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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable Bryan S. Doby, Circuit Court Judge

DAVID HAROLD CAMPBELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-001210

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the PCR court erred in finding counsel was not deficient when they failed to object to evidence under Rule 404, SCRE, that improperly connected petitioner to a known drug house and testimony that narcotics officers recognized petitioner?

STATEMENT

Petitioner was indicted by an Horry County grand jury in February of 2017 for trafficking in cocaine (10-28 g) and failure to stop for a blue light. App. 473 – 481. Petitioner was tried before the Honorable Thomas A. Russo and a jury on May 15 – 17, 2017. App. 1. Morgan O. Martin and Russell B. Long represented petitioner with David P. Caraker, Jr., and William Grayson Ervin appearing on behalf of the State. App. 1. Petitioner was found guilty as indicted and sentenced to thirty years imprisonment on the trafficking charge and five years for the failure to stop charge. App. 473 0 481. On direct appeal, petitioner was represented by Tara Shurling who asserted trial court error on the admission of certain testimony surrounding the initial reaction of law enforcement to petitioner's presence at a house that was the subject of "narcotics complaints" and the denial of a mistrial motion due to the improper testimony. The Court of Appeals, in an unpublished opinion, affirmed the trial court but noted that the objection to the testimony did not cover a Rule 404, SCRE, objection. State v. Campbell, Op. No. 2021-UP-074 n. 1 (Ct. App. 2021).

Petitioner filed an application for post-conviction relief asserting ineffective assistance of counsel surrounding the admission of this testimony among other allegations. App. 353. An evidentiary hearing was held before the Honorable Bryan S. Doby on March 10, 2026. App. 371. Timothy Griffith appeared on behalf of petitioner and MacKinnon Westraad represented the State. App. 371. Judge Doby denied relief by written order of dismissal filed April 24, 2026. App. 457.

This petition for certiorari follows.

ARGUMENT

The PCR court erred in finding counsel was not deficient when they failed to object to evidence under Rule 404, SCRE, that improperly connected petitioner to a known drug house and testimony that narcotics officers recognized petitioner.

A. How the matter impacted trial.

During Petitioner's trial, investigators were allowed to testify about how they approached Petitioner's vehicle during their investigation of a high narcotics area and a narcotics complaint. Detective Neely testified officers were in the area investigating recent narcotics complaints when he observed petitioner's vehicle.

When we had pulled into the Ranchette Circle area, if you're familiar with it, it is literally a circle. When we had pulled in, we had observed the Defendant in his vehicle backed into a driveway. As we had completed the circle, the Defendant was still backed into that same driveway. As we passed, the Defendant then we kind of saw him sitting in the vehicle. He saw us and then pulled out behind us and left the area, which is behavior that would draw our attention.

App. 165, ll. 1 – 9. This testimony was similar to that provided by other narcotics officers: Sauls also claimed recognition by the officers of petitioner and vice versa: "he saw us; we saw him, he pulled out behind us." App. p. 219, lines 23 - 24. Agent Rhew testified that they went to the Ranchette Circle address for a narcotics complaint, at which time, he also noted petitioner's presence. Agent Sauls testified that upon their arrival at Ranchette Circle they "noticed that the vehicle was occupied by the Defendant, Mr. David Campbell, solely." App. 204, ll. 17-23.

As the Court of Appeals noted in finding the trial court did not abuse its discretion in admitting the evidence on relevancy grounds, the argument that testimony about the narcotics

complaint and activity in the area should have been excluded under Rule 404, SCRE, was not preserved since that argument was not presented to the trial court.

To the extent Campbell argues Detective Neely's testimony violated Rule 404, SCRE, as improper character evidence, we find Campbell's arguments on appeal are not preserved for appellate review. . . . *At trial, Campbell only argued Detective Neely's testimony was irrelevant and prejudicial; Campbell did not reference Rule 404 during his objection.*

State v. Campbell, Op. No. 2021-UP-074 fn. 1 (Ct. App. 2021).

B. How the matter was addressed at PCR.

The improper testimony of the officers not being properly preserved was subject to testimony and exhibits before the PCR Court. Trial counsel Long testified about the nature of the objection made to the testimony regarding narcotics officers "recognizing" petitioner and being present at a location of drug complaints. App. 435, l. 15 – 436, l. 7. Trial counsel Long acknowledged the adverse impact narcotics officers' recognizing petitioner when he was leaving a drug house was problematic. "If the jury had heard that they were watching a drug dealer's house and David had come and gone, and then chased him, that is detrimental to David." PCR, App. 436, ll. 3 – 6. Trial counsel Martin also acknowledged the prejudicial impact of this testimony and that a mistrial was requested on the basis of the officer's testimony that went beyond the scope of the trial court's pre-trial ruling on the relevancy objection. App. 446, l. 25 – 448, l. 9. The decision from the Court of Appeals denying relief on direct appeal and noting the lack of preservation of the Rule 404, SCRE, argument was admitted to the PCR court as an exhibit. App. 383, ll. 2 – 14.

C. How the PCR court ruled.

Rather than address the merits of the improper preservation of the Rule 404, SCRE, objection, the PCR court focused exclusively on assertions that portions of the trial transcript were omitted. App. 457. Despite the direct appeal opinion being submitted, the PCR court failed to rule on the merits of the Rule 404, SCRE, violation noted by the Court of Appeals on direct appeal. State v. Campbell, Op. No. 2021-UP-074 (Ct. App. 2021).¹

D. How the PCR court erred.

The direct references by law enforcement that petitioner was seen at a location of narcotics complaints and "recognized" law enforcement agents, who were not in a marked patrol vehicle, implied prior knowledge between the narcotics agents and petitioner, improperly admitting character evidence under Rule 404, SCRE. "Trial counsel should have objected to these statements as improper comments on petitioner's character and her failure to do so prejudiced appellant." German v. State, 325 S.C. 25, 27–28, 478 S.E.2d 687, 688 (1996). The proper objection was under Rule 404, SCRE, not relevance (the objection relied upon by trial counsel). "Evidence that police began an investigation because of reports of criminal activity are admissible under *State v. Brown*, *supra*. However, identification of an individual as the suspect of a criminal investigation, based upon speculation and effectively calling into question that individual's character, is not." State v. Jones, 343 S.C. 562, 575, 541 S.E.2d 813, 820 (2001). Here, the officers were on solid ground testifying they were in the area investigating narcotics

¹ Petitioner would assert the merits of the Rule 404, SCRE, argument are sufficiently apparent for review of this issue without remand for specific findings of fact by the PCR Court. Petitioner's trial counsel objected to this line of testimony as "irrelevant" and would have no valid strategic reason to omit the Rule 404, SCRE, argument as an additional basis for keeping this information from the jury. Absent a valid strategic reason, failure to object under Rule 404, SCRE, would be deficient if the testimony was properly excluded under Rule 404.

complaints, but improperly identified petitioner as someone they recognized and who recognized and responded to their presence. This type of evidence, improper under Rule 404, SCRE, was prejudicial as acknowledged by trial counsel. The objection for "relevance" was improper as ruled upon by the Court of Appeals on direct appeal.

“Evidence of other bad acts is generally inadmissible to prove a defendant's guilt for the crime charged; however, such evidence may be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” State v. King, 424 S.C. 188, 200, 818 S.E.2d 204, 210 (2018) (*quoting* Rule 404(b), SCRE.). In King, the Supreme Court reversed the trial court’s decision to not make a Rule 404 inquiry before allowing testimony about unrelated acts into King’s trial. The admission of this type of evidence is particularly prejudicial, as it “fundamentally demonstrates why certain prior bad act testimony is inadmissible, i.e., it is used by the jury to infer that the defendant did in fact commit the crime for which he is on trial.” State v. Fletcher, 379 S.C. 17, 26, 664 S.E.2d 480, 484 (2008). Moreover, if bad act evidence is admitted under Rule 404(b), “the trial court must then conduct the prejudice analysis required by Rule 403, SCRE.” State v. Spears, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013) (*citing* State v. Wallace, 384 S.C. 428, 435, 683 S.E.2d 275, 278 (2009)). The PCR court erred in avoiding addressing trial counsel deficient performance in failing to object under Rule 404, SCRE.

E. Prejudice.

The State's theory was that petitioner ran from a routine traffic stop and tossed drugs from his person onto the 2nd floor of an apartment complex just before he was taken into custody. App. 166, l. 8 - 170, l. 19. Certainly, petitioner was arrested after an attempted traffic stop and

foot chase through the Sandysgate apartment complex.² An officer for the State testified that he saw petitioner toss the drugs onto a 2nd floor landing during the foot chase. App. 170, ll. 3 – 8.

Felicia Williams resided at the apartment complex and witnessed petitioner's arrest and located the drugs on the floor above her apartment after petitioner was apprehended. She testified at trial that it was not possible for petitioner to have placed the drugs in that location directly contradicting the claim of the pursuing officers that petitioner threw the drugs from his person as he passed the Williams door:

Q: Is it your testimony that he sits here today falsely accused?

A: *Yes, he is.*

Q: But you didn't see what he did before Mr. Neely got to him, correct?

A: *I would've seen -- my door was open.*

App. 269, ll. 9 – 14.

In addition, Aliga Campbell testified that he was standing on the landing area where the drugs were eventually located and dropped them there as he entered an apartment upon hearing the police chasing petitioner.

Q: Okay. So, you were at Sandysgate chilling on November the 30th, 2015?

A: Yes, sir.

Q: And what happened?

A: Well, okay, like I was saying, me and three other guys, we was standing up there, you know what I'm saying, we was chillin, smoking, you know.

² Petitioner at the time of the attempted traffic stop had an outstanding warrant on a domestic violence charge, which was a reasonable explanation for his attempt to evade police. App. 294, l. 15 – 295, l. 11.

Q: Smoking what?

A: Smoking marijuana.

Q: Okay.

A: And we heard a big old boom. So, when we heard the boom, all we heard was 12, 12, get right. So, the first thing I did, we being paranoid and scared, I reached in my pocket, my left pocket, and dropped two bags and went in the house. But I told my cousin, my cousin James, I told him to check the door to make sure the stuff was still there and about the time he opened up the door, the only thing he heard was somebody say get in the house. So, you know

Q: So, I'm gonna show you what's marked and in evidence as State's Exhibit Number 5. Inside of these bags with the red stripes were provided by the government.

A: Yes, sir.

Q: Inside of those are two sandwich bags, each one containing an amount of white powder?

A: Yes, sir.

Q: Are you saying that when you heard the police and you heard the commotion, you were on the balcony and you dropped 8 these two bags of drugs and went inside?

A: Yes, sir.

Q: And these were your drugs?

A: Yes, sir.

Q: Do you understand the enormity of coming into this courtroom and claiming possession of illegal narcotics?

A: Yes, sir.

App. 274, l. 7 – 275, l. 15.

The jury was asked to evaluate the credibility of the officers involved versus that of Aliga Campbell and Felicia Williams as to how drugs were found on the 2nd floor landing. To establish

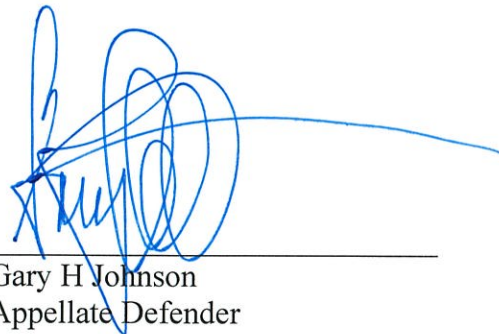
prejudice, petitioner must demonstrate “there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). As the Supreme Court of the United States explained in Strickland v. Washington, “the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt.” Id., 466 U.S. 668, at 695 (1984). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016). As noted in Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018), “for the evidence to be ‘overwhelming’ such that it categorically precludes a finding of prejudice—as we found it did in *Rosemond* and *Harris*—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, 422 S.C. at 191, 810 S.E.2d at 845; *see also* Washington v. State, 445 S.C. 233, 243, 911 S.E.2d 536, 541 (Ct. App. 2025) (finding “counsel's failure to object was prejudicial because there was no physical evidence of the alleged CSC and the only other evidence in the case required an assessment of the relative credibility of the witnesses.”).

The assessment of witness credibility is within the exclusive province of the jury.” State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012). Therefore, “even though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others.” State v. Kromah, 401 S.C. 340, 358, 737 S.E.2d 490, 499 (2013). Here, the case turned on the credibility of which story the jury believed: was Aliga Campbell the source of the drugs and petitioner wrongfully accused as asserted by Felicia Williams, or did the officers see petitioner toss the drugs during pursuit? Trial counsel's failure to object to the introduction of

the narcotics complaints and the investigating officer's recognition of petitioner prior to attempting a traffic stop improperly tilted the credibility scales to the prejudice of petitioner. As credibility was central to the jury's verdict, trial counsel was both deficient in failing to object to the improper testimony by narcotics officers implying prior drug dealing by petitioner and such deficiency had a prejudicial impact on the outcome of petitioner's trial.

CONCLUSION

Based upon the foregoing argument, this Court should grant review of the denial of post-conviction relief and reverse the order of the PCR court and remand this matter to the Court of General Sessions for a new trial. In the alternative, this Court should remand the matter to the PCR court for findings of fact and conclusions of law under Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) regarding the prejudicial impact of trial counsel's failure to object under Rule 404, SCRE, as noted by the Court of Appeals on direct appeal.



Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of October, 2026.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for David Harold Campbell states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge The Hon. Bryan S. Doby, which was held on March 10, 2026, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for David Harold Campbell.

Respectfully Submitted,

Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of October, 2026.

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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of his 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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