

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM DARLINGTON COUNTY  
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

---

Appellate Case No. 2013-002761

---

Ronald Francis Cameron, ..... Petitioner,

v.

State of South Carolina, ..... Respondent.

---

**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

---

ALAN M. WILSON  
Attorney General

JOSHUA L. THOMAS  
Assistant Attorney General  
S.C. Bar No. 100777

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

**RECEIVED**

OCT - 8 2014

**S.C. Supreme Court**

**TABLE OF CONTENTS**

QUESTION PRESENTED.....1

STATEMENT OF THE CASE.....2

ARGUMENT.....4

    I. Petitioner’s argument trial counsel was ineffective for failing to adequately challenge the State’s Schmerber motion is not preserved for appellate review .....4

    II. Probative evidence supports a finding trial counsel was not ineffective in her representation of Petitioner.....6

        A. Trial Counsel effectively challenged the State’s Schmerber motion.....6

        B. Probative evidence supports the post-conviction relief judge’s finding trial counsel was not ineffective in challenging the introduction of the DNA report at trial. ....7

CONCLUSION.....9

## QUESTION PRESENTED

Did the post-conviction relief judge properly find trial counsel was not ineffective in challenging DNA evidence where the issue of trial counsel's performance at the Schmerber hearing was not ruled upon by the trial court; where trial counsel adequately represented Petitioner at the Schmerber hearing; and where trial counsel had no grounds to object to the DNA analyst's report at trial and the State presented overwhelming evidence of Petitioner's guilt?

## STATEMENT OF THE CASE

In October 2008, the Darlington County Grand Jury indicted Petitioner for petit larceny and first degree burglary. (App. pp. 273-76). On September 1, 2009, Petitioner appeared before the Honorable J. Michael Baxley for a hearing on the State's Schmerber<sup>1</sup> motion. (App. p. 1). Tonya Copeland-Little, Esquire ("trial counsel"), represented Petitioner at this hearing. (App. p. 1). By order filed September 2, 2009, Judge Baxley ordered Petitioner to provide the State with a DNA sample. (Supp. App. pp. 1-2).

Petitioner proceeded to trial on September 21, 2009, before the Honorable Howard P. King and a jury. (App. p. 13). Trial counsel again represented Petitioner, along with J. Richard Jones, Esquire. (App. p. 13). On September 23, 2009, the jury found Petitioner guilty as indicted. (App. p. 225, line 24-p. 226, line 7). Judge King sentenced Petitioner to twenty-five (25) years for first degree burglary and thirty (30) days for petit larceny. (App. p. 235, line 25-p. 236, line 5).

Petitioner filed a timely notice of appeal, and Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense perfected Petitioner's appeal with the filing of an Anders<sup>2</sup> brief. State v. Cameron, Op. No. 2012-UP-254 (S.C. Ct. App. filed May 2, 2012). The Court of Appeals dismissed the appeal on May 2, 2012. Id.

Petitioner filed an application for post-conviction relief on July 20, 2012. (App. pp. 238-44). The Honorable R. Ferrell Cothran, Jr. ("the post-conviction relief judge") convened a hearing on the application at the Darlington County Courthouse on July 16, 2013. (App. p. 250). Petitioner was present and represented by Parker E. Howle,

---

<sup>1</sup> Schmerber v. California, 384 U.S. 757, 772 (1966) (holding that "the Constitution does not forbid the States minor intrusions into an individual's body under stringently limited conditions").

<sup>2</sup> Anders v. California, 386 U.S. 738 (1967).

Esquire. (App. p. 250). The post-conviction relief judge denied relief in an order dated October 18, 2013, and filed October 23, 2013. (App. pp. 267-72).

## ARGUMENT

### **I. Petitioner's argument trial counsel was ineffective for failing to adequately challenge the State's Schmerber motion is not preserved for appellate review.**

Petitioner asserts “trial counsel was ineffective because she failed to challenge the state’s request to obtain a DNA standard from Petitioner at the Schmerber hearing.” (Pet. for Writ of Cert. p. 15). However, the post-conviction relief judge did not reach the issue of whether trial counsel should have further challenged the State’s Schmerber motion. Therefore, Respondent submits this issue is not preserved for appellate review.

The post-conviction relief judge found Petitioner “failed to meet his burden of proving trial counsel should have challenged the DNA report.” (App. p. 270). The post-conviction relief judge further found Petitioner “failed to articulate a legal basis upon which trial counsel could have challenged the admission of the DNA evidence at trial.” (App. p. 270). Thus, the order denying relief only addresses whether trial counsel could have articulated a basis to object to the admission of the DNA analyst’s report at trial. The order does not explicitly address whether trial counsel should have articulated further arguments at the Schmerber hearing in opposition to the State’s motion to obtain a DNA sample. Petitioner arguably raised this issue at the evidentiary hearing in the form of his testimony that trial counsel did not bring up a prior sample police obtained without a court order.<sup>3</sup> (App. p. 255, lines 7-17). Applicant did not move to amend his application to include an allegation trial counsel provided inadequate representation at the Schmerber hearing. See Rule 15(b), SCRCF. Applicant also did not file a Rule 59(e), SCRCF, motion to alter or amend the order to address specifically trial counsel’s performance at

---

<sup>3</sup> Respondent notes Petitioner also did not allege at the evidentiary hearing that trial counsel should have challenged the credibility of Larry and Dacia Gainey, which is the argument he raises in his petition for writ of certiorari.

the Schmerber hearing. Therefore, the issue is not preserved for this Court's review. See Marlar v. State, 375 S.C. 407, 408, 653 S.E.2d 266 (2007); Odom v. State, 337 S.C. 256, 260 n.2, 523 S.E.2d 753, 755 n.2 (1999). See also Summersell v. S.C. Dep't of Pub. Safety, 337 S.C. 19, 22, 522 S.E.2d 144, 145-46 (1999) ("The circuit court did not specifically address the issue, and where an issue presented to the circuit court in a civil case is not explicitly ruled upon in the final order, the issue must be raised by an appropriate post-trial motion to be preserved for appellate review." (citing Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997))).

**II. Probative evidence supports a finding trial counsel was not ineffective in her representation of Petitioner.**

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

On appeal, this Court must affirm the circuit judge's denial of post-conviction relief when there is probative evidence to support the judge's findings. Wolfe v. State, 326 S.C. 158, 163, 485 S.E.2d 367, 369 (1997) (citing McCray v. State, 317 S.C. 557, 455 S.E.2d 686 (1995); Cherry, 300 S.C. at 115, 386 S.E.2d at 624)). Furthermore, the Court must give "great deference to the post-conviction relief (PCR) court's findings of fact and conclusions of law." Lorenzen v. State, 376 S.C. 521, 529, 657 S.E.2d 771, 776 (2008) (quoting Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005)).

**A. Trial Counsel effectively challenged the State's Schmerber motion.**

Petitioner asserts trial counsel should have argued to Judge Baxley that the State did not present probable cause to justify requiring a DNA sample from Petitioner. He further asserts trial counsel did not require Judge Baxley to balance the State's interests in obtaining the sample against Petitioner's right to privacy. The post-conviction relief judge did not rule upon this issue. See Section I, supra. However, the record does contain probative evidence to support a finding that trial counsel was not ineffective in challenging the State's Schmerber motion in either of these regards. Therefore, Respondent submits Petitioner is not entitled to relief on this ground.

To be entitled to an order compelling a defendant to provide a DNA sample, the State must show "probable cause to believe a crime has been committed, and probable cause to believe that it was committed by a particular suspect." State v. Register, 308 S.C. 534, 537-38, 419 S.E.2d 771, 773 (1992). At the Schmerber hearing, the State presented the sworn testimony of Captain Watson to demonstrate probable cause to suspect Applicant of the crime. (App. p. 4, line 21-p. 7, line 1). Specifically, Captain

Watson testified the scene of the burglary was covered in blood. (App. p. 4, line 24-p. 5, line 2). He recovered stolen property at a local pawn shop. (App. p. 5, lines 6-12). He interviewed Larry Gainey, the person who pawned the stolen property, and determined Petitioner gave the stolen property to Gainey. (App. p. 6, lines 4-6). When Captain Watson arrested Petitioner, he noticed Petitioner's hands had fresh cuts on them. (App. p. 6, line 13).

These facts are clearly sufficient to establish probable cause show a burglary occurred, and that Applicant was the person who committed the burglary. See State v. Chisholm, 395 S.C. 259, 268, 717 S.E.2d 614, 618 (Ct. App. 2011) (State established probable cause to compel DNA sample in child sex case where victim's mother implicated defendant and investigators found DNA sample on victim from unknown individual). Petitioner has presented no evidence of what arguments trial counsel could have made to disprove Captain Watson's testimony. Instead, he has merely attacked the credibility of the individual to whom he gave the stolen goods after the burglary.<sup>4</sup> However, this credibility attack does not vitiate the evidence presented at the Schmerber hearing. Accordingly, Petitioner has not shown how further presentation from trial counsel would have changed Judge Baxley's ruling.

---

<sup>4</sup> Again, Respondent notes Petitioner did not make these arguments to the post-conviction relief judge. Instead, Petitioner merely took issue with the fact trial counsel did not tell Judge Baxley about a sample allegedly taken without a court order. (App. p. 255, lines 7-17). However, Petitioner informed Judge Baxley about this prior sample. (App. p. 9, line 20-p. 10, line 5). Because Judge Baxley was not deprived of this information, Petitioner was not prejudiced by trial counsel's failure raise it at the Schmerber hearing. Regardless, even if Petitioner had presented credible evidence an initial illegal sample was taken (which he has not), the independent source doctrine would permit the introduction of evidence obtained as a result of the sample taken pursuant to Judge Baxley's order. See State v. Lane, 271 S.C. 68, 71-72, 245 S.E.2d 114, 116 (1978) (warrant not product of an illegal search where it is independently supported by probable cause without relying on information obtained from the illegal search (citations omitted)).

Furthermore, Petitioner's attempts to cast suspicion on Gainey do not exonerate Petitioner. Had trial counsel attacked Gainey's credibility at the Schmerber hearing, Judge Baxley could have conceivably ordered Gainey to submit to DNA testing. Unfortunately, the blood evidence at the crime scene matched Petitioner, not Gainey. (App. p. 128, lines 15-20). Once the State received a report the blood evidence did not match Gainey, the only remaining suspect would have been Petitioner. Such information would have strengthened the State's probable cause to suspect Petitioner. Thus, there is no scenario where Petitioner has shown trial counsel would have been able to prevent the State from obtaining a DNA sample from him.

Once the reviewing judge finds probable cause, he must balance the State's interest in obtaining the sample against the defendant's constitutional right to be free from bodily intrusion. Register, 308 S.C. at 538, 419 S.E.2d at 773 (citing In re: Snyder, 308 S.C. 192, 417 S.E.2d 572 (1992); In re: An Investigation into the Death of Abe A., 437 N.E.2d 265 (N.Y. 1982)). At the Schmerber hearing, trial counsel argued compelling a DNA sample would violate Applicant's right to privacy, and was unconstitutional. (App. p. 8, lines 13-20). Thus, trial counsel directly challenged the State's interest in the sample and asserted Petitioner's right to be free from bodily intrusion. Accordingly, this issue was squarely before Judge Baxley when he ordered Petitioner to provide a DNA sample.

Furthermore, Judge Baxley, in his Order for Collection of Suspect Standards, directly found "probable cause existed to "believe that a crime has been committed by the defendant[.]" (Supp. App. p. 2). Judge Baxley also found the evidence sought was relevant to the question of Petitioner's guilt or innocence; the methods to secure the sample were safe and reliable; and the bodily intrusion did not violate Petitioner's Fourth

Amendment rights. (Supp. App. p. 2). Judge Baxley's order addresses all of the factors to be considered in compelling Petitioner to provide a DNA sample. Thus, any challenge to Judge Baxley's ruling should have been addressed on direct appeal, and is not proper for review in post-conviction relief. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("Errors in a petitioner's trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings." (citations omitted)). In fact, this issue was raised in Petitioner's brief on direct appeal. Cameron, Op. No. 2012-UP-254 ("Ronald Francis Cameron appeals his convictions for first-degree burglary and petit larceny, arguing the trial court erred in granting the State's request that he submit nontestimonial identification evidence."). Therefore, Petitioner cannot now challenge whether probable cause existed to require a DNA sample or whether Judge Baxley properly weighed the competing interests before ordering Petitioner to provide a sample.

The record contains significant probative evidence trial counsel's performance at the Schmerber hearing was well within the bounds of "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 118, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). Likewise, Petitioner presented no evidence he was prejudiced by trial counsel's performance at the Schmerber hearing. Finally, the underlying issue of the propriety of Judge Baxley's order compelling Petitioner to provide a DNA sample were addressed on direct appeal. Accordingly, the post-conviction relief judge would not have erred in denying the application for post-conviction relief had he been asked to rule upon the issue of trial counsel's performance at the Schmerber hearing. Wolfe, 326 S.C. at 163, 485 S.E.2d at 369.

**B. Probative evidence supports the post-conviction relief judge's finding trial counsel was not ineffective in challenging the introduction of the DNA report at trial.**

At the evidentiary hearing, Petitioner asserted trial counsel was ineffective for failing to object to the introduction of the DNA analyst's report at trial. To the extent Petitioner raises this sole preserved ground in his petition for writ or certiorari, Respondent submits the record contain probative evidence to support a finding that trial counsel was not ineffective in for failing to object to introduction of the DNA report.

Trial counsel is not deficient where she can articulate "a valid reason for employing certain strategy[.]" Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Trial counsel testified she did not object to the introduction of the DNA report because there was a court order to obtain the sample, and the State provided a chain of custody for the evidence. (App. p. 261, lines 15-19). In fact, Judge Baxley had authorized the collection of a DNA sample from Petitioner. (Supp. App. p. 1-2). Also, the State established a chain of custody for the sample through Michael August (App. p. 135, line 2-p.136, line 19) and Lilly Gallman (App. p. 155, lines 9-23). State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). Accordingly, trial counsel was not deficient because she correctly surmised she had no valid grounds to object to the introduction of the report generated from that sample. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where "it would have been futile for Attorney to have made such arguments").

Furthermore, Petitioner cannot show prejudice because the State otherwise presented overwhelming evidence of his guilt. See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (no reasonable probability of a different result where there is

overwhelming evidence of guilt). Gainey testified Petitioner sold him a distinctive ring. App. p. 77, lines 4-16). Another witness identified Petitioner with the ring the same day of the burglary. (App. p. 96, line 24-p.97, line 13). The victim identified the ring as an item stolen from her home. (App. p. 68, lines 12-17). When arrested, Petitioner's hands were severely cut and bleeding. (App. p. 114, line 24-p. 115, line 4; p. 125, line 11-p.126, line 20). In light of this overwhelming evidence, Petitioner has not shown how the outcome of his trial would have been different had the DNA report not been introduced.

Because trial counsel did not have any meritorious grounds to object to the introduction of the DNA report, she was not deficient. Because the State presented overwhelming evidence of Petitioner's guilt, he was not prejudiced by the lack of an objection by trial counsel. Therefore, probative evidence exists to sustain the post-conviction relief judge's finding that trial counsel was not ineffective. Wolfe, 326 S.C. at 163, 485 S.E.2d at 369.

**CONCLUSION**

For the foregoing reasons, Respondent respectfully requests this Court deny the  
Petition for Writ of Certiorari.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOSHUA L. THOMAS  
Assistant Attorney General  
S.C. Bar No. 100777

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

By:   
ATTORNEYS FOR RESPONDENT

October 8, 2014

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM DARLINGTON COUNTY  
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

---

Appellate Case No. 2013-002761

---

Ronald Francis Cameron,.....Petitioner,

v.

State of South Carolina, .....Respondent.

---

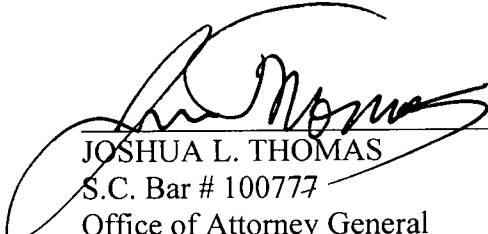
**CERTIFICATE OF SERVICE**

---

I, Joshua L. Thomas, certify that I have today served the within **Return to Petition for Writ of Certiorari** upon Petitioner by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

**Lara M. Caudy, Esquire**  
**South Carolina Commission on Indigent Defense**  
**Division of Appellate Defense**  
**Post Office Box 11589**  
**Columbia, South Carolina 29211-1589**

I further certify that all parties required by Rule to be served have been served.  
This 8th day of October, 2014.

  
\_\_\_\_\_  
JOSHUA L. THOMAS  
S.C. Bar # 100777  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737  
ATTORNEY FOR RESPONDENT



ALAN WILSON  
ATTORNEY GENERAL

October 8, 2014

**RECEIVED**

OCT - 8 2014

**S.C. Supreme Court**

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

**Re: Ronald Francis Cameron v. State of South Carolina**  
**Appellate Case No: 2013-002761**  
**Lower Court Case No. 2012-CP-16-0642**

Dear Mr. Shearouse:

Enclosed for filing please find an original and six (6) copies each of the **Return to Petition for Writ of Certiorari** in the above-captioned case. If there are any questions or comments, please do not hesitate to contact me at any time.

Sincerely,

Joshua L. Thomas  
Assistant Attorney General  
S.C. Bar # 100777

JLT/jacc  
Enclosures

cc: Lara M. Caudy, Esquire  
Trisha Allen, Victim Services