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STATE OF SOUTH CAROLINA

S.C. SUPREME COURT

IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Debra R. McCaslin, Circuit Court Judge

JONATHAN ART LINCOLN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002138

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

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?

ARGUMENT IN REPLY

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.

It is well established that “the trial court is required to charge only the current and correct law of South Carolina.” *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (citing *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (internal quotations and alterations omitted). Prior to petitioner’s July 21, 2021, trial, our Supreme Court held on May 19, 2021, that “[t]he jury charge instructing a jury it may infer knowledge or possession when a substance is found on property under the defendant’s control *should no longer be given*.” See *State v. Stewart*, 433 S.C. 382, 391, 858 S.E.2d 808, 813 (2021) (emphasis added). Therefore, the trial court’s instruction that “The Defendant’s knowledge and possession may be inferred when a substance is found on the property under the Defendant’s control,” was an incorrect statement of law under current South Carolina law as established in *Stewart*. App. 211, l. 23 – 212, l. 8. The failure to object to the improper charge constituted deficient performance. *But see Winkler v. State*, 418 S.C. 643, 658, 795 S.E.2d 686, 694-695 (2016) (finding that trial counsel’s failure to object to the trial court’s refusal to answer the jury’s questions is not rendered unreasonable by the trial court’s instruction “the decision of the jury must be unanimous” because the trial court’s charge in this respect was a correct statement of South Carolina law).

Nor does the record support trial counsel’s alleged valid trial strategy claim, which the state now advances, and the PCR court thus erred by accepting the claim as a valid strategic reason for refusing to object. App. 425, ll. 15-21, 445-446; Return at 8-9; see e.g., *Gilchrist v.*

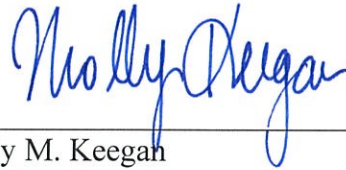
State, 350 S.C. 221, 228 n. 2, 565 S.E.2d 281, 285 n. 2 (2002) (“A blanket statement by counsel at a PCR hearing that he employed ‘strategy’ does not automatically insulate the lawyer from being found ineffective.”). For instance, “[w]hen counsel articulates a strategy, it is measured under an objective standard of reasonableness.” *See Abney v. State*, 408 S.C. 41, 46, 757 S.E.2d 544, 547 (Ct. App. 2014); *see also Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining that to overcome the presumption of adequate representation, a defendant must show that trial counsel failed to act reasonably considering all the circumstances). In petitioner’s case, while trial counsel’s strategy may have been to disclaim that petitioner was driving the truck on the night of the incident, and thus, lacked control over the truck, the improper constructive possession charge dilutes that very strategy. Although it may have been proper for trial counsel to argue that petitioner lacked control over the truck it was nonetheless improper to refuse to object to an incorrect statement of law and to allow the trial court to instruct the jury that knowledge and possession, critical elements of the offense charged, could be inferred if the substance was found on petitioner’s property. App. 194, l. 12 – 201, l. 4; *see also* App. 211, l. 23 – 212, l. 8; *see e.g., Vail v. State*, 402 S.C. 77, 738 S.E.2d 503 (Ct. App. 2013) (determining that trial counsel’s failure to object to inadmissible hearsay fell below the professional norms and that the failure to object did not fit within the purpose of trial counsel’s state trial strategies). Trial counsel’s purported strategy for failing to object was therefore objectively unreasonable and constitutes deficient performance. *Abney*, 408 S.C. at 46, 757 S.E.2d at 547.

Trial counsel’s deficient performance prejudiced petitioner because it allowed the trial court to provide an improper commentary on the facts of the case. *See State v. Brown*, 443 S.C. 196, 199, 904 S.E.2d 448, 450 (2024) (citing *Stewart* as a case that “follows a lengthy line of cases . . . involving the trial court’s improper commentary on the facts of a case.”); *see also State*

v. Burdette, 427 S.C. 490, 502-503, 832 S.E.2d 575, 582 (2019) (explaining that when a trial court tells the jury it may use evidence of particular facts to establish a critical element of the charged offense “the trial court has directly commented upon facts in evidence, elevated those facts, and emphasized them to the jury.”). In addition, both the state and the PCR court rely on the vehicle’s registration, mail addressed to petitioner, and prescription medication bearing petitioner’s name as supporting that the improper inference charge did not harm petitioner’s defense or constitute prejudice. App. 445-446; Return at 9. However, it cannot be said that the jury did not rely on that same evidence to conclude that the vehicle was under petitioner’s control thus allowing the jury to infer knowledge and possession based on the improper jury instruction. App. 211, l. 23 – 212, l. 8; 220, l. 9 – 221, l. 7. Therefore, there is a reasonable probability that but for trial counsel’s deficient performance by failing to object to the incorrect constructive possession inference charge the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 695 (1984) (“[T]he question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt.”).

CONCLUSION

Therefore, based on the foregoing argument and the arguments contained in the Petition for Writ of Certiorari, this Court should grant the petitioner for writ of certiorari to allow full briefing on the issues.



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This 12th day of October, 2026.