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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO AIKEN COUNTY
Court of Common Pleas
The Honorable Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2025-002138

JONATHAN ART LINCOLN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF ISSUES PRESENTED

- I. Whether the PCR court erred by refusing to find trial counsel ineffective for failing to object to the improper constructive possession jury charge where her decision not to object was neither valid nor strategically sound and where petitioner was prejudiced by trial counsel's deficient performance?
- II. The PCR court erred by refusing to find trial counsel ineffective for failing to properly object and preserve the record as to the solicitor's improper closing argument that scales were found in the same bag as the narcotics and petitioner claimed ownership of those scales, and where petitioner was prejudiced by trial counsel's deficient performance?

RESPONDENT'S STATEMENT OF ISSUES PRESENTED

- I. The PCR court did not err in finding Counsel was not ineffective for failing to object to the improper constructive possession jury charge because Counsel articulated a valid reason for not objecting and Petitioner was not prejudiced by Counsel's failure to object.
- II. The PCR court did not err in finding Counsel was not ineffective for failing to properly object to the Solicitor's closing argument because the argument was a proper, reasonable inference from the evidence presented at Petitioner's trial.

STATEMENT OF THE CASE

Procedural History

During its December 2020 term, the Aiken County Grand Jury indicted Petitioner for trafficking in methamphetamine, 28 – 100 grams (2020-GS-02-02100), possession with intent to distribute cocaine (2020-GS-02-02097), possession with intent to distribute heroin (2020-GS-02-02098), resisting arrest (2020-GS-02-02906), and failure to stop for a blue light (2020-GS-02-02099). Petitioner was represented by Suzanne Hayes and Barry Thompson, Esquires. The case was prosecuted by Solicitor Bill Weeks and Assistant Solicitor Ashley Hammack.

On July 21-23, 2021, Petitioner proceeded to a jury trial before the Honorable Jocelyn Newman. Judge Newman directed a verdict as to resisting arrest charge. The jury acquitted Petitioner of the failure to stop for a blue light. The jury found Petitioner guilty of trafficking in methamphetamine and both PWID charges. Judge Newman sentenced Petitioner to thirty (30) years on each charge, with those sentences to be served concurrently.

Petitioner filed a timely notice of appeal. The appeal was perfected by Appellate Defender Lara Caudy of the South Carolina Commission on Indigent Defense – Appellate Division by filing a brief pursuant to *Anders v. California*.¹ The South Carolina Court of Appeals affirmed Petitioner's convictions in an unpublished opinion. *State v. Jonathan Art Lincoln*, Unpub. Op. No. 2022-UP-393. The remittitur was sent on November 18, 2022.

On June 16, 2023, Petitioner filed this post-conviction relief application. On June 10, 2025, an evidentiary hearing was convened before the Honorable Debra R. McCaslin. Assistant Attorney General Travis Cruise Mitchell represented the State. Chelsey F. Marto, Esquire, represented

¹ *Anders v. California*, 386 U.S. 738 (1967).

Petitioner. On September 22, 2025, Judge McCaslin issue an order denying and dismissing the application with prejudice. This appeal follows.

Summary of Relevant Trial Testimony

Sergeant Brandon Knight testified he was working with the Aiken County Sheriff's Office on February 26, 2020, when he observed a white Dodge Durango with windows that appeared to be unlawfully tinted. (App. pp. 41–42). Sergeant Knight initiated his blue lights and attempted to perform a traffic stop when the vehicle continued to travel without stopping. (App. p. 43). The driver of the vehicle eventually sped off into a cornfield, where he got stuck and subsequently fled from the scene. (App. pp. 47–48). At this point, Sergeant Knight was unaware who was driving the vehicle. (App. p. 45). Sergeant Knight searched Petitioner's vehicle where he found narcotics in a bag in the front passenger seat of the vehicle. (App. p. 51). Sergeant Knight additionally found a vehicle registration in Petitioner's name, prescription medicine prescribed to Petitioner, and mail addressed to Petitioner. (App. p. 51). Sergeant Knight also found additional drug-related items, including small ziplock baggies and scales. The scales were found "in the front passenger seat of the vehicle with the narcotics." (App. p. 53).

Sergeant Clarke Palmer of the Aiken County Sheriff's Office was working on the night of February 26, 2020, when he received a call from Sergeant Knight that he was in pursuit of Petitioner's vehicle. (App. p. 65). Sergeant Palmer assisted Sergeant Knight in pursuit of the vehicle. Following a lengthy high-speed pursuit, Petitioner's vehicle eventually entered a field where it came to a stop approximately halfway in. (App. pp. 73–74). After Petitioner's vehicle came to a stop, Sergeant Palmer exited his vehicle and approached Petitioner's vehicle. When he arrived, Sergeant Palmer observed the driver's door was opened, the driver had fled, and there was nobody else in the vehicle. (App. p. 74). Sergeant Palmer then set up a parameter. (App. p. 75).

Colt Woody testified he was at his residence on the early morning of February 27, 2020. Woody testified he woke up between 5:00-5:30 in the morning when he noticed a man with a light jacket, no shoes, and socks sitting on his back porch steps. (App. p. 83). Woody called 911 and law enforcement arrived 15 to 20 minutes later. (App. p. 84).

Deputy Agnieszka Ferrell of the Aiken County Sheriff's Office testified she was patrolling on the morning of February 27, 2020. (App. p. 87–88). It was a cold, rainy morning when Deputy Ferrell received a call for a suspicious person at Colt Woody's residence. (App. p. 89). Upon arrival at Woody's residence, Deputy Ferrell approached the carport and observed Petitioner with his face and shirt covered in snot, dirt, and grass. (App. p. 90–91). Petitioner was given several orders and he did not comply. As a result, Deputies Ferrell and Driscoll forced Petitioner to the ground where he continued to be non-compliant. (App. pp. 92–93). Petitioner was ultimately arrested. (App. p. 95).

Amber Collins, the forensic drug chemist for Aiken County Sheriff's Office, was qualified as an expert in the area of drug identification and analysis. (App. p. 102). Collins tested multiple substances from the BEST kit she received as part of this case. The items tested positive for a total of 48.53 grams of methamphetamine, 1.56 grams of cocaine, and 1.49 grams of heroin. (App. pp. 102–115).

Petitioner testified in his own defense. On the night of February 26, 2020, Petitioner testified he was in the process of moving and had packed all his belongings. Petitioner claimed he pulled into his nephew's driveway, exited his vehicle, and began using the bathroom outside. (App. p. 129–130). Petitioner testified that, while he was relieving himself, he noticed his truck was pulling out of his nephew's yard. (App. p. 131). Petitioner claims he believed it was his nephew who took his truck. (App. p. 132). After waiting for 15 minutes, Petitioner began walking down

the road searching for a Wi-Fi signal. (App. p. 133–134). Petitioner testified he was standing by a hotel when a white female in a white vehicle pulled up and “rendered [him] aid.” (App. p. 135). Petitioner explained that she allowed him to use her Wi-Fi hotspot, so he could track the location of his vehicle. (App. p. 136). The woman then agreed to drive him to the location where his truck was pinging. (App. p. 137). Petitioner testified he was eventually dropped off near where his truck is allegedly located, and he began walking down the street. Petitioner asserted became frightened because the area is “very wild” and “extremely dark.” (App. p. 138). Petitioner testified he arrived at the point where he believed his truck was located and it was “a big swamp of darkness.” (App. p. 140). Petitioner then went to Colt Woody’s house and sat on his back steps when the police arrived. Petitioner claimed he did not have any illegal drugs in his truck. (App. p. 143). On cross-examination, Petitioner confirmed the truck is registered to him and that the prescription drugs were his. (App. p. 145–146). Petitioner admits “it’s a possibility” he put the scales in his truck. (App. p. 148).

STANDARD OF REVIEW

The post-conviction relief court's findings of fact receive great deference during appellate review and will be upheld if "any evidence of probative value" exists in the record to support the lower court's findings. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Questions of law are reviewed *de novo*, and appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. *Id.*; *Smalls v. State*, 422 S.C. 174, 180-81, 810 S.E.2d 836, 839 (2018).

ARGUMENT

- I. The PCR Court did not err in finding Counsel was not ineffective for failing to object to the improper constructive possession jury charge because Counsel articulated a valid reason for not objecting and Petitioner was not prejudiced by Counsel's alleged failure to object.**

Petitioner alleges the PCR court erred in finding trial counsel was not ineffective when she failed to object to the jury charge on constructive possession. The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668 (1984). Where, as in this case, a PCR Petitioner alleges ineffective assistance of counsel as a ground for relief, the Petitioner must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon 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).

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*: first, the Petitioner must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Second, counsel's deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. “A court need not

first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The Petitioner bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814; Rule 71.1(e), SCRPC.

At Petitioner's trial, the trial court charged the jury with the following instruction:

In the prosecution of a crime for possession of narcotics, possession may be actual or constructive. Actual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession; while constructive possession occurs when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs are found. Therefore, the State must prove beyond a reasonable doubt that the Defendant had both the power and intent to control the disposition or use of the cocaine and of the heroin. Mere presence at the scene where the drugs were found is not enough to prove possession. *The Defendant's knowledge and possession may be inferred when a substance is found on the property under the Defendant's control.* However, this inference is simply an evidentiary fact to be taken into consideration by you along with the other evidence in the case and to be given the weight you decide it should have.

(App. pp. 211–212) (emphasis added).

“The trial court may not instruct the jury that it may infer the defendant's knowledge or possession of drugs, in drug possession prosecutions based on constructive possession, when a substance is found on property under the defendant's control.” *State v. Stewart*, 433 S.C. 382, 858 S.E.2d 808 (2021).

At his trial, Petitioner's defense was that his nephew stole his truck and, therefore, Petitioner did not have control of his vehicle at the time law enforcement found the narcotics. At the evidentiary hearing, Counsel testified that she did not object to the jury charge because it was not harmful to their defense. (App. p. 437). “[W]hen Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010). This is clearly a valid strategic

reason for not objecting. The portion of the charge deemed improper by *Stewart* is the inference of possession arising when a substance is found on property *under the defendant's control*. Because Petitioner's defense at trial was that he did not have control of the property at the time the narcotics were found, the improper charge was not harmful to Petitioner's defense and, in fact, aligned with his defense. Thus, Counsel's reason for not objecting is valid. Therefore, the PCR court did not err by finding Counsel was not deficient for failing to object.

Likewise, because the improper charge was not harmful to his defense, Petitioner cannot prove he was prejudiced by Counsel's failure to object. Additionally, the mere fact that the drugs were found on Petitioner's property was not the only evidence presented by the State at trial. The State also introduced evidence that the drugs were found alongside scales, which Petitioner admitted could have been his. (App. p. 51). The State presented evidence of other items found in the vehicle that were indisputably linked to Petitioner, including a vehicle registration in Petitioner's name located in the glove box, mail addressed to Petitioner, and prescription medication prescribed to Petitioner. (App. p. 51). In contrast, the only item in the vehicle Petitioner denied ownership of was the drugs. Given the additional evidence supporting an inference that the drugs belonged to Petitioner and that the improper charge was not harmful to his defense, Petitioner has failed to meet his burden of proving prejudice. Therefore, the PCR court did not err by finding Petitioner has failed to prove a reasonable probability the outcome at trial would have been different had Counsel objected to the jury instruction.

Accordingly, the Petition for Writ of Certiorari should be denied.

II. The PCR Court did not err in finding Counsel was not ineffective for failing to properly object to the Solicitor's closing argument because the argument was a proper, reasonable inference from the evidence presented at Petitioner's trial

Petitioners contends the PCR Court erred in finding Counsel was not ineffective for failing to properly object to the Solicitor's closing argument. This argument is without merit.

During closing argument the Solicitor made these statements:

And, importantly, in that bag in the front passenger seat, is scales. He answered Solicitor Weeks on cross-examination, yeah, it's possible I left my scales in my truck. These don't measure out hamburger meat or chicken.

...

In this case, these drugs were found in a bookbag in the Defendant's car in the passenger seat. But that bookbag didn't just have drugs in it. That bookbag had these scales that are commonly used to weight drugs, to weigh drugs, to measure out how much you're going to sell.

...

And the other thing that was in that bag with those scales with these drugs is - - I think Solicitor Weeks held it up during the trial, was a bunch of Ziploc sandwich bags. But more importantly, were these.

...

These scales are his that he left in his truck, that were found in the same bag as his drugs. So the scales are his, but the drugs aren't?

(App. p. 173; p. 184; p. 185; p. 187).

Following this last statement, Counsel objected:

Mr. Thompson: Your Honor, we have an objection and a matter of law that needs to be taken up outside the presence of the jury...I apologize. I hesitate to interrupt anyone's closing argument. While there is absolutely testimony in this case that Mr. Lincoln was presented with the scales and was told - - and was asked if the scales were his and I believe he said yes, he tells me that his scales were packed in the back of the truck. I don't believe that there was any testimony in this trial that the scales that are in this - - that are in evidence in this case were actually found on the passenger seat of this car.

I would argue it's a critical piece of evidence in this - - I would agree with the State that it's a critical piece of evidence in this case if the scales that he claims are actually right there with drugs, that would be a - - that would be very damning

testimony, but I don't believe that that testimony was - - was in the evidence and testimony of this case. I don't believe any of the officers actually said that. If that's true, I believe that the State would be arguing facts that are not in evidence and we would move for a mistrial in this case.

(App. p. 188).

After arguments from the attorneys, an off-the-record discussion occurred and then the Solicitor was allowed to continue her closing argument. (App. p. 190–191). Although Petitioner concedes Counsel objected, he avers Counsel “half-heartedly” and wrongly objected.

The PCR Court did not err in finding the challenged remarks were proper. “The State’s closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence.” *Vasquez v. State*, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010). “A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony.” *Id.* (quoting *Randall v. State*, 356 S.C. 639, 591 S.E.2d 608, 610 (2004)).

At Petitioner’s trial, Sergeant Brandon Knight testified to the following:

Q. Can you describe what you found in the vehicle and what you took possession of from the vehicle?

A. Yes. In the back passenger area of the vehicle, there was a black shotgun with a pistol grip. In the front passenger seat *in a bag was the narcotics*, drugs that were located.

...

Q. Officer Knight, other than the drugs and shotgun, what else did you find in the back?

A. We found letters with his address on it from the mail. We had an alcohol bottle from the front passenger area, scales, baggies - -

Q. What do you mean scales?

A. Scales to weigh the weight of narcotics.

Q. I'll ask you took at what's marked as State's Nos. 4, 5 and 6, and ask you if you can identify those items?

A. Yes. These are the scales that were secured and placed into evidence that were located in the front passenger seat of the vehicle *with the narcotics*.

(App. p. 51; p. 53).

Petitioner testified to the following:

Q. How about these scales for measuring drugs, were they in your truck, too?

A. I assume they were.

Q. Well, did you put them there?

A. It's a possibility that I did.

(App. p. 148).

Here, Sgt. Knight testified that the narcotics were found in a bag located in the front passenger seat. He further stated that the scales were found in the front passenger seat "with the narcotics." Based on this testimony, it is entirely reasonable to infer that the scales and narcotics were found together in the bag. Petitioner testified at trial that it was possible he placed the scales in his truck. In closing, the Solicitor argued both that Petitioner admitted it was possible he left his scales in the truck and that the scales were found in the bag along with the narcotics. The PCR Court was correct that, taken together with Sgt. Knight's testimony, it is reasonable to infer, and proper to argue, that Petitioner claimed ownership of the scales and that both the scales and narcotics were found together in the same bag. Thus, Solicitor's comments were clearly a proper, reasonable inference from the testimony presented at trial. Therefore, the PCR Court did not err in finding Counsel was ineffective for failing to properly object to the Solicitor's closing.

Accordingly, the Petition for Writ of Certiorari should be denied.

CONCLUSION

For the foregoing reasons, Respondent submits this Court should deny the Petition for Writ of Certiorari, as the post-conviction relief court properly determined Petitioner failed to establish any constitutional ineffectiveness. Should this Court grant certiorari, Respondent requests the opportunity to fully brief the issue raised.

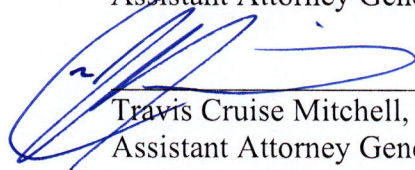
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This 21st day of September 2026.