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Jun 08 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Newberry County

Honorable S. B. Doby, Circuit Court Judge

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JEFFREY GLENN MCCOY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001779

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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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

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**ISSUE PRESENTED**

Whether the court erred in denying post-conviction relief where counsel failed to object to the mischaracterization of an aerial photograph, where the crime scene was one shopping center but Petitioner was arrested at a similar second shopping center, and where the mischaracterization may have confused the jury into incorrectly believing Petitioner was arrested at the crime scene, since Petitioner established deficiency and prejudice in this highly circumstantial case?

## STATEMENT

### **Procedural history**

During the August term of 2012, a Newberry County Grand Jury indicted Jeffrey McCoy, Petitioner, for safecracking, five counts of second degree burglary (violent), grand larceny, two counts of petit larceny, and possession of burglary tools. App. 618 – 652. On April 22 – 24, 2013, Petitioner was tried before the Honorable Frank W. Addy, Jr., and a jury. Charles Verner represented Petitioner. C. Dale Scott and Yates Brown prosecuted the case. App. 1; App. 120. Petitioner was convicted as indicted. App. 458, l. 8 – 459, l. 23.

Petitioner was sentenced to fifteen years' imprisonment for safecracking, five years for grand larceny, and five years for possession of burglary tools, with those sentences to run concurrently. App. 473, l. 19 – 474, l. 5. Petitioner was sentenced to ten years' imprisonment for each count of second-degree burglary, with the burglary charges running concurrently with each other but consecutive to the safecracking offense. Petitioner was sentenced to thirty days for each petit larceny. App. 474, l. 7 – 475, l. 4.

After exhausting his direct appeal remedies, on or about November 3, 2017, Petitioner filed an application for post-conviction relief.<sup>1</sup> App. 477 – 535. On or about April 23, 2018, the State made its return. App. 536 – 539. On or about November 6, 2024, Petitioner filed amendments to his application. App. 540 – 541. A hearing was held on the matter on March 31, 2025, before the Honorable S. Bryan Doby. Charlie Johnson, Jr., represented Petitioner. Zachary Jones appeared on behalf of the State. App. 542. On July 29, 2025, the PCR court issued an order of dismissal. App. 605 – 617.

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<sup>1</sup> The remittitur was issued April 10, 2015, and Petitioner filed a PCR application on November 2, 2015. However, because Petitioner was not present at the PCR hearing since he was incarcerated in Tennessee, an order of dismissal without prejudice was issued. App. 537.

## **Relevant facts**

At approximately 6:15 a.m. on May 27, 2012, Officer Weaver checked properties on Wilson Road in Newberry; specifically, the Shops on Wilson Shopping Center. App. 169, l. 7 – 170, l. 5; App. 194, ll. 18-25. He saw a hole in the cinder block at the back of Check Into Cash. The door was unsecured. Officers entered the building and saw the safe had “cut marks” on it, and there were tools including grinders and pry bars nearby. In checking the adjacent businesses in the shopping center, law enforcement saw the back doors were unsecured on several other businesses. Holes had been knocked into adjacent businesses. El-Amin Barbershop, Boost Mobile, Jackson Hewitt Tax Service, and Regional Finance had also been gone through and left unsecured. An employee had been cleaning up at Regional Finance on May 26th and noticed nothing amiss when she got in her car, which was parked at the back of the building, around 11:00 p.m. App. 170, l. 9 – 171, l. 20; App. 286, l. 18 – 289, l. 20.

The wiring near the rear doors of all of the businesses had been cut, probably to disable the camera, alarm and telephone systems. App. 172, ll. 17-21; App. 175, ll. 17-21. A metal plate had been cut from the front of the safe at Check Into Cash and was lying on the floor. App. 172, l. 22 – 173, l. 4; App. 177, ll. 9-13. Cell phones were missing from Boost Mobile. The value of the phones was \$10,204. Items including gold dollar coins and stamps were taken from Regional Finance. Nothing was taken from the barbershop. A bottle of water was taken from Jackson Hewitt and snacks were taken from Check Into Cash. App. 184, ll. 7-19; App. 268, ll. 8-20; App. 336, ll. 5-24.

Patrols were heightened because of the break-ins. App. 202, ll. 3-8. Approximately fourteen hours later, around 8:40 p.m., Officer Alvarado was patrolling the Bear Village shops. App. 196, l. 9 – 198, l. 3. The Shops on Wilson and shops at Bear Village were a little less than a

mile apart. App. 203, l. 19 – 204, l. 2. Alvarado walked behind Comcast and noticed a storage room or storage facility was open instead of secured. Alvarado saw Petitioner kneeling down behind an air conditioning unit. Petitioner provided his name and date of birth upon request. A records check showed Petitioner was from Tennessee. App. 198, l. 6 – 202, l. 25. Another officer found tools where Petitioner had been, including a pry bar near an open power box. Petitioner was holding a pair of work gloves and had a wrench in his pocket. A phone box behind the businesses was open and wires had been cut. Petitioner was detained. App. 205, l. 4 – 206, l. 16; App. 209, l. 17 – 212, l. 9; App. 243, l. 19 – 244, l. 20.

Officer Malloy found a car with Tennessee plates in front of the Bi-Lo grocery store a couple of parking lots down. The tag came back registered to Petitioner. Malloy looked in the car and saw a tool bag with various tools. He also saw loose change and gold dollars in the console, along with a hotel key. Law enforcement watched the car until the Bi-Lo closed and Petitioner had been arrested. They impounded and inventoried the car. There were rolls of stamps in the glove box. The hotel key had the number 125 on it. App. 221, l. 5 – 229, l. 17. Officer Busko checked local hotels to see if Petitioner was registered at any of them, and the Budget Inn confirmed Petitioner had checked in and paid for two nights. App. 245, ll. 6-18. Law enforcement got a search warrant for room number 125. They located cell phones in the hotel room, along with more tools. The cell phones were labeled Boost Mobile on the boxes. They also found a pair of size ten Fila tennis shoes. App. 245, l. 22 – 251, l. 17; App. 275, l. 11 – 176, l. 4; App. 374, ll. 2-3.

The metal plate from the safe at Check Into Cash (Shops on Wilson) had a footwear impression on it that appeared to be tracked by someone who walked through sheetrock dust. App. 278, l. 10 – 279, l. 3. An expert in footwear examination and comparison opined the left Fila shoe

seized from the hotel room produced the footwear print on the metal plate. App. 366, l. 12 – 379. Additionally, a former inmate at the detention center claimed Petitioner admitted to him that he broke into Regional Finance. App. 305, l. 25 – 309, l. 21.

At the PCR hearing, Petitioner testified counsel impermissibly allowed the State’s witnesses to misidentify an aerial photograph. Although the problem was rectified, counsel did not initially catch it. One officer identified State’s Exhibit #1 as being Shops on Wilson, but another officer identified it as being Bear Village. App. 559, l. 24 – 572, l. 7. “[T]hey almost had me convinced that I got arrested at the crime scene.” App. 572, ll. 6-7. “[T]hey confused the jury enough to make them think that I got arrested where the crimes were committed.” App. 571, ll. 21-22.

Counsel testified he did not believe the solicitor intentionally tried to confuse the jury about where Petitioner was found but he admitted there could have been “goof-ups” with mismarked evidence, as the case involved two similar strip mall locations, built and run by the same company, in close proximity. App. 584, l. 20 – 585, l. 3.

In its order of dismissal, the PCR court concluded there was overwhelming evidence of guilt. It nevertheless addressed the deficiency prong of *Strickland v. Washington*, 466 U.S. 668 (1984). App. 612. The order of dismissal addressed the aerial photographs claim and noted the solicitor referred to certain exhibits with incorrect exhibit numbers. However, the order also stated counsel pointed out the errors and the solicitor agreed to correct the exhibit numbers. The order further cited to the solicitor’s closing argument wherein he discussed that there were two different incident locations, and it stated the court found the problems were “minor clerical errors, which were not likely to confuse the jury and which Counsel swiftly noted and corrected on the record.” Thus, the court found no deficiency. App. 614 – 615. This petition for writ of certiorari follows.

## ARGUMENT

The court erred in denying post-conviction relief where counsel failed to object to the mischaracterization of an aerial photograph, where the crime scene was one shopping center but Petitioner was arrested at a similar second shopping center, and where the mischaracterization may have confused the jury into incorrectly believing Petitioner was arrested at the crime scene, since Petitioner established deficiency and prejudice in this highly circumstantial case.

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668; U.S. Const. amend. VI. A two-pronged test for determining effective assistance of counsel was set forth in *Strickland*. The first prong requires an applicant to show counsel's performance was deficient; the second prong requires a showing the deficient performance prejudiced the applicant. *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The standard for determining deficient performance is whether counsel's representation was reasonable under prevailing professional norms. *Strickland v. Washington*, 466 U.S. at 688. The standard for determining prejudice is whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*, 466 U.S. at 694.

Petitioner established deficient performance. During trial before the jury, Officer Weaver testified State's Exhibit #1 was an aerial photograph of the Shops on Wilson and he identified the burglarized businesses on it. App. 191, l. 9 – 192, l. 25. Then, Officer Alvarado testified State's Exhibit #7 was an aerial photograph of Bear Village. App. 200, ll. 1-7. Subsequently, Officer Busko testified State's Exhibit #1 was Bear Village and the State attempted to admit the exhibit into evidence. App. 242, ll. 5-12. However, the court and the court reporter noted there was

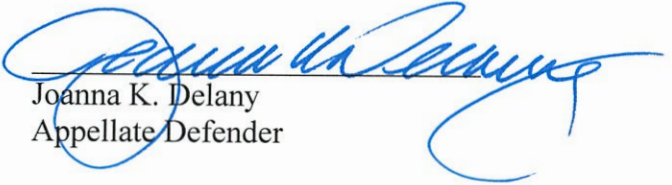
already a State's Exhibit #1 admitted. Defense counsel suggested the exhibit be labeled State's Exhibit #11, and it was so labeled and admitted. App. 242, l. 17 – 243, l. 9. Whether Petitioner was arrested at Shops on Wilson (the crime scene), or only at nearby Bear Village, was a critical distinction. Although Officer Busko identified purported State's Exhibit #1 as Bear Village (the scene of Petitioner's arrest), Officer Weaver had already testified State's Exhibit #1 was Shops on Wilson (the scene of the crimes). Counsel should have objected to the misidentification and ensured the jury was not confused. *See, e.g., Tappeiner v. State*, 416 S.C. 239, 251, 785 S.E.2d 471, 477 (2016) (prosecutor's comments which mischaracterized the evidence were objectionable). Counsel offered no strategic justification for allowing the witness to mischaracterize the exhibit. His performance was deficient. *Strickland v. Washington*, 466 U.S. at 688.

Petitioner also established prejudice. The court erred in finding overwhelming evidence of guilt. For evidence to be overwhelming so that it categorically precludes a finding of prejudice, "the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of 'a reasonable probability the factfinder would have had a reasonable doubt' cannot possibly be met." *Smalls v. State*, 422 S.C. 174, 191, 810 S.E.2d 836, 845 (2018). The evidence here did not meet that standard. This was a highly circumstantial case. Although the goods recovered from Petitioner's hotel room may have supported a verdict for receiving stolen goods, the only evidence directly putting him inside the stores (i.e., supporting the convictions for burglary, larceny, safecracking) was shoeprint identification evidence, which is a dubious category of evidence. *See, e.g., State v. Jones*, 383 S.C. 535, 557, 681 S.E.2d 580, 592 (2009) (holding "barefoot insole impression" evidence was not scientifically reliable); § 13:56. Footprint Experts,

3 Wharton's Criminal Evidence § 13:56 (15th ed.) (noting reliability problems with impression evidence of mass-produced items including tires and shoes). Moreover, these were a common brand of shoes in a common size. Petitioner established "a reasonable probability that, absent [counsel's error], the factfinder would have had a reasonable doubt respecting guilt." *Strickland v. Washington*, 466 U.S. at 695. The court erred in denying post-conviction relief.

**CONCLUSION**

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



Joanna K. Delany  
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of June, 2026.

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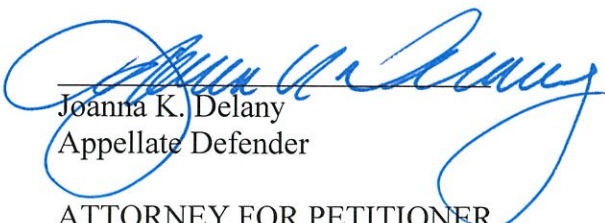
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Jeffrey Glenn McCoy states:

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 S. B. Doby, which was held on March 31, 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 Jeffrey Glenn McCoy.

Respectfully Submitted,

  
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Joanna K. Delany  
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of June, 2026.

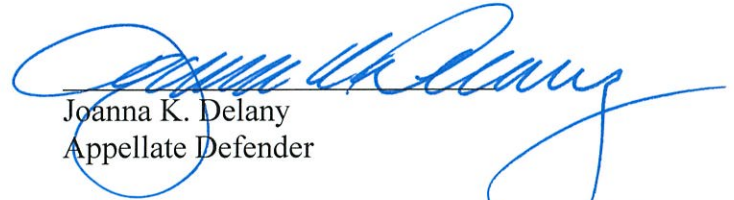
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CERTIFICATE OF COUNSEL

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."



Joanna K. Delany  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
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ATTORNEY FOR PETITIONER

This 8th day of June, 2026.