

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Colleton County
James R. Barber, III, Circuit Court Judge

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S.C. Supreme Court

LEONARD STANFIELD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001602

PETITION FOR WRIT OF CERTIORARI

TIFFANY L. BUTLER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether trial counsel erred by failing to object to testimony from Petitioner's co-defendant, Leonard Pinckney, that he and Petitioner "smoked a blunt" while discussing the robbery and Petitioner gave Pinckney a "bag of cocaine" before driving to Patrice Ford's apartment, where the testimony was not relevant and was unduly prejudicial to Petitioner?

STATEMENT OF THE FACTS

On October 20, 2003, the Grand Jurors of Colleton County indicted Petitioner for murder, armed robbery, kidnapping, and burglary, first degree. App. 417 – 422. Petitioner’s case proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr. and a jury. App. 1. David Matthews represented Petitioner. Steve Knight represented the State. App. 1.

After a two-day trial, Petitioner was found not guilty of murder. App. 296. However, Petitioner was found guilty of armed robbery, kidnapping, and burglary, first degree. App. 296.

Judge Cothran sentenced Petitioner to a concurrent thirty-year prison term for the kidnapping and burglary, first degree, charges. App. 305. Petitioner was sentenced to a consecutive thirty-year prison term for the armed robbery charge where the balance was suspended upon service of twelve years. App. 305 – 306. Petitioner appealed his conviction and sentences.

On direct appeal, a brief was filed by Joseph L. Savitz, III. pursuant to the procedure in Anders v. California, 386 U.S. 738 (1967). See State v. Stanfield, Op. No. 2009-UP-498 (S.C. Ct. App. filed October 26, 2009). Petitioner’s conviction and sentence were affirmed, and counsel was relieved pursuant to Anders.

On February 22, 2010, Petitioner filed a PCR application. App. 343 – 351. Respondent filed a return on December 6, 2010, requesting that an evidentiary hearing be held. App. 354 – 359. Petitioner filed an amended PCR application on March 7, 2012. App. 352 – 353. A PCR hearing was held on February 19, 2014 in Beaufort County before the Honorable James R. Barber, III. App. 360. William C. Bennett represented Petitioner at the hearing. Ashleigh R. Wilson represented the State. App. 360.

On July 11, 2014, Judge Barber issued an amended order of dismissal. Petitioner appealed Judge Barber’s order. This petition for writ of certiorari follows.

ARGUMENT

Trial counsel erred by failing to object to testimony from Petitioner's co-defendant, Leonard Pinckney, that he and Petitioner "smoked a blunt" while discussing the robbery and Petitioner gave Pinckney a "bag of cocaine" before driving to Patrice Ford's apartment, where the testimony was not relevant and was unduly prejudicial to Petitioner.

Relevant Facts

On July 24, 2003, Patrice Ford and her boyfriend, Tony Wilson, were in bed asleep at Ford's apartment in Colleton County when Ford heard "two loud kicks at the door." App. 44, lines 22 – 25. When she looked to see what was going on, two men entered her bedroom. App. 44, lines 22 – 25. According to Ford, one person had on a black and white bandana around his mouth, a black sweatshirt, and jeans. App. 45, lines 2 – 3. One of the men had a gun. App. 45, lines 7 – 11. The two men ordered Ford to get on the floor in the bedroom and wrapped her head with a black bathrobe. App. 45, lines 13 – 15. Wilson was ordered to get out of the bed. App. 45, lines 13 – 15.

The two men demanded \$50,000.00 from Wilson. When he told them that he did not have it, "they were fighting him, beating him." App. 45, lines 17 – 25. The men ordered Ford and Wilson to get into Wilson's car. App. 48, lines 1 – 3. One of the men got into the car with Ford and Wilson and ordered Wilson to drive to Mable T. Willis Boulevard, Colleton County. App. 48, lines 4 – 14.

When the three arrived, Wilson was ordered out of the car and walked to the edge of the road. According to Ford, when Wilson attempted to grab the unknown man, the man told Wilson to get "down on his knees," and then he shot Wilson. App. 48, lines 1 – 23. After shooting Wilson, the man ran into the woods. App. 9 – 10. Ford ran to a nearby house and called the police. App. 14 – 17.

Ford claimed to recognize Petitioner's voice while in Wilson's car. In her statement to police, Ford described the man who shot Wilson as "a tall, slender, dark-skinned male, sounding young, possibly in his early twenties." App. 70, lines 18 – 20. She further described him as wearing "a black hat with eyes cut out, and a black and white bandana around his mouth." App. 70, lines 21 – 22.

Leonard Pinckney, Petitioner's co-defendant, claimed that he and Petitioner were together on the night of July 23, 2004 at Chase Lounge in Colleton County. App. 125, lines 8 – 12. Pinkney claimed that he and Petitioner were drinking and "smoked a blunt." App. 125, lines 15 – 16; App. 128, line 18. They talked about "a lick," which was to rob Wilson. App. 126, lines 2 – 5.

According to Pinckney, Petitioner got a call from Tamika Wilson, Wilson's niece, who told them that Wilson was at Ford's apartment. App. 127, lines 14 – 15. Pinckney claimed that after they "finished the blunt," Petitioner gave him "a bag of cocaine" and they drove over to Ford's apartment. App. 129, lines 2 – 4. He put on a black bandana. App. 129, line 6.

Pinckney stated that he kicked the door down. App. 129, lines 9 – 11. Pinckney claimed that Petitioner was the one who covered Ford's head and rode in the car with Ford and Wilson to the place where Wilson was shot. App. 129, lines 15 – 16. Pinckney stated that "something told [him] to leave, and [he] just left." App. 130, lines 16 – 18. Pinckney met Petitioner later that night at the trailer of Petitioner's girlfriend, Lashanda Spencer. App. 152, lines 24 – 25.

Wilson sustained gunshot wounds to his chest, in his head and in his leg. App. 80, lines 7 – 16. Dr. Susan Presnell concluded that Wilson died from the gunshot wounds to his head and chest. App. 85, lines 2 – 10. The gun used to shot Wilson was not recovered.

In his closing argument, the solicitor discussed Pinkney's claim that he and Petitioner were "smoking a blunt" and "did some cocaine" before "doing a lick." App. 261, lines 1 – 18. The

solicitor mentioned the alleged drug use more than once during his closing argument. App. 261, lines 1 – 18; App. 262, lines 1 – 6.

PCR Hearing

Petitioner testified during the PCR hearing. Petitioner remembered that there was testimony of his drug use at a different location from where the crime took place. App. 9, lines 9 – 15. Petitioner stated that trial counsel never discussed with him the possible consequences of “past crimes or bad acts” being used against him at trial.

Trial counsel also testified during the PCR hearing. Counsel admitted that there was testimony of Petitioner’s use of marijuana and cocaine and that he did not object to it. Counsel stated that he would **normally** object to that kind of testimony unless he “didn’t want to draw attention to it.” App. 388, lines 8 – 13. Counsel admitted that he “probably should have objected to that.” App. 29, lines 8 – 18. Counsel also agreed that “prior bad acts are generally . . . inadmissible because it’s prejudicial.” App. 388, line 19 – App. 389, line 4.

Order of Dismissal

The PCR judge found that trial counsel was not ineffective for failing to object to testimony of Petitioner’s drug use at trial. App. 412. The judge reasoned that trial counsel articulated a strategic reason for not objecting to the testimony. App. 412. The judge found it “unlikely the [Petitioner] was prejudiced by the testimony.” App. 413.

Discussion

Trial counsel erred by failing to object to testimony from Petitioner’s co-defendant, Leonard Pinckney, that he and Petitioner “smoked a blunt” while discussing the robbery and Petitioner gave Pinckney a “bag of cocaine” before driving to Patrice Ford’s apartment. Such evidence of

Petitioner's drug use was not relevant and was unduly prejudicial. Trial counsel gave no strategic reason why he failed to object in this case.

A criminal defendant is entitled to effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984). When a defendant challenges a conviction on the ground that counsel was ineffective, the question becomes, “whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result,” Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 686; see Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)). Pursuant to Strickland v. Washington, a court will conduct a two-prong test when determining whether trial counsel’s assistance was ineffective. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688).

First, an applicant must show that counsel’s performance was deficient. Strickland, 466 U.S. at 687. In analyzing this prong, a court will use an objective standard of reasonableness. *Id.* Under this prong, “[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (quoting Strickland, 466 U.S. at 688).

Second, the applicant must show that counsel’s “deficient performance prejudiced the defendant to the extent that ‘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, 117-118, 386 S.E.2d 624, 625 (1989) (quoting Strickland, 466 U.S. at 688).

Relevant evidence is admissible at trial. Rule 402, SCRE. Evidence is relevant when it has a “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE.

However, evidence of prior bad acts is inadmissible to show propensity to commit the specific crime charged. Rule 404(b), SCRE. Such evidence may be admissible to establish a motive, intent, absence of mistake, common scheme or plan, or identity of the perpetrator. Rule 404(b), SCRE; State v. Fletcher, 379 S.C. 17, 23, 664 S.E.2d 480, 483 (2008). Where those acts are not the subject of a conviction, they must first be proven by clear and convincing evidence. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007).

Even if such relevant evidence is clear and convincing and falls within a Rule 404(b) exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008). Unfair prejudice means an undue tendency to suggest a decision on an improper basis. State v. Stephens, 398 S.C. 314, 320, 728 S.E.2d 68, 72 (Ct.App. 2012) (quoting State v. Lyles, 379 S.C. at 338, 665 S.E.2d at 206); State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001) (“Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one.”).

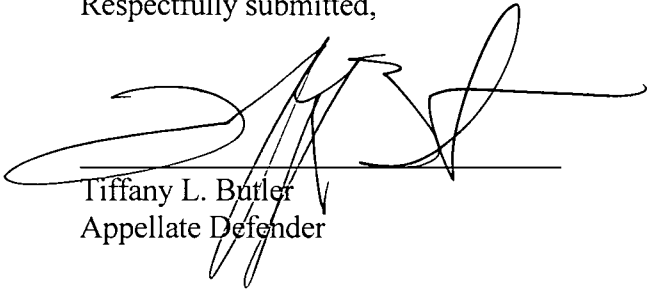
Here, Petitioner’s alleged use of marijuana and cocaine before the robbery is not relevant to prove any of the elements of the crimes for which he was on trial. Such evidence had no probative value and no bearing on Petitioner’s guilt. Pinckney’s testimony that he and Petitioner smoked marijuana and that Petitioner gave him a bag of cocaine insinuated that Petitioner was a drug dealer. Such an insinuation unfairly impugned Petitioner’s character and clouded the issues for the jury. Because trial counsel did not object to this evidence, the jury was allowed to decide Petitioner’s guilt on the improper basis that he lived a life of drugs. See State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990) (holding that the prejudicial effect of admitting evidence of defendant’s social use of cocaine outweighed any probative value to establish defendant’s state of mind or motive for

murder); see also State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) (holding that evidence of defendant's drug use was competent to show defendant's motive for robbing the store because the evidence itself established a **relationship** between the drug use and the robbery), *overruled on other grounds by* State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014).

CONCLUSION

For the reasons argued, Petitioner Leonard Stanfield respectfully requests this Court to grant his petition for writ of certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tiffany L. Butler', is written over a horizontal line. The signature is stylized and cursive.

Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of March, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Colleton County
James R. Barber, III, Circuit Court Judge

LEONARD STANFIELD,

PETITIONER,

V.

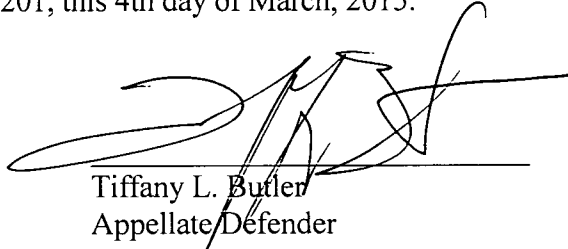
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001602

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Ashleigh R Wilson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of March, 2015.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 4th day
of March, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.