

IN THE STATE OF SOUTH CAROLINA

In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable R. Kirk Griffin, Circuit Court Judge

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**RECEIVED**

**Jan 17 2025**

S.C. SUPREME COURT

Case No. 2024-000687

Michael T. Barnes,

Petitioner,

vs.

The State of South Carolina,

Respondent.

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**REPLY TO STATE'S RETURN TO PETITION FOR WRIT OF CERTIORARI**

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Undersigned counsel respectfully submits this brief Reply to the State's Return

## ARGUMENTS

**I. Whether the PCR Court erred in finding trial counsel was not ineffective for failing to object to the State's mischaracterization of key evidence in closing arguments?**

Contrary to the State's argument, trial counsel rendered ineffective assistance of counsel by failing to make the proper objection. The key issue in the case was who shot the victims. It is of no moment that the defense counsel could not recall any issues with the state's closing. Return, p. 10. The PCR Court committed an error law in finding trial counsel was not ineffective for failing to object to such an assertion and petitioner was prejudiced by his counsel's substandard performance. *Strickland v. Washington*, 466 U.S. 668 (1984).

**II. Whether the PCR Court erred in finding trial counsel was not ineffective for failing to request a limiting/cautionary instruction in the trial court's charge to the jury based on the State's characterization of key evidence in the State's closing argument?**

For the same reason, the PCR court erred in holding that trial counsel was not ineffective for failing to request a cautionary instruction. The key issue in the case was who shot the victims. Counsel could have had no other obligation than to cast doubt on the State's theory that Petitioner was the perpetrator. Counsel had an obligation to remedy any mischaracterizations of the evidence, and Petitioner was prejudiced. The PCR Court committed an error of law in finding trial counsel was not ineffective for failing to request a limiting/cautionary instruction. *Strickland, supra*. This Court should grant certiorari.

**III. Whether the PCR Court erred in finding trial counsel was not ineffective for eliciting testimony from a State's witness that was not called and ultimately bolstered the State's case?**

For reasons argued in the opening brief, trial counsel rendered ineffective assistance of counsel by eliciting harmful evidence at trial. There can be no strategic reason for doing so, and Petitioner was harmed by trial counsel's ineffectiveness. The PCR Court committed an error of law in finding trial counsel was not ineffective for eliciting such testimony from Agent Paavel. *Strickland, supra*. This Court should grant certiorari.

**IV. Whether the PCR court erred in finding trial counsel was not ineffective for failing to impeach Oliver Nelson with his proffer agreement with the State?**

Counsel completely disregarded an opportunity to impeach a key witness against Petitioner by failing to use the proffer agreement during the cross-examination of Nelson. Even though counsel did cross-examine the witness as to other important facts, the fact remains that counsel should have used this important piece of evidence in support of Petitioner's case.

The PCR Court committed an error of law in finding trial counsel was not ineffective for failing to impeach Nelson with his proffer agreement. *Strickland, supra*. This Court should grant certiorari.

**CONCLUSION**

The Court should grant certiorari.

Respectfully submitted,

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