RECEIVED
Jan 08 2024
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable Perry H. Gravely, Circuit Court Judge

JEREMIAH C. JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000976

JOHNSON 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

[1] 378 U.S. 368 (1964)

ISSUE PRESENTED

Did the PCR court err in finding trial counsel provided constitutionally effective assistance of counsel during the *Jackson v. Denno*[2] hearing where trial counsel did not call Petitioner to testify and did not argue that the statements made by Petitioner were involuntary?

2 378 U.S. 368 (1964)

STATEMENT OF THE CASE

In the late evening hours of July 1, 2012, CJ Patel's son reported to police that he had not heard from his father since around 5:30 that afternoon. The police originally treated the matter as a missing person case. App. 204, ll. 5-21. The following day the police received Patel's cellphone records and discovered that Patel had called the same number multiple times within the last hour before he disappeared. App. 206, l. 20-App. 207, l. 6. The number was eventually linked to Petitioner's co-defendant Kyndra Howell. App. 211, ll. 4-24. On July 3, 2012, a landowner reported an abandoned car in a rural area in Anderson County. Upon running the license plate and VIN the police discovered the abandoned car belonged to Patel. App. 112, l. 17-App. 113, l. 22; App. 213, l. 2-App. 214, l. 4. The police obtained a search warrant and impounded the car. At the time, police found no evidence in the car, or in the surrounding area, leading them to Patel's location. App. 118, l. 10-App.119, l. 10; App. 214, ll. 6-25. The lead investigator, Detective Danny Barton, testified that it looked like somebody had attempted to conceal the car. App. 214, ll. 16-17.

A call to the police's tip line led them to question Howell about Patel's disappearance. Based on that conversation, the police obtained a search warrant for Howell's residence on Jerry Drive in Anderson, South Carolina. App. 217, l. 2-App. 219, l. 20. They found security cameras and, after speaking with the landlord, were able to find the DVR "in a wall in the closet that couldn't be accessed by the tenant or anybody else other than . . . the landlord." Police also removed several cords that could have held someone hostage from the home. App. 219, l. 21-App. 221, l. 9.

The video from Jerry Drive showed Patel pull into the driveway of the house on Jerry Drive. Howell gets into Patel's car, they leave, and then return. Patel walks with Howell into the house. According to Detective Barton, that was the "last time CJ Patel is seen by anyone." The video also

depicts Petitioner and his co-defendant Zachary Gantt at the home. Petitioner is seen leaving in Patel's car and returning to the home on the video. Howell eventually moved Patel's car behind the house. App. 224, l. 17-App. 227, l. 24.

With the cooperation of co-defendant Gannt, Patel's body was found on July 11, 2012, in a heavily wooded area in Anderson County. Patel's body was found in an entirely different area of Anderson from his car. App. 126, l. 7-App. 127, l. 22; App. 173, l. 25-App. 179, l. 18. The police found a 9mm shell casing near the body. App. 130, l. 24-App. 131, l. 1. No fingerprints or other forensic evidence was found on the shell casing. App. 134, ll. 13-20. The cause of death was a gunshot wound to the head. App. 164, ll. 5-7. There was no forensic evidence, such as fingerprints or DNA, that implicated Petitioner in the crimes. App. 284, l. 11-App. 285, l. 4.

Gantt was arrested on July 7, 2012. App. 238, ll. 3-5. Petitioner was arrested on July 9, 2012. App. 238, ll. 10-11. At the time of his arrest, Petitioner denied any involvement in Patel's death. App. 242, ll. 12-23. Petitioner claimed he had been at Howell's house playing video games and never saw Patel. App. 242, ll. 12-23. Three days later, the police pulled Petitioner from the jail and interrogated him. App.198, ll. 4-10; App. 354. Claiming they did not have the technological capability in the year 2012, the police did not record their interrogation of Petitioner. App.198, ll. 9-22. The police did not take notes. App. 55, ll. 19-23. The interrogation resulted in an inculpatory statement typed by the police and purportedly signed by Petitioner. App. 185, l. 10-App. 186, l. 18.

Petitioner was indicted during the December 2012 term by the Anderson County grand jury for one count of murder, one count of armed robbery, one count of kidnapping, and one count of possession of a weapon during the commission of a violent crime. App. 366-373. The State, represented by Rame L. Campbell and Brantly Haigler called the case to trial before the

Honorable R. Scott Sprouse and a jury on June 22, 2015. Petitioner was represented by Gordon Senerius. App. 1.

Prior to the start of trial, the parties held a hearing pursuant to *Jackson v. Denno*[3] to determine the admissibility of Petitioner's statements made after his arrest. App. 39, l. 25-App. 40, l. 1. The State called Investigators Todd Owens and Danny Barton to testify to the circumstances surrounding Petitioner's statement. Owens testified that Petitioner was provided with an advisement of rights form which he reviewed with Petitioner. The form advised Petitioner of his rights pursuant to *Miranda v. Arizona*[4] and included a waiver of rights section. Owens testified that Petitioner read portions of the form out loud and other portions to himself, that Petitioner initialed the form, signed the waiver of rights, and agreed to speak with police. App. 41, l. 1-App. 44, l. 25. According to Owens, Petitioner was not handcuffed during the interrogation, there were no threats, intimidation, coercion involved during the interrogation, and Petitioner understood his rights and voluntarily waived them. App. 45, l. 12-App. 46, l. 25.

Owens testified that he typed the statement with Petitioner in his office. He admitted the statement was not an exact word-for-word copy of what Petitioner said but it was a synopsis of Petitioner's statement. Owens stated that he would type a few sentences and then consult with Petitioner about what he had written to ensure it was accurate. At the end, Petitioner was given a chance to read and make changes to the statement before it was printed out and signed. Owens testified Barton was with him for most of the interrogation and for the typing of the statement. App. 47, l. 17-App. 49, l. 7. Owens estimated that the interrogation lasted between two to two

---

3 378 U.S. 368 (1964)

4 384 U.S. 436 (1966)

and a half hours and was not video or audio recorded. He admitted that he did not take any written notes during the interview. App. 54, l. 24-App. 56, l. 3.

The statement attributed to Petitioner was read into the record as follows,

> Over the weekend, I think it was Saturday evening, I was with my girlfriend Nikki in her car, a silver Cadillac. We went over to Jerry Drive. She was driving, and I was riding in the passenger seat. No one -- or no [one] else was with us.
>
> We pulled up and saw Zach Gantt, who I considered to be like a son to me and he looks up to me. We talked, and I got out of the car, and Kyndra called us over to her house, a brick house. We walked over, and she told us about a man inside who had some money, and she said she -- or we should rob him.
>
> I looked at Zach and asked him, 'Do you want to do this?' He shook his head 'yes.' We all three went in the house. We walked back to a room with stuff everywhere. Me and Zach scuffled with a guy, and the guy got held down on the floor. "I asked about if he had money or whatever, and the guy was like, 'No, I don't have no money.' Me and Zach tied the guy up with a cord or something like that. We tied his hands behind him. He was sitting on the floor, and Kyndra was asking him about where his money was.
>
> I reached down and got his wallet. It was on the floor. I sat it on a dresser. I remember Kyndra checking some cards the guy had in his wallet for some money. Kyndra later left with the cards, and the guy had said some numbers so they would work. When she came back, she said those were not the right numbers.
>
> I hit the man in the chest. Zach hit him also. I left and took his car and tried to use the cards using the numbers he gave us. I tried to use them at the Spinx on Highway 81. I tried to use the cards in the ATM. I left and went back to the house. The guy one time laid down like he was knocked out. I said this was enough.
>
> Soon after that, a guy named Quevo came[,] and things got out of hand. Quevo hit the man in the face. I don't know how many times[,] but it was a few times. Quevo sprayed the man with a can of like bug spray or something, trying to get him to talk. Quevo also grabbed a knife and got it off the stove -- hot off the stove and torched the man, burning him with the knife. He burned him in several places. I don't know where all he did because the guy was screaming.
>
> I was feeling like this was enough, and I said, 'Let's take him off.' Quevo was like, 'All right.' My plan was to take him off and let him go. The car was pulled in the backyard already. Somebody had moved it. I remember somebody

saying, 'Hold up a minute,' like there was a car coming down the road or something. It was dark.

He [Patel] got in the backseat in the middle. Me and Zach got in the back with him. Quevo drove. We went out deep into the country on a long back road. We pulled up into some bushes like a driveway to a hunting area or something. The man got out of the car. I was trying to think of a way to get this man away from him [Quevo].

Quevo had a gun in his hand. Me, Zach and Quevo walked down further into the woods with the man. I kept asking the guy to just tell them where the money is at. We were walking, and the next thing I know, I hear Quevo ask the man about the money, and then I see him raise the gun to the side of the man's head, and I start to turn, and he shoots him in the head. I tried to stop him and told him don't do this. But it was too late. The man fell. I asked Quevo if the man was dead. He said yes.

Me and Zach started walking back, keeping him close to me. We walked -- we all walked back to the car. We got into the car, and Quevo drove the car back. We went back to Kyndra's house. I think Quevo told her what happened. Later a guy named Bug or Unc, something like that, came to the house and cleaned the car. I think he was going to clean it up for some dope or something.

I drove the car up to Fair Play. This guy, Bug or whatever, rode up with me. Zach followed us in a car. We dropped the car off in some bushes and Zach drove us back. I'm sorry this happened, and I tried to stop the violence, but it got out of hand.

App. 50, l. 11-App. 53, l. 16

Barton took the stand and testified that at the end of the interview they presented Petitioner with a photographic lineup from which he identified his co-defendant, Ezra Williams, also known as Quevo. App. 63, l. 24-App. 64, l. 20. He further testified that after they had finished taking Petitioner's statement and returned him to the jail, he remembered another question he needed to ask Petitioner. Barton proceeded to the jail, met with Petitioner, re-advised of his rights him with another advisory of rights form, and questioned him about the location of the gun. Petitioner gave a short statement that was memorialized and signed stating

he did not know what happened to the gun after Quevo shot Patel. App. 63, ll. 9-20; App. 64, 24-App. 67, l. 10.

Counsel Senerius argued that Petitioner's statements should be suppressed as not freely and voluntarily given because the statements were not audio and/or visually recorded. He stated that "in a minor situation like a DUI case, that everybody be recorded" or it would lead to a dismissal. Counsel Senerius argued that in a case as serious as Petitioner's the "willful failure to record [the statement] is detrimental to the case and should, as a result thereof, suppress these statements." App. 74, ll. 5-19. He also argued that Petitioner did not write the statements, even though his name appeared on them. He re-emphasized that the investigators did not take notes and because the statement was not audio or visually recorded all the court had to go on was the investigator's memory. He argued the failure to have a recording precluded admission of the statements. App. 75, l. 16-App. 76, l. 6. The State argued that the failure to have a recording of the statement would not lead to a dismissal as this was not a DUI case. The State argued that under the circumstances Petitioner's statements were voluntary and should be admitted. App. 74, l. 22-App. 75, l. 15.

The trial court ruled that under the totality of the circumstances test set forth in *State v. Miller*, 375 S.C. 370, 652 S.E.2d 444 (S.C. Ct. App. 2007), that Petitioner's statements were voluntary and admissible. The court found that Counsel Senerius' arguments went to the weight to be given the statements but not their admissibility. App. 76, ll. 8-23.

Petitioner was ultimately found guilty as indicted and was sentenced to an aggregate forty years[5] imprisonment. App. 344-345; App. 351-352. Petitioner timely appealed his convictions and sentences. The South Carolina Court of Appeals dismissed the case pursuant to *Anders v. California*[6] in an unpublished opinion. *State v. Johnson*, Op. No. 2016-UP-508 (S.C. Ct. App. filed December 7, 2016). The remittitur was sent on January 23, 2017. Petitioner filed the current PCR application on June 1, 2017. App. 374-400. The State filed a return, partial motion to dismiss, and motion for a more definite statement dated September 5, 2017. App. 401-407. Petitioner filed a *pro se* amended PCR application on August 12, 2019, alleging among other claims that Counsel Senerius provided ineffective assistance of counsel during the *Denno* hearing. App. 408-421.

An evidentiary hearing was convened on March 2, 2023, before the Honorable Perry H. Gravely. The State was represented by Danielle Dixon. Petitioner was represented by PCR Counsel Sarah Henry. App. 422. Petitioner, his mother, Counsel Senerius, and Solicitor Campbell testified at the hearing. App. 423. Regarding his statement and the *Denno* hearing, Petitioner testified that he felt his statement was coerced as it contained the same information as a co-defendant's statement but "with different wording." App. 439, ll. 4-16. Petitioner acknowledged that Detective Owens typed the statement and asked Petitioner to sign it. However, Petitioner stated he signed the statement without first reading it because he trusted the police. App. 439, l. 17-16. Petitioner testified that once he read what the statement contained, he asked to change it. He testified he told Investigator Owens that he "had nothing to do with it"

---

5 Petitioner received thirty years for murder, ten years for armed robbery, twenty years for kidnapping, and five years for possession of a weapon during the commission of a violent crime. The ten-year armed robbery sentence was to be served consecutively to the thirty-year murder sentence. App. 362-365.

6 386 U.S. 738 (1967)

and he wanted to change the statement because it was "not the words that [he] said." App. 440, l. 3-20. Petitioner also believed that Counsel Senerius should have objected to a lot of things, particular the statement because it was not written by him. App. 441, ll. 1-24.

Counsel Senerius testified that he communicated with Petitioner frequently about the case and that the biggest issue he faced was getting Petitioner to understand the felony murder rule. App. 466, l. 19-App. 467, l. 25. Counsel testified that he recalled the *Denno* hearing and that the State introduced the *Miranda* waiver forms during the trial. He had concerns about the voluntariness of the statement and testified he raised those concerns during the hearing. Counsel Senerius testified,

> I also practiced at that period – period of time DUI trials, driving under the influence. The statute for driving under the influence says it had to be – it had to be videotaped. In this particular case, when we're dealing with something that was much more serious than a DUI charge, they didn't videotape it. All they did was take notes and they had the capability to do that, and I raised that as part of the argument against the voluntariness of the confession.

App. 470, ll. 1-24.

At the end of the hearing the State argued that Petitioner had not met his burden of proof and his application should be dismissed as there was overwhelming evidence of guilt in the case. PCR counsel made an argument regarding the seating of Juror 71 and did not argue any other of the PCR claims. The court orally ruled that Counsel Senerius had a strategic reason for not removing the juror. The court then denied Petitioner's application and requested that the State prepare a written order of dismissal. App. 485, l. 4-App. 486, l. 13.

An order of dismissal was filed on June 9, 2023, finding that Petitioner had failed to prove that he had received ineffective assistance of counsel. App. 488-489. Regarding the *Denno* hearing, the PCR court ruled that Counsel Senerius did challenge the admission of Petitioner's statements and that his representation in that regard was reasonable under prevailing

professional norms, such that Petitioner could not show deficiency. The PCR court ruled that Petitioner did not show prejudice because he did not present what else counsel could have argued that would have been reasonably likely to change the outcome of the *Denno* hearing. App. 496-497.

ARGUMENT

The PCR court erred in finding trial counsel provided constitutionally effective assistance of counsel during the *Jackson v. Denno*[7] hearing where trial counsel did not call Petitioner to testify and did not argue that the statements made by Petitioner were involuntary.

In deciding *Jackson v. Denno*, the United States Supreme Court wrote,

> It is now axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession, and even though there is ample evidence aside from the confession to support the conviction. Equally clear is the defendant's constitutional right at some stage in the proceedings to object to the use of the confession and to have a fair hearing and a reliable determination on the issue of voluntariness, a determination uninfluenced by the truth or falsity of the confession.

Denno, 378 U.S. 368, 376–77 (1964) (internal citations omitted). The Court went on to state that "[e]xpanded concepts of fairness in obtaining confessions have been accompanied by a correspondingly greater complexity in determining whether an accused's will has been overborne—facts are frequently disputed, questions of credibility are often crucial, and inferences to be drawn from established facts are often determinative." *Id.* at 390.

During a *Denno* hearing "the trial judge must examine the totality of the circumstances surrounding the statement and determine whether the State has carried its burden of showing the statement was made voluntarily. Where there is conflicting evidence as to whether [a] defendant's statement is voluntary, it is, in the first instance the province of the trial court to determine this factual issue by the preponderance of the evidence." *State v. Miller*, 375 S.C. 370, 383, 652 S.E.2d 444, 450–51 (Ct. App. 2007).

---

[7] 378 U.S. 368 (1964)

"The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the given [statement]. The due process test takes into consideration the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." *Id.* at 384, 652 S.E.2d at 451 (citations omitted). "Appellate entities in South Carolina have recognized that appropriate factors to consider in the totality-of-circumstances analysis include: background, experience, and conduct of the accused; age; length of custody; police misrepresentations; isolation of a minor from his or her parent; threats of violence; and promises of leniency. *Id.* at 386, 652 S.E.2d at 452. "Coercive police activity is a necessary predicate to finding a statement is not voluntary. **Coercion is determined from the perspective of the suspect.**" *Id.* (emphasis added) (internal citations omitted).

The finding by the PCR court that Counsel Senerius' representation during the *Denno* hearing was reasonable under prevailing professional norms was not supported by the record. First, Counsel Senerius failed to call Petitioner to testify during the hearing which precluded a finding of coercion. The first time that Petitioner offered any testimony regarding his statements was during the PCR hearing where he alleged that he had not said the words that were ultimately attributed to him. While the State has the burden of proving the voluntariness of the statement, the trial court cannot make a determination regarding coercion without hearing from the defendant. Additionally, the *Miller* test requires the court to consider the totality of the circumstances. Such an examination of the circumstances is not possible without having the perspective of the defendant. The failure to call the alleged statement maker, in challenging the admissibility of the statement, is not reasonable under prevailing professional norms.

Second, Counsel Senerius did not argue the *Miller* factors regarding the totality of the circumstances to challenge the statement. Instead, he argued that, like in DUI cases, the failure

to video record the statement should render it inadmissible. There is no requirement that a defendant's statement be recorded for it to be admissible at trial. As the trial court ruled, such an argument goes to weight to be given the statement, not its admissibility. Review of the transcript makes apparent that Counsel Senerius made no arguments against the admissibility of the statements attributed to Petitioner. This was not reasonable under prevailing professional norms. Counsel Senerius' failure to call Petitioner to testify during the *Denno* and to argue against admissibility under *Miller* was deficient performance.

Additionally, Counsel Senerius' deficient performance was not excused by a reasonably strategic decision. Trial counsel is undoubtedly afforded considerable leeway to make reasonable, strategic decisions. *Stone v. State*, 419 S.C. 370, 383-384, 798 S.E.2d 561, 568 (2017). It is well settled that trial counsel's decision to employ a certain strategy will not be found to be deficient performance if counsel articulates a valid reason for employing the strategy. *Id.* at 384, 798 S.E.2d at 569). However, "[t]he necessary converse of this principle is that **counsel's decision to employ a certain strategy will be deemed unreasonable under the Sixth Amendment if the reasons given for the strategy are not sound.**" *Id.* (emphasis added).

Counsel Senerius did not offer any strategic decision for failing to call Petitioner to testify during the *Denno* hearing, much less a reasonable one. Nor did he offer any strategic decision for failing to argue the *Miller* factors regarding admissibility. He testified he raised the voluntariness of the statement to the trial court by arguing that it should have been recorded and absent a recording the statement should be suppressed. However, Counsel Senerius' argument was not based on any legal authority. Our courts have never required that a defendant's statement be recorded to be admissible and such an argument was neither reasonable nor effective.

Regarding prejudice, the PCR court found that Applicant had not shown what counsel could have argued that would have reasonably changed the outcome of the hearing. Notably, Petitioner testified at the PCR hearing that the statement he signed was not what he had told police. Had that information been available to the trial court it is reasonable to conclude that the court could have suppressed the statement. Counsel Ṣenerius' failure to call Petitioner to the stand deprived the trial court of the ability to actually assess the totality of the circumstances. This resulted in prejudice to Petitioner as the statement was the most damaging piece of evidence the State had against him.

"The Sixth Amendment guarantees every criminal defendant the reasonably effective assistance of counsel." *Stone v. State*, 419 S.C. 370, 379, 798 S.E.2d 561, 566 (2017) *citing* U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 683, (1984). "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* at 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.*

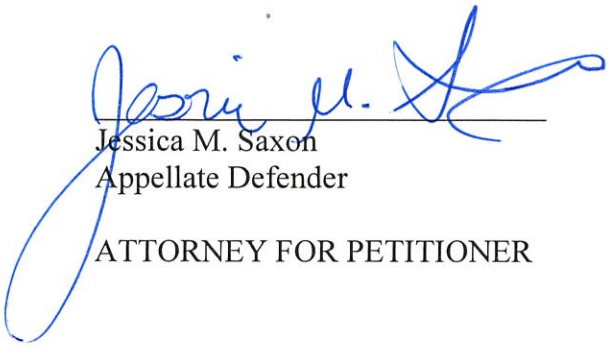
"When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Id.* at 687-688. "[T]he performance inquiry must be whether counsel's assistance was reasonable considering 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.

The PCR court's ruling was not supported by the record. Counsel's failure to call Petitioner during the *Denno* hearing and failure to properly argue against admissibility of the statement was not reasonable under prevailing professional norms. Petitioner's PCR testimony that the statement was not representative of what he told police was information that the trial court never had the opportunity to consider when it was determining coercion and the overall circumstances of the interrogation. Had the trial court had such information there is reasonably probability that the statement would have been suppressed. Accordingly, Petitioner has shown both deficient performance and prejudice.

CONCLUSION

Based on the foregoing arguments, Petitioner respectfully request this Court grant the petition for writ of certiorari to allow full briefing on this issue.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of January, 2024.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Jan 08 2024

S.C. SUPREME COURT

Certiorari to Anderson County

Honorable Perry H. Gravely, Circuit Court Judge

JEREMIAH C. JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jeremiah Christian Johnson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Perry H. Gravely, which was held on March 2, 2023, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Jeremiah Christian Johnson.

Respectfully Submitted,

Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of January, 2024.

RECEIVED

Jan 08 2024

S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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

This 8th day of January, 2024.