STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Certiorari to Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

RECEIVED
DEC 04 2019
S.C. SUPREME COURT

CHRISTOPHER ERIC MEJEAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000468

PETITION FOR WRIT OF CERTIORARI

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

ISSUES PRESENTED

I.

Did the PCR court err in finding trial counsel effective where trial counsel failed to impeach Tee Smith, one of the alleged victims, with his prior inconsistent statement that supported the defense contention that Petitioner did not fire a shotgun into the Smith's trailer?

II.

Did the PCR court err in failing to make specific findings of fact and conclusions of law on the directed verdict ineffectiveness issue where the Court of Appeals held on direct appeal that the denial of the directed verdict motion was not preserved for review due to trial counsel's failure to renew the motion for a directed verdict at the close of all evidence and Petitioner properly raised the issue at the PCR hearing?

STATEMENT OF THE CASE

Tee and Regina Smith, along with their daughter, lived next door to Petitioner, his wife Melissa Mejean and their children. The families had become close friends since the Mejean's had moved into the neighboring trailer a year prior. App. 72, ll. 7-11; App. 83, ll. 8-24. Their children played together, and the couples spent most of their free time together. The families had even celebrated Easter together earlier that year. App. 79, ll. 9-11. On July 1, 2012, Melissa, Regina, and the children had spent the day swimming at Petitioner's mother's home. App. 84, ll. 5-16.

Later that evening Tee Smith, Regina Smith, and their five-year-old daughter were asleep in their trailer outside of Pelzer in Greenville County. App. 58, l. 14-App. 60, l. 25. Tee and Regina were sleeping in their bedroom, their daughter was asleep on the living room couch. Id. At around ten thirty or eleven that night Regina was awoken by a loud noise. App. 71, ll. 15-19. She woke up her husband who told her to turn on the light. App. 71, ll. 20-21. They then heard another loud bang and observed wooden splinters from the trailer's wall all over their bed. App. 58, l. 14-App. 60, l. 25. Tee also noticed a picture had been knocked off the wall. Id.

First thinking that his home had been struck by lightning, Tee began to move through the trailer checking for other areas of damage. App. 58, l. 14-App. 60, l. 25. Tee noticed wooden splitters on the floor in the kitchen and living room. Id. Tee, realizing the damage was likely from someone shooting at the trailer, took his wife and daughter into a bathroom and retrieved his pistol. Id. Once in the bathroom, Regina called to check on the Mejean family. App. 72, ll. 6-7. Regina was worried that whoever shot into her trailer might also be shooting into the Mejean trailer and wanted to check on her best friend. App. 72, ll. 7-11; App. 83, ll. 8-24. Id.

Melissa answered the call and told Regina she was not at home that night but that her husband, Petitioner, might be home. App. 72, ll. 12-15. Regina promptly hung up and called the police to tell them that someone had shot into her trailer. App. 72, ll. 19-20. While Regina was on the phone, Tee went out into the rain and fired two warning shots into the air. App. 59, ll. 9-11. He then ran around the trailer to see if anyone was outside but did not see anyone. App. 59, ll. 12-15. Tee did observe that the outside of the trailer was "blown up too". Id. Tee went back inside to check on his family and told his wife that the trailer had indeed been shot into by someone. App. 59, ll. 14-16.

Regina continued to call 911 and Tee went back outside. App. 59, l. 22-App. 60, l. 11. Tee entered the poorly lit yard and through the heavy rain saw Petitioner walking from his trailer to his shed. App. 60, ll. 12-14. At trial, Tee claimed that Petitioner had "something long" in his hands, "it reminded me of a shotgun." App. 61, ll. 19-24. As Petitioner came out of his shed Tee asked Petitioner if he had shot into his trailer. App. 60, ll. 13-15. At trial Tee claimed Petitioner responded, "where's my mother fucking bitch at?". He stated Petitioner did not say anything else. App. 60, l. 16; App. 66, ll. 4-9. However, in his original statement to police Tee said that when he asked Petitioner if he had shot into his trailer, Petitioner stated that he had not. App. 322, ll. 12-20.

Regina could hear raised voices, so she had Tee come back inside, close the trailer door and wait for police to arrive. App. 60, ll. 17-25. The police arrived at the Smith residence roughly an hour after Regina called 911. App. 64, ll. 22-24. Officers checked the area but did not find Petitioner or anyone else. App. 65, ll. 5-7.

At law enforcement's request, Petitioner's wife Melissa returned home and gave police permission to search their trailer. App. 89, l. 18-App. 1. 22. Melissa stated that she did not

know where Petitioner was that evening. She had tried to call him after speaking with Regina but was unable to contact him. Id. The officers entered the Mejean trailer and found it in complete disarray. Id.

While searching the Mejean trailer officers found an empty gun bag along with several boxes of shotgun and rifle ammunition. App. 129, ll. 7-10; App. 131, ll. 20-25. A search of the yards of both the Smith and Mejean trailers found several spent and unspent twelve-gauge shotgun shells by various manufacturers. App. 116-127. The ammunition, both spent and unspent, found outside was similar to the ammunition and boxes found inside Petitioner's trailer. App. 133, ll. 4-8; 18-23.

Due to the heavy rain it was impossible for police to determine how long the empty shell casings had been on the ground. App. 118, l. 22-App. 119, l. 2. Officers also thought it would be impossible to obtain any forensic evidence from the shotgun shells, such as fingerprints, so no test were performed on any of the collected shells. App. 137, ll. 1-14. No one saw who shot into the trailer and no forensic evidence connected Petitioner to the shooting. Neither Petitioner nor the clothing he was wearing the evening of the incident were tested for gun shot residue. App. 166, ll. 1-3.

On June 18, 2013, the Greenville County grand jury indicted Petitioner for three counts of attempted murder, one charge for each member of the Smith family. App. 373-374; 377-378; 381-382. On June 2-4, 2015, Petitioner proceeded to trial before the Honorable R. Keith Kelly and a jury. App. 1. Timothy Sullivan represented Petitioner. Assistant Solicitor Kris Hodge represented the state.

At trial the state argued that Petitioner and his wife with had been having some marital problems and he went looking for her on the evening in question. The state alleged that Petitioner

shot into the Smith's trailer with the specific intent to kill the Smith's because he believed that his wife was in the Smith's home. App. 47-50; App. 190-199. In support of this theory the state elicited vague testimony regarding marital problems between Petitioner and his wife. The state also relied heavily on the fact that Melissa was upset with Petitioner on the evening in question as he had been drinking with a friend all day and would not come pick her and the children up from his mother's home. App. 63, ll. 20-25; App. 78, ll. 16-22; App. 86, l. 25-App. 87, l. 5.

Counsel Sullivan argued that Petitioner did not shoot into the Smith's home. Petitioner had no conceivable reason to shoot into the Smith's house as the families were close friends. They did not have any problems with one another. App. 66, ll. 1-3; App. 83, ll. 22-24; App. 183-190. Counsel Sullivan also argued in the alternative that if the jury thought Petitioner had shot into the Smith's home that he had not done so with the necessary specific intent for attempted murder. App. 183-190. Either way, Counsel Sullivan argued, Petitioner was not guilty. Id.

At the close of the state's case Counsel Sullivan moved for a directed verdict arguing no evidence of specific intent to kill had been offered by the state. App. 144-145. The state argued that the use of a deadly weapon evidenced the specific intent to kill and that the jury could infer the specific intent from the use of the shotgun. Id. The court ruled that it was "not weighing the evidence, it's merely concerned with what's called a scintilla of evidence. And in looking at that in the light most favorable to the non-moving part, the motion is denied." App. 144, ll. 19-24.

Petitioner took the stand in his own defense. According to Petitioner, he came home that evening to find the front door of his trailer ajar. App. 159, ll. 20-22. This was unusual as the front door had been broken and a couch had been pushed in front of the door to keep it closed. App. 160, ll. 1-6. Petitioner entered his home through the now open front door and encountered a man he knew as "Frog" standing in his living room with Petitioner's shotgun. App 161, ll. 3-

12. Petitioner used to buy marijuana from "Frog" but no longer "messed with him" because "Frog" had gotten into other drugs and Petitioner did not "want anything to do with that". Id.

Petitioner, not knowing if the shotgun was loaded, charged at "Frog" and chased him out of the back door of the trailer. App. 161, ll. 13-23. When Petitioner reached his back door, he met the barrel of the shotgun that "Frog" had turned on him. Id. Petitioner slammed the back door shut as "Frog" fired three rounds, two of which caused damage to Petitioner's home. Id. Melissa testified at trial that the back door to their trailer had apparently also been shot that night and was damaged. App. 95, ll. 6-16.

After the third shot Petitioner opened the back door and continued to chase "Frog" into the rain. App. 161, l. 18-App. 162, l. 7. "Frog" was running from Petitioner's trailer towards a pasture in front of the Smith's trailer. Id. While running from Petitioner, "Frog" would fire shots from the shotgun back at Petitioner, which ended up striking the Smith's home. Id. Petitioner was pursuing "Frog" into the pasture in front of the Smith's trailer when he heard Tee call out to him. Id.

Tee asked Petitioner if Petitioner had shot his trailer and Petitioner stated that he did not shoot Tee's home. App. 162, ll. 11-12. Tee asked Petitioner what was going on and Petitioner, whose mind was on catching "Frog" and recovering his shotgun, yelled "where's my mother fucking bitch?". App. 162, ll. 13-24. Petitioner testified that this statement was about his shotgun and "Frog," not about his wife Melissa. App. 162, ll. 17-24. After this brief exchange Petitioner resumed chasing "Frog" and "searched for him for hours." App. 163, ll. 2-8.

Petitioner was unable to locate "Frog" that evening. He returned to his trailer early the next morning and went to sleep. App. 164, ll. 5-10. When Petitioner woke up, he called his wife and learned that the police were looking for him. App. 164, ll. 15-17. Officers responded to

Petitioner's house and placed him under arrest. Petitioner told the arresting officer about "Frog" and what had happened the night before, but no report was written. App. 164-165. Petitioner maintained that he did not fire a weapon the previous evening.

On cross-examination the state asked Petitioner about the dangers of pointing a shotgun at someone. App. 177-178. Petitioner stated that he would never point a shotgun at a person. Upon further questioning, Petitioner stated he aims his shotgun to kill what he intends to eat and that he does not aim his shotgun at something unless he is intending to kill it. Id. After Petitioner testified the defense rested. App. 179, l. 6. Counsel Sullivan did not renew the motion for a directed verdict.

The jury found Petitioner guilty of one count of attempted murder as to Regina Smith. Petitioner was found guilty of first-degree assault and battery as to Tee Smith and the Smith's daughter. App. 226, l. 11 - 227, l. 13. The trial court sentenced Petitioner to fifteen years imprisonment for attempted murder and two terms of ten years imprisonment for the two counts of first-degree assault and battery. R. 236, l. 20 - 237, l. 8. All sentences were ordered to be served concurrently. Id.

Petitioner's direct appeal was perfected by Appellate Defender John Strom. Appellate Defender Strom argued that the trial court erred in refusing to grant a directed verdict of acquittal on the charges of attempted murder where the state failed to present any direct or substantial circumstantial evidence that Petitioner had the specific intent to kill the Smiths. The Court of Appeals affirmed Petitioner's convictions, finding the matter was not preserved for appellate review as trial counsel failed to renew the motion for directed verdict at the close of Petitioner's case. State v. Mejean, Op. No. 2017-UP-259 (S.C. Ct. App. filed June 28, 2017). Supp. App. 1-2.

Petitioner filed an application for post-conviction relief on May 18, 2018. The state submitted a return on October 23, 2018. App. 253-264. An evidentiary hearing was held before the Honorable Alex Kinlaw, Jr. on December 18, 2018. App. 265.

At the PCR hearing Petitioner was represented by Sarah M. Henry. App. 265. The state was represented by Christian Saville. App. 265. Petitioner and Counsel Sullivan testified at the hearing. App. 266. Petitioner framed his complaints as failure of Counsel Sullivan to object to certain testimony and evidence. Petitioner specifically thought Counsel Sullivan was ineffective for failing to "object" to the inconsistencies in Tee Smith's statements. App. 272, l. 3-App. 273, l. 6.

Counsel Sullivan reviewed the written statement given by Tee Smith as well as the trial testimony. App. 321-327. Counsel Sullivan admitted that Tee Smith wrote that when he asked Petitioner if he had shot his house, Petitioner stated no. Id. Counsel Sullivan stated that the statement matched the trial testimony with regards to Petitioner stating, "where's my mother fucking bitch at?". However, Counsel Sullivan conceded that Tee did not admit at trial to Petitioner denying shooting into his home on the night of the incident. Id. He offered no reason for failing to impeach Tee with the prior inconsistent statement and stated, "[i]f I didn't do it, I didn't do it." App. 325, ll. 1-5.

Counsel Sullivan also admitted that he failed to renew the directed verdict motion at the close of his case. He said he did not renew the directed verdict motion because he "didn't think anything had changed between the end of their case and the end of my case that would have warranted a different ruling." App. 338, l. 22-App. 339, l. 19.

An order of dismissal was filed on February 14, 2019. App. 352-371. The PCR court ruled that Petitioner's claims were without merit. Specifically, regarding Tee Smith's prior

inconsistent statement where he acknowledged Petitioner denied shooting into his trailer shortly after the incident, the PCR court found that the failure to "raise the issue that Applicant denied shooting the house" was a valid trial strategy as the fact that Petitioner denied shooting the house was never in issue. App. 366. Inexplicably, the failure to renew the motion for directed verdict, which was addressed at the hearing, was not included in the order of dismissal.

ARGUMENT

I.

The PCR court erred in finding trial counsel effective where trial counsel failed to impeach Tee Smith, one of the alleged victims, with his prior inconsistent statement that supported the defense contention that Petitioner did not fire a shotgun into the Smith's trailer.

Cross-examining witnesses on inconsistencies between trial testimony and prior statements in order to attack the witnesses' credibility is both permissible and routine. See State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983). "Considerable latitude is allowed in the cross-examination of an adverse witness to show bias." Id.

"Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony." State v. McEachern, 399 S.C. 125, 140-41, 731 S.E.2d 604, 612 (Ct. App. 2012). "Since it is the function of the jury to determine the credibility of witnesses and the weight to be given their testimony, as a general rule, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony, and on cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness." State v. Brewington, 267 S.C. 97, 100-01, 226 S.E.2d 249, 250 (1976) (internal quotations and citations omitted).

The failure of trial counsel to impeach a witness with a prior inconsistent statement results in deficient performance that prejudices a defendant. See Thomas v. State, 308 S.C. 123, 417 S.E.2d 531 (1992); Rutland v. State, 415 S.C. 570, 785 S.E.2d 350 (2016). In Rutland, the defendant was charged with murder. Rutland asserted that he acted in self-defense. A central

issue in the case was whether the victim was armed at the time of the incident. An impartial witness to the incident, Kestner, told police and a news reporter that the victim came into her shop, pulled out a gun and then she heard two shots. Id. at 573-574, 785 S.E. 2d at 351. At trial Kestner stated she never saw the victim with a gun in his hand and it was only after Rutland shot the victim that she saw a gun on the ground near him. Id. Trial counsel for Rutland failed to impeach Kestner with her prior inconsistent written statement to police as well as with her verbal prior inconsistent statement that she had given to a reporter. Id.

This Court held that Kestner's credibility as an impartial witness, considering Rutland was asserting that he acted in self-defense, was central to the trial. Failing to impeach the credibility of Kestner was ineffective assistance of counsel that resulted in prejudice to Rutland in that there was a "reasonable probability the outcome of the trial would have been different had trial counsel impeached Kestner, as her prior inconsistent statements demonstrated all three witnesses to the incident attested at some juncture the victim was armed at the time of the shooting." Rutland, at 578, 785 S.E.2d at 353-354.

Similarly, in Thomas v. State, 308 S.C. 123, 417 S.E.2d 531 (1992), this Court found trial counsel's performance deficient in failing to show that the victim had made a prior inconsistent statement. Thomas was convicted of first-degree burglary and first-degree criminal sexual conduct. Immediately after the assault the victim told the emergency medical personnel that she did not know her assailant. Id. However, several hours later while at the hospital, the victim identified Thomas as her assailant. Id. At trial, the victim testified that it was Thomas who had assaulted her and that she had recognized his face during the assault. Id.

Trial counsel failed to call the emergency medical personnel to testify to the victim's prior inconsistent statement. This Court again noted that, as the sole witness to the assault, the

victim's credibility and identification of her attacker was crucial to the state's case. Id. at 124, 417 S.E.2d at 532. Accordingly, counsel was "deficient in failing to call the medical personnel who would have cast doubt on the sole witness' identification" of Thomas. Id.

The failure of trial counsel to impeach Tee Smith with his prior inconsistent statement that Petitioner denied shooting into his trailer when confronted by Smith immediately after the incident was deficient performance that resulted in prejudice to Petitioner. The state's case against Petitioner was purely circumstantial. There were no eyewitnesses to the incident and no forensic evidence connecting Petitioner to the shooting. With no direct evidence of Petitioner's guilt, the credibility of the witnesses was central to the jury's decision. It was therefore incumbent on trial counsel to challenge the credibility of the alleged victims in front of the jury.

Notably, Tee was the only individual that interacted with Petitioner on the evening in question. As the only person to see or speak with Petitioner that evening, Tee's testimony and credibility were key to the state's case. At trial Tee stated that after yelling "where is my mother fucking bitch at?" Petitioner did not say anything else. This is in direct contradiction with the prior statement that Tee gave stating Petitioner denied shooting the Smith's home almost immediately after the incident. Consequently, Tee's initial statement to law enforcement that Petitioner had denied shooting the Smith trailer was important because the statement corroborated Petitioner's contention that he had denied the shooting from the beginning.

In dismissing Petitioner's application, the PCR court incorrectly characterized the issue as a failure of trial counsel to "raise the issue that Applicant denied shooting the house to Mr. Smith." App. 366. The PCR court found "no strategic reason for trial counsel to suggest Applicant verbally denied shooting the house at the scene." Id. As Petitioner's denial of the

event was never in question, the court found no prejudice from trial counsel's failure to "bring more attention to this issue."

However, the issue was not simply what Petitioner told Tee Smith at the scene, but *that Tee Smith was not impeached with his prior inconsistent statement which corroborated Petitioner's version of the events.* "A prior inconsistent statement may be admitted as substantive evidence when the declarant testifies at trail and is subject to cross-examination." State v. Stokes, 381 S.C. 390, 398-99, 673 S.E.2d 434, 438 (2009); see also Rule 613, SCRE. In the present action the statement was not only substantive evidence, but it also served as crucial corroborating evidence. Considering that the state argued that the jury should view Petitioner's testimony as a story fabricated by someone in order to get out of trouble it was necessary that Smith's prior statement corroborating Petitioner's in court testimony was fully presented to the jury.

"The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984). To prove ineffective assistance of counsel, "the defendant must show that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." Id. "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Id. at 687-688. "[T]he performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." Id. at 688. Concerning prejudice, "a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case." Rather, "[t]he defendant must show that there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

Trial counsel was deficient in failing to impeach Tee with his prior inconsistent statement, particularly given the fact that the case against Petitioner was purely circumstantial making witness credibility extremely important. Importantly, Counsel Sullivan did not have a trial strategy or valid reason for failing to impeach Tee. As he testified at the evidentiary hearing "[i]f I didn't do it, I didn't do it." App. 325, ll. 1-5. Trial counsel failed to impeach Tee Smith with his prior inconsistent statement and as a result Tee's credibility as a victim, and as the only individual that spoke to Petitioner the night of the incident, went unchallenged. Further, crucial, substantive evidence that would have corroborated Petitioner's testimony was not presented to the jury.

II.

The PCR court erred in failing to make specific findings of fact and conclusions of law on the directed verdict ineffectiveness issue where the Court of Appeals held on direct appeal that the denial of the directed verdict motion was not preserved for review due to trial counsel's failure to renew the motion for a directed verdict at the close of all evidence and Petitioner properly raised the issue at the PCR hearing.

The failure of the PCR court to not make any findings of fact or conclusions of law regarding a duly raised ineffective assistance of counsel claim is error. See, Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019); Pruitt v. State, 310 S.C. 254. 423 S.E.2d 127 (1992). This Court has remanded numerous other PCR cases to the circuit court where a PCR court failed to make adequate findings of fact and conclusions of law. In McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991) this Court remanded the case to the circuit court after finding that the PCR court's conclusions regarding ineffective assistance of counsel were insufficient for appellate review and failed to meet the standards set forth in S.C. Code Ann. § 17-27-80. See also McCullogh v. State, 320 S.C. 270, 272, 464 S.E.2d 340, 341 (1995) (admonishing all those involved in future PCR matters to be meticulous in preparing and reviewing proposed orders so that the final order sets forth the required findings and reasons for those findings). Bryson v. State, 328 S.C. 236, 236-237, 493 S.E.2d 500 (1997) (remanding the matter back to the PCR judge to "make specific finds of fact and conclusions of law as to each issue *raised by petitioner in his post-conviction relief application and at the hearing thereon*") (emphasis added).

Notably, the only issued raised by Petitioner on direct appeal was the denial of the directed verdict motion for failure to offer evidence of specific intent. Attempted murder is a crime requiring specific intent. See State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017) (holding

attempted murder required proof that the defendant had specific intent to kill); S.C. Code Ann. § 16-3-29. The commission of an act that creates a probability of death or great bodily injury does not, without more, necessarily allow the inference that the actor had the intent to kill. See *Wharton's Criminal Law*, Attempt §§ 694-695 (1996) ("to constitute an attempt, there must be an intent to commit a particular crime") ("an attempt to commit murder requires a specific intent to kill). Thus, to survive a directed verdict motion the state needed to show that *Petitioner had the specific intent to kill the Smiths.*

In ruling on the directed verdict motion, the trial court applied the incorrect standard of a "scintilla of evidence," and found that at least a scintilla of evidence existed to send the case to the jury. App. 144, ll. 20-22. Not only did the court not apply the proper legal standard of substantial circumstantial evidence[1] but the court based its ruling on the presumption that specific intent could be inferred from the use of a deadly weapon. No evidence was presented at trial to show that Petitioner had any intent to kill the Smith family, thus Petitioner was entitled to a directed verdict of acquittal.

Unfortunately for Petitioner trial counsel failed to renew the meritorious motion for a directed verdict of acquittal after Petitioner testified, thereby precluding the Court of Appeals from reviewing the matter. This failure was deficient performance that resulted in substantial prejudice to Petitioner. Had trial counsel properly preserved the issue, the Court of Appeals could have reviewed the matter and found in Petitioner's favor. Instead Petitioner's direct appeal was affirmed in an unpublished opinion.

---

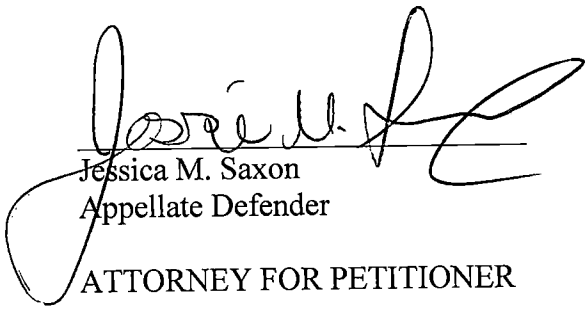
[1] State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) (holding that a case should be submitted to the jury when there is substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced).

As noted above, this issue was properly raised at the post-conviction relief hearing but inexplicably was not included in the order of dismissal. While no Rule 59, SCRCP motion was filed on behalf of Petitioner to amend the insubstantial order, to not address the merits of this issue or remand the matter back to the PCR court would be "fundamentally contrary to the interests of justice." Simmons v. State, 416 S.C. 584, 788 S.E.2d 220 (2016) (holding that although Petitioner's claim was procedurally barred due to failure to file a motion to reconsider, dismissing the writ of certiorari would be fundamentally contrary to the interests of justice).

Petitioner was substantially prejudiced by trail counsel's failure to renew the directed verdict motion at the close of all evidence. That failure should, respectfully, not be excused by a subsequent failure of PCR Counsel to file a Rule 59, SCRCP motion when a directed verdict of acquittal was not issued on direct appeal because of a technical error by trial counsel. In such extraordinary circumstances, consideration of the issue or remand to the PCR court for an order containing the necessary findings of fact and conclusions of law is warranted. See Simmons, *supra.*

CONCLUSION

Based on the foregoing reasons, this Court should grant Petitioner's writ of certiorari to allow full briefing on these issues.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of December, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

CHRISTOPHER ERIC MEJEAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

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 Megan Harrigan Jameson, 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 Christopher Eric Mejean, #364242, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 4th day of December, 2019.

Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 4th day of December, 2019.

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