STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

D. Garrison Hill, Circuit Court Judge

ALBERT SANTANIO KELLY ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001864

PETITION FOR WRIT OF CERTIORARI PURSUANT TO AUSTIN V. STATE

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INDEX

ISSUE PRESENTED

Did trial counsel provide ineffective assistance, in violation of Petitioner's Sixth and Fourteenth Amendment rights, by failing to request an alibi instruction despite having presented evidence of an alibi and arguing to the jury that Petitioner should not be convicted based upon his alibi where the evidence strongly pointed to the guilt of another?

STATEMENT OF THE CASE

A Greenville County grand jury indicted Petitioner for murder (2004-GS-23-5966), armed robbery and possession of a weapon during the commission of a violent crime (2005-GS-23-2024). App. 831-832; App. 834-835. Petitioner was tried before the Honorable G. Edward Welmaker and a jury on October 10, 2005.[1] L. Mark Moyer represented the state, and C. Timothy Sullivan represented Petitioner. App. 1. The jury found Petitioner guilty as charged. App. 590, lines 8-21. Judge Welmaker sentenced Petitioner to forty-five years' imprisonment for murder, fifteen years' imprisonment for armed robbery, and five years' imprisonment for possession of a weapon during the commission of a violent crime. He ordered all sentences to be served consecutively. Thus, Petitioner is serving sixty-five years in prison. App. 596, line 18 – App. 597, line 4; App. 833; App. 836; App. 837.

A timely notice of appeal was filed. Joseph L. Savitz, III perfected Petitioner's appeal by filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). App. 599-609. The Court of Appeals dismissed the appeal in an unpublished opinion filed on September 11, 2008. State v. Kelly, 2008-UP-530 (S.C. Ct. filed Sept. 11, 2008); App. 610-611.

Petitioner filed an application for post-conviction relief (PCR) on September 25, 2008. This action was assigned case number 2008-CP-23-7212. App. 612-648. The state filed a return dated December 3, 2008. App. 650-654. Petitioner amended his application on December 11, 2008 and December 12, 2008. App. 655- 720. The matter proceeded to an evidentiary hearing on November 15, 2010 before the Honorable Robin B. Stilwell. Elizabeth Wiygul represented Petitioner, and Karen C. Ratigan represented the state. App. 721. Judge Stilwell denied

[1] This was Petitioner's second trial. The first ended in a mistrial due to the jury being hung with six votes in favor of not guilty. App. 594, lines 9-12; App. 741, lines 21-23.

Petitioner relief by an order filed on February 1, 2011. App. 747-753. A notice of appeal was not filed.

Petitioner filed an application for post-conviction relief on July 10, 2012 alleging his prior PCR counsel was ineffective for failing to file a timely notice of appeal and allegations of newly-discovered evidence. App. 789-803. The matter proceeded to a hearing on June 19, 2012 before the Honorable D. Garrison Hill. Caroline Horlbeck represented Petitioner, and Karen C. Ratigan represented the state. App. 811. The state consented to a belated appeal from Petitioner's first PCR hearing. App. 814, lines 1-2. Judge Hill granted Petitioner a belated PCR appeal pursuant to Austin, supra. App. 826; App. 828.

Petitioner filed a timely notice of appeal. This petition for writ of certiorari follows.

STATEMENT OF FACTS

During the early morning hours of February 27, 2004, two men attempted to rob Ignacio Delgado at gunpoint outside a trailer at Southgate Trailer Park. One of the men shot and killed Delgado. App. 88, line 9 – App. 89, line 1; App. 194, lines 14-20; App. 200, lines 3-4. One of the trailer park's residents awoke at the sound of the single gunshot and called for help. App. 88, lines 15-18; App. 90, lines 18-21.

The first officer arrived at 1:12 a.m., which was within one minute of his being dispatched. App. 92, lines 1-3; App. 108, line 19 – App. 109, line 18. The call to the ambulance was placed at 1:10 a.m., and the paramedics were cleared to enter at 1:22 a.m. However, Delgado was dead on arrival. App. 118, lines 1-8; App. 119, line 18 – App. 120, line 16. The police followed two sets of tracks in the snow directly to the apartment of Shaundrecus Edwards. App. 263, line 23 – App. 264, line 14; App. 265, lines 13-22; App. 266, lines 17-18; App. 273, lines 13-25.

ARGUMENT

In violation of Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel, trial counsel failed to request an alibi instruction concerning despite having presented evidence of an alibi and arguing to the jury that Petitioner should not be convicted based upon his alibi where the evidence strongly pointed to the guilt of another.

Relevant facts

Evidence produced at trial

The state's evidence

The prosecution's evidence established that the shooting occurred at 1:00 a.m. App. 88, lines 15-18; App. 90, lines 18-21; App. 92, lines 1-3; App. 108, line 19 – App. 109, line 18; App. 118, lines 1-8; App. 119, line 18 – App. 120, line 16. Officer Mark Justice arrived on the scene at approximately 2 a.m. From the scene, he followed two sets of tracks in the snow directly to the back door of an apartment where Shaundrecus Edwards lived across the street. App. 263, line 23 – App. 264, line 14; App. 265, lines 13-22; App. 266, lines 17-18; App. 273, lines 13-25. Officer Justice estimated that he arrived at the apartment of Edwards and his mother at approximately 2:30 a.m. App. 266, line 25 – App. 267, line 9; App. 363, lines 2-19. Upon Officer Justice's arrival, Edwards tried to hide a .22 pistol. App. 268, lines 9-25; App. 270, lines 4-8. Additionally, the police recovered an unloaded .380 caliber handgun, a magazine, and a box of ammunition from under Edwards' couch. App. 171, lines 19-20; App. 282, lines 2-11; App. 316, lines 18-24. SLED Agent Vello Paavel determined this gun fired the fatal shot based on a comparison of test-fired projectiles and cartridge cases with the shell casing found at the scene and the bullet removed from Delgado at the autopsy. App. 305, line 22 – App. 313, line 4.

Edwards and Marcus Parks were the state's primary witnesses against Petitioner. Parks claimed that he, Edwards, and Petitioner discussed engaging in a robbery to get a car and money, but had no specific target in mind. App. 126, line 20 – App. 127, line 14. Parks further claimed he, armed with Edwards' .22, and Petitioner, armed with a .380 Highpoint[2] that was later identified as the gun that fired the fatal bullet, went to the trailer park across from the apartments. App. 127, lines 17-20; App. 130, lines 2-18; App. 131, lines 21-22; App. 312, line 18 – App. 313, line 4; App. 352, line 25 – App. 353, line 6. Although the three of them allegedly discussed the robbery, Parks claimed Edwards did not go with him and Petitioner when they left the apartment around 12:30 a.m. to conduct the robbery. Supposedly, Edwards was sick. App. 131, lines 5-20. Parks claimed Petitioner wore Edwards' Atlanta Braves coat and Parks wore a Tommy Hilfiger coat. App. 141, lines 8-22. Parks saw a man holding a beer and knocking on the side of a trailer. App. 133, lines 4-14. Parks and Petitioner approached the man with their guns raised, and Petitioner told the man to put his hands up. App. 133, line 23 – App. 134, line 14. According to Parks, the man "reached like he was reaching for a gun" so Petitioner threw him to the ground. When the man "reached for like he was reaching for a weapon again," Petitioner shot him. App. 134, line 21 – App. 135, line 11.

The two then ran through the snow back to Petitioner's apartment, but did not go inside. Ultimately, they ran to Edwards' apartment. App. 136, line 13 – App. 137, line 20. Oddly, neither Petitioner nor Parks told Edwards about the shooting. App. 137, line 23 – App. 138, line 8. Nevertheless, Parks claimed he returned Edwards' .22 gun to him. App. 139, lines 22-24. Parks also claimed Petitioner placed the .380 Highpoint "under the shelf, under the couch" in

[2] When the snow melted the following day, the officers found a shell casing, which was collected. App. 290, liens 2-12.

Edwards' apartment. App. 140, lines 8-16. Further, Parks claimed Petitioner removed the Atlanta Braves coat and left it at Edwards' apartment. App. 148, lines 8-19. According to Parks, Edwards' mother told Parks and Petitioner to leave "a couple hours later." App. 138, lines 12-20.

Later, Parks returned to Edwards' apartment and found the police there. App. 142, lines 9-20. Parks claimed he went there to tip off Edwards to the location of the .380 pistol, but he never had a chance to do so because the officers never left the two alone together. App. 143, line 4-24.

Edwards claimed Parks and Petitioner left his apartment with loaded guns "around 10:30 or 11:00. Might have been later." App. 159, lines 12-24. Edwards further claimed that despite being too sick to go with Petitioner and Parks, he went to a neighbor's house, where he ate a hamburger and fries, when Parks and Petitioner left. App. 160, lines 3-10; App. 161, lines 11-17. Edwards returned home and his mother arrived home around midnight. App. 161, lines 20-23. At 1 a.m. or 1:15 a.m., Parks and Petitioner returned to his apartment. App. 162, lines 20-24. Parks returned Edwards' .22 pistol to him. App. 163, lines 2-6. Edwards promptly hid the gun under his bed. App. 163, lines 7-9. Edwards and his mother told Parks and Petitioner to leave, and they did. App. 163, line 18 – App. 164, line 17. "About two or three minutes after" Parks and Petitioner left, the police arrived. App. 164, lines 18-20. During cross-examination, Edwards could not deny that on February 25, 2004, two days before the death of Delgado, he purchased ammunition for a .380 caliber gun. The receipt for the ammunition was found during the search of Edwards' apartment. App. 170, line 12 – App. 171, line 8; App. 365, line 23 – App. 366, line 11.

Petitioner's alibi defense

Joyce Gordon, Petitioner's mother, testified on his behalf. App. 384, lines 20-22. On February 26, 2004, she and Petitioner were together until Petitioner left the house at noon. Petitioner returned at 3:00 p.m. and remained at their home until 10:00 p.m. Petitioner then returned home at 11:00 p.m. The two watched television until 12:30 p.m. when Petitioner went to bed. Gordon stayed up perming her hair until 2:00 a.m. on February 27, 2004. When she checked on Petitioner before going to bed, Petitioner was still in his room. However, when she got up at 6:00 a.m. or 6:30 a.m., Petitioner was gone. App. 385, lines 5-25. Petitioner would not have been able to leave the apartment between 12:30 p.m. and 2:00 a.m. without her knowing because of the apartment's set-up. App. 392, lines 5-7.

Petitioner's sister and stepmother lived in Atlanta, and Petitioner often visited them. App. 386, line 24 – App. 387, line 12. In fact, Petitioner was planning to move to Atlanta. App. 387, lines 18-23. On the evening of February 26, 2004, Petitioner mentioned to Gordon that he may leave to go to Atlanta, but he wanted to discuss it with his girlfriend first. App. 388, line 18 – App. 389, line 2.

Petitioner also testified at the trial in support of his alibi. Petitioner went to Shaundrecus Edwards' apartment around 10 p.m. on the night of February 26, 2004 where Marcus Parks was also visiting. App. 405, lines 5-11. Edwards showed them three guns: a rifle, a black .22, and a chrome and black .380 Highpoint. App. 406, lines 2-8. Parks picked up the .22 and Edwards picked up the .380. Immediately thereafter, Edwards explained to Petitioner that he and Parks had some business to handle. App. 406, lines 9-10; App. 406, lines 16-25. Around 11 p.m., Petitioner left the apartment, followed by Edwards and Parks. The group walked together until Petitioner arrived at his mother's apartment. Petitioner went into the apartment while Parks and Edwards continued toward the trailer park. Petitioner's mother woke up and the two watched

television. App. 406, line 20 – App. 407, line 25. Petitioner affirmed his mother's testimony that he went to bed about 12:30 a.m. App. 408, lines 3-4. Around 3:30 or 4 a.m., Petitioner left his mother's apartment to go to a friend's house. The friend was supposed to take him to Georgia. The friend was not home, so Petitioner waited. When the friend did not arrive, Petitioner called a cab to take him to his girlfriend's house. Petitioner spent the day with his girlfriend. When her roommate arrived home at 6 p.m. and insisted Petitioner leave, Petitioner asked his girlfriend to take him to Georgia, and she agreed. App. 408, line 5- App. 409, line 17. In Georgia, Petitioner stayed with his stepmother and started working for a small family-owned business. App. 409, line 18 – App. 410, line 5.

SLED Agent Ila Simmons tested two jackets for gunshot residue (GSR). On the Atlanta Braves jacket, which belonged to Edwards, the testing was "inconclusive" for particles collected from the right sleeve. App. 468, lines 12-17. However, Agent Simmons found GSR on both sleeves of the Tommy Hilfiger jacket worn by Parks. App. 141, lines 21-22; App. 472, lines 23-25. Although testing of GSR kit from Parks' hands revealed no residue, the testing of GSR kit for Edwards revealed the presence of GSR on the left back and right palm of his hands. App. 478, lines 11-25; App. 481, lines 12-15. Additionally, the testing results for GSR from the swab of the right back of Edwards' hand was inconclusive. App. 481, lines 9-11.

Petitioner's alibi defense in closing argument

During closing argument, trial counsel attempted to convince the jury that Petitioner was not the second black male involved in the robbery and shooting of Delgado. Trial counsel argued the second black male was Edwards. App. 522, line 11 – App. 523, line 4. To support this argument, trial counsel relied heavily upon Petitioner's alibi defense. Trial counsel highlighted Petitioner's mother's testimony that Petitioner was with her in the apartment from 11

p.m. until she went to bed at 2:30 a.m. He freely admitted that Petitioner was gone when she got up at 6 a.m. App. 525, lines 19-25. Trial counsel told the jury to decide whether to believe Edwards' mother regarding his whereabouts or believe Petitioner's mother concerning Petitioner's whereabouts. App. 526, lines 7-12.

Additionally, the prosecutor acknowledged Petitioner's alibi defense in his closing argument. He stated "[t]he defendant tried to offer you several explanations." Those "basically boil[ed] down to three points," one of which was an alibi. In fact, the prosecutor spent a considerable amount of time attempting to defeat Petitioner's alibi. The prosecutor attacked Petitioner's alibi:

> Let's start the alibi witness. I want to say just a couple of words about that; Joyce Gordon, who stood before you. And my comment about that, ladies and gentlemen, that anyone who is desperate enough to run away and to live in another city and another state for two and a half months is desperate enough to try and to get somebody to say what he wants that person to say for them.

App. 540, lines 2-20. Next, the prosecutor attacked Gordon's demeanor and the style in which she testified. App. 540, line 21 – App. 541, line 11. He told the jury that "[m]ost people when they give testimony it is a question and answer." But, he claimed, Gordon was asked "[o]ne question and she was off and running." He told the jury to ask themselves if Gordon's testimony sounded "rehearsed." App. 540, line 21 – App. 541, line 7.

Jury instructions

During a brief charge conference, trial counsel told the judge he had "nothing special" to request. App. 488, line 24 – App. 489, line 2. Then the judge asked, "Were there any - - any self-defense, alibi, or any of those kind of things? Y'all weren't looking for any?" App. 489, lines 9-11. Trial counsel responded as follows: "Ms. Kelly, this is all or nothing. No self-defense. If we believe - - if the jury believes his story, then he's not guilty. If they believe the

other side, then he's guilty. It's just one shot at murder or not - - either guilty or not guilty." App. 489, lines 12-16.

No objection to jury instructions made by trial counsel. App. 583, lines 16-18. During deliberations, the jury asked the following: "'do we have to prove that Albert was the triggerman to convict him of murder or if he was the triggerman? In other words, if we can prove he was there, is that part of the murder charge." App. 585, lines 4-7.

Evidence produced at the PCR hearing

Petitioner testified that although he had an alibi witness and this witness testified, trial counsel failed to request an instruction concerning alibi. Petitioner asked the PCR to grant him relief on this ground. App. 728, lines 10-14; App. 729, line 25 – App. 730, line 4. Trial counsel admitted he presented an alibi defense, but did not remember if he requested a jury charge on alibi. He remarked, "If I didn't make it, I didn't make it." App. 740, lines 2-9.[3] The assistant attorney general referred trial counsel to the portion of the trial transcript in which he stated that he was going "all or nothing." Trial counsel responded he was not seeking self-defense and explained "he's guilty or not guilty." App. 742, lines 19-25. When asked if this strategy of "all or nothing" explained why he did not ask for an alibi charge, trial counsel responded that he did not remember why he did not request an alibi charge. App. 743, lines 1-3. Essentially, trial counsel offered no explanation for his failure to request an alibi instruction even after reviewing the transcript describing his strategy as "all or nothing."

[3] Petitioner's direct appeal brief raised the issue of the trial judge failing to instruct the jury concerning alibi, but noted that trial counsel did not object to the omission. App. 604.

Order of dismissal

The PCR court found trial counsel failed to meet his burden of proving trial counsel should have requested an alibi charge. Relying only upon the trial transcript, the PCR court found trial counsel's declining the trial judge's offer to charge the jury as to alibi as a "strategic decision." According to the PCR court, trial counsel told the trial judge "this is all or nothing." With no more discussion, the PCR court denied Petitioner relief on this claim. App. 752.

Discussion

"The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984). To prove ineffective assistance of counsel, "the defendant must show that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." Id. "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Id. at 687-688. "[T]he performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." Id. at 688. Concerning prejudice, "a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case." Rather, "[t]he defendant must show that 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. at 694.

This Court has held that if trial counsel articulates a valid reason for employing certain strategy, then the conduct is not ineffective assistance of counsel. Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992). In Stokes, this Court determined trial counsel employed a

valid strategy in not calling witnesses that he believed lacked credibility. Id. Similarly, this Court found counsel's trial strategy reasonable in Drayton v. Evatt, 312 S.C. 4, 10-11, 430 S.E.2d 517, 521 (1993) where trial counsel did not present evidence of the defendant's future adaptability because to do so would have allowed the introduction of negative psychiatric and discipline reports.

On the other hand, this Court found counsel's performance deficient in Gilchrist v. State, 350 S.C. 221, 228 n.2, 565 S.E.2d 281, 285 n.2 (2002) for failing to object to the state's vouching for the credibility of a witness where counsel stated he decided not to object based upon a strategy, but never articulated that strategy. In Sanchez v. State, 351 S.C. 270, 276, 569 S.E.2d 363, 366 (2002), this Court determined trial counsel's reason for not objecting to an officer's hearsay testimony of the alleged assault on a child victim, which was that the testimony would help show the allegations were vague, was unreasonable because the hearsay corroborated the victim's testimony.

In sum, if trial counsel articulates a valid reason for employing certain strategy, then the conduct is not ineffective assistance of counsel as long as the strategy used satisfies an objective standard of reasonableness. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992).

This Court held "[i]t is well settled that counsel's rejection of an alibi charge when the defendant claims that he was in another place at the time of the commission of the criminal act constitutes deficient representation under an objective standard of reasonableness." Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1984)(citing Riddle v. State, 308 S.C. 361, 418 S.E.2d 308 (1992)). The failure to give an alibi charge, where the defendant claims to be at another place, is reversible error." Riddle, 308 S.C. at 363, 418 S.E.2d at 309 (citing State v.

Robbins, 275 S.C. 373, 271 S.E.2d 319 (1980)). Riddle's trial counsel rejected the trial judge's offer to charge alibi stating "she did not 'think it [was] necessary.'" Id. This Court found Riddle's counsel's rejection of the charge at trial was deficient performance. Concerning prejudice, this Court found the prejudicial nature of the error was compounded by the solicitor's closing argument in which he instructed the jury to consider only the defenses charged by the judge. Id. at 363-364, 418 S.E.2d at 309-310.

In Roseboro v. State, 317 S.C. 292, 293-295, 454 S.E.2d 312, 313 (1995), this Court found trial counsel's intentional failure to request an alibi instruction "because he felt the alibi testimony 'did not come off too well in front of the jury'" was deficient performance prejudicing the defendant. Trial counsel testified at the PCR hearing that he made a tactical decision not to request an instruction as to alibi "to focus the jury's attention on the state's failure to meet its burden of proof rather than place more emphasis on the alibi testimony by requesting an alibi charge." Id. at 293-294, 454 S.E.2d at 313. This Court found counsel's strategy "invalid" under an objective standard of reasonableness because "[a]n alibi charge places no burden on a criminal defendant but emphasizes that it is the state's burden to prove the defendant was present and participated in the crime." Id. at 294, 454 s.E.2d at 313. According to this Court, the prosecutor's "disparagement" of the defendant's alibi during closing argument further rendered counsel's strategy unreasonable because an alibi charge would have corrected any impression the defendant had any burden of proof at trial. Id.

Recently, this Court, in a divided opinion, held defense counsel's failure to request an alibi instruction was deficient performance, but found the failure did not prejudice the defendant in light of the jury charge as a whole. Gibbs v. State, 403 S.C. 484, 495-496, 744 S.E.2d 170, 176 (2013). The majority concluded that the jury charge requiring the state to prove identity

beyond a reasonable doubt defeated the defendant's argument concerning prejudice. Id. In a powerful dissent, Chief Justice Toal and Justice Beatty concluded defense counsel's failure was prejudicial to Gibbs. Id. at 496, 744 S.E.2d at 176 (C.J. Toal, dissenting). The dissent explained the evidence of Gibbs' guilt was not overwhelming and the identity of the assailant was conflicting. Further, the alibi charge was necessary to correct any indication by the state in closing that Gibbs had any burden of proof and to rebuff the prosecutor's disparagement of Gibbs' alibi witnesses. Id. at 498-499, 744 S.E.2d at 177-178.

Here, trial counsel clearly rendered deficient performance by failing to request an instruction as to alibi. The strategy relied upon by the PCR court was trial counsel's statement to the judge that this case was "all or nothing." However, an "all or nothing" strategy would not concern an alibi defense or alibi instruction. Employing an "all or nothing" strategy in criminal cases concerns instructions as to lesser-included offenses, not a particular defense. See generally, State v. Brown, 360 S.C. 581, 597, 602 S.E.2d 392, 401 (2004). Trial counsel's failure to request the instruction was prejudicial to Petitioner due to the evidence pointing to the guilt of Edwards. The police found the murder weapon in Edwards' home. A receipt proved Edwards had purchased ammunition for a .380 only two days before the murder, which was ironic in light of Edwards' testimony that he did not even own a .380. Testing revealed GSR on Edwards' hands hours after the murder. The primary evidence against Petitioner was the testimony of the cooperating witnesses of Edwards and Parks, who clearly were motivated to place the guilt on Petitioner.

The alibi instruction was necessary to inform the jury how to use the evidence presented by Petitioner, and to buffer the prosecutor's closing argument in which he disparaged Petitioner's alibi witness and suggested that Petitioner had a burden of proof. The PCR court erred in

concluding trial counsel offered a reasonable trial strategy in failing to request an alibi instruction in this case.

CONCLUSION

Petitioner respectfully requests this Court a writ of certiorari and order full briefing on the issue presented.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of August, 2014.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

D. Garrison Hill, Circuit Court Judge

ALBERT SANTANIO KELLY ,

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V.

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RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Albert Santanio Kelly #277334, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 29th day of August, 2014.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day
of August, 2014.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.