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Mar 23 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Laurens County

Honorable R. Scott Sprouse, Circuit Court Judge

DARRELL E. RAINES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002093

JOHNSON PETITION FOR WRIT OF CERTIORARI

JESSICA M. SAXON
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ISSUE PRESENTED

Whether the PCR court erred in finding trial counsel provided effective assistance where counsel failed to object and move to exclude the testimony of Penny Smithers who was not listed on the state's witness list?

STATEMENT OF THE CASE

On August 19, 2013, Myranda Southern was reported missing to the Greenville County Sheriff's office. App. 129. She worked the third shift at Charter Communications on August 18 into the early morning of August 19, 2013. App. 115. After leaving work, no one heard directly from Southern again; however, there were posts on her Facebook account which indicated she had left town to pick up her children from her mother's home in Florida, as well as activity on her cellphone. App. 127-129. On August 23, 2013, a body was found in an overgrown rural field in Laurens County. App. 217-218. It was determined to be the body of Southern. App. 581. The cause of death was a gunshot wound to the neck. App. 324-325

The investigation led police to Petitioner. On November 1, 2013, a Laurens County grand jury indicted Petitioner for murder and possession of a weapon during the commission of a violent crime. App. 870-873. The state, represented by Dale Scott and Margaret Boykin, called the case to trial on December 7, 2013, before the Honorable Donald B. Hocker and a jury. Petitioner was represented by Bryan C. Able. App. 1. On December 11, 2013, the jury found Petitioner guilty as indicted. App. 699-700. Judge Hocker sentenced Petitioner to life imprisonment for murder and five years on the weapons charge. App. 710.

Petitioner timely appealed his convictions and sentences. The case was initially remanded back to Judge Hocker to vacate the five-year sentence on the weapons charge pursuant to S.C. Code Ann. 16-23-460(A) and State v. Palmer, 415 S.C. 502, 525, 783 S.E.2d 823, 835 (Ct. App. 2016). After final briefing and oral argument, the Court of Appeals affirmed Petitioner's convictions and sentence in an unpublished opinion. State v. Raines, Op. No. 2019-UP-188 (S.C. Ct. App. filed May 29, 2019). The remittitur was issued on June 14, 2019.

Petitioner filed an application for post-conviction relief on January 7, 2020. App. 794-801. The state filed a return dated June 10, 2020. App. 802-809. An evidentiary hearing was convened on December 2, 2022, before the Honorable R. Scott Sprouse. Petitioner was represented by Don A. Thompson. The state was represented by Zachary W. Jones. Petitioner and trial counsel Able testified at the hearing. App. 810-811. An order of dismissal was filed on September 29, 2025, finding Petitioner had failed to meet his burden to show counsel was deficient and that counsel's deficiency prejudiced him. App. 853-869.

ARGUMENT

The PCR court erred in finding trial counsel provided effective assistance where counsel failed to object and to move to exclude the testimony of Penny Smithers who was not listed on the state's witness list.

Relevant Facts

During *voir dire*, the trial court published a lengthy list of potential witnesses in the case to the venire. App. 17-18. Southern's mother, Penny Smithers, was not included on the proposed witness list. Smithers was the second witness to testify at trial. App. 136-147. Counsel Able made no motion to question the venire or the selected jury about any relationship with Smithers. He also did not move to exclude the testimony on the basis that the witness had not been the subject of *voir dire* questions.

At the PCR hearing, Petitioner testified he and Counsel Able had a brief discussion about Smithers not being on the witness list, but Counsel Able did not bring it to the attention of the court. Petitioner believed the testimony of Smithers was harmful and that counsel should have objected that she was not on the witness list. App. 817-818.

Counsel Able agreed that Smithers was not on the witness list but testified that he knew she would testify at trial. He stated the solicitor had an open file policy and talked about the witnesses leading up to the trial, so he was prepared to cross-examine Smithers. App. 830-831. When asked why he did not raise the issue to the trial court he stated, "I don't know." App. 840.

The order of dismissal found that Petitioner's claim was focused on the failure of counsel to *voir dire* the venire and jury about Smithers. The PCR court disposed of the issue on the prejudice prong, finding the argument that any juror may have known Smithers and harbored bias purely speculative. App. 862-863.

Discussion

Our state and federal constitutions guarantee a party the right to an impartial jury, and “voir dire can be an essential means of protecting this right.” State v. Rowell, 444 S.C. 109, 113, 906 S.E.2d 554, 556 (2024) citing Warger v. Shauers, 574 U.S. 40, 50, 135 S.Ct. 521, 190 L.Ed.2d 422 (2014); U.S. Const. amends. VI, XIV; S.C. Const. art. I, § 14. To ensure a fair and impartial jury the parties are required to provide their respective witness lists. See State v. Powers, 331 S.C. 37, 44, 501 S.E.2d 116, 119 (1998) citing People v. Cangiano, 131 Misc.2d 930, 502 N.Y.S.2d 349 (1986) (disclosure of prospective witnesses is required to determine whether any prospective juror is related to or knows any one of them and may be challenged for cause).

“It is the duty of the trial judge to see that a jury of unbiased, fair and impartial persons is impaneled.” Powers, 331 S.C. at 43, 501 S.E.2d at 119. The only way for the issue of potential biases to be addressed by the court

[I]s through disclosure to the prospective jurors of the names of all prospective witnesses. Indeed, it is up to the court “to bring to the forefront, at the very beginning, the existence of any relationship between a prospective juror and a witness, which, if undetected at the time of jury selection, could prevent a fair trial. This [permits] counsel, at that early stage of the case, to offer a challenge for cause and to obtain the exclusion of such prospective juror where such relationship exists” The proper procedure for the trial court to follow is that the “names of prospective witnesses should be obtained from the attorneys outside the presence of the jury and presented to prospective jurors during voir dire without attribution to either party.

Cangiano, 131 Misc. 2d at 931–32, 502 N.Y.S.2d at 350.

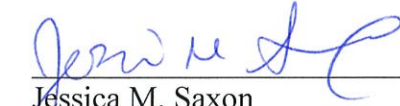
“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been

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 him. Id.; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

Counsel Able admitted that Smithers was not on the witness list, and her name was not presented to the jurors to discover any potential bias. Counsel admitted to being aware that Smithers would testify, yet he still did not have her name presented to the venire. Counsel did not offer a strategic reason for failing to have Smithers name called out to the venire and simply maintained he was aware the state was calling her as a witness. However, his awareness was not relevant – what mattered was whether any member of the *venire* knew Smithers, not whether counsel knew Smithers would testify. There was no strategic reason for failing to object to the testimony of Smithers or for failing to ensure her name was presented to the venire. Additionally, after Petitioner brought the matter to Counsel Able’s attention, there was nothing precluding counsel from requesting the court inquire of the selected jury whether there was any relationship with Smithers prior to her testimony. Counsel Able’s representation in this instant was deficient performance. Petitioner was prejudiced because there was no way for him to discern whether a member of the venire, or his selected jury, knew Smithers and would therefore be partial to her testimony.

CONCLUSION

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



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 23rd day of March, 2026.

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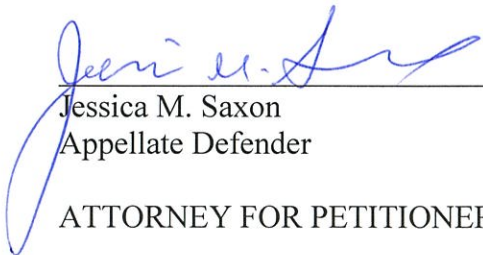
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Darrell Ervin Raines 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 R. Scott Sprouse, which was held on Dec. 2, 2022, 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 Darrell Ervin Raines.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 23rd day of March, 2026.

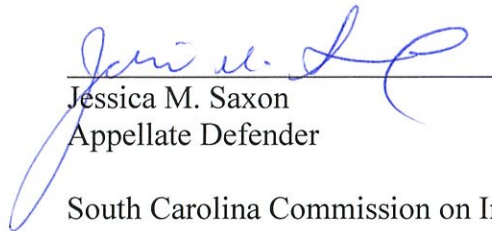
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CERTIFICATE OF COUNSEL

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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