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**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Jasper County

Honorable J. Derham Cole, Circuit Court Judge

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EUZEMA MAURICE AUSTIN, SR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000055

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BRIEF OF PETITIONER PURSUANT TO *WHITE V. STATE*

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**ISSUE PRESENTED**

Whether the trial court erred in allowing Officer Swett to testify over objection where the testimony was cumulative hearsay that only served to improperly bolster the testimony of Craig Scott?

## STATEMENT OF THE CASE

Petitioner was indicted<sup>1</sup> for one count of burglary first degree during the May 2021 term of the Jasper County grand jury. App. 161-163. The state, represented by Mary Jordan Lempeis, called the case to trial on November 2, 2021, before the Honorable Carmen T. Mullen and a jury. Petitioner was represented by Patrick Hall. App. 1-2. The jury found Petitioner guilty as indicted. App. 138, ll. 21-25. Judge Mullen sentenced Petitioner to fifteen years' imprisonment. App. 158, ll. 15-22.

A direct appeal was not filed. Petitioner filed a timely application for post-conviction relief on September 19, 2022. App. 167-178. The state filed a return on May 5, 2023. App. 179-186. PCR counsel Michael H. Lifsey filed an amended application dated May 6, 2024. App. 187-188. An evidentiary hearing was convened on May 8, 2024, before the Honorable J.D. Cole.<sup>2</sup> The state was represented by T. Cruise Mitchell. Petitioner was represented by Counsel Lifsey. App. 189. An order was filed on December 23, 2024, granting Petitioner's request for a belated appeal pursuant to *White v. State*<sup>3</sup> and denying all other claims. App. 234-243.

This brief pursuant to *White v. State*, and a simultaneously filed petition for writ of certiorari, follows.

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<sup>1</sup> Petitioner was also charged with two counts of assault and battery third degree by indictments 2021-GS-27-00445 and 446. These two charges were not presented of the trial and were not challenged on PCR. Petitioner was sentenced to time served on the two assault and battery third degree charges during the sentencing hearing on February 7, 2022. App. 158, ll. 20-22.

<sup>2</sup> It is unclear from the hearing transcript and from the order of dismissal whether Judge J. D. Cole, Sr. or Judge J. D. Cole, Jr. heard this post-conviction relief matter.

<sup>3</sup> 263 S.C. 110, 108 S.E.2d 35 (1974)

### **STANDARD OF REVIEW**

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

## ARGUMENT

The trial court erred in allowing Officer Swett to testify over objection where the testimony was cumulative hearsay that only served to bolster the testimony of Craig Scott.

### **Relevant Facts**

Asa Primus was in a relationship with Petitioner. She was also seeing another man, Craig Scott. Scott alleged he and Primus were asleep in his bedroom when they were awoken by someone banging on the garage door. A person was then heard coming into the home before kicking down Scott's bedroom door. Scott alleged he recognized the individual standing in his bedroom as Petitioner. Scott and Petitioner purportedly had a tussle before Petitioner began hitting Primus with his fist. Scott then alleged that Petitioner drug Primus from his home and down the street as Scott called 9-1-1. App. 18, ll. 4-6; App. 20, l. 18-App. 27, l. 24.

Primus was kind of tipsy the night of the incident and did not fully remember everything. Her statement contradicted Scott's in numerous ways. She stated that Petitioner did come into the house but that he did not kick in or bust in any doors. While the doors were closed, they were not locked. According to Primus there "was no break in." App. 79, l. 8-82, l. 24; App. 91, ll. 24-25. She remembered Petitioner coming to the bedroom door and Scott jumping up to fight him but stated that she and Scott were awake, not asleep, when Petitioner came into the home. App. 83, ll. 15-19; App. 96, ll. 1-16. Primus confirmed she was struck by Petitioner but denied that he forced her from Scott's residence. She maintained that Petitioner did not force her to leave, that she left with him on her own, and returned with Petitioner to his home where she stayed with him until the following morning. App. 92, l. 4-94, l. 11; App. 96, l. 17-97, l. 21.

There was no forensic evidence connecting Petitioner to the incident. App. 65, ll. 7-25; App. 67, ll. 3-8. The whole of the police investigation involved the responding officer, Bert

Swett, photographing the scene, taking the statement from Scott, and drawing up an arrest warrant for Petitioner based on Scott's statement. Swett stated his "investigation was clear that night when Mr. Scott identified Mr. Austin as the suspect." App. 66, ll. 16-24. Swett confirmed that there was no damage visible to the alleged point of entry and both locks on the supposedly busted through doors were intact. App. 64, ll. 13-65, l. 3. During Swett's testimony the following exchange occurred:

Q. Okay. And what did he -- what was his appearance, or his mood when you arrived at that location?

A. He was upset, *stating a friend* -- or an acquaintance had broke [sic] into his house and beat him and his --

MR. HALL: *Your Honor, I'm going to object on hearsay. Mr. Scott's already testified, and this Officer would be reiterating that testimony by what the victim has already said on the stand.*

THE COURT: *Okay, I think he can go ahead, just tell --*

MS. LEMPESIS: Thank you.

Q. What did you learn from Mr. Scott, as far as your investigation, or when you arrived?

A. Mr. Scott was upset. *He stated* he and Ms. Primus were laying in his bedroom. He heard someone break into his residence, and shortly after kicking into his bedroom door, enter into his bedroom and became -- began a physical altercation with himself and Ms. Primus.

App. 53, l. 18-App. 54, l. 15 (emphasis added).

## **Discussion**

"Hearsay is a statement, which may be written, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted." *State v. King*, 422 S.C. 47, 66, 810 S.E.2d 18, 28 (2017) (cleaned up). "Hearsay is not admissible unless there is an applicable exception." *Id.* In *King*, this Court reviewed whether out of court

statements made to police were hearsay. This Court adopted the reasoning from the Supreme Court of Kentucky, writing,

An out-of-court statement made to a police officer is judged by the same rules of evidence that govern any out-of-court statement by any out-of-court declarant. If it is relevant and probative *only* to prove the truth of the matter asserted by the out-of-court declarant, then the statement is hearsay, and its admission into evidence is governed by the traditional hearsay rule. And, as any other statement, if the out-of-court statement made to a police officer has relevance and probative value that is *not* dependent upon its truthfulness, and it is *not* offered into evidence as proof of the matter asserted, then by definition the evidence is *not* hearsay.

In such circumstances, because the out-of-court statement would not be subject to the hearsay rule, its admissibility would be determined by application of other rules of evidence. So-called “investigative hearsay” is still, fundamentally, hearsay. There is no special kind of evidence known as “investigative hearsay;” we have no rule of evidence called the “investigative hearsay rule.” Use of the term imparts no meaningful information to the analysis that is not otherwise supplied by the word “hearsay.”

State v. King, 422 S.C. 47, 67–68, 810 S.E.2d 18, 28–29 (2017). This Court also cautioned “prosecutors against using ‘investigative information’ as it appears this is an attempt to circumvent the rules against hearsay.” *Id.*, at 66-67, 810 S.E.2d at 28.

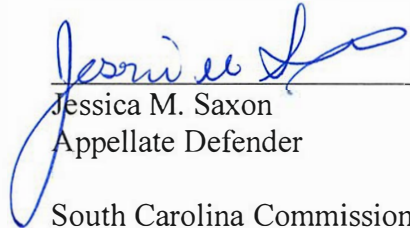
From the record, it can be seen that Counsel Hall objected to the admission of the testimony on hearsay grounds and also argued the testimony was cumulative to what Scott had already testified about. The state did not respond to the objection. The trial court overruled the objection but did not place any grounds on the record. The testimony by Swett was hearsay as it was offered to prove that Petitioner broke into Scott’s home and physically assaulted Scott and Primus. There was no other reason for the admission of the statements. The admission of the testimony was an error of law as the testimony was inadmissible “investigative” hearsay.

Petitioner was prejudiced by the impermissible hearsay testimony because it amounted to bolstering. “A witness may not give an opinion for the purpose of conveying to the jury—directly or *indirectly*—that [they] believes the victim.” *Briggs v. State*, 421 S.C. 316, 324, 806 S.E.2d 713, 717 (2017) (emphasis added). The general rule is that a witness cannot bolster the credibility of another witness because doing so invades the province of the jury. *State v. Makins*, 433 S.C. 494, 502, 860 S.E.2d 666, 670–71 (2021).

Here, the lack of forensic evidence meant the case turned on the credibility of the witnesses. Counsel Hall argued that Scott and Primus were inconsistent and thus incredible in their testimony. However, Swett testified that he obtained the warrant against Petitioner *because of Scott’s statement*. That testimony, combined with the inadmissibly hearsay, would indirectly lead the jury to conclude that Scott’s statements must have been true as they was the basis for Swett to actually arrest Petitioner. Admission of the hearsay testimony constituted improper bolstering. The trial court erred in allowing the impermissible hearsay testimony of Swett.

**CONCLUSION**

Based on the foregoing argument, Petitioner respectfully requests that this Court reverse and remand this matter back to the General Sessions Court of Jasper County for a new trial.

  
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This 8th day of September, 2025.