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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

ON PETITION FOR WRIT OF CERTIORARI TO ANDERSON COUNTY
The Honorable R. Lawton McIntosh, Trial Judge
The Honorable Carmen T. Mullen, PCR Judge

Appellate Case No. 2018-000127

TERRENCE J. GOSS, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent.

BRIEF OF RESPONDENT

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ISSUES PRESENTED

I. The post-conviction relief judge properly found trial counsel was not deficient for further investigating Sanchez Gilliard or calling him as a witness at trial because his statement, if true, described a separate robbery than the one for which Petitioner was convicted, the substance of the statement was presented to the jury, trial counsel decided Gilliard was not credible, and trial counsel determined Petitioner's defense was better served with having the final closing argument.

II. The post-conviction relief judge properly found Petitioner failed to prove prejudice through Gilliard's written confession because the statement was inadmissible hearsay which did not exclude Petitioner's involvement in the charged crime. Without Gilliard's testimony, Petitioner could not prove he was prejudiced by the alleged deficiency of trial counsel.

STATEMENT OF THE CASE

Petitioner is presently confined by the South Carolina Department of Corrections pursuant to orders of commitment by the Anderson County Clerk of Court. Petitioner was indicted at the January 2009 term of the Horry County Grand Jury for armed robbery, conspiracy to commit armed robbery, and possession of a weapon during a violent crime (2009-GS-04-0070; 2009-GS-04-0072). Mary Jane Goodwin, Esquire, was appointed to represent Petitioner at trial. Assistant Solicitor Rame Campbell, Esquire, represented the State. On May 17–19, 2010, Petitioner proceeded to a jury trial before the Honorable R. Lawton McIntosh.

Prior to trial, trial counsel noted that while preparing for trial, another defendant gave Petitioner a copy of a statement written by Gilliard that appeared exculpatory in nature. In the statement, Gilliard claims he, Derek James, and Travis Patterson (Petitioner's codefendant), robbed the BP in question. Trial counsel sought a stipulation from the State that no other exculpatory evidence was in its possession. The State noted Gilliard was convicted of several armed robberies before trial and that the statement applied to a prior armed robbery of the BP; the BP in question was robbed several times over the course of several months. The State informed the trial court it was not in possession of any exculpatory evidence for Petitioner. (App.pp.38–40).

Stephen Lattimore, an employee of the Anderson BP gas station robbed by Petitioner, testified that he was working as a clerk on the night of February 5, 2008, when three men of varying heights entered the store, demanding money. Two of the men were carrying weapons. During the course of the robbery, the two armed men fired a combined three shots into the store; two into the ceiling and one to the right of Lattimore's shoulder. Lattimore noted this was the first time any shots were fired during a robbery at the store; this was the third robbery he

experienced at the BP location and the fourth total in recent history. The first robbery was completed by two people, but the second and third robberies were performed by groups of three men. Finally, Lattimore recalled observing a unique weapon during the robbery, a Kel Tec: a type of rifle which fires handgun ammunition. Lattimore identified the State's Exhibit 18 as the "tec" he saw during the robbery. (App.pp.71–83).

Chris Ronoke testified he knew Petitioner and Patterson and hung out with them around the time of the robbery. He grew up in Anderson and visited frequently although he was a student at Greenville Tech. On the day of the robbery, Ronoke was in Anderson and saw Petitioner and Patterson with the guns used in the robbery, which included the distinctive "tec." Two days after the crime, he met up with the two men and several other friends at a club called "Rolex." Afterwards, Ronoke stayed at a girlfriend's house while Petitioner and Patterson stayed at his campus apartment. When Ronoke returned the following morning, the two men were gone. A member of the campus cleaning staff informed him that she found a handgun under his bed, so he went to his room and found a pistol. He tried to pick it up with the bottom of his shirt, so as to avoid leaving fingerprints on the weapon, when the gun discharged a bullet into his knee. Later, Ronoke told investigating officers that the weapons found in his apartment, which included the Kel Tec, belonged to Petitioner and Patterson. (App.pp.103–19).

Trent Stevenson, one of Ronoke's roommates, was a part of the group that went to Rolex on the night of February 7, 2008. Afterwards, Petitioner rode back with him to the apartment. In the car, Stevenson saw the "tec." Petitioner admitted ownership of the gun and told Stenson it was a Kel Tec and could hold 32 bullets in the clip. When Stevenson dropped Petitioner off at the apartment, Petitioner took the gun with him. (App.pp.151–65).

Officer Kelly Warren Riggs of the Greenville City Police Department responded to the scene after Ronoke shot himself and found the handgun as well as the Kel Tec in the apartment. Officer James Armstrong, a forensic technician and expert in firearm identification, tested the Kel Tec and handgun recovered from the apartment and confirmed the two weapons were used to fire the bullets recovered from the BP robbery in dispute. (App.pp.181–90; 192–200).

Jocastavious Timpson, an inmate in the Department of Corrections who shared a cell with Petitioner, admitted he contacted police and informed them that Petitioner confessed involvement in the BP robbery and that he saw Petitioner with a Kel Tec prior to his incarceration. Javaris Hill, a friend of Petitioner's, testified he saw him with the weapon prior to the robbery and knew the guns belonged to Petitioner and Patterson and that they were purposely "stashed" in Ronoke's apartment. Derrick Jones, another friend of Petitioner's, gave a statement to police identifying the gun as Petitioner's and noting Petitioner told him it was confiscated when Ronoke shot himself in the leg. (App.pp.201–18; 220–25).

Detective Rob Gebing of the Anderson County Sheriff's Office was the primary investigator of the robbery. He confirmed the store had been robbed three times while Lattimore was present, all of which occurred over a ten-month period. He also reviewed the video recording of the robbery and noted that two of the men appeared to be six feet tall, while the third man, holding the Kel Tec, appeared to be several inches taller than the other two.[1] Detective Gebing noted Kel Tecs are "unique" guns and it was the only one he had encountered in his time with the Anderson County Sheriff's Office. Further, when Petitioner and Patterson were arrested, Petitioner was found to be 6'3 and Patterson was 6'0. (App.pp.227–73).

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[1] As noted by Detective Gebing, the store had height tape on the doors which allowed for him to determine the general heights of the men. (App.p.234).

On cross-examination, trial counsel questioned Detective Gebing about Gilliard's statement and claimed it "seemed to exonerate" Petitioner; a statement in which Gilliard stated he and two other men, Jones and Patterson, robbed the BP. However, Detective Gebing pointed out that the statement did not exclude the possibility Petitioner performed the robbery; the statement mentions that one of the persons who robbed the store with Gilliard did so again later, and the BP robbery for which Petitioner was charged, was the last of three such crimes and involved Patterson. On re-direct examination, Detective Gebing explained Gilliard never admitted involvement in the instant BP robbery and that Gilliard, Jones, and Patterson, who are all 6'0 or shorter, did not match the combination of heights seen in the recorded video of the robbery. (App.pp.276–81).

The jury found Petitioner guilty as charged. The trial judge sentenced Petitioner to fifteen years' incarceration for armed robbery, five years' incarceration for conspiracy to commit armed robbery, and five years' for possession of a weapon during a violent crime. (App.pp.372–84).

On August 23, 2012, after exhausting his direct appeal remedies, Petitioner filed an application for post-conviction relief (PCR) alleging he was being held unlawfully for the following reasons:

Ineffective Assistance of Trial Counsel

a. Failure to object to testimony regarding prior bad acts and to introduction of evidence not provided in discovery
b. Failure to investigate
c. Failure to present adequate defense, including failing to subpoena defense witnesses or call Petitioner to testify

Prosecutorial Misconduct

a. Knowingly eliciting false testimony
b. Using statements regarding other crimes to confuse the jury

Violation of Due Process pursuant to Brady

a. Failing to turn over witness statement in discovery

Abuse of Discretion of the Trial Court

a. Error in allowing testimony regarding prior/unrelated crimes

(App.pp.401–13). The State filed its Return on March 11, 2013. (App.pp.414–20).

An evidentiary hearing into the matter was convened on December 1, 2014, before the Honorable Carmen Mullen. Linda Whisenhunt, Esquire, represented Petitioner and John W. Whitmire, Esquire, represented the State. Petitioner testified he first heard about Sanchez Gilliard's confession to a BP gas station robbery through a codefendant of Gilliard's. Petitioner heard Gilliard had bragged about the armed robbery. After making a copy of the statement, he sent it to trial counsel. He claimed the State never provided a copy of the statement in its discovery. (App.pp.421–33).

Petitioner alleged the statement was important to his defense because within it, Gilliard discusses an armed robbery at the same BP which his crime occurred. Gilliard claims he, Edward Jones, and Travis Patterson committed the robbery and never implicates Petitioner was involved. However, trial counsel never called Gilliard as a witness and Petitioner was unsure of whether she even spoke with him. Following Petitioner's testimony, PCR counsel introduced Gilliard's statement into evidence. (App.pp.433–39)

During cross-examination, Petitioner admitted that although he knew who really committed the crime, he did not reveal the identies to trial counsel or the trial court for fear of being labeled a snitch. (App.pp.439 –48).

Trial counsel recalled the events surrounding her representation of Petitioner much differently. She noted that several items, including Gilliard's statement was eventually provided in discovery, but was not initially given to her because there was not a "logical connect[ion]" between Gilliard's robbery and Petitioner's. Trial counsel did not recall whether she ever spoke directly with Gilliard, but did remember having several conversations with Petitioner about the

potential of using him as a witness. Trial counsel believed that Gilliard, who had numerous criminal convictions including several for armed robbery, would not have been a great witness. She explained that Gilliard's statement was not particularly helpful to Petitioner's case. The BP in quesiton was robbed on several occasions and Gilliard's statement appeared to describe another robbery. Further, Gilliard, who is approximately 6'0, was several inches shorter than Petitioner, and everyone in Gilliard's description of the robbery were much shorter than tallest person in the video of the robbery in dispute. Accordingly, she believed it would be more beneficial to Petitioner's defense to not put up any witnesses and have the last closing argument. (App.pp.449–55; App.pp.462–63).

On cross-examination, trial counsel noted Petitioner never informed her that he knew who committed the crime. She also noted other issues with Gilliard's statement, notably that it was not dated and did not describe when the armed robbery occurred. Notably, she also spoke to other individuals implicated in the statement, Derek Jones and Travis Patterson, the week before trial and they did not corroboarate any of the information contained in Gilliard's statement. (App.pp.455–62).

On January 19, 2018, the PCR judge issued an order denying relief. In the order, the PCR judge found trial counsel was not deficient, but "adequately prepared for [Petitioner]'s trial and did not fall below the standards of professional norms in any manner." As to Petitioner's claims regarding trial counsel's failure to investigate and subpoena Gilliard, the PCR judge found trial counsel's investigation and decision to not call Gillard as a witness were reasonable trial strategy. Further, the PCR judge found Petitioner was not prejudiced by trial counsel's actions, noting it "[could] only speculate as to what additional investigation [trial counsel] could have done and what evidence that investigation would have uncovered," and trial counsel had

"sound justification" for not calling Gillard due his credibility concerns and the fact that the statement was not corroborated by any other evidence. Further, the PCR judge found "[Petitioner] failed to present any other witnesses, including Gilliard, at the evidentiary hearing" or other evidence which demonstrated what trial counsel could have uncovered with further investigation. (App.pp.469–80).

On January 25, 2018, Petitioner filed a Notice of Appeal, appealing the PCR court's denial of his application for PCR. Petitioner filed his Petition for Writ of Certiorari and Appendix on October 3, 2018. The State filed its Return to the Petition for Writ of Certiorari on February 19, 2019. On March 5, 2019, the case was transferred to the Court of Appeals pursuant to Rule 243(l), SCACR. On March 15, 2021, this Court granted the petition. Petitioner submitted his Brief of Petitioner on April 12, 2021. This Brief of Respondent follows.

STANDARD OF REVIEW

The standard of review for PCR matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Overall, reviewing courts "give[] great deference to the PCR court's findings of fact and conclusions of law", Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005), with the applicant shouldering the burden of proof. Rule 71.1(e), SCRCP; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Further, a PCR court's findings will be upheld if there is "any evidence of probative value sufficient to support them." Id. Reversal of the lower court's findings occurs when there is no probative evidence to support the initial finding. Pierce v. State, 338 S.C. 139, 526 S.E.2d 222 (2000). Courts must conduct a *de novo* review when evaluating questions of law and are required to reverse the initial holding when the decision is controlled by an error of law. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40; Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

Where the application alleges ineffective assistance of counsel 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, 669 (1984); Butler, 286 S.C. at 442. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 669; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the applicant must prove that counsel's performance was deficient. Cherry, 300 S.C. at 117. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms. "Id. (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the

range of competence required in criminal cases. Butler, 286 S.C. at 442. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). An applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117–18 (emphasis added). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Patrick v. State, 349 S.C. 203, 207, 562 S.E.2d 609, 611 (2002). "It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding." Strickland, 466 U.S. at 693.

"In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks." Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018). "A PCR court's analysis of counsel's strategic decisions must be 'highly deferential' to counsel's judgement, and 'a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.'" Id. at 320–21, 815 S.E.2d at 440 (citing Strickland, 466 U.S. at 689).

A criminal defense attorney has a duty to perform a reasonable investigation. "[W]hile 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." Lounds v. State, 380 S.C. 454, 460, 670 S.E.2d 646, 649 (2008) (citing Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007)). To establish

counsel was inadequately prepared, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."); see also Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Without the testimony of a favorable witness or evidence otherwise offered in accordance with the rules of evidence at the PCR hearing, an applicant cannot establish prejudice from the witness's failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

ARGUMENT

I.

The post-conviction relief judge properly found trial counsel was not deficient for further investigating Sanchez Gilliard or calling him as a witness at trial because his statement, if true, described a separate robbery than the one for which Petitioner was convicted, the substance of the statement was presented to the jury, trial counsel decided Gilliard was not credible, and trial counsel determined Petitioner's defense was better served with having the final closing argument.

Petitioner argues the PCR judge erred in finding trial counsel was not deficient in failing to interview Gilliard or call him as a witness because his prior convictions for armed robbery, cited by trial counsel as undermining his credibility as a witness, actually supported the theory that Gilliard, not Petitioner, committed the armed robbery in question. The State disagrees with this allegation of error: the evidence at the PCR hearing supported the PCR judge's finding that the statement was uncorroborated and did not appear material to the issue of Petitioner's guilt, trial counsel addressed the content of Gilliard's statement during her cross-examination of Detective Gebing and made the jury aware of its existence, and trial counsel did not introduce the statement because she felt it would be more advantageous to Petitioner's case to have the final argument.

In Petitioner's case, there is substantial evidence which supports the PCR judge's findings. As noted by both trial counsel at the PCR hearing and Detective Gebing during Petitioner's trial, Gilliard's "confession" to the BP robbery was an inexact admission to robbing the BP at some non-specified time. Notably, the BP in question was robbed on at least three separate occasions while Lattimore was present and Gilliard's description of the robbery did not match the details of the crime for which Petitioner was charged. Gilliard also did not match the description of any of the men involved in the robbery in question: Gilliard was 6'4, a height

several inches taller than any of the robbers. Further, Gilliard's statement actually *excludes* the possibility he was present at the robbery in dispute because he notes that it was robbed by one of his coconspirators *after* his robbery. This claim is entirely consistent with the state's case because Patterson, one of the men named in Gilliard's statement, was Petitioner's codefendant. Based on the evidence, it was reasonable for trial counsel to not interview Gilliard. See Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64–65 (2011) (finding criminal defense lawyers are not required to "interview every potential witness when they can articulate reasonable grounds not to."); also Stokes v. State, 308 S.C. 546, 547–48, 419 S.E.2d 778, 778–79 (1992) (finding PCR counsel was not ineffective for failing to call witnesses who were "incredible and provided no information likely to have changed the trial's outcome.")

Further, Gilliard's statement did not rebut the crux of the State's case against Petitioner; the ownership of the Kel Tec weapon. Ballistics testing of the guns recovered at Ronoke's apartment confirmed they were the same weapons used in the BP robbery. The State presented substantial evidence that the Kel Tec used in the robbery belonged to Petitioner, an issue completely ignored by Gilliard's statement. See Jackson, 329 S.C. at 353–54, 495 S.E.2d at 772 ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.")

Accordingly, the record supports the PCR judge's finding that trial counsel was not deficient for not investigating Gilliard's statement and calling him as a witness.

II.

The post-conviction relief judge properly found Petitioner failed to prove prejudice through Gilliard's written confession because the statement was inadmissible hearsay which did not exclude Petitioner's involvement in the charged crime. Without Gilliard's testimony, Petitioner could not prove he was prejudiced by the alleged deficiency of trial counsel.

Petitioner argues the PCR judge erred in finding he failed to prove he was prejudiced by trial counsel's failure to investigate Gilliard's statement and present him as a witness because, even without Gilliard's testimony, his written statement was sufficient evidence of prejudice pursuant to Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998). The State disagrees with this allegation of error. Initially, the State notes Gilliard's statement could not have been sufficient proof of prejudice because it is inadmissible hearsay. Further, even if admissible, Gilliard's statement failed to provide sufficient information as to what trial counsel would have uncovered to aid in Petitioner's defense.

In Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995), the Supreme Court of South Carolina found a PCR applicant failed to provide evidence of prejudice for failing to investigate alibi evidence when two witnesses who testified at a PCR hearing did not provide an alibi defense and witnesses who purportedly could have provided the alibi did not testify. The court found that PCR applicants "must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner **consistent with the rules of evidence**" to support a claim that trial counsel was ineffective in failing to interview or call potential alibi witnesses. Id. at 498–99, 458 S.E.2d at 539–40 (emphasis added). The court stated "mere speculation [as to] what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id. In Jackson, the Supreme Court clarified that an applicant does not necessarily need to produce a witness at the hearing, provided the witness's

testimony is submitted "in a manner consistent with the rules of evidence." Jackson, 329 S.C. at 351, 495 S.E.2d at 771.

In Pauling, the Supreme Court found a triage nurse's notes regarding a victim's sexual assault were sufficient evidence under Glover. Pauling, 331 S.C. at 610–11, 503 S.E.2d at 470–71. The court clarified the notes were admissible under the rules of evidence and thus could be admitted to prove the applicant was prejudiced when his attorney failed to call the nurse as a witness at trial. Id. at 611, 503 S.E.2d at 471. Further, the court observed the nurse possessed no independent recollection of the case. Id. 609 n.2, 503 S.E.2d at 470 n.2. Petitioner argues his case is similar to Pauling, not Glover, because Gilliard's statement was authenticated[2] and admitted into evidence by the PCR judge. However, Gilliard's statement is not a proper basis for relief because it is inadmissible hearsay evidence. Notably, authenticity, i.e., whether a statement was made by the witness, is a question separate and apart from whether evidence is inadmissible under other rules of evidence. Compare Rule 901, SCRE (stating the requirements for and examples of authentication and identification) with Rule 801(c), SCRE (defining "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."). Petitioner identified Gilliard's statement at the PCR hearing and the State did not dispute it was the statement submitted to trial counsel by Petitioner. However, this is not the same as the State agreeing Gilliard's statement was admissible under all relevant rules of evidence.

In South Carolina, hearsay is inadmissible "except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE. Our rules of

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[2] In the record, the State's attorney commented that authenticity was "laid" the week before the PCR hearing, but that he had never seen the document. Other than Appellant's identification of the letter and this comment from the State, there is no evidence as to the document's authenticity.

evidence define hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. Without question, Petitioner sought to admit this argument at the PCR hearing in an attempt to prove Gilliard, not Petitioner, was guilty of the armed robbery. In Pauling, the triage nurse's notes were hearsay, but admissible due to multiple exceptions. See Rule 803(4), SCRE (statements made for purposes of medical diagnoses or treatment; Rule 803(5), SCRE (a memorandum or record concerning a matter about which a witness once had knowledge, but not has insufficient recollection); Rule 803(6), SCRE (records kept in the course of regularly conducted business). Petitioner fails to provide any argument as to why Gilliard's letter should not be considered hearsay under the South Carolina Rules of Evidence. Thus, Gilliard's statement does not fit into a hearsay exception and is inadmissible pursuant to Glover.

Although not referenced in Petitioner's brief, Appellant's case is also distinguishable from the Supreme Court's opinion in in Martin v. State, 427 S.C. 450, 832 S.E.2d 277 (2019), in which the court found the defendant's trial counsel ineffective in failing to present the defendant's mother's alibi testimony. While the mother herself failed to testify at the hearing, trial counsel did testify and admitted his file had specific notes about the general time mother had dropped Martin off at a bus station; mother had testified at trial, but counsel failed to elicit the time of the drop-off during direct examination. Id. at 453–54, 456, 832 S.E.2d at 279–80. Like Pauling, and unlike Glover or Petitioner's case, the evidence at issue was admissible pursuant to the South Caroline Rules of Evidence: through the testimony of trial counsel at the PCR hearing.

Further, even if Gilliard's statement were admissible for the purposes of proving prejudice, it lacks sufficient information proving such. Similar to the admitted evidence in Glover, Gilliard's statement is not inconsistent with Petitioner's guilt; it refers to a robbery but

also states a subsequent robbery occurred involving one of Gilliard's coconspirators. Patterson, one of the men named in Gilliard's statement, was Petitioner's codefendant for the charges pertaining to the armed robbery. If anything, the statement support's the State's claim of guilt. Further, the statement failed to address the focus of the State's case against Petitioner: ownership of the Kel Tec weapon used in the robbery.

Accordingly, the record supports the PCR judge finding Petitioner was not prejudiced by trial counsel's alleged deficiency.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the PCR court's finding that Petitioner has failed to prove that trial counsel was constitutionally ineffective.

Respectfully submitted,

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