

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Lexington County

William Jeffrey Young, Circuit Court Judge

---

RECEIVED

JAN 23 2015

S.C. Supreme Court

RANDALL S. TYLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000795

---

REPLY TO THE RETURN TO PETITION FOR WRIT OF CERTIORARI

---

DAVID ALEXANDER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR RESPONDENT

## INDEX

INDEX.....	1
ARGUMENT IN REPLY .....	2
CONCLUSION .....	4

## ARGUMENT IN REPLY

### Issue 1

The State is incorrect that the trial judge's charge was an accurate statement of law. Nor would trial counsel have needed to be clairvoyant or anticipate any change in the law. As shown from the history of this charge in the petition, research would have revealed that the "unlawful act" language was disfavored. The factual scenario of this case—a drug deal gone wrong—is not unusual and inferences of malice from the drug deal should have been easily anticipated by trial counsel. Viewing this case through the lens of Strickland makes no difference. Trial counsel's error was failing to object to an erroneous jury charge and these types of errors by counsel are routinely addressed in PCR cases.

### Issue 2

The State wholly failed to distinguish the solicitor's suggestion in this case that the jury was putting themselves on the line against "those domestic enemies" was the same type of improper arguments made in Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561 (2010) and State v. White, 246 S.C. 502, 144 S.E.2d 481 (1965). The State asserts that the only prohibited argument of this nature is asking the jury to place themselves in the shoes of the victim. This ignores the rationale of Vasquez and White that the solicitor is not permitted to tell the jury that they must act on behalf of the community or against criminals as a whole. A criminal trial is solely about whether the State can prove the defendant guilty beyond a reasonable doubt. It is the individual citizen who is on trial, and he has the right to be tried on the merits of the evidence in his own case, not on a jury's sense of responsibility to victims, the community, or passions inflamed by the State against all persons accused of crimes.

### Issue 3

The notion that counsel had a strategic reason for not cross-examining the State's star witness about lying to the police is not supported by the evidence or logic. Trial counsel's strategy could not have been reasonable. Donna Hutto's testimony was devastating and impugning her credibility was absolutely necessary. Trial counsel's cross-examination shows that he explored the issue of the timeline Hutto gave police, which contradicts any post-hoc rationale for the failure to impeach her with an admitted lie in her statement.

### Issue 4

The State claims that no pitting occurred because there was a "phantom witness." Far from being a phantom, petitioner's defense was that Travis Harsey was the murderer. The State wholly fails to counter petitioner's argument that pitting petitioner against the statement of a witness who does not testify implicates his rights under the Confrontation Clause. The prejudicial effect of pitting is exacerbated by the complete lack of petitioner's ability to cross-examine Travis Harsey.

CONCLUSION

For the reasons in the petition for certiorari and in this reply, petitioner urges this Court to grant certiorari on the important issues involved in this PCR, allow further briefing, and with the ultimate relief of granting a new trial for petitioner.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 23rd day of January, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Lexington County

William Jeffrey Young, Circuit Court Judge

---

RANDALL S. TYLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000795

---

CERTIFICATE OF SERVICE

---

I certify that a true copy of the reply to the return to petition for writ of certiorari in this case have been served on John Walt Whitmire, Esquire, this 23rd day of January, 2015.



David Alexander  
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 23rd day  
of January, 2015.

Maia Jewell (L.S.)

Notary Public for South Carolina  
My Commission Expires: