STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Certiorari to Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

RECEIVED

APR 22 2019

S.C. SUPREME COURT

CHRISTIAN COLEMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001530

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether trial counsel's elicitation of inadmissible hearsay through the lead investigator that a man named Ronnie Washington admitted he was the getaway driver and that he knew petitioner, the effect of which the solicitor told the jury in closing in reference to the defendants, "It kills them," constituted ineffective assistance?

STATEMENT

On May 12, 2010, an Orangeburg County grand jury indicted petitioner for murder, armed robbery, first-degree burglary, and kidnapping. App. 1372-84. On November 23, 2010, petitioner was tried before the Honorable Edgar W. Dickson and a jury. App. 1. Petitioner was represented by Richard Lackey. App. 1. Donald Sorenson represented the State. App. 1. Petitioner was tried along with four co-defendants: (1) Ralph B. Coleman, (2) Walter L. Harris, (3) Danny Ryant, Jr., and (4) Mario N. Shivers. App. 1. Jillian Ullman, Scott Palmer, Douglas Mellard, and Joshua Koger, Jr. represented the co-defendants. App. 1. The jury convicted all of the defendants on all charges. App. 1239-1264. Judge Dickson sentenced petitioner to concurrent terms of thirty years' imprisonment for armed robbery, and forty-five years' imprisonment for murder and first-degree burglary. App. 1273.

After his appeal was affirmed, on June 17, 2013, petitioner filed a PCR application. App. 1294. On May 20, 2015, a hearing was held before the Honorable Maite Murphy. App. 1313. Jonathan D. Waller represented petitioner and J. Clayton Mitchell represented the State. App. 1313. On November 9, 2015, Judge Murphy denied petitioner relief. App. 1351. Petitioner filed a Rule 59(e), SCRCP motion which was denied on January 31, 2018. This appeal follows.

STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue before the Court. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). The Court defers to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Id. The Court reviews questions of law without deference to trial courts. Id. See also Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839–40 (2018).

ARGUMENT

Trial counsel's elicitation of inadmissible hearsay through the lead investigator that a man named Ronnie Washington admitted he was the getaway driver and that he knew petitioner, the effect of which the solicitor told the jury in closing in reference to the defendants, "It kills them," constituted ineffective assistance.

Six people were charged with murdering Charles Pringle in a drug-related home invasion. Approximately a month before trial, the State learned that a man named Ronnie Washington may have been the getaway driver. App. 1338. The State never called Ronnie Washington to testify, but trial counsel nevertheless elicited damaging inadmissible hearsay regarding Washington's involvement and linking Washington to his own client. App. 939-42.

The State's primary evidence against the five men in this joint trial came from the youngest co-defendant, who was not tried, Patrick Tyler. App. 461-62. Tyler was sixteen at the time of the shooting and seventeen at the time of trial, but was charged as an adult. App. 461-62. Tyler testified that he knew all five of the defendants on trial. App. 463-66.

In the early evening of March 12, 2010, Tyler got a phone call from Danny Ryant telling him Mario Shivers had guns and to come to Ralph Coleman's house to see them. App. 466-68. Ralph Coleman and Shivers were at the house when Tyler arrived. App. 470. The men smoked marijuana and Shivers began discussing a plan to rob Pringle. App. 471-73. Shivers knew Pringle dealt drugs, a fact which Pringle's girlfriend confirmed at trial. App. 473. App. 366.

The group did not have transportation to Pringle's house. App. 474. Petitioner and a friend arrived in a Ford Explorer. App. 474. Tyler did not recognize petitioner's friend, the driver, and did not remember ever learning the driver's name. App. 474-75. The solicitor asked

Tyler, "Did you even know anyone by the name of Ronnie Washington back then?" and Tyler replied, "No, sir." App. 475.

On the way to Pringle's, Shivers discussed the plan to rob Pringle. App. 476-77. They picked up co-defendant Walter Harris. App. 477. When they arrived at Pringle's, Harris went to the house, bought marijuana, and returned. App. 480. Harris said he knew somebody in Pringle's house and no longer wanted to participate in the robbery, so the group picked up Danny Ryant. App. 480-81.

They returned to Pringle's apartment and Tyler and Ralph Coleman went to the door and asked to buy marijuana. App. 483. While Tyler bought marijuana, Ralph Coleman pulled his gun on the woman selling the drugs and the rest of the group "came in with the guns." App. 483-84. Tyler claimed petitioner had a chrome nine millimeter pistol. App. 484. The group ransacked the apartment and duct-taped Pringle. App. 484-86. One of the men shot Pringle's dog and, minimizing his involvement, Tyler testified he then ran out of the house. App. 486. While outside the house, Tyler said he heard multiple gunshots. App. 486. The pathologist found twenty-four gunshot wounds in Pringle's body. App. 791.

At the end of Tyler's direct-examination, the solicitor asked whether he had promised "any sentence" in exchange for his cooperation and Tyler said no. App. 502. The solicitor then said, "But the one thing we are allowing you to do because of your cooperation back in March and your testimony is, we're going to reduce your murder to voluntary manslaughter?" and Tyler replied yes. App. 502.

The solicitor then asked again whether Tyler knew who the driver of the Explorer was and Tyler said no. App. 503. Despite no evidence being admitted at this point in the trial that Ronnie Washington was the driver of the Explorer, on cross-examination of Tyler, trial counsel

asked, "So, whatever y'all talked about when you got in the back seat, both Ronnie Washington and Christian Coleman heard, is that correct?" App. 512. Tyler replied, "Yes." App. 512. Trial counsel then asked Tyler, "And do you know this Ronnie Washington fellow who was the driver, do you know he was never arrested?" App. 514. Trial counsel had to repeat the question and Tyler replied that he did not know this information. App. 514.

The State never called Ronnie Washington. The State's last witness, as is often the case, was the lead investigator, Officer James Shumpert. App. 872-73. Officer Shumpert testified on direct that Tyler told the police he did not know the identity of the driver of the Explorer and then the following colloquy occurred:

> Q. Let me ask you, what was the first time you came into physical contact with a young man by the name of Ronnie Washington?
>
> A. Two weeks ago, I believe it probably would be November thirtieth.
>
> **Q. And did you take a statement from him at that time?**
>
> **A. I did.**
>
> Q. Let me show you State's exhibits number twenty, twenty-eight and twenty-nine. Have you seen those photographs before?
>
> A. Yes, sir.
>
> Q. And whose, whose Ford Explorer, who does that Ford Explorer belong to?
>
> A. Ronnie Washington.
>
> **Q. And who was driving this back on March the twelfth of [2010]?**
>
> **A. Ronnie Washington.**
>
> Q. Now, has Mr. Washington at this time been charged with anything, lieutenant?
>
> A. Not at this time.
>
> Q. And is that something the sheriff's office is still evaluating?

A. We are.

Q. And yet again, he just came to your attention two weeks ago?

A. Two weeks ago.

App. 888-90 (emphasis added). Trial counsel failed to object to the hearsay about Ronnie Washington as the driver, which by the solicitor's implication, came from Washington's statement. App. 888-90.

Despite the fact that Ronnie Washington had not testified in the trial and the lead investigator was highly likely to be the last witness called, trial counsel inexplicably elected to cross-examine Officer Shumpert about Ronnie Washington's statement. App. 937-42. Trial counsel again confirmed that Officer Shumpert took a statement from Washington. App. 939. He then asked:

> Q. Okay, so, you took the statement from him, did he admit to being the driver in the statement?
>
> A. Yes, he did.
>
> Q. So, you charged him at that time?
>
> A. No, I did not.
>
> Q. And why is that?
>
> A. Well, he said that he was the driver, from what he told me that, he states that—...

at which point co-defendant's counsel interrupted and objected on hearsay and confrontation grounds. App. 939-40. Co-defendant's counsel said, "He's getting into what Ronnie Washington said in his statement **and he's certainly not here for me to cross-examine him.**" App. 940 (emphasis added). Judge Dickson sustained co-defendant's counsel's objection. App. 940.

Nevertheless, petitioner's counsel persisted in his questioning regarding what Ronnie Washington said outside of court. App. 940-42. Referring to Officer Shumpert's questioning of Washington, Petitioner's attorney asked:

Q. And did [Washington], didn't he, or did he say he knew my client?

A. Yes, sir.

Q. And how did he know my client?

A. He said they used to work together at Burger King.

Q. Uh-huh.

A. And I think they went to school together, but he used to run errands for him.

App. 940. After eliciting this inadmissible hearsay connecting the alleged getaway driver to his own client, trial counsel asked a few other questions about Washington not yet being arrested then surrendered examination to the co-defendants' attorneys. App. 941-43. The State rested after its lead investigator testified and none of the defendants called Washington as a witness.

During closing argument, trial counsel accused the solicitor of over-promising and under-delivering by not having Ronnie Washington testify. App. 11007-08. Attempting to draw an analogy to his defense of mere presence, he told the jury that the likely reason Ronnie Washington had not yet been charged was because of mere presence. App. 1107-08.

The solicitor had last argument and used it to full advantage with respect to Ronnie Washington. App. 1183-84. The solicitor said:

> Well, let's talk about Ronnie Washington. Where is he? Why isn't he charged with murder yet? Someone said in their closing statement, I assume it's because the prosecution in their defense of maybe mere presence. Well, I appreciate their indignation towards the get away driver, Ronnie Washington, **it proves that the defendants are guilty.** I appreciate that. But let's talk about Ronnie. It is not reasonable, he came forth, as you heard, two weeks ago, while we were getting ready for this trial, **Ronnie Washington goes to the sheriff's office, this came**

> **out, and admitted, I was the get away driver. How does that help them?** And we'll talk more about that in a minute. **I was the get away driver, and I'm friends with Chris Coleman, just like Patrick Tyler told you on the witness stand.** How does that help them?
>
> ...
>
> How can I ethically call a witness if I'm about to charge him with a crime? I can't. That's why Ronnie Washington is not here. That's the truth. Well, how can Ronnie Washington in any way help them? Not at all. **It kills them.** He corroborates Patrick Tyler from the testimony you got to hear about Ronnie Washington. **He was the get away driver, that's the only evidence in this case, he's friends with Christopher Coleman**, and he drove an SUV, a jeep type car, an Explorer.

App. 1183-84 (emphasis added). The solicitor's hearsay-laden statements were not objectionable because the hearsay had been elicited by petitioner's own counsel.

At PCR, petitioner alleged trial counsel was ineffective for eliciting this hearsay about Ronnie Washington and his connection to petitioner. App. 1319-1321. App. 1326-1330. When trial counsel testified, he admitted that when Officer Shumpert took the stand, no evidence (that was not hearsay) gave Officer Shumpert the basis for saying Ronnie Washington was the getaway driver. App. 1337-38. Trial counsel said he interviewed Ronnie Washington before trial at the solicitor's office. App. 1338-39. He expected Ronnie Washington to testify. App. 1339. When asked his "trial strategy behind asking Lieutenant Shumpert the details of Ronnie Washington's statement," trial counsel responded that Washington told him during their out-of-court meeting that he did not see petitioner with a gun in the car. App. 1339-40. He said, "I wanted to have that set as he was the driver and then ask him if he ever saw a weapon with my client." App. 1340. He had Washington under subpoena, but elected not to call him to the stand. App. 1340-42.

The PCR court erred in crediting trial counsel with a strategic reason for eliciting this hearsay. App. 1358-61. The court said it did not need to rule on "whether this testimony was inadmissible hearsay because allowing the testimony to come in was a valid strategic decision." App. 1358. The court also erred in holding no prejudice existed because, "The identity of the driver is of no consequence to Applicant's case." App. 1360.

These two findings by the PCR court obviously contradict each other and are error. If the driver is of no consequence, then eliciting inadmissible hearsay about the driver cannot be a reasonable trial strategy. The hearsay was damaging because it connected petitioner to the getaway driver. Nor could trial counsel's claimed strategy be reasonable because all five co-defendants were charged under the hand-of-one-is-the-hand-of-all. The identity of the get away driver and his connection to petitioner were extremely important. What was legally irrelevant, under accomplice liability, was whether petitioner had a gun when the victim was shot twenty-four times.

Furthermore, trial counsel's claimed strategy is contradicted by his own actions at trial and words at the PCR hearing. He claimed he wanted to get from Washington that petitioner did not have a gun in the car. He failed to get this fact from Officer Shumpert. He had Washington under subpoena. Putting aside that his claimed strategy made no sense because of accomplice liability, his failure to call Washington to the stand to get out the information about the gun that he claimed justified his questions to Officer Shumpert show that no such strategy existed.

Trial counsel's actions deprived petitioner of effective assistance of counsel under the Sixth Amendment. U.S. Const. amend. VI. Petitioner proved both deficient performance and prejudice under the Sixth Amendment's standards. Strickland v. Washington, 466 U.S. 668 (1984). In Ingle v. State, 348 S.C. 467, 474, 560 S.E.2d 401, 404-05 (2002), this Court held trial

counsel was ineffective for eliciting damaging hearsay on cross-examination. In Ingle, trial counsel asked a doctor what information she received regarding a sexual assault victim and ultimately testified that the victim was "molested by her mother's boyfriend." Id. Trial counsel in Ingle further failed to object to additional hearsay elicited through the doctor. Id. This Court reversed the PCR court's finding of no prejudice, holding that the cumulative effect of the "devastating impact of improper corroboration" was prejudicial under Strickland. Id. (internal quotations omitted). See also Vail v. State, 402 S.C. 77, 738 S.E.2d 503 (Ct. App. 2013) (holding failure to object to inadmissible hearsay constituted ineffective assistance under Strickland).

In Thompson v. State, 423 S.C. 235, 814 S.E.2d 487 (2018), this Court reevaluated the standard for determining whether ineffective assistance with respect to hearsay requires reversal. The Court applied a harmless error standard and determined that the cumulative effect of the unobjected-to hearsay proved prejudice and that the remaining evidence against the defendant in Thompson was not sufficient to deny relief.

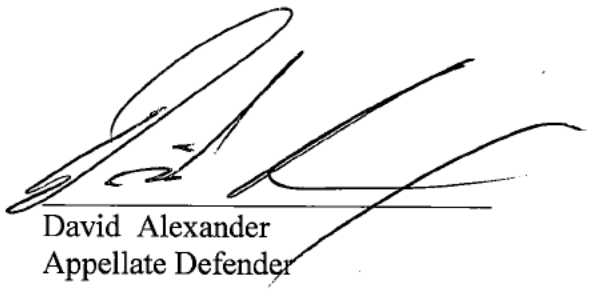
Here, trial counsel performed deficiently because without Ronnie Washington taking the stand, his statements about being the getaway driver and being friends with petitioner were inadmissible hearsay. Rules 801, 802, SCRE (defining hearsay). Judge Dickson sustained a co-defendant's objection to the hearsay, further showing deficient performance. The claimed trial strategy is not only contradicted by trial counsel's own actions and words, but by the law of accomplice liability.

The solicitor explained the prejudice from trial counsel's mistakes far better than appellate counsel can: "It kills them." App. 1183-84. As the solicitor told the jury, the inadmissible hearsay from Ronnie Washington corroborated the testimony of its star witness,

Patrick Tyler. App. 1183-84. Instead of facing a case where the lead witness was compromised by his minimization of his own role and the deal he got from the State to avoid a murder charge with a mandatory thirty-year minimum sentence, petitioner also had to contend with being linked to the crime from his "friend" and former Burger King co-worker, Ronnie Washington. Compounding the problem is petitioner had no opportunity to cross-examine Washington because trial counsel's actions allowed the State to avoid calling Washington. Because of trial counsel's deficient performance, the State had no need to call Washington and expose him to cross-examination. It obtained all it needed regarding Washington from Officer Shumpert and used it to devastating effect during cross-examination. The PCR court's ruling is without support and this Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse petitioner's convictions.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of April, 2019.

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V.

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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 Benjamin Limbaugh, 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 Christian Coleman, #344192, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 22nd day of April, 2019.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 22nd day of April, 2019.

Courtney Powers (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.