

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

**RECEIVED**

James R. Barber, III, Circuit Court Judge

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MAR 14 2016

Appellate Case No. 2015-000095

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**S.C. SUPREME COURT**

Marques Antonio Hudson,

Petitioner,

v.

State of South Carolina,

Respondent.

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REPLY OF PETITIONER

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## ARGUMENT

**1. THE PETITIONER SUBMITTED CREDIBLE EVIDENCE CORROBORATING HIS ARGUMENT THAT TRIAL COUNSEL SHOULD HAVE ATTACKED THE STATE'S RACE-NEUTRAL REASON AFTER A FAILED BATSON CHALLENGE.**

It appears to be the argument of the Respondent that the Petitioner did not corroborate his assertion that the sole black juror was not the only juror with a background in criminal law. However, at the PCR Hearing, the Petitioner testified that James Carpenter was another lawyer seated on the jury and that he had a background working at the district attorney's office associated with the prosecution of criminal defendants. This assertion was not challenged by the Respondent. Therefore, in the face of this evidence, the State's race-neutral reason would have failed and the first prong of the Strickland test satisfied.

As stated in the Initial Brief of Petitioner, Petitioner was prejudiced due to Counsel's failure to properly make a Batson challenge as the Court of Appeals ruled that the Batson challenge was not preserved for review and the Petitioner's complaint for a violation of his rights under the Equal Protection Clause of the United States Constitution that prohibits a prosecutor from challenging potential jurors solely on the basis of race, was not preserved. Batson v. Kentucky, 476 U.S. 79 (1986).

**2. THE PETITIONER DEMONSTRATED THAT SEEKING A CURATIVE INSTRUCTION OR MOVING FOR A MISTRIAL AFTER COUNSEL'S OBJECTION TO THE PEDIATRIC OPHTHALMOLOGISTS'S HEARSAY TESTIMONY WAS NECESSARY.**

By failing to request a curative instruction or mistrial, trial counsel prejudiced the Petitioner by allowing objectionable testimony from the Court's record and in the consideration of the jury. Furthermore, as stated in the Initial Brief, the Court of Appeals noted that Counsel's hearsay objection to doctor speaking on behalf of the medical was not preserved for review. State v. Hudson, Op. No. 10-UP-141 (S.C. Ct. App. filed February 22, 2010).

Dr. Johnson's mention of the "team" was "very general" and that is the nature of hearsay, speaking for people who are not present. Therefore, I don't think the general nature of the

mention is excusable. Further, whether or not the trial Court indicated that trial counsel should move on is irrelevant to the analysis unless the trial Court also indicated that the record was preserved. Trial counsel could have asked for permission to preserve the record.

As such, the Petitioner was prejudiced by Counsel's deficient performance by not only allowing the testimony to remain in the Court's record, but also failing to preserve the objection on appeal.

**3. THE PETITIONER WAS ABLE TO USE WITNESS STATEMENTS TO SUPPORT THAT COUNSEL WAS INEFFECTIVE IN FAILING TO CALL CERTAIN WITNESSES.**

The first thing of note in reply is that Carrie Smith did indeed testify at the PCR Hearing. Ms. Smith testified that Applicant's Exhibit 1 was her statement and recalled giving the statement to police. Carrie Smith's statement that indicated the victim was "somewhat scared" of water and has to be "encouraged" to sit down was directly on point in support of the Petitioner's defense. However, trial counsel did not cross examine Ms. Smith on her statement or otherwise enter her statement into evidence. Therefore, the PRC judge did not have to speculate at all as to her testimony and the Petitioner was prejudiced as a result of his failure to pursue this line of questioning.

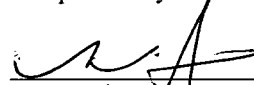
With regards to Almodovar and Rayle, 1) is their statements were entered into the record without objection, and 2) were admissible anyhow considering the nature of their testimony was shown through their statements. Pauling v. State, 331 S.C. 606, 503 S.E.2d 486 (1998).

**CONCLUSION**

For the reasons stated, petitioner asks this Court to grant the petition for a writ of certiorari.

March 9, 2016

Respectfully submitted,



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PROOF OF SERVICE

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I hereby certify that I have served a copy of the foregoing Reply of Petitioner in the above-captioned matter on the following by depositing same in the United States Postal Service first class mail, postage prepaid, on March 10, 2016, to the addresses as follows:

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March 10, 2016