RECEIVED
Mar 19 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Frank R. Addy, Circuit Court Judge

TYRONE LORENZA ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001540

JOHNSON PETITION FOR WRIT OF CERTIORARI

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Whether the court erred in denying post-conviction relief where the State indicted Petitioner on one theory but proceeded at trial on a different theory, and where counsel failed to argue Petitioner was entitled to a directed verdict based on a material variance between the indictment and proof, since Petitioner demonstrated deficiency and prejudice?

STATEMENT

Procedural history

On October 18, 2012, a Beaufort County Grand Jury indicted Petitioner, Tyrone Robinson, for murder. The indictment alleged that on September 1, 2012, while engaged in an ongoing gun battle, an inherently dangerous felony, Petitioner did willfully, unlawfully, and with malice aforethought cause K.S., a minor, to be shot and killed in Hilton Head Island, and the minor did die in Beaufort County as a proximate result thereof. App. 2329 – 2330.

A pretrial hearing was held on February 27, 2014, before the Honorable Thomas W. Cooper, Jr., with three defendants represent: Petitioner, who appeared pro se with Ari Bax as standby counsel; Aaron Young, Jr., who was represented by Roberts Vaux; and Aaron Young, Sr., who was represented by Robert Ferguson, Jr. App. 1 – 3. The court denied the codefendants' motion to sever and it denied Petitioner's motion for immunity. App. 19, l. 7 – 23, l. 9; App. 45, l. 15 – 48, l. 6.

The case against the three defendants was first called to trial April 21 – 23, 2014, before the Honorable Thomas W. Cooper, Jr. App. 53 – 54. A jury was selected on April 21st. App. 153, l. 13 – 165, l. 8. The jury was then sent home for the remainder of the day. App. 168, ll. 6-12. Pretrial motions were heard. Court resumed on April 22nd, and pretrial motions continued. The court again sent the jury home for the day. App. 332, l. 23 – 343, l. 9. The court once again adjourned for the day, and court resumed again on April 23rd. App 345, l. 23 – 346, l. 1. Information came to light that there were additional patrol car videos of which neither the State nor defenses were aware. The court granted the codefendants' motion to sever and it continued the cases until a later date. App. 350, l. 19 – 352.

Petitioner's case was again called to trial, and he was tried before the Honorable Thomas Cooper, Jr., and a jury, from September 15 – 19, 2014.[1] App. 354; App. 488; App. 623; App. 843; App. 1073; App. 1274. Petitioner was represented by Arie Bax and Jessica Saxon. Duffie Stone and Sean Thornton prosecuted the case. App. 354. Petitioner was convicted of murder. App. 1366, ll. 2-24. He was sentenced to imprisonment for life without the possibility of parole. App. 2331; App. 1388, ll. 17-19.

After exhausting his direct appeal remedies, on or about April 22, 2021, Petitioner timely filed an application for post-conviction relief (PCR). App. 1390 – 1814. Petitioner subsequently made amendments to his PCR application. App. 1815 – 1817; App. 1818 – 1936; App. 1937 – 2184. On or about March 12, 2024, the State made its return, motion for clarification, and partial motion to dismiss. App. 2185 – 2193. On or about April 3, 2025, Petitioner filed an amended PCR application. App. 2194 – 2237.

A hearing was held on the matter on April 16, 2025, before the Honorable Frank Addy, Jr. Chelsea Marto represented Petitioner. Benjamin Aplin and Danielle Dixon appeared on behalf of the State. App. 2238; App. 2240, ll. 5-10. On July 14, 2025, the PCR court issued an order of dismissal. App. 2320 – 2328.

Relevant facts

On September 1, 2012, eight-year-old K.S. (Minor), was outside playing on a trampoline in the Allen Road area of Beaufort County when shooting broke out. When Minor tried to get away from the gunfire he was struck by a stray bullet and killed. App. 669, l. 23 – 680, l. 22;

---

[1] As seen, the transcript cover pages state that the Honorable Thomas W. Cooper, Jr., presided over the earlier pretrial motions and first trial, and they state the Honorable "Thomas G. Cooper, Jr.," [sic] presided over the ultimate trial. None of the transcripts reference the Honorable G. Thomas Cooper, Jr. Based on comments by trial counsel, it appears the same judge, Thomas W. Cooper, Jr., presided over all the hearings and trials, and the "G." was likely a typo. *See* App. 599. The Honorable Thomas W. Cooper, Jr., signed the sentence sheet. App. 2331.

App. 711, l. 11 – 713, l. 25; App. 925, l. 24 – 927, l. 1. The State alleged Petitioner had earlier been in an altercation with Aaron Young, Sr., and Aaron Young, Jr., in which Petitioner shot a round from his pistol. App. 793, l. 23 – 802, l. 17; App. 817, l. 23 – 821, l. 8. Police later recovered that spent bullet, which was .38 caliber. App. 805, l. 7 – 806, l. 21; App. 867, l. 17 – 869, l. 10; App. 914, ll. 16-24; App. 973, l. 21 – 978, l. 25. Petitioner withdrew from the conflict: he fled. App. 802, ll. 5-17; App. 821, ll. 4-8; App. 1185, l. 4 – 1187, l. 20. The Youngs drove around looking for Petitioner extensively. App. 802, l. 18 – 803, l. 25; App. 821, l. 9 – 827, l. 18. When they saw his parked car in the Allen Road area, they "swiss cheesed" it with their .9 mm gun, which when recovered by law enforcement looked to be a "submachine gun" with accessories. App. 772, ll. 3-24; App. 881, l. 13 – 885, l. 16; App. 988, l. 19 – 989, l. 19; App. 1114, l. 4 – 1115, l. 1; App. 1124, ll. 12-24. The State claimed Petitioner then fired back, striking Minor. App. 649, ll. 6-12; App. 1316, ll. 19-25.

At trial, the State offered proof that Petitioner fired the fatal shot which struck the minor, and he was guilty of murder under the doctrine of transferred intent—i.e., Petitioner shot Minor while shooting at the Youngs. The proof offered by the State at trial included the following. Petitioner had gunshot residue on his hand. App. 953, ll. 6-12. Minor's friend, J.S., immediately identified Petitioner as the shooter. App. 732, l. 8 – 739, l. 15; App. 747, ll. 7-18. Petitioner had the same caliber gun as the caliber bullet retrieved from Minor's body while the Youngs had a different caliber weapon. The bullet from the gun fired by Petitioner during the earlier altercation with the Youngs was consistent with the bullet recovered during Minor's autopsy although a firearms expert could not make a definitive match. The gun recovered from the Youngs could not have fired the fatal shot. App. 973, l. 12 – 1011, l. 10. Charlese Mitchell averred the final shots did not come from the Youngs' truck. App. 686, l. 21 – 687, l. 17; App.

690, ll. 1-11. In opening statements, the solicitor argued that after the Youngs shot at Petitioner's car, Petitioner shot at them and hit Minor. App. 649, ll. 6-12. In closing argument, the State again argued Petitioner fired the fatal shot. App. 1316, ll. 19-25; App. 1321, l. 11 – 1323, l. 3.

During pretrial motions, defense counsel made a motion to quash the indictment, alleging the "inherently dangerous felony" language in the indictment was insufficient to put the defense on notice "of which inherently dangerous felony I am defending against[.]" The State admitted the indictment "has more than is necessary[.]" The court found the indictment was sufficient and ruled that the defense could revisit the matter at the directed verdict stage. App. 580 – 598. At the directed verdict stage, defense counsel did not address the material variance between the indictment and proof discussed herein and instead focused on whether the State had disproven the elements of self-defense. However, he did argue that the State had not "met their burden to meet the language of the indictment that they have gone forward on. They have not been able to prove an inherently dangerous felony of any kind that was occurring at the time the child died that Mr. Robinson was involved in[.]" App. 1017, l. 1 – 1021, l. 8. The court denied the motion. App. 1021, l. 12 – 1023, l. 22.

At the PCR hearing, Petitioner testified counsel was ineffective in the way he handled the invalid indictment. App. 2260, l. 12 – 2267, l. 6. Petitioner stated the indictment was insufficient for notice. App. 2249, ll. 11-18. He noted counsel effectively let the State amend the indictment without challenge. App. 2265, ll. 11-19. Counsel did not testify at the hearing; he was apparently living "abroad" and his license had been suspended. App. 2240, l. 5 – 2243, l. 13. However, one of the solicitors testified. He claimed as to the indictment: "at worst the language was superfluous." App. 2305, ll. 4-5.

In the order of dismissal, the PCR court addressed Petitioner's claim "the State improperly changed its theory of the case and, in doing so, did not put him on notice of the charges he faced." App. 2324. "[T]his Court has reviewed the indictment and finds it was sufficient to put Applicant on notice of the charge." App. 2324. "Because the indictment was sufficient, there was no basiss for counsel to object to the indictment itself. However, trial counsel did move to quash the indictment and, by doing so, advanced many of the same arguments Petitioner raises now." App. 2324. "Further, counsel raised this argument again at the directed verdict stage[] and properly argued the directed verdict motion." App. 2324. "This Court finds counsel was not deficient in interposing any objection as to any structural amendments of the indictment." App. 2324.

This petition for writ of certiorari follows.

ARGUMENT

The court erred in denying post-conviction relief where the State indicted Petitioner on one theory but proceeded at trial on a different theory, and where counsel failed to argue Petitioner was entitled to a directed verdict based on a material variance between the indictment and proof, since Petitioner demonstrated deficiency and prejudice.

The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 686 (1984). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. A petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and the deficient performance prejudiced the petitioner. *Id.* at 687. "To show prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability the result of the trial would have been different." *Patrick v. State*, 349 S.C. 203, 207, 562 S.E.2d 609, 611 (2002). "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).

"In South Carolina, it is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment. A material variance between charge and proof entitles the defendant to a directed verdict; such a variance is not material if it is not an element of the offense." *Bailey v. State*, 392 S.C. 422, 433, 709 S.E.2d 671, 677 (2011) (cleaned up). "A material variance between the charge and the proof entitles the defendant to a directed verdict." *State v. Evans*, 322 S.C. 78, 81, 470 S.E.2d 97, 99 (1996). "While a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the

indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged. A conviction under the latter circumstance violates principles of due process because the State has failed to prove beyond a reasonable doubt every fact necessary to constitute the crime with which a defendant was charged." *Bailey v. State*, 392 S.C. at 433, 709 S.E.2d at 677 (cleaned up). "[I]ndictments matter. The law does not mandate perfection in the drafting of indictments, but it does require fair notice of the charge against the accused." *State v. Dent*, 446 S.C. 121, 136, 919 S.E.2d 394, 402 (2025).

The indictment alleged that Petitioner did "cause" the minor to be shot, and the minor's death was the "proximate result" of Petitioner's conduct in engaging "in an ongoing gun battle, an inherently dangerous felony." App. 2330. Thus the theory of liability alleged in the indictment was that Petitioner and his severally-tried codefendants, the Youngs, were the proximate cause of Minor's death regardless of who fired the fatal shot. *See State v. Young*, 429 S.C. 155, 157, 838 S.E.2d 516, 517 (2020) ("mutual combat can properly serve as the basis for a murder charge for the death of a non-combatant under the 'hand of one is the hand of all' theory of accomplice liability"). However, at trial, the State proceeded on a different theory of liability—that Petitioner fired the fatal shot which struck the minor, and he was guilty of murder under the doctrine of transferred intent—i.e., Petitioner shot Minor while shooting at the Youngs. The proof offered by the State at trial was that Minor's friend, J.S., immediately identified Petitioner as the shooter; Petitioner had the same caliber gun as the caliber bullet retrieved from Minor's body at autopsy while the Youngs had a different caliber weapon; that Charlese Mitchell averred the final shots did not come from the Youngs' truck. As seen, in opening statements and closing argument, the solicitor argued that after the Young's shot at Petitioner's car, Petitioner shot at them and hit Minor.

Counsel should have moved for a directed verdict of acquittal based on the material variance between the conduct alleged in the indictment and the proof offered at trial. The indictment was insufficient to put Petitioner on notice of what theory he was to defend against. *See Bailey v. State*, 392 S.C. at 433, 709 S.E.2d at 677 (when the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged, a conviction violates principles of due process because the State has failed to prove beyond a reasonable doubt every fact necessary to constitute the crime with which a defendant was charged); *State v. Dent*, 446 S.C. at 133, 919 S.E.2d at 400 ("by choosing to pursue a narrow, specific charge, the State could not seek a conviction under a different and expanded theory of sexual battery").

To the extent that it could be claimed counsel did make this argument during his motion to quash and directed verdict motion, since he argued the indictment was flawed, counsel never identified the concept of a material variance to present this matter to the judge. Instead, counsel focused on whether the indictment put the defense on notice of which dangerous felony was at play for purposes of "felony murder."[2] App. 580 – 598; App. 1017, l. 1 – 1021, l. 8. Petitioner established deficiency and prejudice. *Strickland v. Washington*, 466 U.S. at 687. This Court should grant the petition for writ of certiorari.

---

2 *See State v. Brown*, 443 S.C. 196, 198-99, 904 S.E.2d 448, 449 (2024) (judge may not instruct jury as to murder that the element of malice can be inferred if one kills another during the commission of a felony).

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and allow full briefing on this issue.

Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of March, 2026.

RECEIVED
Mar 19 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Frank R. Addy, Circuit Court Judge

TYRONE LORENZA ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tyrone L. Robinson 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 R. Addy, which was held on April 16, 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 Tyrone L. Robinson.

Respectfully Submitted,

Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of March, 2026.

RECEIVED

Mar 19 2026

S.C. SUPREME COURT

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."

Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 19th day of March, 2026.