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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Dorchester County

Honorable Thomas McGee, Circuit Court Judge

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DEVONTE T. MAJOR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001472

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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**ISSUE PRESENTED**

Did the post-conviction relief court err by finding trial counsel was not ineffective for failing to move for severance because the majority of the evidence presented at trial pointed to co-defendant's guilt and prevented the jury from making a reliable decision as to petitioner's guilt or innocence?

## STATEMENT

On September 26, 2019, a Dorchester County grand jury indicted petitioner for murder, attempted murder, burglary first degree, possession of a weapon during the commission of a violent crime, and ill treatment of animals. App. 946-947; 950-951; 954-955; 958-959; 962-963. On July 9, 2021, petitioner's case was called to trial before the Honorable Diane S. Goodstein and a jury. App. 1-852. Petitioner was tried jointly with one of his co-defendants, Elijah Green. App. 1. Laree Hensley represented petitioner. App. 1. Melisa White represented Mr. Green. App. 1. David Osborn and Nicholas Young prosecuted for the state. App. 1.

The jury found petitioner guilty as indicted. App. 833, l. 23—834, l. 11. Judge Goodstein sentenced petitioner to concurrent terms of life imprisonment for murder, life imprisonment for burglary first degree, thirty years' imprisonment for attempted murder, five years' imprisonment for possession of a weapon during the commission of a violent crime, and five years' imprisonment for ill-treatment of animals. App. 850, l. 19—851, l. 10.

Appellate counsel filed a brief pursuant to *Anders*.<sup>1</sup> The Court of Appeals dismissed the appeal after review. App. 935.

Thereafter, petitioner filed an application for post-conviction relief (PCR). App. 853-862. On March 25, 2025, an evidentiary hearing was held before the Honorable Thomas McGee, III. App. 878-924. Denise Swope represented petitioner. App. 878. Bryan Hall represented the state. App. 878.

On June 10, 2025, Judge McGee signed an order denying PCR. App. 934-945. The court found petitioner failed to show trial counsel was ineffective for failing to move for severance of his trial from co-defendant Green. App. 940. The court found credible counsel's

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<sup>1</sup> *Anders v. California*, 386 U.S. 738 (1967).

testimony that she did not believe the trial court would have granted this motion. The PCR court further found that petitioner failed to show any prejudice by failing to show there was a reasonable probability that the result of his trial would have been different if he were tried separately because there was overwhelming evidence of his guilt. App. 940.

This petition follows.

## ARGUMENT

The PCR court erred finding trial counsel was not ineffective for failing to move for severance because the majority of the evidence presented at trial pointed to co-defendant's guilt and prevented the jury from making a reliable decision as to petitioner's guilt or innocence.

### **Relevant facts**

Late in the evening on January 27, 2019, four armed masked men forced their way into the home shared by Marcus Porter and David Swibaker in Summerville. The intruders allegedly kicked in the back door, which led into the kitchen. App. 251, l. 10 – 252, l. 25; 296, l. 5 – 297, l. 4. Swibaker and Joe Weaver, Porter's friend, were in the kitchen when the men entered. Porter and his dog were sitting on the couch in the living room. App. 249, l. 17 – 251, l. 4; 295, l. 20 – 296, l. 4. The intruders demanded weed. App. 296, ll. 12-25. Porter's dog aggressively approached the men and was instantly shot. App. 252, l. 25 – 253, l. 4; 297, l. 14 – 298, l. 6. At the same time, Swibaker fled to the bathroom and hid in the shower. App. 251, ll. 13-16; 253, ll. 14-16.

Weaver attempted to "diffuse the situation." He put his hands in the air to show he was unarmed and told the intruders he could get them some weed from North Charleston. App. 297, ll. 8-13; 298, l. 21 – 299, l. 9. Weaver "inched closer" to the men and was repeatedly told to "stand back." Weaver was shot and fell to the ground. App. 299, l. 23 – 300, l. 6. According to Porter, Elijah Green was the individual who shot Weaver. App. 300, ll. 7-10.

One of the intruders then told Porter, "You know what time it is, man, just give us the weed, [and] we out of here." App. 300, ll. 12-15. Porter, who admittedly sold drugs and had numerous pending charges at the time of trial, lied and told the man "there was none." App. 283, l. 9 – 284, l. 18; 300, ll. 15-16; 317, ll. 2-8. Two of the intruders dragged Porter to the back

bedroom. App. 300, ll. 17-19.

From his hiding place in the shower, Swibaker saw the two men drag Porter. App. 251, l. 13 – 252, l. 1. After the three went by, Swibaker ran across the hallway into his bedroom. App. 254, ll. 20-22. The other two intruders followed Swibaker into the room. App. 255, ll. 10-18. One of them struck Swibaker in the back of the head with a firearm. He fell to the ground and was told “to lay on the ground or they were going to blow [his] brains out.” App. 254, ll. 20-25. The intruders took the mattress off Swibaker’s bed and flipped it over him. Then they searched his room. App. 254, l. 25 – 255, l. 5.

Meanwhile, when Porter and the other intruders entered Porter’s bedroom, Porter saw his dog “basically” dying on the bed. App. 301, ll. 16-18. He remembered repeatedly saying, “Man, you shot my dog, you killed my dog.” App. 301, ll. 18-19. Porter showed the intruders the glass jar where he often stored loose marijuana, but there was not much in the jar at the time. One of the men stuck his gloved hand into the jar and grabbed the weed out. App. 300, l. 19 – 301, l. 14.

The men did not believe Porter that there were no other drugs in the house. App. 301, ll. 24-25. They pushed him back out to the living room. App. 301, l. 25 – 302, l. 1. Weaver was laying on the ground in the hallway. According to Porter, Weaver was still breathing. App. 302, ll. 7-10. Porter claimed Green announced, “If you don’t come up with some weed, I’m going to start killing motherfuckers around here.” Green shot Weaver again. App. 302, ll. 12-18. The intruders began ransacking the house. “They [were] digging through everything at that point.” App. 303, ll. 14-16.

Eventually one of the men exclaimed, “We gotta go, we gotta go.” App. 303, ll. 17-18. According to Porter, in the midst of fleeing out the back door, Green tripped over Weaver, which

made Green angry, and he shot Weaver a third time. App. 303, ll. 19-23. All four intruders exited through the back door. As they left, gunshots rang out. Porter claimed, “[I]t seemed like there [were] a whole lot of bullets coming at me and coming at us. And there was . . . he [Weaver] ended up getting shot five more times, and me [Porter] once.” App. 304, ll. 3-9. Porter claimed it was Green who shot him. App. 304, ll. 10-13. Porter was shot once in the chest. R. 311, l. 21 – 312, l. 1. Swibaker was uninjured. Weaver died as a result of his wounds. App. 686, ll. 1-3.

After the intruders fled through the back door, Porter left through the front door. He walked to his neighbor’s house. App. 304, ll. 14-21. As he walked, he “heard four sets of people jumping the [chain-linked] fence” between his yard and the woods. App. 305, ll. 1-5. He told his neighbor they had all been shot and asked her to call 911. App. 304, ll. 14-17. She called 911 and reported the burglary. She provided a vague description of the intruders relayed to her by Porter.

As Officer Joshua Scarborough was responding to the shooting, he saw a dark colored Honda CR-V with four black males inside leaving the neighborhood. He was not sure if the vehicle was related to the burglary, but he “[r]elayed the information over dispatch to [his] team and then proceeded to the incident location.” App. 347, ll. 13-21. Corporal Jacob Cramer, who was also responding to the shooting, heard Scarborough mention the vehicle over the radio. App. 373, ll. 21-25. As Cramer was entering the neighborhood, he likewise saw the Honda CR-V with four male occupants pass by him. App. 374, ll. 16-23. Cramer decided to stop the vehicle “since it could have possibly been involved.” App. 376, ll. 14-18. He saw the CR-V turn left onto Highway 78. Cramer turned his patrol car around, got behind the vehicle, and attempted to conduct a traffic stop. The lights and sirens on his patrol car were activated. The

CR-V slowly made a right hand turn and appeared as if it was going to stop. However, the vehicle continued to move slowly until it eventually sped up. App. 376, l. 11 – 377, l. 9.

Cramer continued pursuing the vehicle, which refused to stop. Numerous jurisdictions became involved. App. 378, ll. 12-13; 379, l. 21 – 380, l. 1. Officers with the Colleton County Sheriff's Office set up "spike strips" to stop the fleeing car. App. 382, ll. 4-11. Once the CR-V finally came to a stop, all four occupants were arrested. They were identified as Polo Salazar, Muanah Fortune, Elijah Green, and petitioner, Devonte Major. App. 382, l. 17 – 383, l. 11.

During the pursuit, officers saw numerous objects fly out of the vehicle, including a wallet, clothing, and a mask. App. 380, l. 14 – 381, l. 24; 387, ll. 4-25. After the men were arrested, Corporal Cramer went back and collected these items. App. 387, ll. 4-25. The wallet was later identified as belonging to the decedent Joe Weaver. App. 389, ll. 11-16. Porter claimed watches found in the CR-V were his. App. 313, ll. 17-23.

Because no firearms were found on the suspects, in the vehicle after it was stopped, or in the vicinity of the residence, Cramer continued to search along the route of the pursuit for guns. App. 389, l. 21 – 390, l. 2; 392, l. 25 – 393, l. 14. Cramer "went back to the one place where [he did not] have eyes on the vehicle, which was right there off Highway 78 where the car made the left hand turn" out of the neighborhood shortly after the burglary occurred. App. 394, ll. 4-11. Cramer found four firearms on the shoulder of the road. App. 394, ll. 12-16. Bullets recovered from the body of the decedent were determined to be fired by one of these firearms. App. 608, ll. 1-17.

Porter and Swibaker did not know any of the alleged intruders: Polo Salazar, Muanah Fortune, Elijah Green, or petitioner. The only connection law enforcement could determine between the two groups was through an individual named Jaquavious Washington. App. 246, l.

11 – 247, l. 17; 292, l. 1 – 293, l. 22; 516, l. 24 – 517, l. 18; 527, l. 21 – 529, l. 5. Porter sold marijuana to Washington on at least one prior occasion. App. 246, l. 11 – 247, l. 17. About an hour and a half before the incident, there was an outgoing call from co-defendant Green’s phone to a number identified as belonging to Washington. The call lasted fourteen and a half minutes. App. 516, l. 24 – 517, l. 18.

At petitioner’s PCR hearing counsel testified she did not believe that severing the trial from co-defendant Green would have made any difference in the case. App. 898, ll. 4-13.

### **Discussion**

Counsel was deficient for failing to move to sever petitioner’s trial from his co-defendant Green. Petitioner was prejudiced by the deficiency where there was direct evidence of Green’s presence at the scene and even evidence that he was the shooter which prevented the jury from making a reliable judgement regarding petitioner’s guilt in the incident.

In order to prove ineffective assistance of counsel, petitioner must show 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.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Petitioner must prove “counsel’s performance was deficient,” meaning that it 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 PCR judge erred in finding that counsel was not ineffective for failing to move for a severance. The evidence against petitioner was pieced together by the state and none of it put petitioner at the scene during the burglary and shooting. In contrast Green was identified by two eyewitnesses at trial. There was no reasonable strategic reason for counsel’s failure to move to sever the trials. Petitioner being tried jointly with Green made it impossible for the jury to separate the two men and differentiate their culpability for this incident.

“There can be no clearly defined rule for determining when a defendant is entitled to a separate trial, because the exercise of discretion means that the decision must be based upon a just and proper consideration of the particular circumstances which are presented to the court in each case.” *State v. Avery*, 374 S.C. 524, 533, 649 S.E.2d 102, 107 (Ct. App. 2007). “A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a codefendant’s guilt.” *Id.* at 534, 649 S.E.2d at 107. However, a trial judge “must act cautiously in allowing a joint trial,” and “must carefully consider problems that may arise from a joint trial.” *State v. Dennis*, 337 S.C. 275, 281-282, 523 S.E.2d 173, 176 (1999).

Petitioner was prejudiced by counsel’s failure to move for a severance. Because petitioner and Green were tried together, the state was able present significant evidence of Green’s guilt leaving the jury to infer petitioner’s guilt.

**CONCLUSION**

Based on the foregoing arguments, petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing on the issues presented.

  
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Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of February, 2026.

Feb 20 2026

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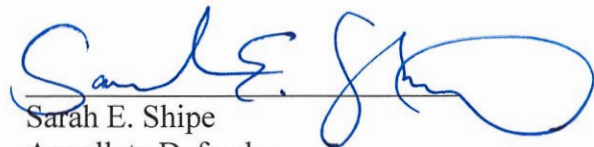
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Devonte Major states:

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 Thomas McGee, which was held on March 25, 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 Devonte Major.

Respectfully Submitted,



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Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of February, 2026.

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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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This 20th day of February, 2026.