

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Georgetown County

S.C. Supreme Court

Kristi Lea Harrington, Circuit Court Judge  
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CRAIG GEATHERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002398  
\_\_\_\_\_

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

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    The PCR court erred by finding the defense counsel provided effective representation where he failed to object to Investigator Lambert’s testimony that Ruby Allman told him petitioner and her daughter were involved in a relationship, and that her daughter lived with her at the time of the cab driver robbery, since this hearsay testimony impermissibly corroborated the cab driver’s story, and it denied appellant his constitutional right to confrontation since Allman did not testify ..... 10

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## ISSUE PRESENTED

Whether the PCR court erred by finding the defense counsel provided effective representation where he failed to object to Investigator Lambert's testimony that Ruby Allman told him petitioner and her daughter were involved in a relationship, and that her daughter lived with her at the time of the cab driver robbery, since this hearsay testimony impermissibly corroborated the cab driver's story, and it denied appellant his constitutional right to confrontation since Allman did not testify?

## STATEMENT OF FACTS

Petitioner, Craig Geathers, had lived in New York City all of life. Petitioner was a certified tax preparer. He had relatives in Georgetown County so he would occasionally come to South Carolina. App.166, l. 23 – 167, l. 25.

Petitioner came to visit South Carolina early in 2001. He was still dating Georgetown resident, Betty McCray, at the time. App. 168, ll. 1-14. Betty was a flight attendant for Delta Airlines. They lived together for a short period of time in Georgetown County, and petitioner went back and forth to New York during their relationship. Petitioner said he still paid part of the household bills even when he was living in New York. App. 168, l. 18 – 169, l. 8.

Petitioner was accused of robbing a cab driver, Harold King, on August 5, 2001 in South Carolina. Petitioner would not learn of the accusations until 2009 because he had been back in New York City for some time.

### **The trial**

Petitioner's case was ultimately called to trial on June 21, 2010 before the Honorable Benjamin H. Culbertson. Eric Fox represented petitioner, and Nancy Cote', and Scott Hickson were the assistant solicitors. App. 1.

Petitioner testified in his own defense, and admitted he got a ride from cab driver King from his aunt's house in North Charleston to Georgetown on August 5, 2001. It was a long cab drive, and a high fare, so petitioner showed King in advance that he had the \$50 necessary for the ride. App. 171, l. 17 – 175, l. 15.

Petitioner's trial attorney, Eric Fox, would later acknowledge he thought cab driver King was "working off the books," and that King had reason to misrepresent what actually happened that night. The robbery story was convenient. Petitioner testified at trial that King took him to his

girlfriend's house in St. Stephen that night. He saw Ms. Allman in the front yard and "Ms. Allman came to the door and told me that [Betty] wasn't home. So, I said okay and left and got back in his cab and then he took me to Georgetown." King waited for him in the cab while he spoke to Ms. Allman, and then King drove him back home. App. 174, l. 1 – 175, l. 18.

As will be seen *infra*, King's story was quite different. King said when he took petitioner by Ms. Allman's house that he was threatening to King that he was going to kill Betty if she was at home. King said that petitioner forced him to shine his headlights on the front door, and to blow his horn so the occupants of the house would emerge.

Betty McCray was a flight attendant for Delta, and that she lived in Moncks Corner. She met petitioner in New York and she knew she had family in Georgetown. McCray maintained that they had a "horrible breakup" in the early part of 2001 when she told him she was ending the relationship. App. 111, l. 14 -- l. 112, l. 22.

Betty could not remember the months she may have shared an apartment with petitioner in South Carolina, and she said she also did not recall if they "shared paying the rent." App. 117, ll. 3-16. Betty testified that she did not know if petitioner knew that she lived with her mother, Ms. Allman, or if petitioner had ever gone by her mother's house. Ms. Allman did not testify at trial regarding whether petitioner's benevolent testimony of stopping by Allman's house with cab driver King that night was correct, or whether King's version of it being a hostile stop by an angry petitioner was actually true. App. 117, l. 24 – 118, l. 5.

Harold King testified on August 5, 2001 that he was driving a North-area cab. King said he picked petitioner up "at a little club where he was standing outside waiting." Petitioner told him he "wanted to go to St. Stephen." App. 119, ll. 16-21.

King claimed he picked up another “young lady” at a gas station while petitioner was riding with him. “I took her to her destination, and once I dropped her off, I proceeded to take Mr. Geathers where he wanted to go.” App. 119, l. 22 – 120, l. 7.

King claimed it was “customary to get half the fare up front, and as we were proceeding to St. Stephen, I kept asking him for the money and he wouldn’t give it to me.” App. 120, ll. 4-13.

King testified that he told petitioner he was going to “pull over right here” in Monk’s Corner unless petitioner paid him for half the fare. King claimed he pulled to the side of the road, and got out of the cab to open the door for petitioner to get out, that petitioner “got out of the cab and pulled a pistol out of his backpack and told me to get in the car and drive.” King maintained petitioner held the gun to the back of his head. App. 120, ll. 8-25.

King said that petitioner told him to take him to his girlfriend’s (Allman’s) house, and that the angry petitioner told him “that he was going there to kill his girlfriend” when they arrived. He claimed petitioner had him shine the lights on front door when they arrived, and ordered him to blow the horn “so he could see if anybody came to the door.” He said petitioner had a gun, that he approached the house, knocked on the door, but no one answered. App. 122, l. 1 – 123, l. 12. King maintained that petitioner threatened to kill him, that petitioner told him that his girlfriend had made him angry, “and if she was at home, he was going to kill her first and then he was going to kill me, but she wasn’t there.” App. 122, ll. 1-6.

After they left the Allman house King ran his cab off of the road, and into a ditch. Petitioner allegedly demanded his money at the time of the wreck, told King to keep “looking straight ahead, and he was gone.” App. 125, l. 13 – 126, l. 15.

The police came, and King showed them the Allman house where he had taken petitioner that night. App. 128, l. 21 – 129, l. 5. King also testified he selected petitioner’s photograph from

a lineup not long after the incident. App. 129, l. 13 – 130, l. 25. King did acknowledge his criminal record for being in possession of stolen goods, and a possession of cocaine conviction. App. 131, ll. 12 -23.

The jury ultimately found petitioner guilty of armed robbery and kidnapping. App. 240, ll. 7-16. Judge Culbertson sentenced petitioner to concurrent terms of twenty-five years' imprisonment. App. 247, ll. 12-16.

Petitioner's convictions were affirmed in State v. Craig Geathers, 2012-UP-259 (S.C. Ct.App., filed May 2, 2012). Petitioner filed an application for post-conviction relief on May 2, 2013. App. 249 – 251. The state filed a return dated September 18, 2013, requesting that an evidentiary hearing be convened. App. 252 – 255.

#### **The PCR hearing**

An evidentiary hearing was convened on August 28-29, 2014, before the Honorable Kristi L. Harrington. Tristan Shaffer represented petitioner. Joshua L. Thomas was the assistant attorney general. App. 258.

Trial counsel, Eric Fox, recalled that petitioner was accused of robbing a cab driver. Petitioner gave the cab driver "half the fare upfront." The driver claimed that petitioner threatened him "along the way at gunpoint and was eventually robbed of some amount of money in Georgetown County. The car ran off the road, actually, and crashed, at which point, Mr. Geathers left and the cab driver was able to get out, get away from him." App. 265, l. 9 – 266, l. 3.

Fox said he remembered that the incident took place in 2001 but his file was not opened until November 20, 2009, seemingly after petitioner was arrested years later in New York. App. 266, l. 6 – 267, l. 24. Petitioner was offered a twelve year negotiated sentence for armed robbery with a dismissal of the kidnapping charge. Petitioner "had absolutely no interest in pleading guilty.

He said, that was not me. So, that was the – from the beginning, was looking at almost certainly going to trial.” App. 268, ll. 9-25. The cab driver was “going to be the main witness, pretty much the only witness.” App. 269, ll. 1-4.

Fox noted that they were unable to find Ms. Allman, the mother of petitioner’s ex-girlfriend, Betty McCray, prior to trial. Fox remembered that Betty gave an in-court identification of petitioner at trial. Betty labeled the end of her relationship with petitioner as “a very nasty breakup.” Fox also remembered cab driver King’s assertion at trial that petitioner said he wanted to kill Betty. App. 272, l. 11 – 273, l. 25.

Fox testified that their defense strategy was to call into question the believability of King since it appeared he was not working by the rules of the cab company, was joyriding, and was working off the books. App. 278, l. 17 – 279, l. 7. Fox offered that petitioner never denied being in King’s cab, but he denied robbing him. The cab ride had been routine, and King had his own motive to misrepresent the events of that evening. App. 279, l. 21 – 280, l. 13.

On cross-examination, Fox was asked why he did not object to Detective Lambert testifying about what Allman allegedly told him. Fox responded that Allman verified that Betty was living with Allman in 2001, and Betty was dating petitioner. Fox reasoned even if Detective Lambert’s testimony was hearsay, “it just wasn’t an issue” because it was consistent with their theory with what happened that day in 2001. App. 285, ll. 1-18.

Petitioner testified at the PCR hearing that he only found out about the armed robbery and kidnapping charges when he was in New York in 2009. He had been arrested on another charge in New York at that time. App. 292, ll. 2-23. Petitioner recalled that Fox was appointed as his attorney, but he did not see King’s written statement until four days before his trial. App. 294, ll. 6-

19. Petitioner also said he did not know that his former girlfriend was going to testify against him until “she showed up in court.” App. 294, l. 25 – 295, l. 5.

Petitioner confirmed he was not going to accept any plea offer because “I didn’t do anything.” App.295, ll. 9-16. Petitioner said he never threatened King, and that he did not own a gun. App. 296, ll. 1-23.

Petitioner reasoned that not having Allman’s testimony at trial was very prejudicial to him given Detective Lambert’s testimony about what Allman allegedly told him. Petitioner told the PCR judge that King’s version of events about what happened at Allman’s house that night was fictitious. Petitioner said all that happened was Allman came to the door: “She told me her daughter was not there, and I got back in the cab.” App. 296, ll. 1-23. Petitioner complained that there was no corroboration of his defense, that this was an innocent cab ride, and an innocent stop at Allman’s house. App. 297, l. 16 - 299, l. 2.

An order of dismissal dated October 7, 2014, was issued. App. 306 – 313. This order found petitioner failed to meet his burden of showing trial counsel was ineffective for failing to object to the introduction of Allman’s statements through the police officer as a violation of the Confrontation Clause. App. 310. The court reasoned Allman’s statements were not offered for the truth of the matter asserted. App. 310.

The court further wrote that Allman’s statements only identified her as the owner of the home petitioner visited on the day in question, and his relationship “with the owner.” “These statements are intended to demonstrate why the officer began to investigate the applicant as a suspect . . . . Furthermore, because the testimony was not hearsay, it was not objectionable as a violation of the Confrontation Clause.” App. 311.

The court further reasoned that none of the information in Allman's statement contradicted petitioner's defense. "It also had no bearing on the truth of the victim's accusations."

App. 312.

## ARGUMENT

The PCR court erred by finding the defense counsel provided effective representation where he failed to object to Investigator Lambert's testimony that Ruby Allman told him petitioner and her daughter were involved in a relationship, and that her daughter lived with her at the time of the cab driver robbery, since this hearsay testimony impermissibly corroborated the cab driver's story, and it denied appellant his constitutional right to confrontation since Allman did not testify.

### **Discussion**

In Crawford v. Washington, 541 U.S. 36, 59 (2004), the United States Supreme Court held that the admission of testimonial hearsay against an accused violates the Confrontation Clause if: (1) the declarant is unavailable to testify at trial, and (2) the accused has no prior opportunity to cross-examine the declarant.

In this case, McCray's mother, Allman, a key witness, and she gave Detective Lambert a statement during the course of a criminal investigation. The statement was therefore testimonial.

Allman was unavailable to testify at trial. Further, petitioner had no prior opportunity to cross-examine the declarant.

Cab driver King's testimony was explosively prejudicial to petitioner. King claimed as they approached Allman's house that petitioner told him he was going to kill Betty if she was home.

Allman was a critical witness because petitioner's testimony was that he calmly went to see Betty, and Allman simply told petitioner she was not at home when he knocked on the door. The jury, in the absence of Allman's live testimony, was thus left with investigator Lambert corroborating King's testimony that King and petitioner went by Allman's house that night to see Betty. The rest of King's story was left unchallenged in Allman's absence.

The Sixth Amendment to the United States Constitution provided that petitioner had the right to confront and cross-examine the witnesses against him. Pointer v. Texas, 380 U.S. 400, 406 (1965). The state used this isolated part of Allman's alleged statement to Investigator Lambert to its advantage.

The PCR court erred by reasoning that Lambert imparting Allman's alleged statements to the jury was not prejudicial to petitioner because petitioner conceded Betty was his girlfriend, and that he went by Allman's house with King that evening. This reasoning fails to take into consideration how this "corroboration" of **King's testimony** was prejudicial to petitioner.

When viewed in context, the inability of petitioner to confront and cross-examine Allman was prejudicial to petitioner. Defense counsel's instinct that King's story seemed to be fabricated because he was "working off of the books" or otherwise was correct. However, counsel's failure to object to Lambert's hearsay testimony about what Allman allegedly told him constituted deficient performance because petitioner was denied his constitutional right to confrontation.

Further, as explained above, Lambert's testimony about what Allman allegedly told him, in isolation, appeared to be corroborating cab driver King's highly prejudicial testimony. Consequently, this prejudicial hearsay testimony being admitted without objection by trial counsel constituted ineffective assistance of counsel. See, Vail v. State, 402 S.C. 77, 738 S.E.2d 503 (Ct.App. 2013).<sup>1</sup>

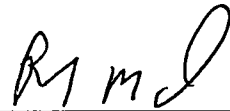
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<sup>1</sup> Certiorari denied by this Court.

CONCLUSION

By reason of the foregoing arguments, a writ of certiorari to allow full briefing on this issue should be granted.

Respectfully submitted,



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Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of July, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GEORGETOWN COUNTY  
KRISTI LEA HARRINGTON, CIRCUIT COURT JUDGE

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CRAIG GEATHERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002398

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Craig Geathers states:

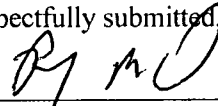
1. He is the Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.

2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on August 28-29, 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 Craig Geathers.

Respectfully submitted,



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Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 10th day of July, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Georgetown County

Kristi Lea Harrington, Circuit Court Judge  
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CRAIG GEATHERS,

PETITIONER,

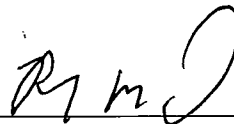
V.

STATE OF SOUTH CAROLINA,

RESPONDENT  
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CERTIFICATE OF SERVICE  
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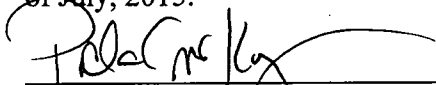
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Joshua L. Thomas, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Craig Geathers, #341480, at Lieber Correctional Institution, this 10th day of July, 2015.



\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 10th day  
of July, 2015.



(L.S.)

Notary Public for South Carolina  
My Commission Expires: July 24, 2022.