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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Berkeley County

Honorable R. Kirk Griffin, Circuit Court Judge

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JOSEPH RUSSELL UMPHLETT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001539

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# PETITION FOR WRIT OF CERTIORARI

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## ISSUE PRESENTED

Whether the PCR court erred in finding that Petitioner was not prejudiced by trial counsel's unconstitutionally deficient failure to preserve a motion to suppress for appellate review?

## STATEMENT

At the October 7, 2014, term of the Berkely County grand jury, Petitioner was indicted for trafficking methamphetamine, possession of a weapon during the commission of a violent crime, and possession of a weapon by a convicted felon. App. 1033-38. His case was called to trial on September 28, 2015, before the Honorable Kristi L. Harrington and a jury. App. 1. Grover Seaton represented Petitioner. App. 2. Jessica Nickles and Wilton McNeely represented the state. App. 2.

**Facts**

On May 12, 2014, Officers Williams, Henderson, and Oswald with the Summerville Police Department responded to the Economy Inn in Summerville. App. 52, 82. The police received an anonymous[1] call requesting a welfare check for children that apparently lived in the hotel room with Petitioner and his girlfriend, Kory Abdon. App. 159. The caller informed the 9-1-1 dispatcher that Petitioner and Abdon kept narcotics in the room around the children. App. 153. Despite Petitioner informing the officers no children were present, the officers told Petitioner to open the door, and Petitioner did so. App. 52-54. The officers smelled marijuana when the door opened. App. 53. Once the door opened, the officers, without permission, went into the room to look for children. App. 54. Thereafter, they also asked for permission to search the room, which Petitioner refused, except for allowing them to collect a small amount of marijuana from the nightstand. App. 53. Twenty minutes after officers originally entered Petitioner's hotel room, they called another officer to obtain a search warrant to search the room. App. 85. The probable cause for this search warrant was the odor of marijuana. App. 1039-44.

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[1] The call was placed by Abdon's mother; however, this fact was not known to the officers who responded to the hotel room, so the caller is referred to as anonymous here, since that is the understanding the police would have operated under. App. 163.

During the resultant search, the officers found two firearms and a total of 193.71 grams of methamphetamine. App. 669-673; 766. Petitioner gave a statement to law enforcement where he claimed all illegal items in the room to have been his own. App. 126.

**Petitioner's Trial**

Before trial, Petitioner made two motions to suppress evidence. The first was a *Jackson v. Denno*[2] hearing regarding statements that Petitioner made to law enforcement. App. 50. Those statements were found to be admissible, and the Court of Appeals affirmed that decision on direct appeal. App. 147; 922.

Petitioner also moved to suppress the fruits of the search of the hotel room. App. 148. After hearing evidence, the trial court denied the motion to suppress. App. 183. It found that the police had a duty to investigate every child welfare call and that the search had been made pursuant to a valid search warrant that was supported by probable cause. App. 183.

The evidence was admitted against Petitioner at trial, and Petitioner was convicted on all three counts. App. 852. Judge Harrington sentenced Petitioner to life imprisonment for trafficking pursuant to the recidivist statute, and five years for each of the two gun charges, all to run concurrently. App. 859-60.

The Court of Appeals affirmed Petitioner's conviction. App. 920. As to Petitioner's motion to suppress evidence from the search of the hotel room, the Court of Appeals held that Petitioner's trial counsel had failed to contemporaneously object when the challenged evidence was entered at trial. App. 921. The Court held the issue was not preserved for appellate review and did not address the merits of the argument. App. 921.

Petitioner did not seek certiorari review from this Court.

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[2] 378 U.S. 368 (1964).

**Post Conviction Relief Proceedings**

Petitioner timely filed the present application for post-conviction relief (PCR) on October 16, 2018. App. 931. In his application, he alleged trial counsel was ineffective for failing to preserve the suppression issue for appeal. App. 926. On April 17, 2023, the Honorable R. Kirk Griffin held a hearing on the Petition. App. 945. Michael D. Moore represented Petitioner. App. 945. Danielle E. Dixon represented the state. App. 945. During the hearing, trial counsel candidly testified that he felt as though he was ineffective for failing to preserve the suppression issue. App. 987.

The PCR court dismissed the petition with prejudice. App. 1020. As to trial counsel's failure to preserve the suppression issue, the PCR court agreed that his failure to do so constituted deficient performance. App. 1024. However, the PCR court found that Petitioner was not prejudiced by this failure. App. 1024. It found that the child welfare check constituted an "implicit license" to approach a home, and once the officers smelled marijuana, they were justified in entering in the room, detaining everyone inside, and securing the room while awaiting a search warrant. App. 1025. Therefore, according to the PCR court, Petitioner was unlikely to prevail on appeal and was not prejudiced by trial counsel's failure to preserve the issue for appeal. App. 1024.

This petition follows.

## ARGUMENT

The PCR court erred in holding that Petitioner was not prejudiced by trial counsel's failure to preserve a suppression issue for appellate review.

The drugs found in Petitioner's hotel room were the fruits of an unlawful search, and Petitioner was likely to prevail on appeal.

To prevail on a PCR action for ineffective assistance of counsel, a petitioner must establish both that his trial counsel was deficient, and that deficiency prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A petitioner is prejudiced when "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Smith v. State*, 386 S.C. 562, 566, 698 S.E.2d 629, 631 (2010). When the deficiency alleged is the failure to preserve an issue for appeal, the PCR court essentially transforms into an appellate court and must determine prejudice by determining whether the petitioner was likely to succeed on appeal, using the same standard of review as an appellate court would have. *Milledge v. State*, 422 S.C. 366, 380, 811 S.E.2d 796, 804 (2018).

### A. Trial counsel was deficient.

At the outset, the PCR court was correct in holding that trial counsel was deficient in failing to renew his pre-trial motion objection at trial. The PCR court must "determine whether counsel was ineffective at the time of the alleged error." *Pantovich v. State*, 427 S.C. 555, 562-63, 832 S.E.2d 596, 600 (2019). Essentially, the question here is whether trial counsel "should have known to object." *Chappell v. State*, 429 S.C. 68, 80, 837 S.E.2d 496, 502 (Ct. App. 2019). Trial counsel failed to make the required contemporaneous objection to preserve the issue. *See*

*State v. Wood*, 362 S.C. 520, 526, 608 S.E.2d 435, 439 (Ct. App. 2004).[3] Trial counsel candidly admitted that he was deficient in this regard. App. 987.

The PCR court correctly concluded that trial counsel was deficient. App. 1024.

**B. Petitioner would have prevailed on appeal.**

Both the United States and South Carolina Constitutions prohibit "unreasonable searches and seizures." U.S. Const. amend. VI; S.C. Const. art. I, § 10. The South Carolina Constitution also safeguards against "unreasonable invasions of privacy," which has been recognized to provide broader protections than the Fourth Amendment. *State v. Counts*, 413 S.C. 153, 168, 776 S.E.2d 59, 68 (2015). Generally, any search made without a judicially issued search warrant is *per se* unreasonable, subject only to a few exceptions. *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993). When the state relies on a warrantless search, it is the state's burden to justify its search on one of the exceptions to the warrant requirement. *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971).

Whether a warrantless entry into a hotel room was "reasonable" is typically governed by the same standard as entries into the home. *See, e.g., Goins v. State*, 397 S.C. 568, 574, 726 S.E.2d 1, 3-4 (2012) ("The Fourth Amendment generally protects a motel guest from unwarranted intrusions where police have entered a guest's room under no other authority than the consent of an employee" (citing *Stoner v. California*, 376 U.S. 483, 490 (1964)); *United States v. Jeffers*, 342 U.S. 48, 52 (1951) (explaining when warrantless entry into hotel room would be lawful; similar standard to exigent circumstances); *cf. also, Kentucky v. King*, 563 U.S. 452 (2011) (discussing Fourth Amendment rules with regard to apartment complex).

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[3] While a contemporaneous objection is no longer required after a final, pretrial ruling on an issue of constitutional law, it was required at the time of Petitioner's trial. *See State v. Jones*, 435 S.C. 138, 144-45, 866 S.E.2d 558, 561 (2021).

Child welfare checks, like the one that led the police to Petitioner's door, fall within what has been described as the "community caretaking" function of police officers. Courts have several times recognized that police officers often engage in tasks that are not necessarily related to criminal investigations or law enforcement. *See generally, e.g., Cady v. Dombrowski*, 413 U.S. 433 (1973). However, "this recognition…was just that—a recognition that these tasks exist." *Caniglia v. Strom*, 593 U.S. 194, 199 (2021). It is "not an open-ended license to perform them anywhere." *Id.* Therefore, when police officers approach a dwelling, even for non-criminal justice purposes, the Constitution confines them into certain parameters.

For example, police officers may approach homes and knock on doors, because "that is no more than any private citizen might do." *Florida v. Jardines*, 569 U.S. 1, 8 (2013) (internal quotation marks and citation omitted). However, this approach must be limited to "approach[ing] the home by the front path, knock[ing] promptly," and "wait[ing] briefly to be received." *Id.* After that, "absent invitation to linger longer," the officers should "leave." *Id.* Police, like the general public, have an "implied license" to do whatever a private person, such as a "Girl Scout or trick-or-treater," might do, but not more. *Id.* at 8-9. And since "no man can set his foot upon his neighbour's close without his leave," *id.* at 8 (quoting *Entick v. Carrington*, 95 Eng. Rep. 807, 817 (K.B. 1765)), the police may not, without a warrant, intrude onto property without a warrant in a manner that was not authorized by the occupant. *Id.*; *Counts*, 413 S.C. at 173, 776 S.E.2d at 70 (police need reasonable suspicion to approach a home and knock on the door in the first place).

*Caniglia* is instructive here. In that case, Caniglia pulled out a firearm and put it on the table in front of his wife during an argument, asking her to "shoot [him] now and get it over with. 593 U.S. at 196 (alteration in original). She left the home, and when she could not reach

Caniglia the next day, she called the police for a welfare check. *Id.* The police, deciding that he posed a risk to himself or others, entered his home without a warrant and seized two handguns. *Id.* at 196-97. Caniglia's resultant lawsuit against the police was unsuccessful in the trial and intermediate appellate courts due to those courts reading a "community caretaking exception" to the Fourth Amendment based on the Supreme Court's decision in *Cady*. *Id.* at 197.

The Supreme Court reversed. *Id.* It held that the "community caretaking exception" recognized in *Cady* was not an exception at all, but rather, a mere recognition that police often do more than investigate crimes. *Id.* at 198-99. Further, *Cady* involved the search of a vehicle, not a home, the latter of which is subject to far greater Fourth Amendment protection. *Id.* at 199; *see generally, Carroll v. United States*, 267 U.S. 132 (1925). The difference is that "the 'frequency with which…vehicle[s] can become disabled or involved in…accidents on public highways' often requires police to perform noncriminal 'community caretaking functions,' such as providing aid to motorists." *Id.* (quoting *Cady*, 413 U.S. at 441). Homes do not come with the same built-in rationales for abandoning the Fourth Amendment warrant requirement. *Id.* Logically, neither should hotel rooms. *Cf., Johnson v. United States*, 333 U.S. 10, 15 (1948) (refusing to draw Fourth Amendment exception for search of a hotel room because, *inter alia*, there were no exceptional circumstances warranting it. "The search was of *permanent premises*, not of a movable vehicle" (emphasis added)).

Here, every officer that approached Petitioner's hotel room was aware that the anonymous 9-1-1 caller had made allegations that narcotics would be found in the room. When the officers arrived, Petitioner told them that there were no children on the premises. They ordered him to open the door anyway. After Petitioner opened the door, the officers smelled marijuana and made their way into the hotel room.

This police action is far afield of what "a private citizen might have the authority to do if [the 911 caller] had approached a neighbor for assistance instead of the police." *Caniglia*, 593 U.S. at 198. For one, the "knock and talk" procedure employed here, when conducted by uniformed police officers, is already "inherently coercive" in a way that it is not when conducted by a private person. *Counts*, 413 S.C. at 172, 776 S.E.2d at 70. Secondly, it would certainly come as a great surprise to homeowners across the state if any private person could approach their front door, knock for several minutes, demand to see their children, and refuse to leave until the door is opened. Such behavior by a private person "would inspire most of us to—well, call the police." *Jardines*, 569 U.S. at 9.[4]

"The scope of a license...is limited not only to a particular area but also to a specific purpose." *Id.* The purpose of the officer's intrusion into Petitioner's hotel room was to check on his girlfriend's children, based on anonymous reports of criminal activity. This is not a "purpose" that any private citizen would be authorized to undertake. Nor is it a purpose "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady*, 413 U.S. at 441.[5] Rather, the police officers' behavior here, commanding

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[4] *Jardines* did not involve a child welfare search. However, it is still analogous to this case. The police in *Jardines* had received an anonymous, unverified tip that marijuana was being grown in the home at issue in that case. 569 U.S. at 3. They then approached the home with a drug sniffing dog. *Id.* at 4. Here, the primary reason for the police responding to the hotel room could not have been to simply check in on Abdon's children; it was because of the allegation that the children were around narcotics.

[5] It should be noted that the *Counts* Court suggested in *dicta* that welfare checks are held to a lesser standard than investigative knock and talks, which must be supported by reasonable suspicion. *Counts*, 413 S.C. at 174 n.7, 776 S.E.2d at 71 n.7. This *dictum* is not relevant to this case. The *Counts* Court suggested that, in the event of a welfare check, the police were authorized to follow the Supreme Court's procedure in *Jardines*, which, for the reasons stated above, was not done here. *See id.*

Petitioner to open the door and then immediately seizing both occupants of the hotel room, "objectively reveals a purpose to conduct a search." *Jardines*, 569 U.S. at 10.

If a private citizen approached Petitioner's hotel room with the purpose of 'checking on his kids,' Petitioner's response that the kids were not present would have ended the matter. That private citizen would have had no authority to order Petitioner to open the door or demand that he answer questions. He simply would have had to do what the officers here *should have* done: called Abdon's mother—who Petitioner told the officers was watching the children—to confirm the children's location.[6] By not doing so, the officers took advantage of the inherently coercive nature of knock and talk procedures and exceeded their implied license to approach Petitioner's door. In this way, they exceeded the authority granted to them by the Fourth Amendment, and Article I, § 10 of the South Carolina Constitution. Thus, the entry into, and subsequent search of Petitioner's hotel room was unlawful.

Because the trial court was wrong to refuse to suppress the fruits of the search of Petitioner's hotel room, the PCR court was wrong to hold that Petitioner would have been unlikely to prevail on appeal. This Court should grant certiorari and reverse.

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[6] The officers could have, and should have, sought judicial authorization of *some kind* before entering Petitioner's hotel room. *Cf., Caniglia*, 593 U.S. at 203 (Alito, J., concurring) (states may create procedures for the issuance of non-criminal warrants to permit entry into homes). The touchstone inquiry is whether the search of Petitioner's hotel room was reasonable. The officers, knowing that they may well end up making a drug arrest, still ordered Petitioner to open the door after repeated assurances that no children were present. This would have been the time to step back and obtain a search warrant.

## CONCLUSION

For the foregoing reasons, this Court should grant certiorari to allow for fuller briefing of the above issues.

W. Chandler Norville
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of September 2025.