

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Beaufort County

Honorable Frank Addy, Jr., Circuit Court Judge

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DALE E. KING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001062

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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**Jan 20 2026**

S.C. SUPREME COURT

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### **ISSUE PRESENTED**

Whether the PCR court erred in finding Petitioner received effective assistance of counsel where trial counsel failed to investigate photographs shown to Petitioner during the interrogation that were not provided by the state in discovery and that supported his contention that he found his wife in a different position than the evidence entered at trial showed?

## STATEMENT OF THE CASE

On May 16, 2017, Matt Bowsher with the Beaufort Fire Department responded to the Atlantic Inn for a person who was possibly in cardiac arrest. App. 142, l. 25 – 143, l. 14. Bowsher arrived on the scene around 8:10 a.m. and found a woman who was “unresponsive, laying on the sofa, stiff and cold to the touch [and] also had signs of blood and a cut to the lip and also blood coming from the nose.” App. 143, l. 15 – 144, l. 14; State’s Exhibit 3D.<sup>1</sup> The woman was later identified as Veronica King (King), Petitioner’s wife of over thirty years.

Bowsher recalled that Petitioner was present on the scene and that Petitioner told him that King had a history of seizures and the two of them had been drinking with friends the night before. App. 147, l. 14 – 148, l. 1. Bowsher did not find any seizure medication. App. 148, ll. 18-19. A paramedic arrived shortly after Bowsher and found that King had “no cardiac activity whatsoever” and that her body was cold and stiff. App. 151, l. 20 – 154, l. 3.

Prior to law enforcement’s arrival, Atul Patel, the new owner of the motel, recalled that Petitioner came to his office and told him that King was not responding so Atul called 911. App. 157, ll. 9-18. Chet Patel, the individual who had just sold the Atlantic Inn at the time of King’s death, testified that both Petitioner and King worked for him for almost seven years and lived in one of the rooms at the hotel during that time. App. 160, ll. 1-24.

Jerome Bates, who was married to King’s sister, recalled speaking with Petitioner on several occasions after King’s death. App. 165, l. 7 – 167, l. 22. Bates maintained that on the morning of King’s death, Petitioner told Bates that he did not know what happened. Bates also testified that Petitioner was “highly intoxicated.” App. 167, l. 23 – 168, l. 4. Bates further stated

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<sup>1</sup> State’s Exhibit 3D – Photograph of King as she was discovered on scene was entered over defense counsel’s objections. App. 146, ll. 23-24.

that later, while he and Petitioner were still at the hotel, Petitioner stood in the doorway of his hotel room and said, "I have to face this the rest of my life." App. 169, ll. 1-8.

Bates further claimed that Petitioner told him that King must have fallen and hit her head while taking a shower. App.. 169, ll. 9-15. Bates then recalled that he and Petitioner were sitting in the hotel room when he asked Petitioner what happened and Petitioner responded: "I went to sleep around 10:30, 11 and I did not wake up until about 8:00 the next morning. When I got up, I noticed [King] wasn't in the bed and I found her on the couch and was stiff." App. 170, ll. 19-25. Bates then claimed that Petitioner was "questioning himself" out loud and asked: "What was I thinking? What did I just do?" App. 171, ll. 2-18.

Ultimately, Petitioner left the hotel and went to stay with Bates at his house later that day. While at Bates' house, Bates claimed that Petitioner said: "[King] wanted to take a shower and I just told her to get her ass in bed and we'd wash up in the morning when we get up. I don't know why she just made her head so hard. She just wouldn't listen to me." App. 172, l. 17 – 173, l. 7.

Petitioner was arrested the following day after law enforcement received the preliminary autopsy results which showed King was strangled. App. 197, l. 13 – 201, l. 24. After Petitioner was arrested, Bates recalled having two separate conversations with Petitioner while he was in jail. First, Bates claimed that Petitioner said he put King in the shower and as he was taking her out of the shower, she "slipped and she felt like dead weight" so he put King on the bed. App. 174, ll. 3-16. Bates claimed that in a second conversation with Petitioner, Petitioner said he grabbed King by the neck while getting her out of the shower and that she accidentally fell and hit her mouth. App.. 174, ll. 17-24.

The morning that King was found dead, Petitioner was transported to the Beaufort City Police Department to be interviewed. App. 193, l. 3 – 194, l. 25. Investigator Dowling, who interviewed Petitioner, recalled his initial conversation with Petitioner:

[Petitioner] advised that he resided in that unit with his wife, that the previous night they had been consuming alcohol with friends and he explained that at roughly 10:00 to 11:00 that his friends had departed and . . . it was just him and his wife, that they had secured the hotel room. . . . He stated that they both went to bed together. He didn't report any disturbance or any arguments that occurred.

He advised me that when he woke up in the morning at roughly 8 a.m., that he found his wife on the couch. He went over to investigate, and he described that he had rolled her over and noticed that she wasn't breathing.

App. 195, l. 12 – 196, l. 6. Dowling further recalled that in Petitioner's first interview, Petitioner said that he believed King might have taken a shower that night and that Petitioner did not like King taking showers after she had been drinking for fear that she would slip and fall. App. 196, ll. 12-25.

Dowling interviewed Petitioner again the next day prior to arresting him. App. 197, l. 13 – 201, l. 24. In the second interview, Dowling claimed that Petitioner admitted to being angry at King for wanting to take a shower because she had been drinking. App. 201, l. 25 – 202, l. 23. Petitioner then supposedly told Dowling that if he was responsible for King's death that "it was not intentional and that he didn't mean to hurt [her]." App. 204, ll. 4-14. Petitioner further admitted that he and King were fighting on the night of her death and that he slapped her in the face at one point. App. 204, l. 15 – 205, l. 11.

The autopsy of King determined that she died from strangulation. App. 218, ll. 21-23. King had three areas of bruising on the left side of her neck, two areas of bleeding in her left eye, and hemorrhages in six of her ten neck muscles. App. 219, l. 17 – 223, l. 21.

Petitioner was indicted by the Beaufort County grand jury for murder. App. 371 – 372  
Petitioner’s jury trial was held before the Honorable Edgar W. Dickson and a jury from  
December 9 -11, 2019. Petitioner was represented by Trasi Campbell. The state was represented  
by Kimberly Smith and Hunter Swanson. App. 1. The jury found Petitioner guilty as charged.  
App. 300, ll. 16-19. Petitioner was sentenced to thirty-five-years imprisonment. App. 310, ll.  
14-18. Petitioner timely appealed his conviction. The Court of Appeals affirmed his conviction  
in an unpublished opinion. State v. King, Op. No. 2023-UP-091 (S.C. Ct. App. Filed March 15,  
2023). The South Carolina Supreme Court declined to hear the case and the remittitur was  
finally issued on May 22, 2024.

Petitioner filed an application for post-conviction relief on June 25, 2024. App. 312 –  
318. The state filed a return on March 7, 2025. App. 319 – 324. Petitioner, through PCR  
counsel, filed an amended application dated April 9, 2025. App. 325 – 327. An evidentiary  
hearing was held on April 14, 2025, before the Honorable Frank Addy, Jr. The state was  
represented by Kylee Kanealey. Petitioner was represented by Chelsey Marto. App. 328.

Petitioner testified that he did not meet with trial counsel very many times. He stated  
when they went through the photographs in the discovery, he informed trial counsel that  
photographs of the crime scene were missing. The photographs “really could have helped” his  
case because they showed King in the position she was in when discovered her and showed he  
covered her with a blanket. He testified that at trial, someone had stated it appeared the body of  
King had been moved, and he felt that if the original pictures were shown to the jury, it would  
have supported his defense. App. 333, l. 3 – 338, l. 11; App. 345, l. 18 – 346, l. 1. He also felt  
counsel was ineffective in failing to cross-examine the investigators regarding the missing  
pictures. He maintained that he informed counsel of the pictures, of their importance to the case,

but that she did not follow up on them or cross examine witnesses about them. He concluded that maybe she had forgotten about the pictures. App. 342, ll. 21-343, l. 20.

Trial counsel testified that she met with Petitioner over ten times and discussed the case with him. She stated she had no recollection of a conversation about missing photographs but had reviewed all the evidence provided in discovery with Petitioner. She admitted that Petitioner discussed King's body being in a different position than what was shown in the photographs in discovery. App. 348, l. 24 – 351, l. 22.

Judge Addy took the matter under advisement. App. 356, ll. 12-20. A form 4 order dismissing Petitioner's application was filed on May 12, 2025. App. 358 – 360. A full order of dismissal was filed on May 23, 2025. App. 361 – 370. Regarding the photographs, the court found the testimony of trial counsel that no photographs were missing and that Petitioner did not bring any potential missing photographs to her attention credible, while finding the testimony of Petitioner not credible. The court found that trial counsel reviewed all discovery with Petitioner, including all the photographs, and thus counsel was not deficient. The court found that Petitioner had failed to provide the purported missing photographs during the PCR hearing which precluded him from establishing prejudice and that the photographs, should they exist, would not materially alter the outcome of the trial. App. 365 – 366.

## ARGUMENT

The PCR court erred in finding Petitioner received effective assistance of counsel where trial counsel failed to investigate photographs shown to Petitioner during his interrogation that were not provided by the state in discovery and that supported his contention that he found his wife in a different position than the evidence entered at trial showed.

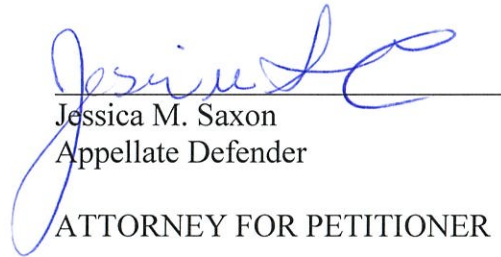
“A criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.” Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986); see also Strickland v. Washington, 466 U.S. 668, 691 (1984). When evaluating the reasonableness of counsel's conduct, “the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” Strickland v. Washington, 466 U.S. at 690. Therefore, “at a minimum, counsel has the duty to interview potential witnesses and to make an **independent** investigation of the facts and circumstances of the case.” Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (emphasis in original).

“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different.” Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992) (citing Strickland v. Washington, 466 U.S. 668 (1984)). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Strickland 466 U.S. at 695 (1984). A PCR applicant is entitled to relief based on ineffective assistance of trial counsel if he can establish that counsel's performance was deficient, and that this deficiency prejudiced his defense. Id.; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

Trial counsel testified that she did not recall a conversation about missing photographs of King's body. Critically, the testimony was not that she investigated the photographs and learned they did not exist but that she simply did not recall discussing them. Counsel's lack of memory is not a reason to deny relief. Petitioner maintained that he found his wife in a different position than what was shown to the jury. See State's Exhibit 3D. His discovery of her in a different position was not only relevant but probative evidence that supported Petitioner's defense. Trial counsel had a duty to ensure that the state provided all of the evidence, including photographs, that it collected during its investigation. That did not occur in this case. Counsel did not look for evidence supporting Petitioner's defense despite the fact that Petitioner told her the photographs existed and her admission that Petitioner maintained the body was positioned differently when he discovered King. Petitioner received ineffective assistance of counsel in that counsel failed to perform a reasonable, independent investigation into the photographic evidence. See Ard v. Catoe, supra.

**CONCLUSION**

Based on the foregoing argument, Petitioner respectfully requests this court grant the petition to allow full briefing of this issue.

  
Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 20th day of January, 2026.

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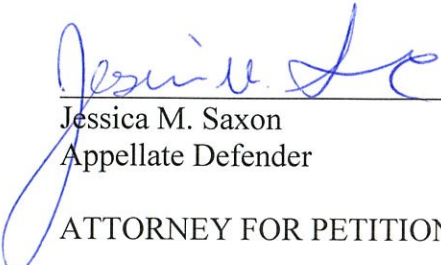
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Dale Eugene King states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Frank Addy, Jr., which was held on April 14, 2025, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Dale Eugene King.

Respectfully Submitted,

  
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Jessica M. Saxon  
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of January, 2026.

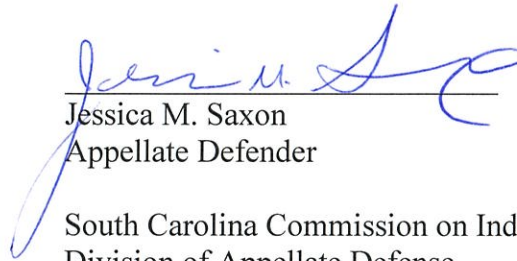
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her 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 20th day of January, 2026.