

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Certiorari to Aiken County

Honorable Edgar W. Dickson, Circuit Court Judge

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TEVON MICHAEL JACKSON,

S.C. SUPREME COURT

RESPONDENT/PETITIONER

V.

STATE OF SOUTH CAROLINA,

PETITIONER/RESPONDENT

APPELLATE CASE NO. 2017-000790

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

1.

Did the post-conviction relief judge err by finding the state did not commit prosecutorial misconduct when it failed to disclose evidence favorable to the defense pursuant to Brady v. Maryland, 373 U.S. 83 (1963) that the solicitor's office received from Kalyn Floyd, specifically that she did not give Joseph Dicks a .38 caliber firearm, suspected to be the murder weapon, at the direction of Respondent/Petitioner, as Dicks claimed, which would have impeached Dicks, a critical state witness, and where there is a reasonable probability that its disclosure would have produced a different result at trial?

2.

Whether Respondent/Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to object to the admission of the decedent's cellular telephone records, marked as State's Exhibit No. 54, or the testimony of the records custodian who laid the foundation for their admission since there was no evidence this witness was qualified to testify about the records and where he gave an inconsistent and contradictory explanation of the data contained in the records?

STATEMENT OF THE CASE

The state alleged at trial that Respondent/Petitioner Tevon Michael Jackson, then seventeen years old, shot and killed Marcus Finklin during the early morning hours of June 4, 2008 in Aiken, South Carolina. The state's case against Jackson relied almost entirely upon the testimony of Joseph Dicks and Jose Serrano, who claimed Jackson confessed to murdering the decedent. Their credibility was critical to the prosecution. Dicks and Serrano, who were both suspects in the murder, repeatedly changed and added to their account of what occurred up until Jackson's trial.

An Aiken County Grand Jury indicted Jackson on January 29, 2009 for murder and possession of a firearm during the commission of a violent crime. App. 1295-1298. His case was ultimately called to trial on February 22, 2011 before the Honorable Doyet A. Early, III, and a jury. App. 3. Chief Solicitor John William Weeks and Assistant Solicitor Elizabeth Young represented the state, and Wallis Alves represented Jackson. App. 3. After a five day trial, the jury found Jackson guilty. App. 739, ll. 5-19. Judge Early sentenced him to thirty years for murder and five years concurrent for the weapons offense. App. 781, ll. 6-11.

On November 27, 2013, after his direct appeal was dismissed pursuant to Anders v. California, 386 U.S. 738 (1967), Jackson filed an application for post-conviction relief (PCR). App. 805-810. The state filed a return to this application dated May 13, 2014. App. 811-27. On August 13, 2015, Jackson filed his first amended application. App. 826-828. On August 31, 2015, Jackson filed a second amended application raising the claims argued in this petition. App. 829-830.

An evidentiary hearing was convened on September 10, 2015 before the Honorable Edgar W. Dickson. App. 831. Assistant Attorney General Daniel Gourley represented the state,

and Tricia Blanchette represented Jackson. App. 831. Jackson called eleven witnesses during his presentation of evidence and submitted seventeen exhibits. App. 832-833. At the conclusion of the hearing, Judge Dickson took the matter under advisement. App. 1212.

On September 12, 2016, Jackson filed a memorandum in support of application for post-conviction relief. App. 1213-1240. Also on September 12, 2016, the state filed a memorandum in support of denying post-conviction relief. App. 1241-1256. By order filed January 13, 2017, Judge Dickson granted Jackson relief. App. 1257-1281. He found trial counsel was ineffective for failing to properly investigate and prepare for trial. Due to counsel's lack of investigation and preparation, the judge found she failed to called numerous witnesses to testify at trial and utilize evidence that would have refuted the state's timeline of events and theory of the case. App. 1260. However, Judge Dickson denied Jackson relief on his remaining allegations, including the two claims argued in this petition. App. 1257-1281.

On February 1, 2017, the state filed a motion to reconsider pursuant to Rule 59(e), SCRCF. App. 1282-1292. Judge Dickson denied the motion to reconsider by order dated March 17, 2017. App. 1293. A corrected order was filed March 27, 2017. App. 1294. The state and Jackson both filed a timely notice of appeal.

Because the post-conviction relief judge erred by finding the state did not commit prosecutorial misconduct when it failed to disclose evidence favorable to the defense pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and that counsel was not ineffective for failing to object to the testimony of William Hare and the admission of the decedent's telephone records, this petition for writ of certiorari follows.

ARGUMENT

1.

The post-conviction relief judge erred by finding the state did not commit prosecutorial misconduct when it failed to disclose evidence favorable to the defense pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) that the solicitor's office received from Kalyn Floyd, specifically that she did not give Joseph Dicks a .38 caliber firearm, suspected to be the murder weapon, at the direction of Respondent/Petitioner, as Dicks claimed, which would have impeached Dicks, a critical state witness, and where there is a reasonable probability that its disclosure would have produced a different result at trial.

Relevant Facts

On or about the Monday before trial, the prosecution met with Joseph Dicks and Jose Serrano *together* in preparation for trial. Dicks claimed for the first time during this interview that at the direction of Jackson, Kalyn Floyd brought a .38 caliber gun, which matched the caliber of the murder weapon, to Dicks' house on the morning of the murder, and that Dicks in turned gave the firearm to Jackson. Based on Dicks' allegation, the solicitor or his investigator met with Kalyn Floyd on or about February 24, 2011, after the start of trial. Floyd denied bringing a gun to Dicks on June 4, 2008 and told the solicitor that she had been in Augusta, Georgia that whole week. Despite discovering this evidence, clearly favorable to the defense in it that could have been used to impeach Dicks, the solicitor failed to turn it over to Respondent/Petitioner Jackson or his counsel.

On the second day of Jackson's trial, Joseph Dicks testified that sometime on the night of June 3, 2008 into the early morning hours of June 4, 2008, the morning the decedent was killed, Kalyn Floyd, at the direction of Jackson, gave Dicks a .38 caliber revolver. Shortly thereafter,

Dicks gave the firearm to Jackson. App. 235, l. 20 – 237, l. 20. This allegation was extremely significant because, while the murder weapon was never found, David Black, who was qualified as an expert in firearm analysis and identification, testified that the projectile recovered from the decedent's body during autopsy was "a fired .38 caliber jacketed hollow point bullet." App. 480, l. 17 – 482, l. 23. Black also "determined, through examination [of] the weight and characteristics, that the bullet is loaded in some .38 Special and .357 magnum caliber cartridges." App. 484, ll. 1-4.

Specifically, Dicks claimed during direct examination by the solicitor:

Q: Okay. What happened when he [Jackson] left?

A: Nothing. He left and one of his friends came through and dropped something off to me.

Q: And what did they drop off to you?

A: A .38 caliber gun.

Q: What kind of gun was it?

A: A .38 small. It was like a little small pistol.

Q: Was it a revolver or an automatic?

A: It was a revolver thing with the little spinning, spinning thing on it?

Q: Was it loaded?

A: I think so, yes, sir.

Q: And what was his friend - - who was his friend that did that?

A: A person named Kayla.

Q: What was her name?

A: Kayla.

Q: Describe her.

A: You know like a regular dude, girl. I don't know which one you call her. Like a man/female or a dike or a stud or whatever you want to call it.

Q: You thought she was gay?

A: Yes, sir.

Q: All right. And did she live around there? Did you know her?

A: No, sir.

Q: Okay. Had you seen her before that day?

A: No sir, I seen her occasionally with Tevon [Jackson], you know, but I didn't know her.

Q: All right. What did she deliver to you?

A: A pistol.

Q: And that was the .38 you just mentioned?

A: Yes, sir.

Q: Was she dressed like a man?

A: Yes, sir.

Q: All right. What happened after that with you and Tevon [Jackson] after you got a visit from her?

A: I met back up with him.

Q: Where at?

A: On the same, on Nondrum [Street] at my house, and I gave it to him.

Q: Why did you give it to him?

A: Because it was meant for him.

Q: All right. How do you know it was meant for him?

A: Because he was the reason why I picked it up from her.

Q: Okay. Did he call you or something and tell you to get it?

A: Yes, sir.

Q: How did he do that?

A: He called me on my phone, on my mother's phone.

App. 235, l. 20 – 237, l. 20.

On cross-examination, Dicks admitted that, despite multiple interviews, he never mentioned anything about Kayla bringing him a .38 caliber revolver to law enforcement. He said he first told the solicitor about Kayla the Monday before trial, which would have been February 14, 2011. App. 262, l. 9 – 263, l. 19.

During the evidentiary hearing, Kalyn Floyd testified that she “was subpoenaed to go talk to the solicitor. And I went to go talk to him. He asked me what happened because Meat Man [Joseph Dicks] said I brought Tevon [Jackson] the murder gun but I was actually out of town that whole week.” App. 842, l. 18 – 843, l. 3. Floyd said she received the subpoena on the first day of Jackson's trial and met with the solicitor the following day. App. 848, ll. 13-24. The solicitor told her Dicks alleged she gave Jackson a gun on the morning of the murder. App. 847, ll. 21-23. Floyd told the solicitor that she had been in Augusta, Georgia that whole week and did not bring Jackson a gun. App. 847, ll. 12-16. She also gave the solicitor a signed written statement indicating that she did not give Jackson a firearm that morning. App. 846, l. 23 – 847, l. 11.

Significantly, the PCR judge found Kalyn Floyd's testimony credible. App. 1263.

During her testimony, trial counsel, Wallis Alves, remembered hearing the name Kayla prior to trial. App. 215, ll. 18-25. Upon reviewing at her notes, counsel testified:

On February 22nd [the first day of trial] at 11:30 I met with Solicitor Bill Weeks, Solicitor Beth Ann Young and Investigator Norwood Bodie. And they discussed new information that they had gotten from Joseph Dicks and Jose Serrano when they met with them *the week before*.

During that meeting and the solicitor, actually Solicitor Weeks approached me and told me that they wanted to meet with me to tell me about them. I took notes about what they told me. And I was specifically told that Tevon [Jackson] had gotten - - that Joseph Dicks said that Tevon called him on the phone, and specifically that Tevon had some stud coming to see Joseph [Dicks] who was bringing him a package. And when I asked them more details about what that meant by some stud, they told me it was a gay woman who dressed like a man named Kayla and they didn't have any further information about that person.

App. 1005, ll. 1-16 (emphasis added).

Trial counsel said the solicitor never disclosed to her that the state had investigated Kayla or "what if any information they found out about her last name and if she in fact had provided the murder weapon in this case." App. 1006, l. 19 – 1007, l. 11.

The assistant attorney general called Solicitor Weeks to the stand. When asked about Joseph Dicks, Weeks admitted Dicks constantly added to his statement and repeatedly changed his story of what occurred on the night of June 3, 2008 into the early morning hours of June 4, 2008. App. 1119, ll. 9-21. After which, the following testimony was elicited:

Q: And did that include naming Kayla Floyd as the person who he received the .38 caliber weapon from that he then gave to Tevon Jackson?

A: Yes. I don't know that that was a change. It might have been a change or it might have been an addition to, but to the best of my memory that was in pretrial preparation where Joseph [Dicks] told us that and so did Joey [Serrano].

Q: Okay.

A: It was a joint meeting really when both of them were there at the office at the same time.

Q: And did you disclose that information to Ms. Alves, his [Jackson's] public defender?

A: I can't swear I disclosed the indictment to her but I know I always do.

Q: Yes, sir.

A: Standard rule in my office is we give them everything. If a defense lawyer wants it - - if I would want it as a defense lawyer, they get it.

Q: Okay.

A: I certainly would not have withheld this Floyd woman's role in this from Ms. Alves. Now, do things come up right before court? Oh, yea. Because I'm pretty sure she was probably working, the Sunday night before court started Monday and I can assure you we were. But it wasn't a mystery. Once we knew about it we told her everything we knew. And we do that with all the witnesses. Before we have a major trial like this, Ms. Alves would come to our office, along with an investigator more than likely, and go through every single piece of paper in our file that isn't something that we would say is work product. In this case there were a number of witnesses. *There were a number of inconsistent witnesses.* It was like a parade for a couple of weeks trying to get people in and out to interview them. I cannot remember whether or not she talked about a particular witness.

App. 1119, l. 22 – 1121, l. 9 (emphasis added).

Weeks could not recall whether he ever met Floyd, but he admitted he had a note in his file dated February 24, 2011 indicating that his investigator interviewed her. App. 1121, ll. 11-18.

On cross-examination, Weeks admitted that Kalyn Floyd was never indicted for any role she may have played in the murder. As to why she was not charged, Weeks testified,

A: Because I didn't have a case against her for anything. On the information we had, you heard the information that we had and I would be the most neglectful prosecutor in the state if I had hauled out an arrest warrant for that woman who's never told me to this day whether she gave him [Jackson] the gun or didn't. I'm not sure what she said on the witness stand [during the evidentiary hearing], I wasn't in here. But [I] absolutely couldn't charge that woman [Kalyn Floyd] based on what we [knew] then and couldn't charge her on what I know today *because none of its very credible.*"

Q: And the information though was coming from your witness, Joseph Dicks.

A: Coming from Joseph Dicks. I called Joseph Dicks as a witness.

Q: And - - but you're saying the information that he have was not credible?

A: No, I didn't say that.

Q: Okay. Then could you please clarify what you meant by saying you couldn't charge her because the information was not credible?

A: *It was given three years later*, for one thing. And I never talked to Ms. Dicks - or Ms. Floyd, or never interviewed her to my knowledge. But if we did it was late in the game. *And I wasn't trying to put a gun in Ms. Floyd's hand. I was trying to put a gun in Tevon's hands.*

Q: But you elicited testimony on direct of Joseph Dicks that Kayla provided a .38 to him which was the specific caliber of the murder weapon in this case, and you went into detail with him about that. *So you submitted that information to the jury in this case to consider as part of the guilt or innocence of Tevon Jackson.*

A: I asked Mr. Dicks the questions that the record reflects.

App. 1129, l. 18 – 1131, l. 3 (emphasis added).

Discussion

Our judicial system relies upon the integrity of the participants. State v. Quattlebaum, 338 S.C. 441, 449, 527 S.E.2d 105, 109 (2000). In Berger v. United States, 295 U.S. 78, 88 (1935), the United States Supreme Court explained the importance of the prosecutor's role in the judicial process. The Court asserted:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Id.

Granting post-conviction relief based upon prosecutorial misconduct is commonly accepted in South Carolina. In Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999), this Court

addressed prosecutorial misconduct in the form of a violation pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and ultimately granted Gibson a new trial. In Gibson, the prosecution failed to disclose that the only witness who claimed to have seen Gibson point a pistol at the decedent and purposefully shoot him, was taken to the scene, and changed her account of what occurred. After Gibson pled guilty to voluntary manslaughter, this information was discovered during the course of a civil trial. In holding that the prosecution committed a Brady violation by not disclosing this evidence to Gibson, this Court reasoned:

The overriding theme of the Brady cases is the emphasis the [United States] Supreme Court has placed on the prosecutor's responsibility for fair play. In close cases, "the prudent prosecutor will resolve doubtful questions in favor of disclosure. This is as it should be. Such disclosures will serve to justify trust in the prosecutor as the representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done. And it will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations."

Gibson v. State, 334 S.C. at 526, 514 S.E.2d at 325 (quoting Kyles v. Whitley, 514 U.S. at 438-440).

"A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Gibson, 334 S.C. at 524, 514 S.E.2d at 324 (citing Kyles v. Whitley, 514 U.S. 419, 432-442 (1995); Brady, 373 U.S. at 87; and State v. Von Dohlen, 322 S.C. 234, 241, 471 S.E.2d 689, 693 (1996)) (internal footnote omitted). "This rule applies to impeachment evidence as well as exculpatory evidence." Gibson, 334 S.C. at 524, 514 S.E.2d at 324 (citing United States v. Bagley, 473 U.S. 667, 676 (1985) and State v. Von Dohlen, 322 S.C. 234, 241, 471 S.E.2d 689, 693 (1996)) (internal quotation marks omitted).

The evidence presented during the evidentiary hearing clearly shows the solicitor or his representative met with Kalyn Floyd during Jackson's trial due to Joseph Dick's recent addition to his story, and learned Floyd could not have provided Jackson with the murder weapon as Joseph Dicks claimed since she was in Georgia on the morning of the murder. Despite the solicitor's claims that he errs on the side of disclosure, his testimony regarding his usual practices does not line up with what occurred in this case. It is undisputed that the state failed to disclose that it met with Kalyn Floyd during trial, questioned her about the allegations raised by Joseph Dicks, and finally the information it received from Floyd, which was favorable to Jackson and material to his guilt or innocence. Trial counsel made clear that if she would have known the state met with Floyd during trial and decided not to call her as a witness, she would have used this information at trial.

The solicitor admitted at the evidentiary hearing that the state chose not to call Floyd as a witness at trial, and ultimately not to charge her with a criminal offense, such as accessory before the fact, because the only evidence implicating her in any wrongdoing was not credible. This evidence consisted solely of the allegations raised by Joseph Dicks, whose credibility was essential to the state's case against Jackson. The solicitor's reasoning for not charging Floyd reeks of prosecutorial misconduct. Essentially, the solicitor testified under oath that he did not charge Floyd because he would be the "most neglectful prosecutor in the state" due to the timing of the change in Dicks' story and since Dicks' account implicating Floyd was not credible. Yet, the solicitor elicited that exact information from Dicks during Jackson's trial to place the same caliber gun as the murder weapon in the hand of Jackson to win at trial.

Respondent/Petitioner Jackson respectfully requests this Court reverse the ruling of the PCR judge and find the state committed prosecutorial misconduct in the form of a Brady

violation by failing to disclose the favorable evidence it learned from Kalyn Floyd during the course of trial, where there is a reasonable probability that this disclosure would have changed the outcome of trial since Joseph Dick's credibility was essential to the state's case.

2.

Respondent/Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to object to the admission of the decedent's cellular telephone records, marked as State's Exhibit No. 54, or the testimony of the records custodian who laid the foundation for their admission since there was no evidence this witness was qualified to testify about the records and where he gave an inconsistent and contradictory explanation of the data contained in the records.

Relevant Facts

During trial, the state called William Hare, an employee of the local Verizon Wireless store in Aiken, to introduce and interpret records from one of the five cellular telephones found in the possession of the decedent. Hare admitted he had worked for Verizon for only two years. App. 139, l. 22 – 140, l. 9. He testified that the company maintained records of “every call” for “every phone” in the ordinary course of business and that he refers to such records every day for “billing issues and such.” App. 140, ll. 10-20.

Hare identified the records from the decedent's telephone and maintained the records were “true and accurate.” App. 141, ll. 9-23. The records listed all the telephone calls made and received by the decedent's phone from 11:05 PM on June 3, 2008 until 8:25 AM on June 4, 2008. App. 142, ll. 10-15. Hare testified to the meaning of various codes that appeared in the records. He claimed that M.F. stands for “a call that went to voicemail,” M.T. stands for “an incoming call,” and M.O. stands for an “outgoing” call. App. 143, ll. 8-14. When asked if he could tell from the records whether an incoming call was answered, Hare replied that he could because an answered call listed a length of time, in seconds, and a call that went straight to voicemail unanswered was marked with the code M.F. App. 143, ll. 15-22.

However, a quick review of the records admitted as State's Exhibit No. 54 indicate that even calls that went straight to voicemail and are marked with the code M.F. still have a time in seconds listed beside the call, which is inconsistent with Hare's testimony. App. 1148. State's Exhibit No. 54 was marked as Applicant's Exhibit No. 7 at the evidentiary hearing. App. 1148.

During the evidentiary hearing, trial counsel admitted that she failed to consider whether Hare was qualified to interpret the telephone records as he did at trial, and that she did not object to his testimony. App. 998, l. 15 – 1000, l. 12. She also concluded that his interpretation of the records did not appear to make sense. App. 1000, l. 13 – 1001, l. 8. When trial counsel was shown photographs of screen shots of the call log from the decedent's cellular telephone that were a part of the Aiken County Sheriff's Office file, she noted the inconsistencies between Hare's interpretation of the records and what appeared on the screen shots. She admitted that she should have used the information contained in the screen shots, which she received from the state before trial, to impeach the testimony of William Hare. App. 1001, l. 13 – 1002, l. 9. Counsel also agreed that the state used the decedent's telephone records at trial to make their witnesses appear credible. Consequently, it would have damaged the state's case if she would have objected to the admission of the telephone records and William Hare's testimony. App. 1003, ll. 4-9. Moreover, trial counsel conceded that the benefit of the telephone records to the state was compounded when she argued during closing that "we can take the word of the cell phone records because a computer has nothing to gain or lose in this case." App. 1002, l. 19 – 1003, l. 3; See App. 688, ll. 16-21.

Peter Skidmore, a private investigator hired by Jackson, testified at the evidentiary hearing that he reviewed all the evidence at the Aiken County Sheriff's Office, including the photographs of the screen shots from the decedent's cellular telephone. He maintained that the

screen shots conflicted with William Hare's testimony at trial. Based on the screen shots, the decedent had two missed calls from Jackson at 2:17 AM on June 4, 2008. However, based on Hare's testimony before the jury, it appeared that the decedent had one missed call from Jackson at 2:17 AM and one that was actually received or answered by the decedent. App. 1062, l. 12 – 1066, l. 11.

Discussion

Trial counsel was ineffective for failing to object to the admission of the decedent's cellular telephone records, marked as State's Exhibit No. 54, and the testimony of William Hare, the supposed records custodian, who laid the foundation for their admission since there was no evidence Hare was qualified to testify about the records, and where he gave an inconsistent and contradictory explanation of the data contained in the records. Jackson was prejudiced by counsel's deficient performance because the state used the records at trial to bolster the credibility of its witnesses in a case where there was little to no physical or forensic evidence implicating Jackson.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). The United States Supreme Court has established a two pronged test to evaluate allegations of ineffective assistance of counsel. An applicant must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and the deficient performance prejudiced Petitioner. Strickland, 466 U.S. at 687. Under the second prong, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). "A reasonable probability is a probability sufficient to

undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

“Without a doubt, a criminal defense attorney has a duty to investigate, but this duty is limited to a reasonable investigation.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007) (quoting Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir. 1986)) (internal quotation marks and alterations omitted). “When evaluating the reasonableness of counsel’s conduct, ‘the court should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.’” Id. at 331, 642 S.E.2d at 597 (quoting Strickland, 466 U.S. at 690. “Moreover, while the scope of a reasonable investigation depends upon a number of issues, ‘at a minimum, counsel has the duty to interview potential witnesses and to make an *independent* investigation of the facts and circumstances of the case.’” Id. at 331-332, 642 S.E.2d at 597 (quoting Troedel v. Wainwright, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff’d*, 828 F.2d 670 (11th Cir.1987) (emphasis in original)).

Here, trial counsel admitted William Hare’s testimony was inaccurate and inconsistent with the photographs of the screen shots taken from the decedent’s cellular telephone, which were available for her to utilize at trial. Counsel failed to conduct a proper investigation into these records and employ them to Jackson’s benefit at trial. Counsel easily could have discredited Hare. Counsel also told the jury during her closing argument that she did not doubt the accuracy of the telephone records “because a computer has nothing to gain or lose” and that the state was using the records to bolster the credibility of its witnesses.

Moreover, counsel failed to object to Hare's qualification to testify as a records custodian. It was only through his testimony that the records were admitted under the business records exception to the hearsay rule. See Rule 803(6), SCRE. Hare was merely an employee from a local Verizon Wireless branch in Aiken and claimed he was familiar with the records because he dealt with them on a daily basis for "billing issues and such." Hare went so far as to claim the records were "true and accurate."

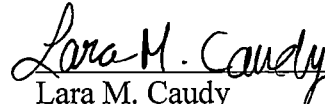
In a case where the credibility of the witnesses was critical, counsel's error was extremely prejudicial. Instead of mounting a viable defense to the telephone records and exposing the inaccuracies in Hare's testimony and interpretation of the records, counsel aided the state with her closing argument where she claimed she had no reason to doubt the accuracy of the records. Counsel further told the jury that the state admitted the records to bolster the credibility of its own witnesses. If counsel had properly objected to the admission of the records and the testimony of Hare, the outcome of Jackson's trial would have been different.

Respondent/Petitioner Jackson respectfully requests this Court grant certiorari and hold trial counsel was ineffective for failing to object to the admission of the decedent's telephone records marked as State's Exhibit No. 54 and the inaccurate testimony of William Hare, which was prejudicial to Jackson since the state used the records to bolster the credibility of its witnesses, which was crucial to the state's case against Jackson.

CONCLUSION

Respondent/Petitioner Tevon Michael Jackson respectfully requests this Court grant the petition for writ of certiorari and permit further briefing on the issues presented.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR
RESPONDENT/PETITIONER

This 30th day of October, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Aiken County

Honorable Edgar W. Dickson, Circuit Court Judge
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TEVON MICHAEL JACKSON,

RESPONDENT/PETITIONER

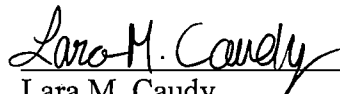
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STATE OF SOUTH CAROLINA,

PETITIONER/RESPONDENT

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CERTIFICATE OF SERVICE
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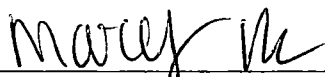
The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Joint Appendix in the above referenced case have been served upon Julie Coleman, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Joint Appendix have been served upon Tevon Michael Jackson, #344982, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 30th day of October, 2017.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 30th day of October, 2017.



(L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.