

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

MARTINA R. PUTNAM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2012-212396

APPENDIX II

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Martina R. Putnam, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-212396

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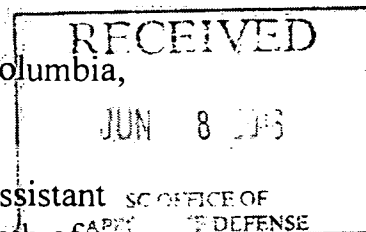
Appeal From Sumter County
George C. James, Trial Judge
W. Jeffrey Young, Post-Conviction Relief Judge

Opinion No. 5408
Heard October 13, 2015 – Filed June 8, 2016

AFFIRMED

Appellate Defender Benjamin John Tripp, of Columbia,
for Petitioner.

Attorney General Alan McCrory Wilson and Assistant
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LOCKEMY, J.: In this post-conviction relief (PCR) action, Martina R. Putnam contends the PCR court erred in dismissing her application for PCR and finding

trial counsel was not ineffective for failing to adequately prepare her case and call witnesses to testify in her defense. We affirm.

FACTS/PROCEDURAL HISTORY

Putnam was charged with homicide by child abuse in the death of her thirteen-month-old son (the Victim). At trial, the State sought to prove Putnam willfully and unlawfully killed the Victim by abuse or neglect. Putnam attempted to shift suspicion to her husband, Patrick, and her older children—Sibling One, age nine, and Sibling Two, age six (collectively, the Children)—who were also in the house when the Victim's fatal injuries occurred.

When Putnam awoke on the morning of the Victim's death, Patrick and the Children were already awake; Patrick was in the kitchen preparing food, and the Children were playing outside. Putnam testified she fed the Victim breakfast, took him to the bathroom for his bath, and laid him on the bathroom floor. Putnam stated she went to the bedroom to get a towel and when she returned to the bathroom, the Victim was not moving and felt like a "rag doll" in her hands. Officer Gwen Herod of the Sumter County Sheriff's Office, who interviewed Putnam, testified that Putnam claimed she did not know how the Victim's injury happened and admitted she was the only person with the Victim during that time.

Officer Herod conducted a videotaped forensic interview with the Children. Her understanding was Sibling One had interacted with the Victim before Putnam did on the morning of the Victim's death. Officer Herod testified Sibling One said he picked the Victim up from his crib that morning before going outside to play, hugged him, and then put him back in the crib. Additionally, Officer Herod stated Sibling One described picking the Victim up and holding him upside down by his feet two days before the Victim died. The trial court allowed this testimony after the parties stipulated to its admissibility. Outside the presence of the jury, trial counsel asked Officer Herod whether Sibling One reported seeing Patrick pick the Victim up in a similar manner. Without reviewing the videotaped interview, Officer Herod could not recall whether Sibling One said someone else also picked the Victim up by his feet. Trial counsel noted that in the videotaped interview, Sibling One described holding the Victim by his feet and went "into this whole process about how [Patrick] used to do this and how they would hold his head and everything else." The trial court ruled Sibling One's comments concerning Patrick's alleged conduct were inadmissible hearsay under section 17-23-175 of the

South Carolina Code (2014) because Sibling One did not testify at trial and were beyond the scope of the stipulation.¹

Outside the presence of the jury, trial counsel proffered Officer Herod's testimony that on the day the Victim died, Patrick allegedly threatened to kill her and another officer. Trial counsel argued Patrick's threat was relevant because it demonstrated Patrick, who had access to the Victim before Putnam awoke on the day he died, had a tendency to express violence. The trial court excluded the proffered testimony because the threat was not relevant.

To demonstrate Sibling One's propensity for violence, Putnam proffered testimony that while in foster care following Putnam's arrest, Sibling One kicked Sibling Two so hard that the kick left a shoe print on Sibling Two's chest. The trial court refused to admit the testimony under Rule 404(b), SCRE, and determined the testimony did not survive the analysis set forth in *State v. Gregory*² because it merely cast a bare suspicion of guilt on Sibling One.

The State presented testimony from three doctors who explained the Victim's medical history and injuries. Dr. Joel Sexton, the pathologist who conducted the Victim's autopsy, concluded the cause of death was a subdural hematoma resulting from an abusive head trauma like a shaking or impact injury and ruled the death a homicide. Dr. Sexton opined the Victim could have experienced a lucid period after his impact injury but before he lost consciousness; however, the other two doctors disagreed with Dr. Sexton's opinion. Dr. Sexton testified the Victim was born premature and suffered from delayed development. In addition, Putnam testified the Victim suffered from severe apnea, reflux, digestive problems, breathing problems, and retinopathy.

¹ See § 17-23-175 (allowing the admission of an out-of-court statement of a child under twelve years of age when the statement was given in response to questioning conducted during an investigative interview of the child, the statement was recorded, the child is present to testify and is subject to cross-examination, and the trial court finds the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness).

² 198 S.C. 98, 104-05, 16 S.E.2d 532, 534-35 (1941) (providing evidence demonstrating a third party's guilt "must be limited to such facts as are inconsistent with [the accused's] own guilt" and prohibiting "evidence which can have no other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another").

The jury found Putnam guilty, and the trial court sentenced her to twenty-five years' imprisonment. Putnam filed a direct appeal, and this court affirmed her conviction and sentence. *State v. Putnam*, Op. No. 2011-UP-526 (S.C. Ct. App. filed Dec. 2, 2011).

Putnam filed a PCR application. At the PCR hearing, Putnam asserted trial counsel provided ineffective assistance by failing to call Patrick and the Children to testify about the events occurring in their home on the day the Victim died. She contended if the Children had attended trial and the trial court had admitted the videotape of the Children's interviews, the interviews could have helped her case. At the PCR hearing, neither Patrick nor the Children testified, Putnam did not introduce evidence showing what Patrick and the Children would have testified at trial, and Putnam did not introduce the videotape or transcript of the Children's recorded interviews. Putnam also asserted trial counsel was ineffective for failing to call an expert to testify about the Victim's medical issues and the ways a premature infant can die from a hematoma without suffering child abuse. Putnam did not introduce any expert testimony at the PCR hearing.

The PCR court found trial counsel's investigation fell within reasonable professional norms and Putnam failed to demonstrate prejudice from trial counsel's failure to present additional witnesses. Accordingly, the PCR court denied Putnam's PCR application. This court granted certiorari.

STANDARD OF REVIEW

"In reviewing the PCR court's decision, [an appellate court] is concerned only with whether there is any evidence of probative value to support that decision." *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006). This court "will reverse the PCR court only where there is either no probative evidence to support the decision or the decision was controlled by an error of law." *Edwards v. State*, 392 S.C. 449, 455, 710 S.E.2d 60, 64 (2011). This court gives great deference to the PCR court's findings of fact. *Dempsey v. State*, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005). "In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief." *Lorenzen v. State*, 376 S.C. 521, 528, 657 S.E.2d 771, 776 (2008). This court gives great deference to the PCR court's findings on matters of credibility. *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 146 (2014).

LAW/ANALYSIS

Trial counsel must provide "reasonably effective assistance" under "prevailing professional norms." *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

"There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Under the two-prong test established in *Strickland*, to establish a claim of ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance was deficient and (2) the deficient performance prejudiced the applicant's case. *Leon v. State*, 379 S.C. 448, 450, 666 S.E.2d 260, 261 (Ct. App. 2008). "Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim." *Strickland*, 466 U.S. at 700.

Under the first prong of the *Strickland* test, "the burden of proof is upon [the] petitioner to show that counsel's performance was deficient as measured by the standard of reasonableness under prevailing professional norms." *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). "[C]riminal defense attorneys have a duty 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). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) (emphasis omitted). "The validity of counsel's strategy is reviewed under 'an objective standard of reasonableness.'" *Id.* (quoting *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002)).

Concerning the second prong of the *Strickland* test, "[t]o establish the requisite prejudice necessary to prove a claim of ineffective assistance of counsel, [the] petitioner must demonstrate that his attorney's errors had an effect on the judgment against him." *Edwards*, 392 S.C. at 458-59, 710 S.E.2d at 65. "A PCR applicant 'must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Id.* at 459, 710 S.E.2d at 66 (quoting *Strickland*, 466 U.S. at 694). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). "A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence." *Dempsey v. State*, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." *Glover v. State*, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995).

A. Failure to Present Expert Testimony

Putnam argues the PCR court erred in dismissing her PCR application because trial counsel was ineffective for failing to call an expert witness to undermine the testimony of the State's experts that the Victim died from either violent shaking or a severe blunt trauma to the head. We disagree.

We find evidence in the appendix supports the PCR court's determination that trial counsel conducted a reasonable investigation concerning experts who might give testimony favorable to Putnam. Trial counsel testified at the PCR hearing that he spoke with Dr. Sexton several times before trial, and both Putnam and Dr. Sexton testified at trial about the Victim's developmental problems. Further, trial counsel explained one reason he did not retain an expert witness was that Dr. Sexton "made it very clear that he had seen it many times, and felt it was true in this case—not just possible, but probable"—that the Victim experienced a period of lucidity between the time of the injury and the time he lost consciousness. Trial counsel also explained one of the State's other expert witnesses, Dr. Richard Cartie, testified there was no period of lucidity, so the jury heard the doctors take different positions. Therefore, trial counsel determined he did not need to call another expert to provide the same testimony Dr. Sexton provided. Because trial counsel interviewed Dr. Sexton before trial and strategically chose not to call an expert witness to give the same testimony Dr. Sexton provided concerning a possible period of lucidity and the Victim's developmental problems, we find evidence shows trial counsel's performance was objectively reasonable.

In addition, we find evidence in the appendix supports the PCR court's finding that Putnam failed to demonstrate prejudice from trial counsel's decision not to call additional expert witnesses. Putnam did not present any expert testimony at the PCR hearing; therefore, her assertion that additional expert testimony might have changed the result of her case is merely speculative and insufficient to demonstrate prejudice. Accordingly, we find probative evidence in the appendix supports the PCR court's finding that Putnam failed to meet her burden of demonstrating trial counsel was ineffective and failed to show prejudice.

B. Failure to Secure the Attendance of Patrick and the Children

Putnam also argues trial counsel was ineffective for failing to secure the attendance of Patrick and the Children at trial, given that all three had clear opportunities to injure the Victim and trial counsel's sole theory of the case was the State could not prove beyond a reasonable doubt that Putnam—rather than another resident of the home—injured the Victim. We disagree because, although we find trial counsel's

performance was deficient, Putnam failed to demonstrate how trial counsel's performance prejudiced her trial.

Trial counsel's failure to subpoena witnesses can constitute ineffective assistance of counsel under certain circumstances. For example, in *Martinez v. State*, our supreme court found trial counsel ineffective for failing to subpoena a witness who would have testified he saw the petitioner at a location other than the crime scene fifteen minutes before the conclusion of the crime. 304 S.C. 39, 40-41, 403 S.E.2d 113, 113-14 (1991). In *Martinez*, trial counsel testified at the PCR hearing that he would have called the witness if the witness had been present at trial, the witness's testimony might have been important, and one more piece of evidence might have made a difference in the verdict. *Id.* at 41, 403 S.E.2d at 113-14.

Both South Carolina and Tennessee have enacted the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings (the Uniform Act). See S.C. Code Ann. § 19-9-10 (2014); Tenn. Code Ann. § 40-17-201 (2012). The Uniform Act provides procedures for securing the testimony of material witnesses through the courts of states that have adopted it, and South Carolina's version of the Uniform Act specifically provides the court requesting the witness may recommend "the witness be taken into immediate custody and delivered to an officer of this State to assure his attendance in this State." See S.C. Code Ann. § 19-9-70 (2014). Tennessee's version of the Uniform Act provides that in lieu of issuing a subpoena or summons, the Tennessee court may "order that the witness be taken into custody immediately and delivered to an officer of the requesting state." Tenn. Code Ann. § 40-17-205 (2012). The Uniform Act also prescribes penalties to ensure witnesses attend trials. S.C. Code Ann. § 19-9-100 (2014); Tenn. Code Ann. § 40-17-206 (2012).

We find trial counsel rendered deficient performance by failing to secure the Children's attendance at trial and no probative evidence supports the PCR court's contrary finding. Because the Children were not present at trial, the rule against hearsay prohibited Putnam from introducing their videotaped depositions, which included testimony that Sibling One saw Patrick hold the Victim upside down by his feet. The Children's absence also prevented Putnam from questioning them about the events occurring before Putnam awoke on the day of the incident. Both Children awoke before Putnam that morning, and Officer Herod testified Sibling One admitted entering the Victim's room that morning before going outside to play.

Trial counsel testified he subpoenaed the Children through Putnam's ex-husband, who had custody of the Children and lived in Tennessee, but the ex-husband

refused to bring the Children to court. Trial counsel should have secured the Children's attendance using the Uniform Act, which was in effect in both Tennessee and South Carolina at the time of trial. If trial counsel had utilized the Uniform Act to secure the Children's presence at trial, a Tennessee court could have ordered the Children to be taken into custody immediately and delivered to an officer in South Carolina. Further, a Tennessee court could have imposed penalties to ensure the Children attended Putnam's trial in South Carolina. Because trial counsel failed to secure the Children's presence at trial, his performance was unreasonable under prevailing professional norms and therefore deficient.

However, evidence supports the PCR court's finding that Putnam did not establish prejudice from trial counsel's failure to secure the Children's attendance at trial. Although Putnam asserted the Children's testimony "may have shown some sort of information that may have helped in some way" and may have provided the jury with a better understanding of "what was actually going on in the house at the time," that testimony was speculative and therefore insufficient to establish prejudice. The jury heard Officer Herod testify about two statements Sibling One made in his videotaped interview: first, that he picked the Victim up from his crib and hugged him on the morning of the incident before going outside to play; and second, that he picked the Victim up and held him upside down by his feet two days before he died. However, at the PCR hearing, Putnam did not introduce the Children's videotaped deposition, and the Children did not testify. Therefore, any other testimony of the Children—including Sibling One's alleged statement he saw Patrick hold the Victim by his feet—was merely speculative. Putnam also failed to establish the result of the trial would have been different if the Children had testified at trial. Therefore, we hold Putnam failed to show she was prejudiced by trial counsel's failure to secure the Children's presence at trial.

Furthermore, we find probative evidence does not support the PCR court's determination that trial counsel's performance was not deficient based on his failure to subpoena Patrick to testify at trial. Trial counsel should have subpoenaed Patrick to ensure his attendance instead of relying on him to attend trial voluntarily. Trial counsel was in contact with Patrick before trial, and Patrick attended Putnam's bond hearing. Therefore, trial counsel could have served Patrick with a subpoena before trial. Because Putnam's defense was that Patrick and the Children were in the home and could have interacted with the Victim before she did on the day the Victim died, trial counsel should have subpoenaed Patrick to question him about his interaction with the Victim that morning. The fact Patrick changed his mind about attending trial "in the last few days" before trial, got in a truck, and "took off" out-of-state does not excuse trial counsel's failure to subpoena

him before that time. Accordingly, trial counsel's failure to subpoena Patrick was unreasonable under prevailing professional norms and constituted deficient performance.

However, evidence supports the PCR court's conclusion that Putnam did not demonstrate prejudice from trial counsel's failure to subpoena Patrick. First, although trial counsel hoped to introduce testimony regarding Patrick's alleged threats against law enforcement to demonstrate his violent nature, the trial court ruled such testimony was irrelevant to Putnam's guilt and was inappropriate under a third-party guilt approach. Putnam failed to demonstrate the trial court's decision would have been different had Patrick testified at trial. Second, because Patrick did not testify at the PCR hearing, any other testimony by Patrick was merely speculative and therefore insufficient to establish prejudice. Therefore, we hold Putnam failed to show she was prejudiced by trial counsel's failure to subpoena Patrick to testify at trial.

CONCLUSION

Putnam received inadequate representation in her prior trial proceedings.³ However, we are constrained by our standard of review to affirm the PCR court's order dismissing Putnam's PCR application because Putnam failed to demonstrate trial counsel's deficient performance prejudiced her trial. Based on the foregoing, the PCR court's order of dismissal is

AFFIRMED.

KONDUROSO, J., and FEW, A.J., concur.

³ In that regard, we are concerned that PCR counsel—who knew of trial counsel's failure to secure Patrick's and the Children's presence at trial—failed to secure their presence at the PCR hearing or provide evidence of what their testimony would have been at trial. At the PCR hearing, for example, PCR counsel failed to present any depositions or the Children's videotaped interviews in an effort to establish trial counsel's deficient performance prejudiced Putnam's case.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

MARTINA R. PUTNAM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212396

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

Opinion No. 5408

PETITION FOR REHEARING

On June 8, 2016, this Court affirmed the denial of Petitioner Martina R. Putnam’s application for post-conviction relief. Putnam was convicted of homicide by child abuse and sentenced to twenty-five years incarceration. While this Court found that the PCR court erred in finding that trial counsel was effective despite his failure to call Putnam’s husband (hereinafter “Patrick”) and two other minor children (hereinafter “the Siblings”) as witnesses at her trial, this Court upheld the finding that Putnam failed to prove that she was prejudiced by counsel’s deficient

representation. Putnam respectfully petitions this Court for a rehearing of a portion of its Opinion No. 5408. Pursuant to Rule 221(a), SCACR, Putnam avers that the following points were overlooked or misapprehended by the Court:

As this Court will recall, Putnam was the mother of three sons. Sibling 1 and Sibling 2 were from Putnam's first marriage and she gained sole custody of them in 2003 after her divorce. In April 2005, Putnam began working as a long-haul truck driver and met Patrick. App. 357, l. 20 – 360, l. 4. In June 2005, Putnam married Patrick. On February 5, 2006, she gave birth to Decedent. Decedent was premature at only twenty-five weeks and had severe apnea, reflux and digestive diseases, and retinopathy. He was not released from the hospital until the end of April 2006. App. 360, l. 5 – 362, l. 1; App. 390, l. 5 – 391, l. 17; App. 549, l. 6 – 550, l. 7.

Putnam, Patrick, and the three children moved to Sumter at the end of 2006 for a better truck driving opportunity. At the end of February 2007, Patrick had quit working and stayed home with Decedent and Siblings 1 and 2 – then six and nine years of age – while Putnam worked. On Saturday, March 10, 2007, Putnam woke up at approximately 8:30 or 9:00 a.m. She had just returned home from a haul the night before. The Siblings were up and playing, and Decedent was getting restless and was ready to get out of bed. Petitioner saw Patrick was already up, so she took a shower before getting Decedent out of his crib at approximately 9:30 a.m. As a result of his prematurity and developmental delays, Decedent had not yet developed the ability to crawl or walk and was learning to sit up on his own. Decedent she set him on the floor between her legs to feed him baby cereal, as she usually did. And as usual, when Decedent was done eating, he quit holding himself up on her legs and let himself fall backwards on the ground a couple of times.¹ Decedent

¹ There was no allegation that Decedent's death was caused by his falling backward on the ground from a seated position. App. 252, l. 25 – 253, l. 10; App. 270, l. 15 – 271, l. 4; App. 415, l. 23 – 416, l. 5.

seemed “a little bit cranky” and did not eat as much but Putnam did not think too much of it. App. 309, ll. 12-16; App. 360, l. 15 – 367, l. 3; App. 374, l. 16 – 376, l. 4; App. 475, ll. 2-7.

Putnam brought Decedent to the bedroom to get a fresh diaper and towel. When they went into the bathroom she took off his pajamas and laid him on the floor. She realized that she had forgotten the towel, so she went back to the bedroom. When she returned, Decedent was not moving and when she picked him up he was “like a rag doll” in her hands. She panicked, called for Patrick, and attempted rescue breathing, as she had been trained to do when Decedent was in neonatal intensive care. They drove to the emergency room around 10:40 a.m., and on the way Putnam continued rescue breathing and pinched Decedent on the leg, but he never responded. App. 367, l. 4 – 369, l. 16; App. 376, ll. 2-8. Decedent was pronounced dead later that day, at 6:38 p.m. App. 322, ll. 14-17. The death was the result of complications of either shaking and/or an impact injury on a soft or padded surface. App. 221, ll. 8-25; App. 249, ll. 3-9.

Police initially detained Patrick as their main suspect. App. 80, ll. 17-25. However, police ultimately arrested Putnam on March 13, 2007. App. 55, ll. 15-19; App. 166, l. 9 – 167, l. 2. Putnam was ultimately arrested because she had told the victim advocate, Gwen Herod, and Investigator David Florence that she was the only one who had control of Decedent that morning and she did not implicate anyone else. App. 78, l. 19 – 79, l. 22; App. 263, l. 15 – 264, l. 10. Testimony was admitted at trial that Sibling 1 admitted to Herod, during the interview that she conducted with the Siblings prior to going to see Putnam, that he had “contact” with the Decedent before Putnam got up that morning. App. 37, l. 18 – 40, l. 9; App. 268, ll. 9-15; App. 271, ll. 5-21. Putnam also testified that Patrick told her he had given Decedent something to drink earlier in the morning. App. 364, ll. 18-22. Notably, both Herod and Florence testified that Putnam was not in custody at the time she made the statements to them. App. 41, l. 1 – 54, l. 16; App. 56, l. 24 – 63, l.

10; App. 71, l. 9 – 76, l. 8; App. 77, l. 7 – 82, l. 13. Putnam testified that she was trying to pay attention to the questions that Herod asked her but she was concerned about her child and under the impression that Herod was there to provide comfort and not conducting an investigation. App. 385, l. 10 – 386, l. 9.

As this Court will recall, Putnam maintained her innocence during sentencing. Putnam expressed that she had two years to think about everything that happened and that she did not do anything with Decedent that she would not have done on any normal day. She said that she wishes “with all [her] heart” that she knew what caused Decedent’s injuries. Putnam told the Court:

I love my children and my whole life has been involved with trying to make sure that my children are taken care of to the best of my abilities. I went so far out of the way as to come here to South Carolina to try to better my children’s lives because I wasn’t making it back west where I was. I thought in doing so that I could get my family involved in something bigger, that we would have something to show for our efforts, for all the work that I put into it.

But I don't know what happened to [Decedent]. And when the officers were asking me questions, when the doctors were asking me what happened, there were certain things that I didn't say simply because I didn't think that at that point in time that those things were important. I thought that I needed to let them know exactly what happened and not go into every single detail to the doctor simply because I wasn't thinking about a towel or a car seat when the doctors were asking me what happened.

I told them I found him and he wasn't breathing and he wasn't responsive. I don't know anything beyond that other than what I had done during that day. I don't know what happened before. I had no idea. The kids were going in and out of the house, doing the things that they normally do.

All I know is that I love my children with all my heart and I would do anything for them. And I know that you can nullify certain laws, and so am I, that I have to follow, that everybody has to follow. And I know that this charge carries a large amount of time, up to and including life. And I maintained my innocence through this entire thing because I honestly don't know what happened to him and I wish to God I did.

I refused to accept a lesser plea simply because I know that I didn't do anything. There is nothing on this earth that will make me change what I said. There is

nothing on earth that will make me change the way I feel about my children or anything, sir.

No matter what, I know what I did, and I know that I didn't harm my son in any way. And I wouldn't have ever have harmed my son. I am not a disciplinarian. I never strike my children. It wouldn't have made any difference to me whether it was [Decedent] or Sibling 1 or Sibling 2. If something had happened to my children, I would have been there for them.

All I'm saying, sir, is that I did anything that any reasonable parent would have done. I didn't neglect my child by taking him to the hospital. I did everything that I thought in my power that I could do for him. I wasn't being neglectful in my duties by taking him there.

Maybe I wasn't there with my children all the time, but I had to work. I had to take care of my family. I don't know what happened during the times that I wasn't there. I don't know what happened in the morning before I woke up that day. All I can say is what happened when I saw him.

And when I found him and he wasn't breathing and he wasn't reacting or anything, I didn't know what to do other than to do what I was told. And I knew that I had to breathe for him and I knew that I had to do everything in my power to try to get him to come back to us because I knew that something serious had happened because he wasn't breathing.

And no matter what, I'm still going to make statements that I didn't do anything here because I still don't know what happened and I wish that I did. Thank you.

App. 459, l. 6 – 462, l. 1.

This Court focused only on the evidence presented at the PCR hearing and overlooked the proffers and arguments contained in the trial transcript. See Smith v. State, 386 S.C. 562, 568-69, 689 S.E.2d 629, 633 (2010) (finding applicant was prejudiced by trial counsel's deficient performance after "carefully reviewing the entire transcript of the underlying trial"); see also Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) ("In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing."). To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for

counsel's errors, there is a reasonable probability the result at trial would have been different. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Strickland v. Washington, 466 U.S. 668 (1984). A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial. Strickland, 466 U.S. at 694. The United States Supreme Court specifically ruled that "a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case." Id. Moreover, the Court ruled that: "The ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. **In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results.**" Id. at 696 (emphasis added).

Admittedly, neither the Siblings nor Patrick testified at the trial or PCR hearing. Putnam's ex-husband refused to bring the Siblings from Tennessee for the trial and trial counsel did not seek to enforce an out-of-state subpoena. App. 477, ll. 13-22; App. 547, l. 17 – 548, l. 11. Patrick had originally said he would attend trial but when he heard that the defense was going to subpoena him, he "took off" such that counsel did not know where he was to subpoena him. App. 190, ll. 18-25; App. 561, ll. 8-12. Counsel said that Patrick, who was living out of state, was afraid that there was "a warrant out for him" in South Carolina or that he would be charged with something. App. 473, ll. 8-11; App. 561, ll. 8-22. As noted in this Court's opinion, PCR counsel did not call either the Siblings or Patrick to testify at the PCR hearing, nor did he admit the recorded interview of the children conducted by Herod. See App. 39, ll. 1-23. Even so, their testimony was not needed at the PCR hearing because the content of their testimony and

the recorded statements in the interview were apparent from the trial transcript and from the testimony of trial counsel at the PCR hearing. See App. 572.

Though Sibling 1 was not present to testify at trial, the parties stipulated to the admission of testimony regarding statements that Sibling 1 made in the recorded interview conducted by Herod. The juror heard that Sibling 1 went into Decedent's room earlier in the morning on the day he died. Sibling 1 "picked him [Decedent] up and hugged him and he described him babbling and talking and then he was fine, I think was his words, and then he [Sibling 1] put him back in the crib and [Sibling 1] went outside to play." App. 170, l. 7 – 171, l. 2. However, the stipulation did not allow discussion of portions of the video in which Sibling 1 said that he held the Decedent by his legs before or that he had seen Patrick handle Decedent like that before. App. 168, l. 23 – 180, l. 15. Trial counsel told the Court: "And on this tape, without question, whether she recalls it or not, he goes through this whole process how daddy used to do this and how they would hold his head and everything else." App. 178, ll. 6-9. The solicitor admitted that the statements regarding what he had seen Patrick do with the Decedent were only hearsay because Sibling 1 was not there to testify. App. 175, ll. 2-25. Trial counsel also proffered testimony from Terri Starnes, the foster mother with whom the Siblings were placed. Starnes testified regarding an incident that occurred within a few days of Decedent's death, in which Sibling 1 kicked Sibling 2 in the chest and left a shoe print. App. 339, l. 2 – 354, l. 21. Trial counsel also proffered testimony that Patrick said that he had a gun and was going to kill Lieutenant David Florence and the victim advocate, Gwen Herod. App. 183, l. 1 – 193, l. 7. The trial court ultimately ruled that incident between Sibling 1 and Sibling 2 and the death threat made by Patrick were not relevant at trial. App. 349, l. 20 – 354, l. 19; App. 191, l. 10 – 192, l. 24. However, they were still valid considerations for the PCR judge. See Smith, 386 S.C. at 568-

69, 689 S.E.2d at 633 (finding applicant was prejudiced by trial counsel's deficient performance after "carefully reviewing the entire transcript of the underlying trial")

At the PCR hearing, Putnam testified that the information that the Siblings gave in the videotaped interviews would have been helpful for the jury to understand what was going in the house on the day that Decedent died. App. 548, ll. 12-24. Trial counsel Howle also discussed the testimony that was proffered regarding Patrick's death threat and Sibling 1's assault on Sibling 2, to show their violent tendencies. App. 561, l. 23 – 563, l. 6; App. 568, ll. 2-14. Howle said that the video of the interviews of the Siblings "would have probably helped" but that there were some things in the video that did not. App. 563, ll. 7-12. He said that one of the children was talking about ghosts and he was unsure what the jury would have thought about that. However, he said that **"the thing [in the video interview] that probably helped us the most is the way Ms. Herod was asking her questions."** App. 563, ll. 13-18. It was **"obvious [that] she was trying to get them [the Siblings] to say something about Martina [Putnam] being the person who did something.** It wasn't just middle of the road questions. **They were definitely directed in trying to get at that response."** App. 563, ll. 19-23. Thus, Howle asserted that the Siblings failure to implicate Putnam, even when prompted to do so by the interviewer, would have been helpful to the defense. Howle said that they were unable to admit the video because the Siblings were not present to testify. Notably, he had subpoenaed the Siblings but their father refused to bring them. App. 563, l. 24 – 564, l. 11. It is evident from both the trial and PCR hearing transcripts that Howle wanted the Siblings and Patrick to testify at trial and that if they have been properly subpoenaed and those subpoenas enforced, he would have called them to testify at trial because he thought their testimony would be favorable to Putnam.

Had the Siblings testified at trial, their absence would have no longer precluded the admission of their videotaped interview at trial pursuant to S.C. CODE ANN. § 17-23-175. Thus, the jury would have heard the suggestive questions to the Siblings and their failure to inculcate Putnam and the statement that Sibling 1 had seen Patrick hold Decedent by his feet. Further, even if not admissible under section 17-23-175, the prior statements on the video could have been used to refresh the Siblings recollection or to impeach them. See Rule 613, SCRE. Because the proffers at trial and Howle's testimony at the PCR hearing discussed the content of the video and the circumstances of the altercation in foster care, there testimony was not required at the PCR hearing.

Without Patrick there to testify, Howle could not present a third party guilt defense of any substance. See State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941) (“[T]he evidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible.”); see, e.g., Miller v. State, 379 S.C. 108, 665 S.E.2d 596 (2008) (finding trial counsel ineffective where trial counsel failed to properly cross-examine witness regarding specifics of other three armed robberies that she committed with third party and failed to point out physical similarities between third party and victim's description of robber and sole defense was mistaken identity and third-party guilt). Howle thought that Patrick was more than likely the person responsible for the injuries to Decedent and even law enforcement investigated him. App. 561, l. 6 – 562, l. 2. Because the State's pathologist testified that there could be some period of lucidity following the incident that caused Decedent's injury, it was possible that the injury to Decedent was inflicted upon him by Patrick before Putnam even got up that morning. App. 227, l. 3

– 228, l. 5. Undoubtedly, it would be unlikely that Patrick would admit his own guilt on the witness stand. However, trial counsel could have questioned Patrick about his young age and inexperience as a parent, the propriety of holding a disabled baby upside down by its feet, the added difficulties and challenges with parenting a disabled baby, the added stressors of caring for two non-biological children and being a single-parent when Putnam would be away working as a truck driver, his temper and tendencies toward violence, his moving out-of-state after the incident, and his lack of cooperation. See App. 561, l. 6 – 562, l. 2; App. 562, l. 23 – 563, l. 6; App. 565, l. 2 – 566, l. 4; App. 568, ll. 2-14. The jury would have then had the opportunity to judge Patrick’s credibility and reach the conclusion that Patrick had the means, motive, and opportunity to injure the Decedent before Putnam picked him up out of the crib that morning.

In the opinion issued in this case, this Court cited Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995), and Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005), regarding the burden that an applicant bears in proving prejudice from counsel’s failure to call a favorable witness at trial. The applicant in Glover presented the testimony of the two witnesses who he claimed would have testified that he was in Florida when the crimes were committed. 318 S.C. at 497, 458 S.E.2d at 539. A majority of the Supreme Court found that the witnesses’ testimony did not foreclose the possibility that Glover could have committed the crime and thus did not provide an alibi. Id. at 498, 458 S.E.2d at 540. With respect to other witnesses who applicant claimed could provide an alibi defense but did not call to testify, the Court wrote:

In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence. The applicant’s mere speculation what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice.

Id. at 498-99, 458 S.E.2d at 540. Additionally, in footnote 2 of the Glover opinion, the majority wrote: “To the extent the majority opinion in Grier v. State, 299 S.C. 321, 384 S.E.2d 722 (1989),² can be read to suggest that a PCR applicant’s mere speculation what a witness’s testimony would have been is sufficient to satisfy the applicant’s burden of showing prejudice, it is overruled.” Id. at 499 n. 2, 458 S.E.2d at 540 n. 2; but see Pauling v. State, 331 S.C. 606, 610-11, 503 S.E.2d 468, 471 (1998) (holding that introduction of nurse’s triage notes were sufficient under Glover); Black v. State, 151 S.W.3d 49 (Mo. 2004) (“[A] movant is not required to reenact how a hypothetical trial would have proceeded had particular evidence been utilized, but to show that counsel knew of the evidence and was ineffective in failing to use it, to movant’s prejudice.”).

The applicant in Dempsey alleged that counsel was ineffective in failing to subpoena the victim’s grandfather, who Dempsey said would have testified that “the victim lied about being sexually assaulted.” 363 S.C. at 369, 610 S.E.2d at 814. The Dempsey Court wrote: “A PCR applicant cannot show that he was prejudiced by counsel’s failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence.” Id. (citing Glover, 318 S.C. at 498, 458 S.E.2d at 540).

² In Grier v. State, the PCR applicant claimed that counsel was ineffective in failing to call several witnesses, both with respect to alibi and to testify regarding what Grier was wearing on the night of robbery. 299 S.C. 321, 322-23, 384 S.E.2d 722, 723-24 (1989). Trial counsel admitted that “it seemed like” Grier’s girlfriend did verify that Grier was wearing brown, but he could not recall why he failed to call her as a witness. Id. With respect to the alibi witnesses, trial counsel “testified that he interviewed these witnesses, as suggested by Grier and that they were either ‘poor witnesses’ whose testimony was ‘repetitive,’ or could not identify the exact time they saw Grier at home.” Id. However, counsel had few notes on these interviews. Id. In affirming the grant of PCR relief, our Supreme Court found that “the PCR judge evidently believed Grier’s testimony and concluded that counsel’s failure to call these witnesses constituted deficient performance and that, because the credibility of Grier’s alibi defense was crucial, this deficiency prejudiced Grier’s case.” Id. at 323, 384 S.E.2d at 724.

The Court understandably overturned the PCR court's grant of relief, because the Court could not determine what the victim's grandfather would have said in his testimony. Id. As such, the Court found that any prejudice is "merely speculative" and there was "no evidence that, if counsel had subpoenaed the witness, the result at trial would have been different." Id. Unlike Glover or Dempsey, there was far more evidence here than an applicant's bald allegation that a witness' testimony would have been favorable.

This Court's opinion also cites Martinez v. State, 304 S.C. 39, 403 S.E.2d 113 (1991). In Martinez, our Supreme Court reversed the PCR court's finding that counsel was effective and remanded for a new trial. 304 S.C. at 40-41, 403 S.E.2d at 113-14. There, Martinez alleged that trial counsel was ineffective in failing to call Tony Wilson, whom he had told counsel would confirm that he saw Martinez leave a lounge at exactly 1:45 a.m. Id. at 41, 403 S.E.2d at 113. Trial counsel testified that had Wilson been present in the Courtroom on the day of trial, he would have called him to testify. Id. He further conceded "that Wilson's testimony, placing Martinez at the lounge fifteen minutes prior to the conclusion of the rape, may have been important." Id. at 41, 403 S.E.2d at 113-14. Counsel "candidly admitted he was uncertain whether 'one more piece of evidence' may have made a difference in the verdict." Id. at 41, 403 S.E.2d at 114. The Court reversed because "by counsel's own admission, the testimony of Wilson may have made the difference in obtaining an acquittal." Id. Martinez was distinguished by the Court in Gantt v. State, 354 S.C. 183, 580 S.E.2d 133 (2003). In Gantt, counsel testified that though he failed to preserve the issue, he did not believe that the outcome of trial would have been different. In Martinez, however, trial counsel admitted the testimony of a potential witness could have made a difference. Here too, Howle indicated the testimony of Sibling 1 and Patrick would have helped. App. 562, l. 23 – 563, l. 2; App. 563, ll. 17-23.

More recently, in Rutland v. State, 415 S.C. 570, 785 S.E.2d 350 (2016), *rehearing denied* May 18, 2016, our Supreme Court held that the PCR court erred in finding trial counsel was not ineffective by failing to cross-examine the State's key witness, Kestner, as to her prior inconsistent statements that the victim was armed at the time of the shooting. In Rutland, the PCR judge found that trial counsel's performance was deficient but determined that Rutland had failed to prove he was prejudiced by the deficient performance. 415 S.C. at 575-76, 785 S.E.2d at 352. Though Kestner was not called to testify at the PCR hearing, her prior written statement was admitted, along with affidavits of individuals attesting to hearing Kestner say that the victim was armed. Id. at 577, 785 S.E.2d at 353. Had Kestner denied her prior statements, trial counsel could have impeached Kestner with the written statement or news article in which she was quoted as saying the victim was armed, which would have affected her credibility. Id. at 577-78, 785 S.E.2d at 353-54. As further evidence of prejudice, our Supreme Court looked at the solicitor's arguments, which relied on Kestner's testimony, and the jury's questions and difficulty in reaching a unanimous verdict. Id. at 578-79, 785 S.E.2d at 354.

The deliberations in this case were just under one and a half hours. App. 450, l. 17; App. 452, ll. 24-25. Interestingly though, the jury did send out one question. It said: "A juror would like to see the photo of the bathroom." The judge told the jurors that "what they were permitted to consider as far as tangible exhibits were the exhibits that had been introduced." App. 451, l. 23 – 452, l. 13. The photograph of the bathroom, which was not admitted into evidence, was referenced during the solicitor's cross-examination of Putnam. State's Exhibit 15, which was admitted into evidence, was a photograph of a another bathroom in the home. The bathroom where Putnam laid Decedent just prior to his becoming unresponsive was located off of the hallway. The solicitor showed a photograph of that hall bathroom to Putnam, though it was not marked for identification

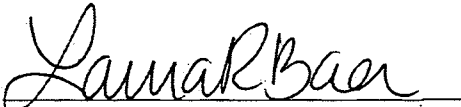
or admitted into evidence. Putnam pointed out where she had laid Decedent and where she had laid his “jammies” in the bathroom. App. 383, l. 19 – 385, l. 6; App. 398, l. 14 – 399, l. 19. Trial counsel did not ask any questions or attempt to admit the photograph on redirect. App. 399, ll. 21-22. The implication of the juror’s question was that they were looking for physical evidence that was consistent with Putnam’s testimony that she was getting ready to bathe Decedent when she returned to find him unresponsive.

“[T]he Constitution guarantees criminal defendants “a meaningful opportunity to present a complete defense.” Crane v. Kentucky, 476 U.S. 683, 690, 106 S.Ct. 2142, 2146 (1986). This Court agreed that trial counsel was deficient in failing to secure the presence of the Siblings and Patrick to testify at trial. The evidence presented, which included the trial transcript and the testimony at the PCR hearing, were also sufficient to support a finding of prejudice under the “reasonable probability” standard set forth in Strickland. The PCR court erred in finding otherwise. Therefore, the Putnam is entitled to post-conviction relief.

CONCLUSION

For the reasons set forth herein, Appellant Martina Putnam respectfully requests that the Opinion of the Court of Appeals be withdrawn and that this Court reverse her conviction.

Respectfully submitted,


Laura R. Baer
Appellate Defender

This 23rd day of June, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

MARTINA R. PUTNAM,

PETITIONER,

V.

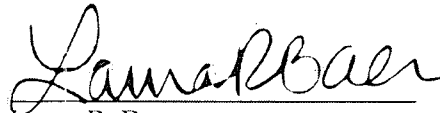
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212396

CERTIFICATE OF SERVICE

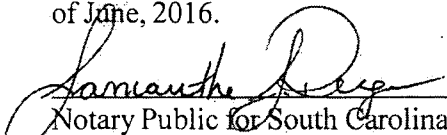
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Julie Coleman, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Martina Putnam, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, on this 23rd day of June, 2016.



Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 23rd day
of June, 2016.



(L.S.)
Notary Public for South Carolina

My Commission Expires: April 27, 2026

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable George C. James, Jr., Trial Judge
The Honorable William Jeffrey Young, Post-Conviction Relief Judge

2009-CP-43-2055
Appellate Case No. 2012-212396

Martina R. Putnam, Petitioner,

v.

State of South Carolina, Respondent.

RETURN TO PETITION FOR REHEARING

On June 8, 2016, this Court issued an opinion in this case in which it affirmed the post-conviction relief (PCR) judge's order dismissing the underlying PCR matter. Petitioner submitted a petition for rehearing dated June 23, 2016. This Court did not misapprehend or overlook relevant facts of this case and the applicable law. Accordingly, pursuant to Rule 221(a), SCACR, the Court should deny the petition for rehearing.

I.

Petitioner was convicted of homicide by child abuse and sentenced to twenty-five years imprisonment. This Court affirmed his convictions and sentences. State v. Putnam, Op. No. 2011-UP-526 (S.C. Ct. App. filed December 2, 2011). The remittitur

was issued on December 22, 2011.

Petitioner filed a PCR application on September 8, 2009 and a hearing was held on March 22, 2012. The Honorable William Jeffrey Young denied the application in an order dated May 16, 2012. Petitioner filed for Writ of Certiorari on February 27, 2013. Respondent filed its Return to Petition for Writ of Certiorari on May 14, 2013. On May 21, 2014, this Court of Appeals granted Certiorari. This Court affirmed the denial of the PCR application by Order filed June 8, 2016.

II.

In its opinion, this Court found Petitioner "failed to show she was prejudiced by trial counsel's failure to subpoena [the husband] to testify at trial." This Court found that "evidence supports the PCR court's finding that [Petitioner] did not establish prejudice from trial counsel's failure to secure the Children's attendance at trial. Although [Petitioner] asserted the Children's testimony 'may have shown some sort of information that may have helped in some way' and may have provided the jury with a better understanding of 'what was actually going on in the house at the time,' that testimony was speculative and therefore insufficient to establish prejudice."

III.

Petitioner now argues this Court erred in finding that the evidence presented failed to show prejudice to Petitioner's case. Petitioner also argues "this Court focused only on the evidence presented at the PCR hearing and overlooked the proffers and arguments contained in the trial transcript." Petitioner's arguments are without merit.

IV.

This Court properly found Petitioner failed to meet her burden of proving she was prejudiced as a result of how trial counsel failed to call her husband and children as witnesses at trial. Prejudice from trial counsel's failure to interview or call witness cannot be shown where the witnesses do not testify at the PCR hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). Petitioner must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rule of evidence at the PCR hearing in order to establish prejudice from the witness's failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Based on the foregoing, Petitioner can show no prejudice as she did not present any testimony from either the husband, or the children, boy 1 or boy 2.

Additionally, Petitioner argument that she was unable to present a third party guilt defense due to Counsel's failure to secure husband, boy 1 or boy 2's presence for trial is without merit. In determining the relevancy of evidence, "the trial court has broad discretion...and its decision to admit or exclude evidence will not be reversed on appeal absent an abuse of the discretion and a showing of prejudice." State v. Cope, 654 S.E.2d 177, 183 (S.C. App. 2009). Evidence of another's guilt must raise a reasonable inference or presumption as to his own innocence, and evidence that only casts a bare suspicion on another is not admissible. State v. Gregory, 198 S.C. 98, 104-05, 16 S.E.2d 532, 534-45 (1941). Additionally, evidence of remote acts, disconnected and outside the crime itself, cannot be separately proved to show another person was the guilty party. State v. Cooper, 334 S.C. 540, 549, 514 S.E.2d 584, 589 (1999).

Furthermore, as explained in the Brief of Respondent, Counsel was able to

successfully proffer testimony from various witnesses regarding husband, boy 1 and boy 2's tendencies to commit violence. See Brief of Respondent, page 9.

Based on the foregoing, Petitioner can show no prejudice as she failed to present an expert witness during the PCR.

V.

WHEREFORE, as this Court properly affirmed the PCR judge's decision to deny relief in this case, it is respectfully requested that the petition for rehearing in this case be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE A. COLEMAN
Assistant Attorney General
S.C. Bar # 102214

Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

July 25, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Sumter County

The Honorable George C. James, Jr. Trial Judge
The Honorable William Jeffery Young, Post-Conviction Relief Judge

MARTINA R. PUTNAM, #334375

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

PROOF OF SERVICE

I, CHANDRA E. YOUNG, certify that I have served the Return to Petition for Rehearing on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Laura R. Baer, Esquire
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 25th day of July 2016.


CHANDRA E. YOUNG
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
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The South Carolina Court of Appeals

Martina R. Putnam, Petitioner,

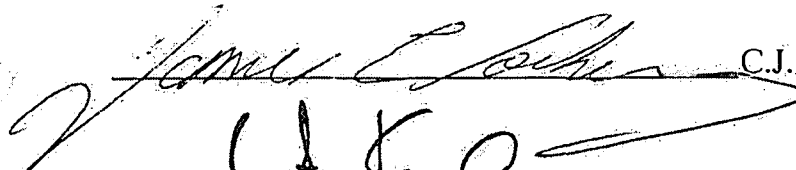
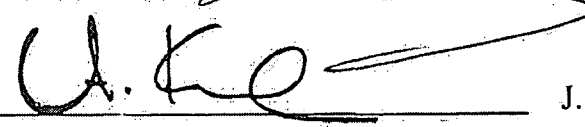
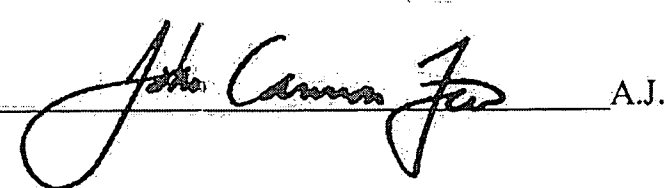
v.

State of South Carolina, Respondent.

Appellate Case No. 2012-212396

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 A.J.

Columbia, South Carolina

cc:
Benjamin John Tripp, Esquire
Alan McCrory Wilson, Esquire
Julia Amanda Coleman, Esquire
Laura Ruth Baer, Esquire

FILED

August 17, 2016