

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County  
Stephanie P. McDonald, Circuit Court Judge

S.C. Supreme Court

TERRELL CHANDLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO, 2014-002307

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JOHNSON PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS  
Appellate Defender

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

ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Did the PCR judge err in refusing to find trial counsel ineffective for not moving to strike a juror who was related to one of the State's witnesses?

## STATEMENT

In November of 2008, the Charleston County Grand Jury indicted Chandler for murder and possession of a firearm during the commission of a violent crime, indictments #2008-GS-10-8359, 8361. On June 11, 2010, Chandler proceeded to jury trial before the Honorable Roger M. Young. Sam Mitchell Slade, Jr. and Waring Simons Howe, Jr. represented Chandler at trial. Jennifer Shealy and Kriston Neely prosecuted the case. The jury returned verdict of guilt on both charges. Judge Young sentenced Chandler to forty five (45) years for murder and five (5) years consecutive for the weapons charge. A timely notice of intent to appeal was filed. Tristan M. Shaffer perfected the direct appeal. On May 23, 2012, the South Carolina Court of Appeals affirmed the sentence and conviction. State v. Chandler, Op. No. 2012-UP-313 (S.C.Ct.App. filed May 23, 2012).

On August 1, 2012, Chandler filed an application for post conviction relief. The State filed a return on June 26, 2013. On November 18, 2013, an evidentiary hearing was held before the Honorable Stephanie P. McDonald. Charles T. Brooks, III represented Chandler at the PCR hearing. Ashleigh R. Wilson represented the State. In a written order signed October 27, 2014, Judge McDonald denied relief and dismissed the application. A timely notice of intent to appeal was served on October 29, 2014. This petition for writ of certiorari follows.

## ARGUMENT

The PCR judge erred in refusing to find trial counsel ineffective for not moving to strike a juror who was related to one of the State's witnesses.

On May 31, 2008, Calvin Gibbs was fatally shot while selling drugs to Che Carr outside of Petitioner Chandler's apartment at 930 Battery Avenue in the West Ashley area of Charleston. Gibbs' girlfriend, Cherelle Anderson, who was in the car with Gibbs at the time of the shooting, identified Che Carr as the shooter. (App. pp. 576 – 578). Che Carr's identical twin brother, Storme Carr, Chandler's cousin, Steven Brown, and Petitioner were present at the time of the shooting. There were also three women inside Petitioner's apartment at the time of the shooting: Latrice Smalls, Ta'Mequa Durant and Megan White. (App. p. 330, lines 12-19). Petitioner was charged with murder after Che Carr implicated him in the shooting. Latrice Smalls and Megan White were called as State's witnesses at trial.

After jury selection but before opening statements, Juror #304, Odessa Brown, sent a note to the judge saying, "When I got home yesterday evening, I realized that I may know one of the witnesses. Her name is Patricia Smalls. Thank you." (App. p. 112, lines 11-13). The judge questioned the juror who revealed that her cousin called her the night before and asked where she had been all day. When the juror told her cousin she had been in court, the cousin told her that the cousin's daughter had also been in court that day as well. (App. p. 113, lines 11-16). The juror told the judge that she knew her cousin's daughter by the name of Monet rather than Patrice or Latrice. (App. p. 113, lines 17-21). During juror qualification the jurors were asked if they knew Latrice Smalls, not Monet Smalls. (App. p. 29, line 8).

After further questioning of the juror, the judge asked if the parties had any objection to the juror continuing to serve. (App. p. 114, lines 22-23). Counsel for Petitioner responded, "Could we have a moment to discuss it Your Honor?" (App. p. 114, lines 24-25). Counsel for Petitioner then

responded, “Your Honor, while we have some depth of concern, and it’s really not an easy call and quite a close call, we won’t object to her remaining.” (App. p. 115, lines 3-6).

During the PCR hearing Petitioner alleged that counsel was ineffective for not moving to strike the juror who was related to State’s witness Latrice Smalls. (App. p. 1078, line 23 – p 1079, 1080, lines 1-9). Trial counsel Slade testified at the PCR hearing that he discussed the issue with the juror with Petitioner. (App. p. 1107, lines 1-8). Counsel also testified, “You know, generally in looking at hose situations you also got to look at who your alternate is.” (App. p. 1106, lines 23-24). Trial counsel Howe testified at the PCR hearing that he “thought Judge Young did a good job in questioning the juror about her ability to be partial, and the extent of her relationship with the witness, if she knew the witness sort of more so through somebody else than knowing her directly or having had a lot of association with the witness herself.” (App. p. 1123, lines 15-20).

In the order of dismissal the PCR judge wrote, “The Applicant alleges that counsel was ineffective in failing to have removed from the jury a juror who was related to one of the State’s witnesses. The Court finds that Applicant has failed to carry his burden of proving that counsel provided ineffective assistance of counsel in this regard.” (App. p. 8). The PCR judge also wrote, “The Court finds that counsel provided credible testimony that he discussed the removal of the juror with the Applicant during trial. (T. 114:24-115:6). Counsel’s decision to not request that the juror be removed does not constitute deficient performance.” (App. p. 9). Additionally, the PCR judge wrote:

This Court finds that Applicant has failed to show that any prejudice resulted from Juror Brown remaining on the jury. The record reflects that Judge Young properly questioned the juror about her ability to be fair and impartial despite her familial relationship to the State’s witness. The record further reflects that Juror Brown told the court that she could be fair and impartial despite having what appeared to be a distant relationship with the State’s witness Latrice Smalls. (T. 114:1-5). Juror Brown also told the Court that she had not discussed her relationship to Smalls with any of the other jurors. (T. 114:16-19). This Court finds that counsel’s performance

was not ineffective based on the Court's thorough inquiry of the juror regarding her ability to be fair and impartial. Applicant has presented no evidence to show bias or lack of impartiality by Juror Brown. Thus, the allegation is without merit.

(App. pp. 1141-1142). The PCR judge erred. Trial counsel was ineffective for not moving to strike a juror who was related to one of the State's witnesses. Petitioner was prejudiced by the deficient performance.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

In State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001), the Court wrote:

All criminal defendants have the right to a trial by an impartial jury. U.S. CONST. amends. VI and XIV; S.C. CONST. art. I, § 14. To protect both parties' right to an impartial jury, the trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998). "Through the judge, parties have a right to question

jurors on their *voir dire* examination not only for the purpose of showing grounds for a challenge for cause, but also, within reasonable limits, to elicit such facts as will enable them intelligently to exercise their right of peremptory challenge.” Gulledge, 277 S.C. at 370, 287 S.E.2d at 490.

The Court in Woods, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001), also wrote:

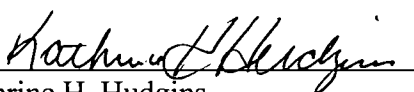
When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn. State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct.App.1991).

While the juror's failure to disclose in the present case was innocent and there is no inference of impartiality, the information would have been a material factor in the use of peremptory strikes. Trial counsel was ineffective for not moving to strike the juror who was related to one of the State's witnesses and replace that juror with an alternate juror who did not have any relationship to the State's witnesses.

**CONCLUSION**

Based on the above argument, the petition for writ of certiorari should be granted to allow further briefing on the issue.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of July, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO CHARLESTON COUNTY  
STEPHANIE P. MCDONALD, CIRCUIT COURT JUDGE

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TERRELL CHANDLER,

PETITIONER,

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STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO, 2014-002307

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Terrell Chandler states:

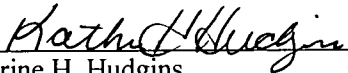
1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.

2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on November 18, 2013. In her opinion seeking certiorari from the order of dismissal is without merit.

3. She 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 her as counsel for Terrell Chandler.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 6th day of July, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County  
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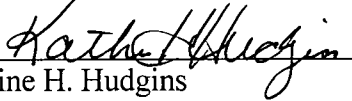
APPELLATE CASE NO, 2014-002307

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CERTIFICATE OF SERVICE

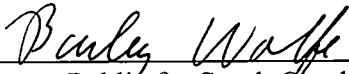
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Terrell Chandler, #300938, at Lieber Correctional Institution this 6<sup>th</sup> day of July, 2015.

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

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

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: October 24, 2021.