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Sep 19 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Grace Gilchrist Knie, Circuit Court Judge

JOSEPH CHAPPELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000428

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR court err in finding counsel was not ineffective for failing to cross-examine the alleged victim and investigating officer using the officer's contemporaneous report that he saw no injury on the alleged victim?

STATEMENT

Petitioner was indicted by the Greenville County grand jury for carjacking in May of 2017. App. 176. He went to trial before Judge Roger Crouch and a jury on April 11, 2018. App. 1. He was represented by Rodney Richey, and Brann Fowler prosecuted the case. App. 1. At trial Coneze Barner testified he gave Petitioner a ride in March of 2017. App. 59:3-60:14. Eventually, according to Barner, Petitioner led him to a store parking lot, pulled out "something" that may have been a gun "and hit me upside my head." App. 62:3-63:10. Barner left the car and eventually was found by law enforcement officers. App. 67:20-68:2. Barner testified Petitioner took a "full arm" swing at him with what something that looked metal. App. 84:1-14. Officer Nicholas Downing testified he was the forensic investigator on the case. App. 105:8-106:6. When the car was recovered, he found "no signs of forced entry" or tampering with the ignition. App. 107:2-7. He also found fingerprints that did not belong to Petitioner. App. 108:24-110:14.

In closing, trial counsel argued Barner was not credible because no one could corroborate his testimony and because he did not go to the hospital despite the claimed attack. App. 139:10-141:13. After deliberations the jury returned a verdict finding Petitioner guilty. App. 164:2-14. The trial court issued a fifteen-year sentence. App. 173:4-8. Petitioner appealed, and following briefing and review pursuant to *Anders v. California*, 386 U.S. 738 (1967), the Court of Appeals affirmed his conviction. *State v. Chappell*, No. 2019-UP-345 (S.C. Ct. App. filed Oct. 9, 2019).

Petitioner filed an application for post-conviction relief on November 20, 2019, and he amended the application on September 22, 2022. App. 178, 195, 250. Judge Grace Knie held an evidentiary hearing on the application on September 21, 2023. App. 197. Petitioner was represented by Susannah Ross, and Melody Brown represented the state. App. 197. Ultimately,

on November 7, 2023, the PCR court entered an order denying all claims and dismissing the application. App. 249.

At the hearing Petitioner claimed, among other things, that trial counsel was ineffective for failing to use on cross-examination an investigative report detailing Officer Downing's observation that the alleged victim "did not have any visible signs of injuries" even after attempting to point to the alleged injury. App. 180, 201:25-206:5, 248. The PCR court denied relief. App. 249.

This petition for a writ of certiorari follows.

ARGUMENT

"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) (citations omitted). A PCR applicant proves ineffectiveness in two prongs: "(1) counsel's representation fell below an objective standard of reasonableness and (2) but for counsel's error, there is a reasonable probability that the outcome of the proceeding would have been different." *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (first citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984); then citing *Sellers v. State*, 362 S.C. 182, 188, 607 S.E.2d 82, 85 (2005)).

Trial counsel was provided in discovery an investigative report produced by Officer Downing. App. 207:17-24., 248. In it Downing recorded that he "did not observe any visible signs of injuries" even after he "had the victim point to the location where he was struck." App. 248. Downing also noted that there were pictures taken of Barner. App. 248. Despite this knowledge, when trial counsel cross-examined Downing, he asked only about his forensics role examining the vehicle and collecting DNA and fingerprints. App. 108:5-110:17. He made no attempt to challenge Barner's credibility with this information.

Reasonable counsel would have used Downing's report to try and convince the jury that Barner fabricated his story. Trial counsel clearly recognized the importance of challenging Barner's story in every way, and he questioned Deputy Tim Fuller about calling the ambulance and Barner's physical condition. App. 98:24-99:12. Nonetheless, counsel did not use the contemporaneous report stating Barner had no visible injury. When he questioned Downing, he did not ask a single question about Barner's condition or claimed injury. Reasonable counsel would have asked about his notes indicating there was no visible injury. Counsel also should have asked for the images of the victim the report mentions. This case was fundamentally one of

credibility: Barner claimed Petitioner stole his car through violence, but no physical evidence supported his claim at all. In that context, reasonable counsel would have presented every single piece of evidence tending to show Barner's version of events was inaccurate or false.

At the PCR hearing trial counsel testified his theory of the case was what Petitioner told him: that it was not a carjacking but a drug transaction where Petitioner traded drugs to Barner for the use of the car. App. 225:13-20, 54:16-55:12. Trial counsel offered no strategic reason for not using the investigative report. App. 232:1-233:25. To the contrary, he recognized that he attempted to undermine Barner's testimony about the alleged attack in other ways. App. 233:1-20. There is no sound reason to follow that path and theory without this report. Rather, the most likely explanation is that counsel failed to recognize the importance of the report or forgot that it existed. That is not adequate representation and rendered his performance deficient. *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) ("Counsel must articulate a **valid** reason for employing a certain strategy to avoid a finding of ineffectiveness." (emphasis original) (citations omitted)).

The PCR court found Petitioner did not prove prejudice based on a misunderstanding of petitioner's argument. Petitioner was charged under section 16-3-1075 for carjacking. That statute essentially divides the offense into two classes depending on whether great bodily injury results. § 16-3-1075(B). If great bodily injury results, the maximum sentence is thirty years instead of twenty. *Id.* At trial, the state proceeded solely under the provisions of subsection (B)(1) where great bodily injury does not result. App. 253, 9:25-10:5, 172:5-7. For that reason the state argued below and the PCR court believed that Barner's injury was simply not important. App. 253-254.

This was incorrect because the purpose of referring to Downing's notes was not to defeat the element of great bodily injury for a crime for which he was not on trial. The purpose was to bring Barner's credibility into question. By thoroughly demonstrating that someone else checked his claimed injury out and could not find it—even after Barner pointed to the alleged location—counsel could have brought all of his testimony into question. If Barner was not believed, the state had no case. Failing to attack his testimony and credibility with every available tool was ineffective assistance of counsel.

CONCLUSION

The PCR court erred in finding trial counsel was not ineffective, and Petitioner respectfully requests this Court grant his petition and allow further briefing.



Jordan Wayburn
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of September, 2025.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph Chappell 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 Grace Gilchrist Knie, which was held on September 21, 2023, 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 Joseph Chappell.

Respectfully Submitted,



Jordan Wayburn
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of September, 2025.

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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.”



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This 19th day of September, 2025.