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Sep 17 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Charleston County

Honorable Walton J. McLeod, IV, Circuit Court Judge

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KEVIN L. MIDDLETON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000349

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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**ISSUE PRESENTED**

Did the PCR court err in finding trial counsel was effective when he failed to challenge the validity of the search warrant used to seize evidence from the Leslie Street residence that authorized a search on property located on Park Gate Drive?

## STATEMENT

A Charleston County Grand Jury indicted petitioner for trafficking cocaine base, possession with intent to distribute cocaine, and possession with intent to distribute heroin. App. 403 - 408. His case was called to trial on April 13, 2015, before the Honorable W. Jeffrey Young and a jury. Assistant Solicitors Edward Corvey, David Osborne, and Greg Voigt appeared on behalf of the State, and Seth Whipper represented petitioner. App. 1.

At the conclusion of the three-day trial, the jury found petitioner not guilty of trafficking cocaine base between ten and twenty-eight grams, guilty of trafficking cocaine base between twenty-eight and one hundred grams, guilty of possession with intent to distribute heroin, guilty of possession of cocaine, and not guilty of possession of intent to distribute cocaine. App. 334, l. 24 – 335, l. 21.

Judge Young sentenced Appellant to three years' incarceration on the charge of possession of cocaine, ten years on the possession with intent to distribute heroin, and sixteen years on the trafficking cocaine charge. App. 409 – 411.

On direct appeal, petitioner was represented by Taylor Gilliam who raised issues regarding the validity of the initial warrantless search of the residence where petitioner was arrested and the propriety of allowing evidence of an outstanding felony warrant as prior bad act evidence. The Court of Appeals denied relief in an unpublished decision. *See State v. Middleton*, 2020-UP-043 (S.C. Court of Appeals filed Feb. 12, 2020).

Petitioner filed for post-conviction relief. An evidentiary hearing was held before the Honorable Walton J. McLeod, IV, on March 12, 2024. App. 447. Timothy Thomas appeared on behalf of petitioner with Bryan Hall representing the state. App. 447. Judge McLeod denied relief in a written order dated January 24, 2025. App. 527.

This petition for certiorari follows.

## ARGUMENT

The PCR court erred in finding trial counsel was effective when he failed to challenge the validity of the search warrant used to seize evidence from the Leslie Street residence that authorized a search on property located on Park Gate Drive.

Criminal defendants are entitled to the effective assistance of counsel pursuant to the Sixth and Fourteenth Amendments to the United States Constitution. “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 v. Washington, 466 U.S. 668, 686 (1984). “An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense.” Wiggins v. Smith, 539 U.S. 510, 521(2003). “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.” Strickland, 466 U.S. at 688. Concerning prejudice, “[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.

### A. How the matter impacted trial.

The state seized a quantity of narcotics from a home on Leslie street. Authorities were at that address to serve an arrest warrant on petitioner and take him into custody. Kristofer

Gorman, one of the officers, testified about a tip that petitioner was in a home on Leslie Street and multiple officers knocked on the door to attempt to locate petitioner due to an outstanding arrest warrant. App. 81, l. 19 – 82, l. 25.

After a white male answered the door, Gorman claimed to see petitioner sitting inside on a couch. App. 84, l. 21 – 85, l. 6. Gorman testified that the occupants of the home were all detained within a minute of entry. App. 91, l. 6 – 92, l. 12. Gorman claimed there were substances that appeared to be narcotics located in on a table in front of petitioner that petitioner was cutting upon entry. App. 85, ll. 16 - 25. However, testimony from a different officer indicated that there was nothing on the coffee table during the law enforcement's initial approach. App. 122, ll. 14 – 23.

The search warrant in question was obtained following petitioner's arrest. App. 549. During deliberations, the jury asked the trial court a question regarding the validity of the search warrant: "What is the difference between -- and this is on the search warrant. They got it circled. What is the difference between page 108 and 109 because they have two different addresses with the same date, April 20th, 2013, signed by the same judge." App. 316, ll. 10 – 14.

In response, trial counsel attempted to belatedly object to the warrant:

THE COURT: Again, we talked about it, and there was no objection in chambers, but I think that was probably the wrong instruction. It's not a fact for them to consider. It's a ruling on the law that I made, and, therefore, I think I cured what was a mistake by sending the note back there, but your objection is noted.

MR. WHIPPER: All right. I think the positions that I took relative to -- there are some questions about the accuracy of the warrant relative to the --

THE COURT: But I have already ruled that it was admissible, and, quite frankly, the drugs came in. Exhibit No. 10 came in without objection.

MR. WHIPPER: Well, it came in mistakenly without objection, but, by the same token, the idea of is this, in fact, unauthorized, one I think went to the date issue, and I think the date issue is a fact issue, and they do with it what they want, and that would be my objection.

App. 319, l. 8 – 320, l. 1.

How the matter was addressed at PCR.

Trial counsel admitted not noticing the facially invalid search warrant before trial, and not objecting to the admission of the drugs seized under the search warrant.

Q. Did you know there was an error prior to trial? That there was an error in the locations of the ...

A. I did not.

Q. ... Of the search warrant?

A. I did not.

Q. So it's something that really didn't come up in trial?

A. It's something that didn't really come up in trial.

App. 511, ll. 6 – 13.

How the PCR court ruled.

In its ruling, the PCR court found trial counsel was effective in handling the invalid search warrant because there was not “a reasonable probability that the drugs seized would have been suppressed if Counsel had objected.” App. 540. This ruling was in part based upon the trial court’s ruling that petitioner lacked standing since he did not own the house, and the drugs were in plain view as soon as the door to the home was opened. App. 540.

How the PCR court erred.

A. Standing and validity of search warrant.

Petitioner clearly had standing to object to the validity of the search warrant even if he did not reside at the Leslie Street address. While standing is a legitimate issue when the suppression is based solely on the 4<sup>th</sup> Amendment to the United State’s Constitution, under the warrant statute in South Carolina, “one contesting the legality of a search because of a defect under Section 17–13–140 need only show that the State is attempting to introduce the evidence against him.” State v. McKnight, 291 S.C. 110, 115, 352 S.E.2d 471, 474 (1987). Here, the warrant was issued pursuant to S.C. Code Ann. §17-13-140, and under McKnight petitioner had standing to contest the validity of the warrant. The PCR court committed an error of law in ruling to the contrary.

Moreover, the warrant is facially defective. It authorized the search of property on Park Gate Drive. App. 549. Guidance can be provided by this Court’s analysis in State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480 (2013) involving a search warrant with a blank following the section titled “Description of Premises (Person, Place, or Thing) to be Searched.” While the warrant referenced the supporting affidavit, those supporting documents filed in the blank without creating confusion or uncertainty regarding the place to be searched. This Court noted:

Here, the warrant refers to the attached affidavit, and the solicitor represented without contradiction that the affidavit accompanied the warrant. As we read the opinion, nothing in *Groh* prohibits a court from considering an accompanying or “incorporated” affidavit along with the search warrant for purposes of satisfying the Fourth Amendment's particularity requirements.

Cheeks, 401 S.C. at 326, 737 S.E.2d at 482.

Petitioner acknowledged that the supporting affidavit in the present case referenced Leslie street. App. 546 – 548. However, under Cheeks, there is no way to read the warrant and supporting affidavit and conclude which location supports a probable cause to search: Leslie street or Park Gate. The jury understood the confusion the incorrect addresses would cause. App. 316, ll. 10 – 14. Since the warrant authorized a search of a different location than the supporting affidavit, it was invalid and the evidence seized should have been suppressed.

In State v. Thompson, 419 S.C. 250, 797 S.E.2d 716 (2017), this Court reviewed a search warrant for the home of a suspect’s parents. There, the affidavit to search the parents’ home was “insufficiently specific to provide a fair probability the evidence sought by the search warrant would be located there.” Id. at 258, 797 S.E.2d at 720. Unlike in Thompson, the affidavit here indicated a connection between petitioner and Leslie street, but that was not the location the warrant authorized for the search.

B. Plain view.

In addressing plain view, the trial court incorrectly held that:

Here is the difference, Mr. Whipper, is that they always have a right to knock on the door. Door opens, there is the man they have the warrant for. Everything is in plain view. I think most of the rules that protect the Fourth Amendment, because of his presence there with drugs and has an active arrest warrant, certainly gives them probable cause to go further.

App. 57, ll. 9 – 16.

Contrary to the trial court's ruling, officers do not have an absolute right to knock on doors. In State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015), this Court held:

For our state constitutional right to privacy to have any significance, we believe there must be some minimum evidentiary standard met before law enforcement conduct a warrantless search of a South Carolina citizen's home. Therefore, we hold that law enforcement must have reasonable suspicion of illegal activity before approaching the targeted residence and conducting the "knock and talk" investigative technique.

Counts, 413 S.C. at 174, 776 S.E.2d at 70–71.<sup>1</sup>

Since the officers did not have an absolute right to knock on the door, the trial court and PCR court should have evaluated whether or not officers had a reasonable suspicion of illegal activity to knock on the door. While the presence of a wanted fugitive within the residence may supply such reasonable suspicion, the record before this Court omits critical information regarding the alleged "tip" that connected petitioner with the Leslie street property. As such, the trial court's ruling, on both the validity of the search warrant and the use of the arrest warrant, was colored by the incorrect belief that officers had every right to knock on the door of the home. Under Counts, this was an error of law.

The PCR court erred in finding trial counsel was effective when he failed to challenge the validity of a facially invalid search warrant. The PCR court compounded this error in relying upon lack of standing and plain view as excusing trial counsel's deficient performance.

Prejudice.

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<sup>1</sup> While Counts was decided in the same year as petitioner's original trial, it was issued after the trial's conclusion.

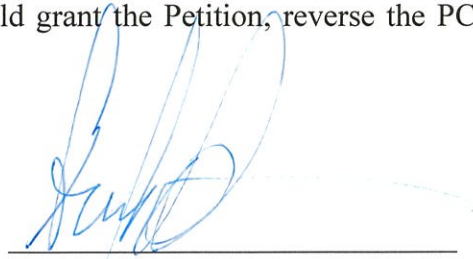
The case against petitioner centered on his presence in a home where drugs were seized and \$400 in cash on his person. Kristofer Gorman, one of the officers, testified about a tip that petitioner was in a home on Leslie Street and multiple officers knocked on the door to attempt to locate petitioner due to an outstanding arrest warrant. App. 81, l. 19 – 82, l. 25.

After a white male answered the door, Gorman claimed to see petitioner sitting inside on a couch. App. 84, l. 21 – 85, l. 6. Gorman testified that the occupants of the home were all detained within a minute of entry. App. 91, l. 6 – 92, l. 12. Gorman claimed there were substances that appeared to be narcotics located in on a table in front of petitioner that petitioner was cutting upon entry. App. 85, ll. 16 - 25. However, testimony from a different officer indicated that there was nothing on the coffee table during the law enforcement’s initial approach. App. 122, ll. 14 – 23.

This testimony, combined with the unknown source of the “tip” received by officers, negates the PCR court’s finding that there was no “reasonable probability that the drugs seized would have been suppressed if Counsel had objected.” App. 540.

**CONCLUSION**

For the foregoing reason, this Court should grant the Petition, reverse the PCR Court's order, and grant petitioner a new trial.



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Gary H Johnson  
Appellate Defender  
SC Bar #8898

ATTORNEY FOR PETITIONER

This 17th day of September 2025.

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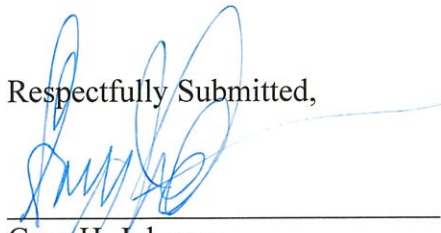
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Kevin L. Middleton states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge Walton J. McLeod, IV, which was held on March 12, 2024, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Malik Jabree Singleton.

Respectfully Submitted,



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Gary H. Johnson  
Appellate Defender  
SC Bar #8898

This 17th day of September 2025.

ATTORNEY FOR PETITIONER

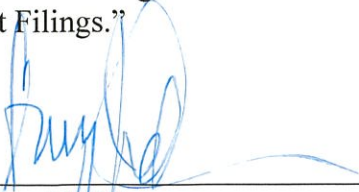
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**CERTIFICATE OF COUNSEL**

**S.C. SUPREME COURT**

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."



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ATTORNEY FOR PETITIONER

This 17th day of September 2025.