

STATE OF SOUTH CAROLINA  
In The Supreme Court

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CERTIORARI TO SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

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Appellate Case No. 2013-001284

**RECEIVED**

SEP 24 2014

**S.C. Supreme Court**

State of South Carolina, .....Petitioner-Respondent,

v.

Nathaniel Charles Teamer, .....Respondent-Petitioner.

**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Did the PCR court correctly deny Respondent's application as to the issue of Counsel's failure to object to testimony of the investigating officer regarding Respondent crossing the center line, where evidence of probative value supports the PCR court's finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel's performance resulted in prejudice?
2. Did the PCR court correctly deny Respondent's application as to the issue of Counsel's failure to explore Respondent's allegations that Donald Martin, victim of the burglary, had motive to accuse Respondent because of Martin's improper relationship with his niece, daughter of Erica Gray, where evidence of probative value supports the PCR court's finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel's performance resulted in prejudice?
3. Did the PCR court correctly deny Respondent's application as to the issue of Counsel's failure to seek admission of the cocaine and alcohol use of the victim of the felony DUI, where evidence of probative value supports the PCR court's finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel's performance resulted in prejudice?
4. Should this Court consider Respondent's argument that the decision of the PCR court should be affirmed based upon the doctrine of cumulative error when it was never raised or ruled upon by the lower court?

## STATEMENT OF THE CASE

Respondent<sup>1</sup> is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Respondent was indicted at the May 2006 term of the Spartanburg County Grand Jury for burglary – 1<sup>st</sup> degree (07-GS-42-1719), felony driving under the influence – great bodily injury (06-GS-42-1732), and failure to stop when signaled by officer with great bodily injury (06-GS-42-1733, count 1)<sup>2</sup>. E. Joshua Schultz, Esquire, represented him. On September 12, 2007, Respondent underwent trial, pursuant to which he was found guilty as indicted. The Honorable J. Derham Cole sentenced him to confinement for thirty years for burglary – 1<sup>st</sup> degree, fifteen years for felony driving under the influence – great bodily injury, and ten years for failure to stop when signaled by officer with great bodily injury. All sentences were set to run concurrent.

A timely Notice of Appeal was filed on Respondent's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Respondent's conviction and sentence. State v. Teamer, Op. No. 2010-UP-117 (S.C. Ct. App. filed February 11, 2010). The Remittitur was sent on July 13, 2010.

The Respondent filed his application for post-conviction relief August 2, 2010 (2010-CP-42-4049), and amendment to the application on October 8, 2012. An evidentiary hearing was held on October 29, 2012, at the Spartanburg County Courthouse. The Respondent was present and represented by Counsel, Tricia Blanchette, Esquire, and Jeremy Thompson, Esquire. The State of South Carolina was represented by Suzanne H. White, Assistant Attorney General. The Honorable Brooks P. Goldsmith granted the application by written Order on February 8, 2013.

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<sup>1</sup> For purposes of this Return to the Petition for Writ of Certiorari, “Respondent” will be used for Respondent-Petitioner and “Petitioner” for Petitioner-Respondent.

<sup>2</sup> The charge of attempting to leave the scene of an accident with great bodily injury (06-GS-42-1733, count 2) was not proessed.

Petitioner filed a 59(e) Motion and a hearing was held on the Motion on April 18, 2013. Judge Goldsmith denied the Motion by written Order on May 6, 2013. Petitioner filed a timely notice of appeal and Respondent filed a timely notice of cross-appeal. This Return to Petition for Writ of Certiorari is in response to Respondent's Petition for Writ of Certiorari pursuant to his cross-appeal.

## STANDARD OF REVIEW

In a post-conviction relief (PCR) proceeding, an Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The reviewing Court may reverse the PCR judge's factual findings where the record lacks "any evidence of probative value" to sustain them. See Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (citing Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996)) ("[A] PCR judge's findings should not be upheld if there is no probative evidence to support them"). Further, where the PCR court's decision is premised on an error of law, this Court must reverse. Ard v. Catoe, 372 S.C. at 331, 642 S.E.2d at 596 ("this Court will reverse the PCR court's decision when it is controlled by an error of law.").

## ARGUMENT

- I. **The PCR court correctly denied Respondent's application as to the issue of Counsel's failure to object to testimony of the investigating officer regarding Respondent crossing the center line, where evidence of probative value supports the PCR court's finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel's performance resulted in prejudice.**

Respondent argued that Counsel should have objected to Corporal Darity's opinion testimony that Applicant caused the accident by crossing the center line and Officer Evett's opinion testimony that Applicant caused the accident by driving without his headlights.

In this case, the arrest occurred as the result of the officer's investigation of an accident. (App. p. 256-8; p. 261-8; p. 336-339). At trial, Corporal Darity of the South Carolina Highway Patrol, testified that he responded to the accident involving a blue Caprice and Chevy truck. He confirmed that the blue Caprice was driven by Respondent and the Chevy truck was driven by James Young. (App. p. 257). Darity testified that as a result of his investigation, he determined Respondent caused the accident by crossing the center line. (App. p. 258, lines 1-5).

During cross-examination, Counsel was able to have Darity testify several times that he never saw the accident and in fact arrived approximately sixteen minutes after the accident. (App. p. 261; 262; p. 264, lines 15-18; p. 266). Counsel also cross-examined Darity as to the fact that he received some of his information from other officers, failed to include all information in his incident report, and did not complete any measurements or accident reconstruction. (App. p. 263-4; p. 266).

The PCR court was correct in determining that Respondent failed to meet his burden of proof as to this claim. (App. p. 1395). The court examined the record as a whole to determine if counsel was ineffective and due to counsel's cross-examination of the law enforcement officers, which called into question the opinions of law enforcement officers, the Court could not find that

Counsel was ineffective. (App. p. 1395). Further, because of the testimony of all law enforcement witnesses, as well as James Young, the Court properly found that Respondent had failed to prove that the outcome of the trial would have been different had Counsel objected to the statement. Accordingly, there is probative evidence in the record to support the PCR court's finding that Respondent failed to satisfy the prejudice prong of Strickland.

**II. The PCR court correctly denied Respondent's application as to the issue of Counsel's failure to explore Respondent's allegations that Donald Martin, victim of the burglary, had motive to accuse Respondent because of Martin's improper relationship with his niece, daughter of Erica Gray, where evidence of probative value supports the PCR court's finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel's performance resulted in prejudice.**

Respondent alleged that trial counsel was ineffective for failing to fully explore the potential motive for Donald Martin and the Grays to testify against Respondent because of a prior DSS case involving Erica Gray's daughter, Ieshia. Respondent testified that there was an underlying DSS case with the Gray family, which resulted in animosity towards Respondent. (App. p. 589). However, Respondent failed to produce any documents that supported the claim that there was a DSS case involving Ieshia. Respondent introduced a police report made on August 4, 2005, related to an alleged sexual assault of Ieshia by Donald Martin in 1996 and an Order for house arrest on June 28, 2005, following Ieshia's arrest for possession of marijuana. (App. p. 837-9). Neither of these documents substantiates a DSS investigation, change in custody arrangement, or any criminal charges based on the sexual abuse allegations.

Counsel testified that he believed it would have been very difficult to overcome the State's objections, had he attempted to introduce any records of a report of sexual assault by Martin since there was no conviction and the victim was a minor. (App. p. 773). Counsel testified that he tried to get the allegations in by asking Donald Martin about DSS hearings involving Iesha, but the

court sustained the State's objection. (App. p. 636). The letter written to Ieshia by Respondent and introduced by the State made mention of "what [Martin] did to [Ieshia] when [she] was little." (App. p. 774). Furthermore, the recorded jail phone calls from Respondent reference the fact that Respondent was mad because he believed that Martin used to "mess with" Ieshia. (App. p. 125).

The PCR Court was correct in finding that, after reviewing the transcript, evidentiary hearing testimony and exhibits, Respondent failed to meet his burden of proof as to this issue. There was no additional evidence provided by Respondent that could have been introduced at trial in an attempt to establish any motive for the Grays or Martin to lie. The evidence that was offered would have been excluded because it was merely reported incidents, not any convictions or sworn statements to use against Martin or the Grays. Furthermore, Petitioner submits that the evidence Respondent argues would demonstrate a motive to lie for the Grays and Martin, also provides a motive for Respondent to burglarize their home and terrorize Martin at the same time, as demonstrated through the recorded jail house phone calls. (App. p. 125).

Petitioner submits that there is clear evidence of probative value in the record which supports the PCR court's finding that Respondent failed to satisfy this burden.

**III. The PCR court correctly denied Respondent's application as to the issue of Counsel's failure to seek admission of the cocaine and alcohol use of the victim of the felony DUI, where evidence of probative value supports the PCR court's finding that Respondent failed to meet his burden of showing Counsel was deficient as to this issue or that Counsel's performance resulted in prejudice.**

Respondent argued that Counsel was ineffective for failing to seek admission of James Young's alcohol and cocaine use on the night of the accident.

During trial, Counsel moved to admit the toxicology results of James Young, the victim of the felony DUI, and moved for permission to question Young as to his alcohol use that evening, but the trial court sustained the State's objection since Young had been found not guilty of the

DUI. (App. p. 308; 311). However, Counsel had no evidence that Young “violated some law or neglected some duty that was imposed upon him, violated some statute, some traffic regulation or anything else that would have contributed to the accident.” (App. p. 312). Respondent argues that because Counsel failed to specifically mention the cocaine found in Young’s system, he was ineffective. (App. p. 748). Counsel testified that any evidence of alcohol or cocaine use by Young that night would have been difficult to get into because Young was found not guilty of the charge of DUI. (App. p. 749).

Rule 609, SCRE, specifically states that for impeachment purposes, “a conviction includes a conviction resulting from a trial or any type of plea, including a plea of *nolo contendere* or a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).” S.C. R. Evid. 609. In this case, there was no conviction to use to impeach Young.

The PCR Court properly found that Counsel was not ineffective for failing to argue that James Young’s use of alcohol and cocaine could be used to impeach his testimony at trial. (App. p. 1399). The PCR Court found that trial counsel provided a valid reason for employing his strategy in attempting to admit the records and question James Young. See Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002) (Finding that counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness and such strategy is measured under an objective standard of reasonableness).

For the foregoing reasons, Petitioner submits that the PCR judge properly denied Respondent’s petition on this issue because Respondent failed to meet his burden of proof and probative evidence exists to support the court’s decision.

**IV. Respondent's argument that the decision of the PCR court should be affirmed based upon the doctrine of cumulative error should not be considered as it was never raised or ruled upon by the lower court.**

Petitioner submits that this issue is not properly before the Court. The argument was never brought before the lower court and ruled upon; therefore, this argument is unpreserved for appellate review. See State v. Sheppard, 391 S.C. 415 --, 706 S.E.2d 16, 20 (2011) ("Our law is clear that an issue may not be raised for the first time on appeal."); I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (holding an appellate must present both his issues and arguments to the lower court and obtain a ruling before presenting issues and arguments on appeal). Therefore, Petitioner submits that this issue was not properly preserved and should not be considered.


**CONCLUSION**


For the reasons stated above, this Court should deny the Respondent's Petition for Writ of Certiorari and affirm the PCR Court's ruling on these issues. Should this Court grant Certiorari, the Petitioner requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

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By:   
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 2/2/2014.

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Certiorari to Spartanburg County  
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NATHANIEL TEAMER,

RESPONDENT-PETITIONER,

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THE STATE OF SOUTH CAROLINA,

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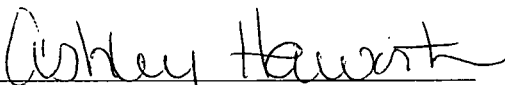
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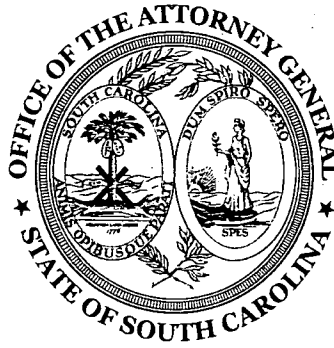
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The undersigned hereby certifies that a true copy of the **Petitioner-Respondent's Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Mr. C. Rauch Wise, Esquire  
305 Main Street  
Greenwood, South Carolina 29646

This 24<sup>th</sup> day of September, 2014

  
ASHLEY HAWORTH  
LEGAL ASSISTANT



ALAN WILSON  
ATTORNEY GENERAL

September 24, 2014

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

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SEP 24 2014

**S.C. Supreme Court**

**RE: Nathaniel Teamer v. State of South Carolina**  
**Lower Court Case No: 2010-CP-42-4049**  
**Appellate Case No. 2013-001284**

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Petitioner-Respondent's Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Suzanne H. White  
Assistant Deputy Attorney General  
SC Bar No. 78225

SHW/ah  
Enclosures

cc: C. Rauch Wise (2 copies)  
Trisha Allen. Victim Services (1 copy)