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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to McCormick County

Honorable David P Caraker, Jr, Circuit Court Judge

JOE ROSS WORLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000928

JOHNSON PETITION FOR WRIT OF CERTIORARI

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INDEX

ISSUE PRESENTED

Did the post-conviction relief (PCR) court err by finding trial counsel was not ineffective when counsel failed to object to the admission of Petitioner's statement to Sheriff George Reid immediately before Petitioner's arrest when law enforcement did not advise Petitioner of his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), or obtain a voluntary waiver of those rights before Petitioner gave the statement?

STATEMENT OF THE CASE

During the early morning hours of November 15, 2009, Petitioner shot at who he thought was a burglar on his mother's property where he was living at the time after the individual repeatedly rang the doorbell. The suspected burglar was actually Robert Rushton, who was employed as a deputy with the McCormick County Sheriff's Office. Petitioner shot the gun that Rushton was holding injuring Ruston's hand in the process. Rushton, along with Deputies Nicholas Moore and Melissa McAllister, had responded to Petitioner's home after his mother's neighbors had called 911 to report hearing gunshots. Rushton was not wearing a uniform when he responded as he had only rejoined the sheriff's office two weeks before the shooting and his uniform had not arrived yet. Moreover, none of the deputies responded with blue lights or sirens and Petitioner maintained that they never announced themselves as law enforcement.

After the shooting, McCormick County Sheriff George Reid, along with Deputies McAllister and Moore, drove to the Worley residence. Sheriff Reid testified at trial that when he arrived, Petitioner and his mother were walking around their yard with flashlights. Reid asked them not to shine their flashlights in his eyes. Seemingly unafraid of Petitioner, Reid demanded to know if Petitioner realized he had just shot one of his officers. Petitioner told Reid that he had placed the remains of Rushton's gun in his patrol car. Petitioner then purportedly told Reid that the officers had "no business" ringing his doorbell at four o'clock in the morning. Reid then placed Petitioner under arrest without further interrogation. App. 755, l. 15 – 762, l. 17.

A McCormick County grand jury indicted Petitioner on February 22, 2010, for assault and battery with intent to kill and possession of a weapon during the commission of a violent crime. App. 2287-2290. A pretrial hearing was held on May 31, 2011, and June 1, 2011, before the Honorable William Keesley on Petitioner's motion to bar prosecution pursuant to the

Protection of Persons and Property Act. App. 1. Donald Myers, Ervin Maye, and Frank Young represented the state. Lance Sheek, Billy Garrett, and Carson Henderson represented Petitioner. App. 1. By order filed June 24, 2011, Judge Keesley denied Petitioner relief. An amended order was filed on July 5, 2011, to correct scrivener's errors. On July 6, 2011, Petitioner filed a motion to reconsider the denial of immunity. By order filed December 11, 2011, Judge Keesley denied the motion. App. 1702-1726.

Petitioner immediately appealed Judge Keesley's ruling denying him immunity from prosecution. The Court of Appeals remanded the case to the trial court to reconstruct the record after it was discovered that a large portion of the hearing could not be transcribed. App. 1385. A reconstruction hearing was held on June 14, 2013, before Judge Keesley. App. 232. Ultimately, the Court of Appeals dismissed the appeal as interlocutory and rescinded its order to reconstruct after our Supreme Court decided State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013); App. 1434-1435.

Petitioner's case was called to trial on December 16, 2013, before the Honorable R. Lawton McIntosh, and a jury. App. 292. Donald Myers, Ervin Maye, and Frank Young represented the state. Desa Ballard, Billy Garrett, and Carson Henderson represented Petitioner. On December 19, 2013, the jury convicted Petitioner as indicted. App. 1210, l. 20 – 1211, l. 8.

On June 30, 2014, Judge McIntosh sentenced Petitioner to twenty years for assault and battery with intent to kill, and five years for the weapons offense. App. 1246, ll. 1-5.

Petitioner filed a timely notice of appeal. On May 4, 2016, Petitioner filed a motion to hold the appeal in abeyance and remand for reconstruction of the record of the pretrial immunity hearing. The Court of Appeals remanded the case to the trial court to reconstruct the record. App. 1928-1929.

A second reconstruction hearing was held on October 25, 2016, before Judge Keesley. On December 30, 2016, Judge Keesley filed a report regarding reconstruction of the record with the Court of Appeals. App. 1930-1943.

On appeal, Petitioner argued the trial court erred by denying him immunity from prosecution pursuant to the Act and by denying his motion for a mistrial after the state made improper remarks on Petitioner's right to remain silent during its closing argument. App. 1957. The Court of Appeals affirmed Petitioner's convictions in an unpublished opinion filed July 18, 2018. State v. Worley, 2018-UP-327 (S.C. Ct. App. filed July 18, 2018). App. 2062-2063. The Court of Appeals denied Petitioner's petition for rehearing, withdrew its previous opinion, and filed a substituted opinion on September 26, 2018. App. 2093-2096. State v. Worley, 2018-UP-327 (S.C. Ct. App. filed September 26, 2018). By order filed June 28, 2019, the Supreme Court denied Petitioner's petition for writ of certiorari. App. 2193. The remittitur was issued on December 9, 2019. App. 2194.

On January 14, 2020, Petitioner filed an application for post-conviction relief (PCR). App. 2195-2202. The state filed a return to this application dated May 28, 2020. App. 2203-2208. With the assistance of counsel, Petitioner filed an amended application on August 24, 2024, raising the claim argued in this petition. App. 2209-2210. An evidentiary hearing was convened on August 26, 2024, before the Honorable David Caraker, Jr. App. 2211. Senior Deputy Attorney General Donald Zelenka represented the state. Ashely McMahan represented Petitioner.

Billy Garrett, Petitioner's trial counsel, testified that Petitioner was not in custody when Petitioner spoke with Sheriff Reid. Garrett explained that Petitioner and his mother approached Reid in the yard after the shooting and Petitioner and Reid exchanged words. Because Petitioner

was not in custody, Garrett testified that Reid was not required to advise Petitioner of his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966). Moreover, because Petitioner did not plan to testify at trial, Garrett explained that the defense wanted the jury to hear Petitioner's statement to Reid. App. 2233, l. 11 – 2235, l 2.

By order filed April 25, 2025, the PCR court denied Petitioner relief. The court found trial counsel was not ineffective for failing to object to the admission of Petitioner's statements to Sheriff Reid immediately before Petitioner's arrest. The court determined the statements were "a pre-arrest noncustodial voluntary admission." The court emphasized that at the time Petitioner made the statements, "he was freely walking around the property" and was not in custody. Because Petitioner was not in custody, the court determined law enforcement was not required to advise Petitioner of his Miranda rights. The court further found Petitioner failed to prove prejudice. App. 2267-2270.

Because Petitioner's rights to the effective assistance of counsel were violated, this petition for writ of certiorari follows.

ARGUMENT

The post-conviction relief (PCR) court erred by finding trial counsel was not ineffective when counsel failed to object to the admission of Petitioner's statement to Sheriff George Reid immediately before Petitioner's arrest when law enforcement did not advise Petitioner of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), or obtain a voluntary waiver of those rights before Petitioner gave the statement.

Trial counsel was ineffective for failing to object to the admission of Petitioner's statement to Sheriff George Reid immediately before Petitioner's arrest since Petitioner was never advised of his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), and did not voluntarily waive those rights before giving the statement. Petitioner was prejudiced by counsel's deficient performance because if counsel had properly objected to the admission of the statement, there is a reasonable probability the trial court would have excluded the statement, and the outcome of Petitioner's trial would have been different.

In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "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); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d

624, 625 (1989) (citing Strickland, 466 U.S. at 688). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

The Fifth Amendment of the United States Constitution states "no person . . . shall be compelled in any criminal case to be a witness against himself." "This constitutional safeguard protects individuals from overzealous police practices and limits the admissibility of incriminating statements, 'whether exculpatory or inculpatory, stemming from custodial interrogation of a defendant unless the prosecution demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.'" State v. Barksdale, 433 S.C. 324, 331, 857 S.E.2d 557, 560 (Ct. App. 2021) (quoting Miranda, 384 U.S. at 444). "A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights under Miranda v. Arizona, 384 U.S. 436 (1966)." State v. Brewer, 438 S.C. 37, 45, 882 S.E.2d 156, 160 (2022) (quoting State v. Saltz, 346 S.C. 114, 135-36, 551 S.E.2d 240, 252 (2001)) (internal quotation marks omitted).

"Miranda warnings, the procedural safeguards used to secure the privilege against self-incrimination, are required for official interrogation 'only when a suspect has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" State v. Barksdale, 433 S.C. 324, 331, 857 S.E.2d 557, 561 (Ct. App. 2021) (quoting State v. Easler, 327 S.C. 121, 127, 489 S.E.2d 617, 621 (1997) *overruled on other grounds by* State v. Greene, 423 S.C. 263, 814 S.E.2d 496 (2018)). "A significant deprivation of freedom 'has been interpreted as meaning formal arrest or detention associated with a formal arrest.'" Id. (quoting Easler, 327 S.C. at 127, 489 S.E.2d at 621).

"Whether an individual is in 'custody' is determined based on the totality of the circumstances surrounding the interrogation, including 'the location, purpose, and length of interrogation, and whether the suspect was free to leave the place of questioning.'" Id. (quoting State v. Medley, 417 S.C. 18, 25, 787 S.E.2d 847, 851 (Ct. App. 2016)). "The initial determination of whether an individual was in custody depends on the objective circumstances of the interrogation, not the subjective views harbored by either the interrogating officers or the person being questioned." Id. (quoting State v. Sprouse, 325 S.C. 275, 282, 478 S.E.2d 871, 875 (Ct. App. 1996) (internal quotation marks omitted). "The relevant inquiry is whether a reasonable man in the suspect's position would have understood himself to be in custody." Id. (quoting Easler, 327 S.C. at 128, 489 S.E.2d at 621) (internal quotation marks omitted). "Even if an officer focuses his inquiries on a suspect, Miranda warnings are not warranted if the setting is noncustodial." Id. (citing Easler, 327 S.C. at 127-28, 489 S.E.2d at 621). "Miranda warnings were 'not intended to hamper the traditional function of police officers in investigating crime.'" Id. (quoting Miranda, 384 U.S. at 477).

Sheriff Reid testified during Petitioner's trial that after the shooting, he responded to Petitioner's mother's house. As Reid was walking down the driveway, he encountered Petitioner and his mother, who both had a flashlight. App. 759, ll. 1-16. The following testimony was then elicited by the solicitor:

> Q: What, if anything did you say to them or what, if anything, did they say to you?
>
> A: I said, Do not shine the flashlight in my face.
>
> Q: Did anybody respond?
>
> A: No, sir. Then I quickly asked, Who is you? Then it was respond back and said, Who is you? Then I identified myself as Sheriff Reid. So, by that time, we were walking towards each other at the time.

Q: And there was two people that you were coming in contact with?

A: That's correct.

Q: What happened when y'all got up face-to-face?

A: When we got face-to-face, the defendant told me that, I put your deputy's gun in his car.

Q: I put your deputy's gun in his car?

A: That's correct.

Q: And what was said next?

A: Then I said, Well, some shooting going on down here. Then he responded back, I did it.

Q: I did it?

A: I did it.

Q: And what did you say?

A: Then I said, Did you know you shot my deputy? Then he said, He didn't have no business ringing my damn doorbell.

Q: Said what now?

A: He didn't have no business ringing my damn doorbell.

Q: And what did y'all do then?

A: Then I placed him under arrest.

Q: And the person y'all arrested was who?

A: Was the defendant over there (indicating).

Q: Mr. Worley?

A: That's correct.

App. 760, l. 20 – 762, l. 4.

Trial counsel was deficient for failing to object to this testimony concerning Petitioner's alleged statement to Sheriff Reid because Reid did not advise Petitioner of his Miranda rights before he questioned Petitioner. At the time Reid interrogated Petitioner in the driveway, a reasonable person in Petitioner's position would have believed he was in custody. While Petitioner had not been formally arrested at the time, he was in investigative detention and would not have been free to leave given the circumstances. While trial counsel maintained during the evidentiary hearing that he had a strategic reason for failing to object to this testimony, his reasoning was flawed. Counsel testified that because Petitioner did not plan to testify at trial, the defense wanted the jury to hear Petitioner's statement to Reid. See App. 2233, l. 11 – 2235, l 2. However, Petitioner's statement to Reid was not favorable.

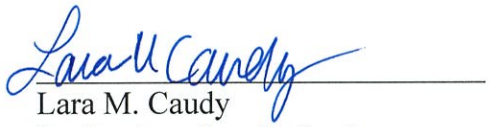
Petitioner was prejudiced by counsel's deficient performance because if counsel had correctly objected to the admission of Petitioner's statement to Reid, there is a reasonable probability the trial court would have suppressed the statement because it was taken in violation of Miranda and the outcome of Petitioner's trial would have been different.

Accordingly, this Court should grant certiorari and hold the PCR court erred by finding trial counsel was not ineffective. Petitioner respectfully requests this Court reverse his conviction and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing. Petitioner ultimately requests this Court reverse his conviction and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
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This 17th day of February, 2026.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joe Ross Worley states:

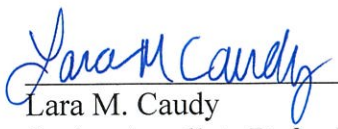
1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Petitioner.

2. She has reviewed the record of Petitioner's post-conviction relief hearing, which was held on August 26, 2024, before the Honorable David P Caraker, Jr., 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 Joe Ross Worley.

Respectfully Submitted,



Lara M. Caudy
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CERTIFICATE OF COUNSEL

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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