

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Edgefield County

Honorable Eugene C. Griffith, Circuit Court Judge

K. C. LANGFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001397

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

Did the PCR court err by not finding trial counsel ineffective for failing to conduct a sufficient investigation into Petitioner Langford's case by not interviewing the two alibi witnesses, Veronica and Vanessa Phillips, who testified at the PCR hearing that Petitioner Langford was with them during the incident on August 14, 2008?

STATEMENT

In 2008, there was a Chinese restaurant called the Hong Kong restaurant in Johnston. A Chinese couple and their adult son and his wife operated the restaurant. None of them spoke English. App. 173, ll. 23 – App. 174, ll. 10. Within walking distance of the restaurant were the housing authority apartments. App. 175, ll. 1 – 12.

Bryan Phillips lived in the apartments. His cousin, Alvin Phillips, stayed with Alvin's sister, Veronica, in her apartment in the housing authority frequently. K.C. Langford was dating Veronica Phillips who had a son by Langford. Langford stayed with Veronica often at her apartment. App. 177, ll. 21 – Ap. 179, ll. 13.

According to Alvin Philips in his confession to police, in the weeks before this incident on August 14, 2008, Bryan and Alvin watched the Chinese people when they left the restaurant in the evening, and observed that they carried a bag home every evening. Bryan and Alvin suspected that they were bringing home money in the bag. They began planning to rob the Chinese people of this money. When Langford heard of their robbery plan, he allegedly wanted to be part of it also. App. 179, ll.14 – App. 181, ll. 6.

Around 10:30 in the evening on August 14, 2008, Bryan and Alvin allegedly put ski masks on to cover their faces. Alvin retrieved a .40 caliber handgun that he had stolen from a vehicle and hid in the woods. Langford allegedly tied a black T-shirt around his face. Then the three went and waited in the dark in the backyard of the home belonging to the Chinese people. App. 180, ll. 2 – App. 181, ll. 23.

When the Chinese family arrived at home, the older father, Mr. Chen, went outside to water his garden and was stopped by the three robbers who asked for his money. Mr. Chen's son, Mr. Li, went to check on his father in the backyard and was accosted by the three men who asked

him for money. Because they did not understand English, the Chinese did not answer. Langford then allegedly went into the house and grabbed the money bag which contained about \$3000 from the restaurant. The three then ran. App. 175, ll. 25 – App. 176, ll. 10; App. 181, ll. 14 – App. 183, ll. 24.

A few days later, Investigator Roosevelt Young who worked in narcotics, received a tip from an informant, that he should talk to Alvin Phillips about the robbery. When Investigator Young talked to Alvin, Alvin confessed and told the entire story of Bryan Phillips and K.C. Langford being involved. Alvin was seventeen at the time. App. 184, ll. 18 – App. 185, ll. 16; App. 178, ll. 22 – 23.

In December 2008, the Edgefield County Grand jury indicted Petitioner Langford on the charge of criminal conspiracy. In May 2010, the Edgefield County Grand Jury indicted Langford for burglary first degree, armed robbery (AR), and kidnapping. App. 753- App. 754;

On September 6-9, 2010,¹ K.C. Langford, and his co-defendant Bryan Phillips, proceeded to trial before the Honorable William P. Keesley and a jury. Langford was represented by Mark R. Calhoun; and Phillips was represented by Randall Williams. The state was represented by Assistant Solicitor Ervin J. Maye. App. 1; App. 17.

Alvin Phillips, who was a senior at Strom Thurmond High School, at the time of this incident, testified that he and Bryan Phillips, who was his first cousin, watched this Chinese family come and go between their home and work at the restaurant. They allegedly thought the Chinese family might be taking their money from the restaurant home with them because they did not see the family take the money to the bank after work.

¹ The first trial transcript mistakenly had the trial date as January 23, 2011. The court reporter corrected this, and the record reflects the correction.

On August 14, 2008, Alvin and Bryan, decided to rob the Chinese family. Alvin got his gun from inside the house and met Bryan. K.C. Langford, who lived with Alvin's sister, decided to go with them. Alvin said they waited outside in the bushes. When the father came out, Alvin jumped on him and pointed the gun at him. They could not understand what the man said. Then the son came out. Langford went in the house, and then came out running down the street. Alvin and Bryan then ran away also. App. 239, ll. 4 – 25; App. 244, ll. 10 – App. 253, ll. 16. Alvin Phillips testified that he gave a statement to the police confessing to the incident and implicating Bryan and Langford. App. 258, ll. 1 – 23.

Langford nor his co-defendant Bryan Phillips testified at the trial. App. 380, ll 11 – 25.

The jury returned verdicts of guilty on all charges as indicted. App. 540, ll. 20 – App. 541, ll. 13. Judge Keesley sentenced Langford to twenty years on each of the kidnapping, burglary first degree, and armed robbery. The sentence on criminal conspiracy was five years; all sentences were to run concurrently. App. 565, ll. 1 – 25.

Langford's attorney filed an appeal which was perfected by the Division of Appellate Defense. The Supreme Court certified Langford's appeal pursuant to Rule 204 (b), SCACR from the Court of Appeals to the Supreme Court. App. 754. The Supreme Court affirmed Langford's convictions and sentences in a published opinion on November 21, 2012. State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2010). The United States Supreme Court issued an order denying Langford's petition for a writ of certiorari on October 7, 2013. App. 754.

On July 8, 2014, Langford filed an application for post-conviction relief (PCR). An amendment to the PCR application was filed January 30, 2017. The state filed a return on May 4, 2015. App. 753. An evidentiary hearing was held on February 1, 2017 before the Honorable

Eugene C. Griffith, Jr. Petitioner Langford was represented by Charles T. Brooks, III, and the state was represented by Johanna Valenzuela. App. 616.

Petitioner Langford testified at the PCR hearing that to the best of his knowledge his trial attorney did not hire an investigator to help with Langford's case. App. 622, ll. 14 – App. 623, ll. 17. Langford explained that that he had two alibi witnesses who would have testified that he was at Veronica Phillips' apartment with her during the time of the incident. These witnesses were Veronica Phillips and Vanessa Phillips. He told his lawyer about these women but his lawyer never talked to them. Veronica was the mother of Langford's son. Vanessa Phillips was Veronica's mother. App. 651, ll. 11 – App. 652, ll. 24.

Langford's son was about twenty months old at the time. Langford was "monitoring" his son that night of the incident. Langford was in and out of the apartment during that evening watching his son. He said that Veronica could "vouch" for him being there. Langford testified that he was with Veronica and his child the entire day before and after this crime was committed. He rode with Veronica when she took her mother to work around eleven o'clock that evening. Because they were never called to testify, the jury did not have this information. If these two women had testified, the outcome of his case would have been different. App. 653, ll. 1 – App. 654, ll. 14; App. 686, ll. 1 – App. 687, ll. 4.

Veronica Phillips testified at the PCR hearing that Langford was the father of her son who was age ten at time of PCR hearing. Langford was living with her in August 2008. On August 14, 2008, neither she nor Langford were working. Veronica testified that Langford was at home with her all day on August 14, 2008. Her mother, Vanessa, came to Veronica's house everyday. Veronica stated that Langford was with her all day on August 14, 2008. App. 687, ll.

15- App. 689, ll. 25. Veronica testified that no one had talked to her about Langford's whereabouts on the night of August 14, 2008. App. 691, ll. 2 – 9.

Veronica's testimony was that months after the incident, Investigator Young and another officer came and talked to her about Langford's whereabouts on the night of August 14, 2008. She told them he was home with her. They were asleep on the couch until they took her mother to work. App. 692, ll. 18 – App. 695, ll. 23.

On cross-examination, Veronica said that she had not had a conversation with Langford in almost eight years. She no longer wrote to him. App. 698, ll. 16 – App. 699, ll. 21. She also confirmed that she had never spoken to his trial attorney about Langford being with her on August 14, 2008. App. 703, ll. 1 – 22.

Vanessa Phillips testified that she was Veronica's mother. App. 708, ll. 13 App. 709, ll. 8. She knew Langford and testified that on August 14, 2008, she was at Veronica's apartment. She testified that Langford was there "all day long." He rode with Veronica to take Vanessa to work and to take her back to her house to get her ID for work that she had forgotten. App. 710, ll. 1 – App. 711, ll. 20. She had never talked to the police nor Langford's attorney about Langford being at Veronica's during this incident. No one ever talked to her. App. 712, ll. 1 – App. 713, ll. 23.

When asked on cross examination why she did not come forward with this alibi information, Vanessa replied that no one asked her to testify. App. 714, ll. 10 – 25.

Trial counsel testified at the PCR hearing that he never saw the need for an investigator in Langford's case. He said that Langford never gave him any information to investigate. Trial counsel testified that about two weeks before trial, Langford told counsel that he had two relatives "who were willing to testify that he was with them but it wasn't true." App. 715, ll. 17

Trial counsel told Langford that it would be a “bad idea” to call a young girl who was the mother of his child on the stand to commit perjury. According to trial counsel, Langford dropped the idea and did not go forward on that issue. Counsel said Langford never mentioned it again. App. 716, ll. 1 – App. 717, ll. 25. Counsel said that neither of the two women contacted him. He admitted that he did not speak to them. App. 718, ll. 1 – 7; App. 728, ll. 1 – 5.

When asked if he had received the statement of Veronica Phillips in the Rule 5 discovery sent to him by the solicitor, trial counsel said he did not remember receiving that statement. When shown Ms. Phillips’ statement, trial counsel said that he had never seen that statement. App. 728, ll. 1 – App. 729, ll. 22.

Trial counsel testified that Petitioner Langford was not open to any plea negotiations. He wanted a trial. However, counsel said that Langford did not give him “much to work with.” App. 733, ll. 7 – 25.

The state called the solicitor, Ervin Maye, who prosecuted the case to testify. Solicitor Maye stated that the co-defendant, Alvin Phillips, was a cooperating witness. He provided the names of the people who were arrested. Maye confirmed that there was no “deal” for Alvin Phillips. Maye admitted that the case “came down to Alvin Phillips’ credibility alone.” App. 734, ll. 9 – App. 737, ll. 24. Maye testified that he never heard anything about the alibi testimony until this PCR hearing. App. 745, ll. 1 – 21.

PCR counsel argued to the court that Langford said he received a copy of Veronica Phillips’ statement from his trial counsel in the discovery. PCR counsel argued that the two women who were the alibi witnesses needed to be “talked to” by trial counsel. App. 746, ll. 13 – App. 748, ll. 4. PCR counsel then told the court that the relief Langford was seeking was a new trial. App. 749, ll. 9 – 24.

The PCR judge issued an order on June 15, 2017 denying Petitioner Langford's PCR application and dismissing it with prejudice. App. 753 – App. 765. The judge found, regarding trial counsel's failure to investigate the two alibi witnesses, that trial counsel's testimony was credible but found the testimony of the alibi witnesses, Veronica and Vanessa Phillips, to not be credible. The judge wrote that the alibi charge was "not supported by the evidence." The judge found that neither of the two women informed anyone of this "life-changing" alibi. The judge concluded that Langford failed to meet his burden of proving that trial counsel's performance was deficient nor that Langford was prejudiced by counsel's performance. App. 756 – App. 757.

Langford's PCR counsel filed a notice of appeal. This petition for a writ of certiorari follows.

ARGUMENT

The PCR court erred by not finding trial counsel ineffective for failing to conduct a sufficient investigation into Petitioner Langford's case by not interviewing the two alibi witnesses, Veronica and Vanessa Phillips, who testified at the PCR hearing that Petitioner Langford was with them during the incident on August 14, 2008.

Failure to investigate possible defenses constitutes ineffective assistance of counsel. Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991). Counsel representing a criminal defendant has a duty to conduct a reasonable investigation, which encompasses the defendant's right to interview potential witnesses against him. State v. Sanders, 341 S.C. 386, 534 S.E.2d 696 (2000).

In Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), the Supreme Court held that for purposes of the claim of ineffective assistance of counsel, 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.

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland v. Washington, *supra*; Butler v. State, *supra*.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional

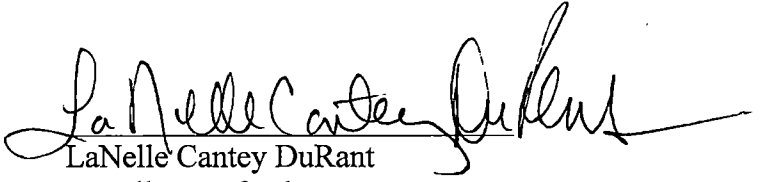
errors, the result would have been different. Cherry v. State, 300 S.C. 117-118, 386 S.E.2d 624 (1989).

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); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The PCR court erred in not finding trial counsel ineffective for not fully investigating Langford's case. Trial counsel was the one to find information by investigating the evidence provided in discovery. Trial counsel did not need to rely on Langford to provide information. Counsel needed to ask for the information to investigate. Trial counsel knew about the two women not too long before trial. Counsel had an obligation to talk to the women to determine if they had credibility sufficient to raise reasonable doubt in the minds of the jurors. Alvin Phillips was a biased witness as there was a strong probability that his sentence would be reduced based on his testimony against Langford.

CONCLUSION

Based on the above, certiorari should be granted; Petitioner Langford's convictions and sentences reversed and the case remanded for a new trial.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of February, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Edgefield County

Honorable Eugene C. Griffith, Circuit Court Judge

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K. C. LANGFORD,

PETITIONER

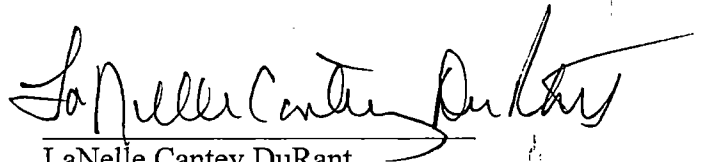
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STATE OF SOUTH CAROLINA,

RESPONDENT

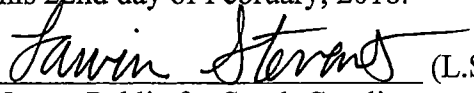
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CERTIFICATE OF SERVICE
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The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix and Supplemental Appendix in the above referenced case have been served upon Kelly Oppenheimer, 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 and Supplemental Appendix have been served on K. C. Langford, #294500, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 22nd day of February, 2018.



LaNelle Cantey DuRant
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 22nd day of February, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.