notably, specific intent was not an element of assault and battery with intent to kill (ABWIK), South Carolina’s precursor to attempted murder. *King*, 422 S.C. at 58, 810 S.E.2d at 23. However, in creating the offense of attempted murder, the General Assembly expressly recognized it was both repealing ABWIK and creating a brand new offense. *Id.* at 63, 810 S.E.2d

at 26. This was further shown in the significant increase in sentence for attempted murder as opposed to ABWIK. *Id.* (thirty years for attempted murder as opposed to twenty for ABWIK).

King's analysis demonstrates why trial counsel was deficient.² While trial counsel is not required to "foresee successful appellate challenges to novel questions of law," *see Teamer*, 416 S.C. at 183, 786 S.E.2d at 115, the issue presented here is not a novel issue of law. In fact, as noted above, this Court has expressly held that specific intent to kill would be an element of attempted murder. *Sutton*, 340 S.C. at 397, 523 S.E.2d at 285. Further, the fact that the attempted murder statute is both entitled and worded as an "attempt" crime should have given trial counsel clear notice that specific intent was an element of the offense. Attempt crimes are "commonly regarded as...specific intent crime[s]." *King*, 422 S.C. at 56, 810 S.E.2d at 23. Even simple logic should have informed trial counsel that specific intent was an element, "as it is logically impossible to attempt an unintended result..." *Id.* Far from needing the gift of "clairvoyance," *see Gilmore*, 314 S.C. at 457, 445 S.E.2d at 456, trial counsel needed only to apply logical, long-standing, general principles of law. Accordingly, trial counsel was on notice that attempted murder contained, as an element, specific intent to kill. Thus, trial counsel was deficient.

Further, Petitioner was prejudiced. There was no evidence that Petitioner and Smith specifically intended to kill Drawhorn. On the contrary, the evidence showed that Petitioner and Smith were not trying to shoot Drawhorn at all, but another person in the house. This is significant because the specific intent element of attempted murder is specific to the *intended*

² The PCR court held that the jury charge was a correct statement of law at the time it was given. App. 875. This is incorrect. *King* held that ABWIK had been repealed and replaced by a new crime, attempted murder, which the General Assembly always intended to include an element of specific intent. *King*, 422 S.C. at 63, 810 S.E.2d at 26. Therefore, the trial court's instruction, that attempted murder did not contain a specific intent element, was never correct. The PCR court's dismissal is based entirely on this ground, and thus, the PCR court erred. Nevertheless, because the state is substantially certain to argue, as an additional sustaining ground, that trial counsel was not required to anticipate changes in the law, Petitioner addresses that argument here.

victim. The doctrine of transferred intent does not apply to attempted murder. *State v. Geter*, 445 S.C. 129, 146, 912 S.E.2d 255, 258 (2025). Therefore, under the correct definition, the attempted murder charges should not even have survived a directed verdict motion, much less resulted in convictions. Thus, it cannot be said that there is no “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. Accordingly, Petitioner has demonstrated prejudice.

II.

The PCR court erred in finding that trial counsel was not ineffective for failing to object to Investigator Watson's testimony that vouched for and bolstered the credibility of Willie Bethea.

Due to trial counsel's failure to object, a police investigator was permitted to vouch for and bolster the credibility of one of the state's most important witnesses. Because trial counsel could articulate no valid reason for failing to object, he rendered deficient performance. Because of the importance of Bethea's testimony to the state's case, Petitioner was prejudiced. This Court should grant certiorari and reverse.

"The assessment of witness credibility is within the exclusive province of the jury." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) (citing *State v. Wright*, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)). Therefore, a witness may not testify as to their opinion on another witnesses truthfulness; testimony that another witness is being truthful is called bolstering, while testimony that another witness is lying is called pitting the witnesses. *See generally, id.* at 464, 725 S.E.2d at 141 (collecting cases). "[A] witness 'may not...give testimony that improperly bolsters the credibility of [another witness]." *Chappell v. State*, 429 S.C. 68, 75, 837 S.E.2d 496, 499 (Ct. App. 2019) (quoting *Briggs v. State*, 421 S.C. 316, 323, 806 S.E.2d 713, 717 (2017)). Improper bolstering occurs when a witness gives testimony that indicates the witness believes another witness's testimony to be truthful, and does not serve some other valid purpose. *Id.* at 75, 837 S.E.2d at 499-500. "Improper bolstering also occurs when a witness testifies for the purpose of informing the jury that the witness believes [another witness], or when there is no other way to interpret the testimony other than to mean the witness believes [another witness] is telling the truth." *Id.* at 75, 837 S.E.2d at 500; *Briggs*, 421 S.C. at 324, 806

S.E.2d at 717 (“a witness may not give an opinion for the purpose of conveying to the jury—directly or indirectly—that she believes [another witness]”). In the PCR context, failure to object to improper bolstering testimony constitutes deficient performance in the absence of a valid strategic rationale not to do so. *See, e.g., Briggs*, 421 S.C. at 329, 806 S.E.2d at 720; *Chappell*, 429 S.C. at 79-80, 837 S.E.2d at 502.

Here, Watson testified that Bethea “was very cooperative” and “out of all the co-defendants...was probably the only person that I can give an honest opinion of 18 years of law enforcement to be sincere and apologetic and remorseful for what happened.” The PCR court held that this testimony did not constitute bolstering at all, because the testimony was a mere “professional assessment of Bethea’s demeanor.” App. 883. However, Watson’s testimony far exceeded his opinion regarding Bethea’s “demeanor.” Watson specifically stated that Bethea was “sincere,” and directly compared Bethea’s sincerity to Petitioner’s by including the line “out of all the co-defendants.”

Further, Watson’s statements that Bethea was the most sincere, apologetic, and remorseful person he had ever spoken to in eighteen years of law enforcement experience, compounded the error. Improper bolstering most commonly appears in the context of forensic interviewers testifying during child sex trials. In those cases, this Court has made clear that bolstering by an expert compounds the harm, because jurors tend to defer more to witnesses with expertise. *See e.g., State v. Kromah*, 401 S.C. 340, 358, 737 S.E.2d 490, 499 (2013). While Watson was not qualified as an expert in this case, the same issues are present with his testimony. He was allowed to testify, essentially, that out of thousands of people he had interviewed in eighteen years, Bethea, who was going to be a witness at the trial, was the most

honest of them all. This is improper bolstering in the highest order. Trial counsel was deficient for not objecting.

Moreover, Petitioner was prejudiced by the deficiency. “The determination whether a bolstering error [prejudiced the outcome of a trial] depends on whether the case turn[ed] on the credibility of” the bolstered witness. *Chappell*, 429 S.C. at 80, 837 S.E.2d at 502 (*quoting State v. Chavis*, 412 S.C. 101, 110, 771 S.E.2d 336, 341 (2015) (all alterations in original)). Prejudice is found when a witness is bolstered if “believing” that witness “was the only way the jury could convict.” *Gilchrist v. State*, 350 S.C. 221, 228, 565 S.E.2d 281, 285 (2002).

Bethea’s credibility was not just central to the state’s case, it *was* the state’s case. To quote the Solicitor, “it boils down to those two young men and I’ll admit to you right now if you don’t believe them, the state doesn’t have that much of a case....” App. 634, ll. 8-10. Because the case “turn[ed] on the credibility of” Bethea, *Chappell*, 429 S.C. at 80, 837 S.E.2d at 502, there is a reasonable probability that the outcome would have been different if not for trial counsel’s failure to object. *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. Accordingly, Petitioner was prejudiced by trial counsel’s deficient failure to object. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari to allow for fuller briefing on the issues presented herein.



W. Chandler Norville
Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of October, 2026.