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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Barnwell County

Honorable Deadra L. Jefferson, Circuit Court Judge

MICHAEL P. BUCKMON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000837

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the court erred in denying post-conviction relief, where the prosecution offered and relied upon the trial testimony of Petitioner's codefendant, Matthew Bolen, where the solicitor admitted that Bolen was not telling the whole truth, and where Petitioner was entitled to due process of law, since the State's presentation of known false evidence was fundamentally unfair and could reasonably have affected the outcome of the case?

STATEMENT

Procedural history

During the July term of 2016, a Barnwell County Grand Jury indicted Michael Buckmon, Petitioner, for murder and first-degree arson. App. 477 – 478; App. 481 – 482. During the November term of 2014, a Barnwell County Grand Jury indicted Petitioner for first-degree criminal sexual conduct. App. 479 – 480. A pretrial *Jackson v. Denno*, 378 U.S. 368 (1964), hearing was held before the Honorable Robert E. Hood on July 19, 2016. Michael Chesser represented Petitioner. David Miller and Wilder Harte appeared on behalf of the State. App. 1 – 2. Petitioner was tried before the Honorable Doyet Early, III, and a jury, from October 17 – 19, 2016. Michael Chesser represented Petitioner and David Miller prosecuted the case. App. 45. Petitioner was sentenced to life imprisonment for murder, thirty years for first-degree criminal sexual conduct, and thirty years for first-degree arson, with sentences to be served concurrently. App. 483 – 485; App. 372, ll. 11-18.

On or about April 1, 2019, after exhausting his direct appeal remedies, Petitioner filed an application for post-conviction relief (PCR). App. 375 – 382. On or about July 12, 2019, the State made its return and motion for a more definite statement. App. 383 – 392. On January 24, 2022, Petitioner served an amended PCR application. App. 393 – 396. On December 9, 2025, Petitioner again served an amended PCR application. App. 397 – 400. On December 17, 2025, a PCR hearing was held before the Honorable Deadra L. Jefferson. Petitioner was represented by Chelsey Marto. Cruise Mitchell appeared on behalf of the State. App. 401. On March 4, 2026, the PCR court issued an order of dismissal. App. 457 – 476.

Relevant facts

On the morning of November 1, 2013, the body of Donna Dempsey (Decedent) was found in the kitchen of her Berry Street home in Barnwell by her fiancé and his family members. App. 101, l. 12 – 112, l. 7; App. 120, ll. 6-13. The Fire Department responded as the house was hot and full of smoke. App. 110, ll. 4-22; App. 119, l. 8 – 122, l. 18. An arson investigation would determine that fires had been set in the home. App. 194, l. 24 – 195, l. 25; App. 199, ll. 5-17; App. 225, l. 7 – 227, l. 1. The decedent's blood was spattered on the cabinets and walls of the kitchen. App. 230, ll. 2-21; App. 322, ll. 6-11; App. 323, ll. 3-17. Electronics and musical equipment, including a drum kit and keyboard were missing from the home. App. 112, l. 20 – 113, l. 7. A forensic pathologist who autopsied the decedent's body would conclude Decedent died from smoke inhalation due to incapacitation from blunt force injuries and strangulation. App. 250, ll. 2-16; App. 254, ll. 11-19.

Decedent and Petitioner's mother were neighbors. App. 148, ll. 2-4. On the afternoon of November 1, 2013, Petitioner and one Matthew Bolen pawned drums at a pawnshop in Easley. App. 173, l. 22 – 174, l. 25. Bolen's jeans, which the police collected from his car, were spattered, apparently with Decedent's blood. Bolen was the star witness at Petitioner's trial. App. 233, ll. 11. 1-22; App. 323, l. 3 – 324, l. 2. Bolen, who faced the same charges as Petitioner—murder, arson, and criminal sexual conduct in the first degree—testified he had been made no plea offers but admitted he was there to help himself. App. 179, l. 19 – 180, l. 16; App. 191, ll. 4-23.

Bolen claimed he and Petitioner were hanging out on Halloween at a friend's home on Berry Street, across from the decedent's home, when the decedent came over. Bolen alleged the decedent came over again later to where he and Petitioner were hanging out behind the home of Petitioner's mother. App. 140, l. 8 – 142, l. 7. Bolen told a convoluted tale, with a large cast of

characters, detailing what allegedly ensued thereafter—errands, drinking, doing drugs, driving around, and back and forth to various places with various people, many identified only by nickname. App. 142, l. 8 – 152, l. 6.

As to these offenses, Bolen claimed he was at the decedent Dempsey's home and had consensual sex with Dempsey before she "passed out" in her bathroom. Bolen stated he and another man, Keem Mixon, were there. App. 144, l. 11 – 146, l. 16. Bolen claimed the two left but Bolen came back with Petitioner and "CeeLo" and stole electronics which they, and others, delivered to another man. App. 147, l. 24 – 151, l. 15. Bolen wanted to go back to Decedent's home to steal more. App. 152, ll. 19-23. Bolen alleged he and Petitioner went back, where Decedent was asleep in bed. Bolen claimed he began stealing things and alleged Petitioner stated he was going to try to have sex with Dempsey. App. 153, l. 5 – 155, l. 16. Bolen claimed he (Bolen) thereafter went into the bedroom and unsuccessfully tried to tie up Dempsey's feet before leaving the room and continuing to steal things. App. 156, l. 3 – 157, l. 9.

Bolen alleged he later noticed smoke, whereupon Dempsey came running out of her bedroom with Petitioner behind her. App. 159, ll. 9-14. Bolen claimed Petitioner then choked Decedent and beat her in the head with a hammer.[1] App. 160, l. 1 – 162, l. 24. Bolen vacillated between claiming that he handed Petitioner the hammer and saying he did not. App. 180, l. 24 – 181, l. 11. Bolen alleged Petitioner then threatened him with a gun and Bolen noticed a fire in the home. App. 163, l. 4 – 165, l. 20. Bolen claimed Petitioner ordered him to "finish burning" the house down, but Bolen alleged he instead put the fire out by throwing the burning object in the bathtub along with his own bloody shirt. App. 176, ll. 9-12; App. 164, l. 19 – 166, l. 18; App. 229, ll. 5-12; App. 321, ll. 17-18. According to Bolen, the men finished loading the stolen musical

[1] Recall that Bolen was the one with Decedent's blood spattered on his pants.

equipment into Bolen's car and left. App. 167, l. 7 – 173, l. 18. Bolen claimed Petitioner threw the hammer in the woods on Wren School Road. Bolen was unable to lead law enforcement to the hammer. App. 175, l. 22 – 176, l. 8. Law enforcement found Bolen's t-shirt in the bathtub of decedent's burned home. The bathroom was where the largest fire occurred. App. 229, ll. 5-12; App. 218, ll. 9-10.

In contrast, Petitioner denied involvement in the death and the fire. App. 267, l. 22 – 268, l. 1. He conceded being with Bolen and the decedent earlier that night. App. 265, ll. 9-22. He did admit to having a sexual relationship with Dempsey for about two months and stated the two had consensual sex the day of or day before Halloween. App. 268, ll. 1-11. Petitioner also stated that while he and Bolen were at a house party, Bolen told him Bolen needed to move some items he had stolen from the decedent's home. Petitioner felt constrained to help Bolen move the stolen items because they were in his mother's back yard. App. 266, ll. 1-10. According to the prosecution, Petitioner also stated he later smelled smoke and ran into decedent's home and put the fire out. App. 326, l. 20 – 329, l. 7.

In closing argument, the solicitor told the jury that State's star witness Bolen was "a piece of trash" but claimed he was telling the truth: "He's either brilliant, which I didn't see from that stand, or he's telling the truth." App. 325, ll. 2-13. The solicitor further argued to the jury that Bolen: "minimized his own actions. I will freely admit that he minimized what he did. What he told you still makes him just as guilty as Michael Paul Buckmon, but he minimized it." App. 337, ll. 1-8. "Did he minimize it because he didn't want to admit it? Did he minimize it because of the fact that he just can't cope with the fact that he did this to another human being? I don't know." App. 337, ll. 9-12. Nevertheless, the solicitor argued to the jury: "There's nothing inconsistent about his [Bolen's] story." App. 337, ll. 13-15. "Matthew Bolen—all of the facts, all of the

evidence lines up with his testimony. Did he minimize what he did? Absolutely. Surely he did." App. 341, l. 24 – 342, l. 1.

In PCR, Petitioner alleged prosecutorial misconduct, and he testified that the State used perjured testimony by Bolen to obtain convictions. App. 377; App. 408, ll. 14-24. The solicitor, David Miller, testified at the PCR hearing. Miller again stated that he believed "Bolen was minimizing his involvement in the crime." App. 427, l. 25 – 428, l. 1. However, Miller stated: "there was really nothing about Bolen's testimony that was contradicted by the evidence they [law enforcement] had." App. 441, ll. 5-8.

The PCR court addressed Petitioner's prosecutorial misconduct claim in its order of dismissal. App. 463 – 465. The order stated the PCR court found the solicitor "did not engage in prosecutorial misconduct by presenting the testimony of Applicant's co-defendant Bolen. Solicitors have the right to prosecute their cases as they see fit." App. 465. "The believability of a witness is for a jury to determine and does not go to admissibility of a witness's testimony." App. 465. This petition for writ of certiorari follows.

ARGUMENT

The court erred in denying post-conviction relief where the prosecution offered and relied upon the trial testimony of Petitioner's codefendant, Matthew Bolen, where the solicitor admitted that Bolen was not telling the whole truth, and where Petitioner was entitled to due process of law, since the State's presentation of known false evidence was fundamentally unfair and could reasonably have affected the outcome of the case.

The PCR court erred in denying relief where Petitioner's convictions and sentences were obtained in violation of due process. S.C. Code § 17-27-20(A)(1) (Uniform Post-Conviction Procedure Act applies to any person who has been convicted of or sentenced for a crime and claims the conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this State); U.S. Const. amend. XIV ("nor shall any state deprive any person of life, liberty, or property, without due process of law"); *Gibson v. State*, 334 S.C. 515, 529, 514 S.E.2d 320, 327 (1999) (prosecutorial misconduct warranted post-conviction relief where it constituted violation of *Brady v. Maryland*, 373 U.S. 83 (1963), i.e., rose to level of constitutional violation).

The presentation of known false evidence is incompatible with rudimentary demands of justice. *Giglio v. United States*, 405 U.S. 150, 153 (1972). "[T]he Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence." *Miller v. Pate*, 386 U.S. 1, 7 (1967). While the credibility of a witness is a determination for the jury, e.g., *State v. Needs*, 333 S.C. 134, 144, 508 S.E.2d 857, 862 (1998), a "conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the outcome of the jury." *Gibson*

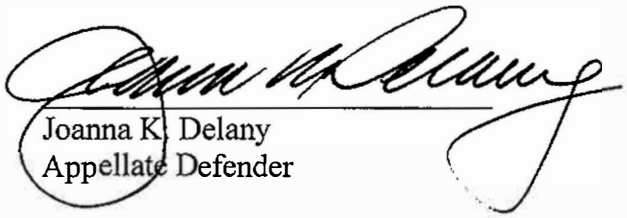
v. State, 334 S.C. at 525 n. 4, 514 S.E.2d at 325 n. 4 (quoting *United States v. Bagley*, 473 U.S. 667, 678 (1985)).

See Riddle v. Ozmint, 369 S.C. 39, 48, 631 S.E.2d 70, 75 (2006) (holding prosecutor's failure to correct false testimony of key eyewitness and alleged accomplice entitled defendant to post-conviction relief where prosecutorial misconduct rendered trial fundamentally unfair); *Fortune v. State*, 428 S.C. 545, 561-62, 837 S.E.2d 37, 46 (2019) (holding a prosecutor's misconduct in closing argument, of a type which endangers the due process rights of criminal defendants, infected the trial "with such a high degree of unfairness" as to make the conviction a denial of due process entitling defendant to post-conviction relief).

In this case, the State's ability to obtain convictions against Petitioner depended upon the testimony of Bolen. Yet the solicitor knew Bolen was not telling the truth. The solicitor admitted at both trial and PCR that Bolen was "minimizing" his own involvement. Bolen was the key witness against Petitioner. The State's knowing presentation of false evidence—Bolen's testimony—was fundamentally unfair and deprived Petitioner of due process of law. *Miller v. Pate*, 386 U.S. at 7; *Giglio v. United States*, 405 U.S. at 153. Given the paramount importance of Bolen's testimony in this case, there was a reasonable likelihood the false testimony could have affected the jury. *Gibson v. State*, 334 S.C. at 525 n. 4, 514 S.E.2d at 325 n. 4; *United States v. Bagley*, 473 U.S. at 678. The PCR court erred in denying relief.

CONCLUSION

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



Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of November, 2026.

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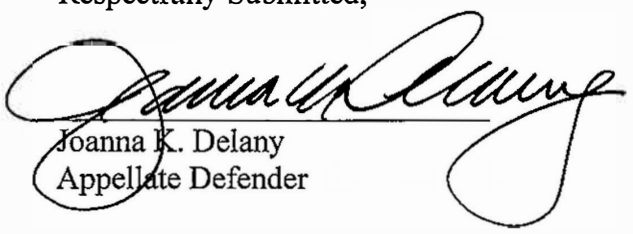
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael P. Buckmon 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 Deadra L. Jefferson, which was held on December 17, 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 Michael P. Buckmon.

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of November, 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."

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This 9th day of November, 2026.