

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable G. Thomas Cooper, Circuit Court Judge

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S.C. SUPREME COURT

TAURUS WATTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000500

PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT 3

CONCLUSION 11

ISSUE PRESENTED

Did the PCR judge err in refusing to find trial counsel ineffective in failing to call former Deputy Ray Weldon Gregory as a defense witness to establish that the State's sole eye-witness, Ricky Jacobs, initially did not identify Petitioner or his co-defendant by name despite knowing both of them, and described the suspects involved in the shooting as one black male with dreadlocks and one black male with a close cut haircut and a striped shirt driving a white SUV, possibly a Nissan with a black stripe down the side, descriptions that matched two other individuals who were stopped shortly after the shooting took place driving a white Isuzu Rodeo SUV in which ammunition consistent with the shell casings found at the scene of the shooting were found?

STATEMENT

In August of 2007, the Richland County Grand Jury indicted Petitioner Watts for murder. On October 5, 2009, Watts and his co-defendant, Tremain Wray, proceeded to jury trial before the Honorable Michelle J. Childs. Theresa N. Johns represented Petitioner at trial. Vanessa C. Shipley and Joanna A. McDuffie prosecuted the case. On October 15, 2009, the jury returned verdicts of guilty for both defendants. Judge Childs sentenced Watts to a thirty five (35) year sentence and sentenced Wray to a forty (40) year sentence. A timely notice of intent to appeal was filed and the direct appeal perfected. On June 1, 2012, the South Carolina Court of Appeals affirmed the sentence and conviction. State v. Watts, No. 2012-UP-381 (S.C.Ct.App. June 20, 2012).

On May 30, 2013, Petitioner filed an application for post- conviction relief (PCR). The State filed a return on January 9, 2014. On December 10, 2015, an evidentiary PCR hearing was held before the Honorable G. Thomas Cooper, Jr. Anna R. Good represented Petitioner at the PCR hearing. J. Clayton Mitchell represented the State. In a written order signed March 3, 2016, Judge Cooper denied relief and dismissed the application. A timely notice of intent to appeal was served on March 9, 2016. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred in refusing to find trial counsel ineffective in failing to call former Deputy Ray Weldon Gregory as a defense witness to establish that the State's sole eyewitness, Ricky Jacobs, initially did not identify Petitioner or his co-defendant by name despite knowing both of them, and described the suspects involved in the shooting as one black male with dreadlocks and one black male with a close cut haircut and a striped shirt driving a white SUV, possibly a Nissan with a black stripe down the side, descriptions that matched two other individuals who were stopped shortly after the shooting took place driving a white Isuzu Rodeo SUV in which ammunition consistent with the shell casings found at the scene of the shooting were found.

In the early morning hours of June 30, 2007, Demuria Hank Johnson was shot in the leg outside of the H&J Club, a night club in Northeast Columbia. Johnson died as a result of the gunshot wound. Johnson went to the club with Travis Malone, James Lamont Goodwin, Stephanie Boston, Verda Roberts, and Charlie Bates. The group arrived at the club between 1:00 AM and 2:00 AM. (App. p. 242, lines 20-25). At some point a fight broke out inside the club after two men approached Charlie Bates as he was on the dance floor with Jalicca Lisa Johnson. (App. p. 311, lines 14-17). The owner of the club, Ricky Jacobs, testified that he decided to close the club when the fight broke out. (App. pp. 513-515).

Lisa Johnson testified that on June 30, 2007, she arrived at the club at approximately 3:00 AM. (App. p. 409, lines 9-16). Johnson knew Petitioner because he is her nephew's uncle. (App. p.405, lines 21 – p. 406, lines 1-6). Johnson testified that she was approached by an unknown man who made advances toward her. She testified that this unknown man was named "T-something." (App. p. 413, lines 5-20).. Johnson confirmed that the man named "T-something" was **not** Petitioner Taurus Watts. (App. p. 444, line 25 – p. 445, lines 1-5). She testified that she did not continue talking to "T-something," but went to the dance floor. At the dance floor, she was approached by Charlie Bates. Bates and Johnson had dated on and off again for a couple of years.

(App. p. 410, line 17 – p. 411, lines 1-3). “T-something” approached her again. At that point “T-something” and Bates had a disagreement. Bates threw a drink on “T-something” and a fight erupted. (App. pp. 414-416). Lisa Johnson testified that many people became involved in the fight, including Brian Johnson. (App. p. 416, lines 16-23). According to Lisa Johnson, “T-something” was Brian Johnson’s homeboy. (App. p. 418, lines 7-13).

Charlie Bates testified that he was on the dance floor with Lisa Johnson when two males approached him and got in his face. (App. p. 314, lines 14-25). Bates testified that his uncle, Travis Malone, Hank and Lamont intervened and then “[e]verything went crazy.” (App. p. 315, lines 1-5). Although Bates denied throwing a drink, (App. p. 329, lines 16-17), his aunt, Stephanie Boston, testified that Bates threw a drink. (App. p. 282, line 22 – p. 283, lines 1-2). Verda Roberts is Bates’ mom and Travis Malone is his uncle. Hank Johnson and Lamont Goodwin were friends of Malone.

Brian Johnson testified that he got involved in the altercation at the H&J Club on June 30, 2007, after somebody threw a drink in his friend, Darius White’s face. (App. p. 486, line 23 – p. 487, lines 1-17). Johnson testified that at some point during the fight inside the club somebody yelled out something about a gun. (App. pp. 493-495). The club’s owner, Ricky Jacobs confirmed that he saw a man he did not know backing out of the club with a gun in his hand. (App. p. 554, lines 1-12).

Jacobs was the State’s key witness and the sole witness to the shooting that took place outside of the club. Jacobs testified that after the fight started, he stepped outside and saw Petitioner and Wray approaching the club. He told the two men that he was closing the club. (App. p. 517, line 1 – p. 518, lines 1-17). There was no evidence to establish that Petitioner and Wray were involved in the fight inside the club. Jacobs testified that the two men returned to their car, a tan

Suburban. (App. p. 519, lines 12-18). The co-defendant, Wray, got into the driver's side and Petitioner got into the passenger side. (App. p. 519, line 19 – p. 520, lines 1-3). According to Jacobs, Petitioner was holding a gun. (App. p. 520, lines 4-10). Jacobs testified that the tan Suburban drove towards Farrow Road. (App. p. 522, lines 13-22). Then, according to Jacobs, shots were fired from the driver's side of the tan Suburban towards the club. (App. p. 526, lines 2-13). Jacobs testified that shots were also fired from a white Isuzu Rodeo as it was leaving the club. (App. pp. 526-530).

The first officer on the scene after the shooting was Ray Weldon Gregory with the Richland County Sheriff's Department. (App. p. 1780, lines 18-25). Deputy Gregory was not called as a witness a trial. At the PCR hearing Deputy Gregory testified that he spoke with the owner of the club, Ricky Jacobs, and prepared a report. (App. p. 1781, lines 6-18). The report was entered in evidence as Applicant Exhibit #1. (App. p. 1781, lines 19-25; pp. 1844-1845). Deputy Gregory testified that Jacobs told him that the vehicle involved with the shooting was a white Nissan with black stripes down the side. (App. p. 1782, line 23 – p. 1783, lines 1-4). The report lists suspect number one as an unknown black male with dreadlocks. (App. p. 1844). The report lists suspect number two as an unknown black male with close cut hair cut with striped shirt. (App. p. 1845). Jacobs told Deputy Gregory that suspect number two fired over the top of the vehicle. (App. p. 1844). When asked if Jacobs had given the deputy the names of the suspects, would the deputy have listed the names on the report, Deputy Weldon answered, "Probably." (App. p. 1782, lines 20-22). Both suspects were listed as unknown.

At trial, however, Jacobs admitted that he knew both Petitioner and co-defendant Wray. Jacobs admitted that he has known Petitioner for twenty years and Petitioner's mom worked for Jacobs. (App. p. 548, lines 13-16; p. 568, line 11 – p. 569, lines 1-14). Jacobs admitted that he has

known co-defendant Wray for several years, knew his uncles and knew where he lived. (App. p. 614, lines 14-25).

At trial Investigator McRae with the Richland county Sheriff's Department testified that Jacobs gave him the first name Taurus and a description at the scene. (App. p. 1484, lines 4-15). In a later phone call to the investigator Jacobs provided the last name as Watts or Watson. (App. p. 1509, line 19 – p. 1510, lines 1-10). In this same phone call Jacobs provided more information on the driver but claimed that he only knew the driver's first name as Tremaine. (App. p. 1511, lines 13-16).

Shortly after the shooting, Deputy Galinski stopped a white Isuzu Rodeo matching the vehicle identified by Jacobs. (App. p. 683, line 3 – p. 684, lines 1-19). Jacobs initially told Deputy Gregory that the vehicle was possibly a white Nissan. Deputy Galinski testified that a Nissan Pathfinder and an Isuzu Rodeo are very similar in model and style. (App. p. 695, lines 2-9). The driver of the Isuzu Rodeo was identified as Luther Centural Landrum, Jr. (App. p. 686, lines 7-10; p. 699, lines 23-24). The passenger was identified as Earl Jerome Green. (App. p. 686, lines 14-17; p. 700, lines 3-7). The driver and passenger matched the description that Jacobs gave to Deputy Gregory. They were two black males and the driver had dreads and the passenger had short hair and a yellow shirt with stripes. (App. p. 685, lines 5-12). Deputy Galinski found one round of 38 caliber ammunition and some rounds of 9 millimeter ammunition in the white Rodeo. (App. p. 687, lines 18-23.). At the hospital another officer recovered a fired 9 millimeter bullet from the pants of the deceased. (App. p. 734, line 3 –p. 735, lines 1-12; App. p. 1433, lines 4-6; p. 1434, lines 5-10). Investigator Collins, an expert in firearms and tool mark examination, testified that the bullet recovered from the hospital and two fired bullet jackets recovered at the scene had all been fired by the same gun. (App. p. 1435, lines 13-17). Investigator Collins also examined ten fired 9

millimeter Luger caliber cartridge cases recovered from the scene of the shooting. (App. p. 1433, lines 6-7). Investigator Collins testified that the ten cartridge cases were fired by one gun but he could not say that the same gun fired the cartridge cases and the three recovered bullets because no firearm was submitted for comparison. (App. p. 1448, lines 4-17).

Investigator Bouknight conducted GSR tests on the Isuzu Rodeo. The investigator, however, left the GSR kit in his locker for 7 months and when it was tested, it tested negative for gunshot residue. (App. pp. 755-773; App. p. 1365, lines 12 – p. 1366, lines 1-6). Five hours following the shooting, GSR tests were conducted on the hands of Landrum and Greene, the driver and passenger of the white Isuzu Rodeo. (App. p. 1398, line 22 – p. 1399, lines 1-7). When Deputy Galinski initially stopped the white Isuzu Rodeo, he did not have paper bags to place on the hands of the stopped subjects to preserve any possible gun shot residue. (App. p. 694, lines 6-22). Deputy Galinski was instructed to simply make sure the subjects did not wash their hands. (App. p. 694, lines 8-13). Landrum and Greene were finally swabbed for GSR and when the results were examined, not surprisingly, both tested negative for gunshot residue. (App. pp. 1327-1331). The State's GSR expert conceded that the fact that the subject's hands were not bagged could effect the reliability of the test. (App. p. 1397, lines 1-21). The occupants of the white Isuzu Rodeo were not charged in connection with the shooting. A search warrant was executed on the tan Suburban, and a GSR kit obtained. This test revealed the existence of 16 rounded lead particles in the interior of the Suburban. No weapons or ammunition were located in the Suburban.

During the PCR hearing trial counsel admitted that the main strategy was to try and discredit Jacobs. (App. p. 1804, lines 1-17). Jacobs claimed that the only person he talked with on the night of the shooting was Investigator McRae. (App. p. 602, lines 4-6). Trial counsel did not attempt to impeach Jacobs with Deputy Gregory's report or ask about statements Jacobs

made to Deputy Gregory. Trial counsel failed to call Deputy Gregory as a witness to establish critical inconsistencies between Jacobs' trial testimony and his initial report to Deputy Gregory. Deputy Gregory's testimony would have established that Jacobs initially did not identify Petitioner or his co-defendant by name despite knowing both of them. Deputy Gregory's report would have established that Jacobs initially stated that suspect number two fired over the top of the white SUV toward the club. (App. p. 1844). In contrast, at trial Jacobs claimed that the passenger in the white Isuzu Rodeo sat up on the door of the car and only shot one time up in the air. (App. p. 528, line 24 – p. 529, line 1). There is no mention of a second vehicle firing shots in Deputy Gregory's report.

Deputy Gregory's report would have established that Jacobs initially described the suspects involved in the shooting as one unknown black male with dreadlocks and one black male with a close cut haircut and a striped shirt driving a white SUV, possibly a Nissan with a black stripe down the side. In contrast, at trial Jacobs testified that Petitioner and co-defendant Wray were in a tan Suburban. (App. p. 519, line 12 – p. 520, lines 1-3). Jacobs testified that Petitioner was wearing a white t-shirt and wore his hair in short dreads or twists. (App. p. 524, line 22 – p. 525, lines 1-16). Jacobs testified that the co-defendant was wearing a white T-shirt also. (App. p. 525, lines 17-21).

During the PCR hearing trial counsel admitted that she thought the report made by Deputy Gregory had been made by Deputy Galinski. (App. p. 1824, lines 5-12). Trial counsel testified that she used the report mainly because it indicated that the suspect had dreadlocks. (App. p. 1824, lines 1-4). During the identification hearing at trial Petitioner testified that at the time of the incident he wore his hair in a low afro. (App. p. 142, lines 9-21). In the order of dismissal the PCR judge wrote:

After reviewing the entire record and testimony presented, this Court finds Applicant has failed to establish any deficiency of Counsel in failing to call Gregory. Counsel testified law enforcement officers are not usually helpful to defendants based on her experience. This Court finds Counsel was able to adequately cross examine Jacobs without calling Gregory as a witness. This Court finds Jacobs was thoroughly impeached during his testimony by Counsel and Swerling. This Court finds that Gregory's testimony added very little to the overall presentation and likely would have had no impact on the result of the proceeding. As discussed above, Counsel challenged the State's eyewitness on virtually every aspect of his recollection. This court is not convinced that testimony from Gregory would have had any impact on the jury's view of Jacobs or his credibility, much less the result of Applicant's trial. This allegation is denied and dismissed.

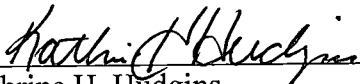
(App. p. 1839). The PCR judge erred.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

Trial counsel was ineffective in failing to call Deputy Gregory as a witness to establish that the State's sole eye-witness, Ricky Jacobs, initially did not identify Petitioner or his co-defendant by name despite knowing both of them, and described the suspects involved in the shooting as one black male with dreadlocks and one black male with a close cut haircut and a striped shirt driving a white SUV, possibly a Nissan with a black stripe down the side, descriptions that matched two other individuals who were stopped shortly after the shooting took place driving a white Isuzu Rodeo SUV in which ammunition consistent with the shell casings found at the scene of the shooting were found. There is a reasonable probability that, but for counsel deficient performance, the result of the proceeding would have been different. While counsel challenged statements Jacobs made to Investigator McRae, counsel failed to challenge the critical inconsistencies between the initial statement given to Deputy Gregory and Jacobs' trial testimony. Jacobs' initial statement to Deputy Gregory presents an even stronger third party guilt defense than the third party guilt evidence trial counsel failed to raise in the case of Miller v. State, 379 S.C. 108, 665 S.E.2d 596 (2008). As in Miller there is no probative evidence to support the PCR court's decision to dismiss Petitioner Watts' application.

CONCLUSION

Based on the above argument, the petition for writ of certiorari should be granted to allow further briefing on the issue.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of November, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Richland County

Honorable G. Thomas Cooper, Circuit Court Judge

TAURUS WATTS,

PETITIONER

V.

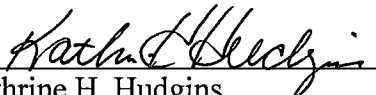
STATE OF SOUTH CAROLINA,

RESPONDENT


APPELLATE CASE NO. 2016-000500

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CERTIFICATE OF SERVICE
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The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Jessica Kinard, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Taurus Watts, # 324820, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 17th day of November, 2016.


Kathrine H. Hudgins
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 17th day of November, 2016.

 (L.S)
Notary Public for South Carolina
My Commission Expires: March 1, 2026