

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to York County

J. Ernest Kinard, Jr., Circuit Court Judge  
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S.C. Supreme Court

ROBERT T. ARTIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002189  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

BENJAMIN JOHN TRIPP  
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South Carolina Commission on Indigent Defense  
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ATTORNEY FOR PETITIONER

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### **ISSUE PRESENTED**

Whether the record supports the PCR court's conclusion that Petitioner failed to proffer any questions and answers that trial counsel should have propounded in cross-examining a witness where Petitioner testified at the PCR hearing that the witness's testimony directly contradicted indisputable video evidence but where trial counsel did not confront the witness about the contradiction.

## STATEMENT

On March 22, 2012, the York County Grand Jury indicted Petitioner Robert Timothy Artis for petit larceny. App. 302-303. On April 16, 2012, Petitioner proceeded to trial before The Honorable Michael Baxley and a jury. Dan Hall represented Petitioner and Marina Hamilton represented the State. App. 1.

The State alleged that between March 25 and 28, 2011, Petitioner stole from a local paint and body shop a unique piece of aluminum, which he sold on March 29, 2011 to a scrapyard. App. 77, line 2—App. 78, line 7. The owner of the shop, James Fanning, testified that he realized the piece was missing on March 28, 2011. He went to the Palmetto Salvage Yard on March 29, 2011 to see whether someone had sold it there. He watched the scrapyard's surveillance footage, in which he claimed he saw Petitioner:

I recognized the car he drove up in and I recognized him when he got out of the car and went around to the trunk and retrieved the metal. And he went to the scales and put the metal on the scales.

App. 95, lines 12-24; App. 102, line 20—App. 105, line 13. Although trial counsel cross-examined Mr. Fanning, he never asked Mr. Fanning about the content of the surveillance video. App. 108, line 5—App. 124, line 2.

The jury found Petitioner guilty, and the trial judge sentenced him to seven years' incarceration. App. 224, lines 5-10; App. 232, lines 15-20. On January 30, 2014, Petitioner filed an application for post-conviction relief (PCR) claiming ineffective assistance of counsel. App. 239-250. The State filed a return on May 22, 2014. App. 251—App. 255. On August 5, 2014, Petitioner appeared at any evidentiary hearing before The Honorable J. Ernest Kinard. Leah B. Moody represented Petitioner and J. Rutledge Johnson represented the State. App. 256.

Petitioner testified and explained what the video actually showed:

. . . [Mr. Fanning] stated that by looking at the video he saw the car when it first pulled up, he seen me get out the car, he said he seen me go to the trunk of the car, he said he seen me get the metal out of the trunk of the car and put in on the scale, but the video does not show that. It just only shows me standing there at the scale.

App. 267, lines 10-16. Petitioner also related how trial counsel failed to cross-examine Mr. Fanning about his testimony:

Q: Okay. And so what didn't your attorney do—I mean, you just testified. What did you want your attorney to do?

A: I asked my—I advised my attorney that the witness just made a false statement while under oath and I asked him to cross-examine him. He told me to be quiet. I said this man just made a false statement under oath.

...

Q: From the transcript, your attorney did not cross-examine the witness?

A: Not when—when I told him he had—he had found him for committing the act of perjury under oath.

...

Q: So you wanted your attorney to tell the Court that the witness committed perjury?

A: Yeah, perjury while under oath.

...

Q: Okay. Did your attorney ask that victim about the video?

A: No, ma'am.

App. 267, line 23—App. 269, line 17.

On September 3, 2014, the PCR court issued its order of dismissal concluding Petitioner failed to establish ineffective assistance of counsel. App. 294—App. 301. Specifically, the order

stated that Petitioner failed to proffer any questions that trial counsel failed to ask or any testimony showing the answers at trial would have been different had counsel asked them. App. 299.

### ARGUMENT

**The record does not support the PCR court's finding that Petitioner did not proffer any questions that trial counsel failed to ask or any testimony showing the answers at trial would have been different had counsel asked them.**

The record does not support the PCR court's finding that Petitioner did not proffer any questions that trial counsel failed to ask or any testimony showing the answers at trial would have been different had counsel asked them. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. *Id.* at 687.

“The validity of counsel’s strategy is reviewed under ‘an objective standard of reasonableness.’” *Lounds v. State*, 380 S.C. 454, 463, 670 S.E.2d 646, 650 (2008) (quoting *Ingle v. State*, 348 S.C 467, 470, 560 S.E.2d 401, 402 (2002)). An attorney must propound “a valid, articulated strategic decision” not to cross-examine a witness. *State v. Nance*, 393 S.C. 289, 297, 712 S.E.2d 446, 451 (2011) (citing *Watson v. State*, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (“[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.”)).

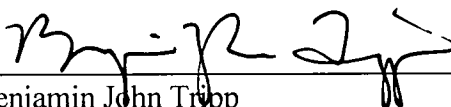
In this case, ample evidence established that trial counsel should have confronted Mr. Fanning about his false testimony. Mr. Fanning testified that he saw in the video Petitioner get out of his car, walk to the trunk, and pull out the piece of metal. Petitioner testified at the PCR

hearing that the video never showed a car. Instead, it merely showed Petitioner standing at a scale. Thus, as Petitioner testified at the PCR hearing, trial counsel should have confronted Mr. Fanning on the stand about his false testimony under oath. Furthermore, Mr. Fanning's response would have provided a response that was not elicited in the actual cross-examination. If he admitted to the false testimony, he would have expressly told the jury that he was an incredible witness. If he did not, he would have plainly implied to the jury that he was incredible because his reiterated testimony conflicted with the indisputable contents of the video. Accordingly, Petitioner did proffer the question that trial counsel failed to ask and Mr. Fanning's testimony that would have been different, and the PCR court's conclusions in dismissing Petitioner's claim were not supported by the record.

### CONCLUSION

For the foregoing reasons, Petitioner Robert Timothy Artis respectfully requests that this Court grant his petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,

  
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Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of May, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO YORK COUNTY  
J. ERNEST KINARD, JR., CIRCUIT COURT JUDGE

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ROBERT T. ARTIS,

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APPELLATE CASE NO. 2014-002189

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PETITION TO BE RELIEVED AS COUNSEL

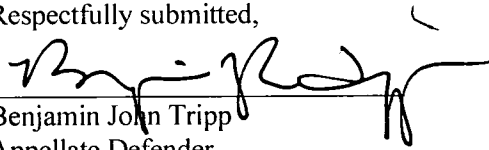
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Counsel for Robert T. Artis states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on August 5, 2014. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Robert T. Artis.

Respectfully submitted,

  
Benjamin John Tripp  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 6th day of May, 2015

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IN THE SUPREME COURT

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Certiorari to York County  
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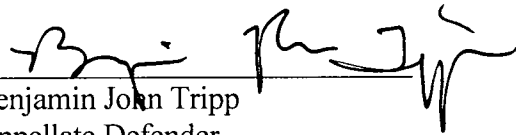
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CERTIFICATE OF SERVICE


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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire and Robert T. Artis, #189722, at Manning Correctional Institution this 6th day of May, 2015.

  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day  
of May, 2015.

  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: July 3, 2023