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**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Richland County

Honorable George M. McFaddin, Circuit Court Judge

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TRENTON M. BARNES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001267

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PETITION FOR WRIT OF CERTIORARI

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GARY H. JOHNSON  
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

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### **ISSUE PRESENTED**

Was defense counsel ineffective for failing to object to impermissible testimony from two prison informants that co-defendant Young told them “Trigg” was one his accomplices in this attempted armed robbery and murder case, and that the informants found out from someone else that “Trigg” was petitioner since this testimony was inadmissible under Rule 602, SCRE, because the informants did not have personal knowledge regarding the identity of “Trigg” and it was extremely prejudicial to petitioner?

## STATEMENT

During a joint trial from November 10 – 19, 2014, Trenton Barnes and Lorenzo Young were convicted by a jury of murder, kidnapping, second-degree burglary, and attempted armed robbery. State v. Barnes, 421 S.C. 47, 51, 804 S.E.2d 301, 303–04 (Ct. App. 2017). At trial before the Honorable Robert E. Hood, petitioner was represented by Mark Schnee while Young was represented Tracey Pinnick, Stephen Krzyston, and Jacqueline Bambach. App. 1. Dolly Garfield, Luck Campbell, and Nicole Simpson prosecuted the case. App. 1. At the time of trial, petitioner was sixteen years old.<sup>1</sup>

By order of this Court filed February 10, 2021, petitioner’s trial counsel Mark Schnee was disbarred due to “numerous instances of misconduct combined with [Schnee]'s deception of his clients, the courts, and ODC . . .” Matter of Schnee, 432 S.C. 500, 514–15, 854 S.E.2d 840, 847 (2021). This fact was not brought to the attention of the PCR court during the evidentiary hearing before the Honorable George M. McFaddin. Joshua Edwards, appearing on behalf of the state, told the PCR court that Schnee was no longer practicing law in South Carolina and could not be served for appearance. App. 1954, ll. 8 – 19.

During trial, Schnee failed to object to the state’s two prison informants providing hearsay testimony regarding the identity of “Trigg” and “Trap” as persons committing the crimes with Young. Due to his failure to object, the issue was not preserved as noted by the Court of

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<sup>1</sup>During trial, the guidelines for sentencing minors changed due to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). Consequently, Barnes was sentenced during a subsequent hearing on December 12, 2014, to allow consideration of the Aiken factors. In fact, there was no mental health evidence, nor any other expert testimony offered during the sentencing hearing. App. 1974 25, ll. 2 – 22. The “extensive” sentencing hearing referenced by Garfield consisted of testimony of a teacher from Alvin S. Glenn who had petitioner in class for 50 days, petitioner’s mother, a written DJJ intake evaluation, and school records the court had to obtain for counsel Schnee since his effort to obtain the records was not in the proper form. App. 1889, ll. 9 – 18.

Appeals in with petitioner's direct appeal. See State v. Barnes, 421 S.C. 47, n.1, 804 S.E.2d 301, n.1 (Ct. App. 2017).

At the PCR hearing, Petitioner testified "the actual identities of the two individuals from an unknown source that was never mentioned, and Mark Schnee never objected to that." App. 1959, l. 17 – 1960, l. 1

Following the PCR hearing, Judge McFaddin denied relief and dismissed the application by written order, but failed to address the issue regarding the identity of "Trigg" and "Trap."

This petition follows.

## ARGUMENT

The PCR court erred in not addressing whether counsel was ineffective for failing to object to impermissible testimony from two prison informants that co-defendant Young told them “Trigg” and “Trap” were his accomplices in this attempted armed robbery and murder case, and that the informants found out from someone else that “Trigg” was petitioner since this testimony was inadmissible under Rule 602, SCRE, because the informants did not have personal knowledge regarding the identity of “Trigg” and it was extremely prejudicial to petitioner.

“A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution.” Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). To establish a claim for ineffective assistance of counsel, a PCR applicant must show (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668 (1984). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

### **The identity of “Trig” and “Trapp” at trial.**

A key element of the case against petitioner came in the form of the identity of “Trigg” and “Trap.” Two prison informants provided testimony at trial that co-defendant Young admitted he committed the murder with the aid of “Trigg” and “Trapp.”

Alfred Wright testified as follows:

That [Young] was with two other individuals that [Young] called Trigg and Trap, *and I later got their names from somebody else, but not from him. He just gave me their nicknames.* He said they went to rob a club, but the club was closed, so they went next door

to a bakery where Trap stayed outside as a look out and he and Trigg went in. A woman resisted when they demanded for money and swung a knife at them, and he shot her two times.

App. 936, ll. 5 – 13 (emphasis added).

Without objection, Wright then testified as to who “Trig” and “Trap” were:

Q. Did you learn who Trigg was?

A. *I was told by someone else, not him, that Trigg was Troy Stevenson and Trap was Trenton Barnes and they were both brothers.*<sup>2</sup>

Q. They were both brothers?

App. 936, ll. 17 – 21 (emphasis added).

A second prison informant, Michael Schaefer, also relayed testimony about conversations with co-defendant Young:

Okay, he said him and two other people by the name of Trap and Trigg went out to rob a nightclub in the area, but it was closed. They saw the bakery was opened. They took that as an opportunity to go in. The woman was in there. He said she went for a knife and she was struggling so she shot her twice. He fled the scene. He said he was wearing a red hoodie and jeans.

App. 920, ll. 10 – 17.

Again, without objection Schaefer was allowed to provide the identity of “Trap” and “Trigg”:

Q. And you just mentioned Trap and Trigg. Did you know who those individuals were?

A. No, it wasn't until later on. I just knew them by their nicknames.

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<sup>2</sup> There are inconsistent connections to petitioner being “Trigg” or “Trapp” due to the lack of foundation and personal knowledge. As such, petitioner is identified at times as “Trigg” as in the PCR court’s order. App. 1989. At other times, petitioner is associated with “Trapp” as in Wright’s testimony. App. 936, ll. 17 – 21. Regardless of which nickname was connected to petitioner, the prejudicial impact would be the same.

Q. And did you determine later who Trap and Trigg were?

A. Yeah.

Q. Who was Trap?

A. A 16-year-old kid named Troy. Yeah, Troy.

Q. A 16-year-old?

A. Yes.

Q. Did you understand who Trigg was?

A. That's Trenton, Trenton Stevens.<sup>3</sup>

App. 1111, ll. 3 – 15.

**How the issue was raised at PCR.**

During the PCR hearing, petitioner testified as to the prejudicial impact of having two separate witnesses confirm his identity through a nickname as being associated with Young during commission of the crimes:

Mark Schnee, he basically failed to test the credibility of the witness testimony when the witness was allowed to testify stating that co-defendant Young confessed -- confessed the crime to him, stating that he was alongside two defendants -- two individuals in a crime by the name of Trigg and Trap, but the trial judge allowed him to testify that he got the name -- *the actual identities of the two individuals from an unknown source that was never mentioned, and Mark Schnee never objected to that.*

App. 1959, l. 17 – 1960, l. 1. In addition, petitioner's original PCR application referenced this as hearsay within hearsay testimony as a denial of his rights under the confrontation clause. App. 1929.

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<sup>3</sup> Due to the witness's lack of personal knowledge, we are left to assume he is referring to petitioner Trenton Barnes and not his brother Troy Stevenson as to which is in fact "Trigg" or "Trap."

In discussing the “Trigg” and “Trap” issue, Solicitor Garfield stated Schnee had objected to such hearsay.

Q. Okay. And you don't have any recollection of Mr. Schnee attempting to block that testimony or make an objection regarding his testimony about statements made by a co-defendant identifying people, Trigg and Trap, and all that testimony? You don't remember Mr. Schnee –

A. I felt like there was extensive objections from Mr. Schnee to exclude such hearsay. That's my memory.

App. 1976, ll. 16 – 22.

While Schnee did object to the testimony of Shaefer and Wright as inadmissible hearsay and a violation of petitioner's confrontation clause rights under Bruton v. United States, 391 U.S. 123, (1968), Schnee failed to object to the additional statements by Shaefer and Wright about the identity of “Trigg” and “Trap” under Rule 602, SCRE. App. 931, ll. 1 – 16; 935, ll. 19 – 25; 1110, ll. 2 – 5. This failure was noted by the Court of Appeals on direct appeal: “Although not an issue before us, it is unclear how Wright and Schaefer's testimony concerning how they learned the identities of ‘Trigg’ and ‘Trap’ complied with Rule 602, SCRE.” Barnes, 421 S.C. at 56 n. 1, 804 S.E.2d at 306 n. 1.

#### **How the PCR court ruled.**

The PCR court failed to rule on this issue despite the fact that the PCR court used the improper statements to connect petitioner to the nickname “Trigg.” App. 1989. A remand for additional findings of fact and conclusions of law under Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) might be required if this Court finds the record incomplete on this issue. However, the statements were both hearsay and the two witnesses admitted they lacked personal knowledge required under Rule 602, SCRE, regarding the identity of “Trigg” and “Trap.” Shaefer testified that Young only referred to the nicknames “Trigg” and “Trap” and he learned

“later on” that they were petitioner and his brother Troy. App. 1111, ll. 3 – 15. Similarly, Wright testified that heard from some other source (other than Young) that “Trigg” and “Trap” were petitioner and his brother Troy. App. 936, ll. 17 – 21. Schnee was deficient in failing to prevent the connection of “Trigg” and “Trap” to appellant. The only question before this Court would turn on the prejudicial impact of such deficiency, allowing this Court to determine the merits of this issue without guidance from the PCR court, as discussed *infra*.

**Prejudicial impact.**

During closing, solicitor Simpson went back to the identity of “Trig” and “Trapp.”

You heard from Alfred Wright who testified that Young approached him in the law library. I believe he was researching this stand your ground for another inmate. At that point he said he learned that three people went to rob a club. Three people, but it was closed, so they went to rob the bakery next door. Young and Stevenson, A/K/A Trigg entered with guns. She resisted and Young shot two times. They didn't get any money. Said Little Trap, A/K/A Trenton was the lookout. It's 1 here I'll remind you because this is the testimony that will become important. It doesn't matter if Trenton was just the lookout. Although, I submit the other evidence in this case shows that he actually is the one, by his own admission, that went into that bakery, but either way, it doesn't matter. The hand of one is the hand of all.

App. 1745, l. 17 – 1746, l. 8.

Michael Schaefer, Young. Same dorm, played cards. Young told them that he *along Trap and Trigg, we later learned their names,* went out to rob a club, said he was wearing a red hoodie. . .

App. 1747, ll. 11 – 14.

Young and Stevenson A/K/A Trigg, entered with guns, she resisted and Young shot two times. They didn't get any money. Little Trap A/K/A Trenton was the lookout. Again, three individuals, the hand of one is the hand of all. It doesn't matter if it was Trenton or Troy, but in this case I submit supports Trenton as the shooter.

App. 1757, ll. 11 – 17.

The state even relied upon the identity of Trigg and Trap in their statement of facts to the PCR court. App. 1941-1942. The PCR court used the identity of “Trigg” and “Trap” in its order. App. 1989.

While the statements from petitioner’s mother provided to investigators implicated petitioner, she denied the truth of those statements during trial and relayed the pressure she was placed under by authorities who indicated one of her two sons was going to need to take the fall. App. 851, l. 2 – 852, l. 18; 884, ll. 16 – 23. A letter, written in handwriting both petitioner’s mother and the state’s expert connected to petitioner, may properly be read as solely an attempt to protect petitioner’s brother Troy.<sup>4</sup>

The state’s case was built around the statements Young made to prison informants implicating himself and “Trig” and “Trapp” along with the letter trying to protect petitioner’s brother Troy. This case does not present overwhelming evidence of guilt that would support a finding that trial counsel’s failure to object to witnesses identifying petitioner and his brother as “Trigg” and “Trap” was not prejudicial. *See Smalls v. State*, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018) (holding for overwhelming evidence to serve as a categorical bar to preclude a finding of prejudice, the “evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong” that the prejudice test cannot possibly be met.). The prejudicial nature of allowing prison informants to identify petitioner as “Trigg” and his brother Troy as “Trap” without objection by

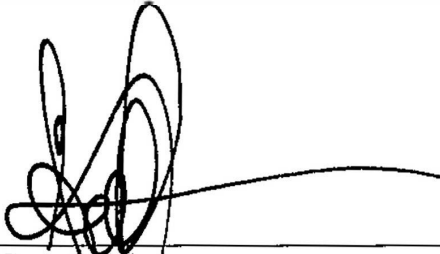
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<sup>4</sup> Petitioner at the PCR hearing denied writing the letter introduced during his trial and testified that Schnee failed to contest the validity of the letter or properly deal with its admission during his trial. App.1963, ll. 12 – 25. At the time the letter was written, petitioner was 16 years old, and his mother had been told one of her sons needed to take the fall to save the other. App. 884, ll. 16 – 23. The letter should be viewed in that context.

trial counsel requires the reversal of the PCR court and granting of a new trial. See Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 745 S.E.2d 97 (2013).

**CONCLUSION**

Based upon the foregoing, petitioner respectfully requests that this Court grant the writ of certiorari to allow full briefing on this issue, or remand for further findings of fact and conclusions of law under Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019).



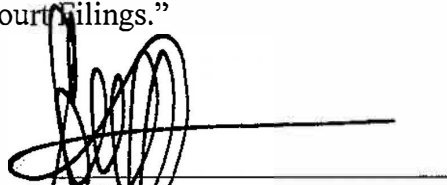
Gary H. Johnson  
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of February, 2024.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of his 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."



Gary H. Johnson  
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 15th day of February, 2024.

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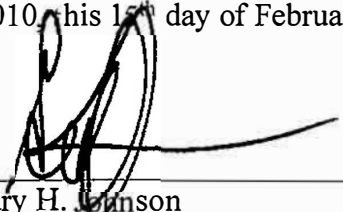
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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the Petition for Writ of Certiorari and Appendix in the above-referenced case have been served upon D. Russell Barlow, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Trenton Malik Barnes, #362454, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 15<sup>th</sup> day of February, 2024.



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Gary H. Johnson  
Appellate Defender

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Division of Appellate Defense  
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Columbia, SC 29211-1589  
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