THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

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SC Court of Appeals

William Jeffrey Young, Circuit Court Judge

Opinion No. 5382 (S.C. Ct. App. filed February 24, 2016)
2011-GS-45-00095

The State of South Carolina ..... Respondent

v.

Marc Anthony Palmer ..... Petitioner

REPLY TO RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

Ryan L. Beasley, No. 68307
RYAN L. BEASLEY, P.A.
650 E. Washington Street
Greenville, SC 29601
(864) 679-7777 (Phone)
(864) 672-1406 (Fax)
rlb@ryanbeasleylaw.com

Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent Defense, Appellate Division
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29201-1589
(803) 734-1330 (Phone)
(803) 734-1397 (Fax)
Attorneys for the Petitioner

Other counsel of record:
Donald J. Zelenka, Office of the Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

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ARGUMENT

I. Did the Court of Appeals error in finding that the trial court properly granted the State's Batson v. Kentucky motion and quashing the original jury?

The Court of Appeals' decision is in direct conflict with this Court's decision in State v. Inman, 409 S.C. 19, 26, 760 S.E.2d 105, 108 (2014). The petitioner's counsel gave a race neutral explanation for striking Juror 173. He explained that he struck Juror 173 due to his employment as a plant supervisor. (R. p. 36, ln. 13-17). Given Juror 173's supervisory capacity, counsel was concerned that if he was appointed foreman on the jury and was unsympathetic to the petitioner, there could be improper influence. (R. p. 36, ln. 13-17). The respondent does not dispute that the petitioner's reason for striking Juror 173 was race neutral. (*See* Return at pp. 2-7).

After the petitioner's counsel gave a race neutral explanation for the strike, "the circuit court should have shifted the ultimate burden of persuasion back to the State to show that the proffered reason was pretextual." Inman, 409 S.C. at 28, 760 S.E.2d at 108 (citing State v. Evins, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007)). The State never gave a reason why it thought the petitioner's reason for striking Juror 173 was pretextual. (*See* R. p. 37, ln. 24 – p. 39, ln. 15). It acknowledged that it "hadn't had quite an opportunity to go down through everybody." (R. p. 29, ln. 1-3). Yet, it was the State's burden to do so. *See* Inman, 409 S.C. at 26, 760 S.E.2d at 108 ("The ultimate burden always rests with the party asserting the *Batson* challenge to prove purposeful discrimination") (citations omitted).

The respondent argues that *because* the State did not give a reason why it thought the petitioner's reason for striking Juror 173 was pretextual, the State somehow withdrew its challenge to Juror 173. (*See* Return at 6-7). Not only is the respondent's assertion in direct contrast to this Court's holding in Inman, it is not supported by the record.

The petitioner struck 11 prospective jurors, both white and black. (R. p. 33, ln. 1-18). The State made the Batson motion with respect to the white prospective jurors, including Juror 173. (R. p. 34, ln. 8 – p. 37, ln. 20). The petitioner's counsel gave race neutral reasons for striking the white prospective jurors, including Juror 173. (R. p. 34, ln. 8 – p. 37, ln. 20). The State then *gave examples* as to why it believed the petitioner's counsel's explanations were pretextual. (R. p. 37, ln. 24-25; 38, ln. 1-25; 39, ln. 1-15). The State even used the phrase "for example." (R. p. 38, ln. 3). By using examples, the respondent did not withdraw its challenge to Juror 173. There is nothing in the record to suggest that the State withdrew its Batson motion with respect to any of the prospective jurors.

Even if the State somehow withdrew its objection to Juror 173, the trial court's ruling clearly encompassed Juror 173. The trial court stated it was "not convinced" that the "answers" offered by petitioner's counsel for striking the prospective jurors "were race neutral." (R. p. 40, ln. 9-12 stating "[t]he defense has stricken and I'm not convinced that the answers that were race neutral and therefore I am going to strike this jury"). The "answers" offered by the petitioner's counsel included an answer for Juror 173. (R. p. 34, ln. 8 – p. 37, ln. 20). The appellant therefore could not strike Juror 173 during the re-paneling.

In both Inman and here, the trial court improperly placed the ultimate burden of persuasion on the petitioner. In Inman, the trial court stated that "I'm going to grant the State's motion based on those three individuals jurors numbers 17, 60, and 166 *that the reasons given I don't believe are sufficient.*" Inman, 409 S.C. at 24, 760 S.E.2d at 107 (emphasis that of the Court). Similarly here, the trial court stated that "[t]he defense has stricken and *I'm not convinced that the answers that were race neutral* and therefore I am going to strike this jury. We will re-strike the entire panel." (R. p. 40, ln. 9-12). It was not the petitioner's burden to

convince the court that his answers were race neutral. *See* Inman, 409 S.C. at 26, 760 S.E.2d at 108. It was the State's burden to prove purposeful discrimination. Id.

The Court of Appeals never addressed the issue of whether the trial court committed legal error by placing the ultimate burden of persuasion on the petitioner. It instead held that the trial court "did not err in granting the State's *Batson* motion" because "the State demonstrated the explanations were pretextual by showing [the petitioner] did not strike similarly-situated members of another race." (Appx. 7). However, this was a finding for the trial court to make, not the Court of Appeals. *See* Hernandez v. New York, 500 U.S. 352, 364, 111 S.Ct. 1859, 1869, 114 L.Ed.2d 395 (1991) ("*Batson's* treatment of intent to discriminate as a pure issue of fact, subject to review under a deferential standard, accords with our treatment of that issue in other equal protection cases"). Even if the Court of Appeals could properly make this finding, such a finding was in error because the State offered no similarly situated argument for Juror 173. Because Juror 173 sat on the second jury, prejudice is presumed and the proper remedy is a new trial. Inman, 409 S.C. at 29, 760 S.E.2d at 110.

II. Did the Court of Appeals error in finding that the trial court properly denied the petitioner's motion for a mistrial and motion for a new trial after a witness testified that he took and passed a polygraph test, clearing the witness of the murder for which the petitioner was on trial?

The respondent does not dispute that the Court of Appeals adopts a *per se* rule that so long as the results of a polygraph are not introduced into evidence at trial, there is no prejudice to the defendant. (*See* Court of Appeals Opinion, Appx. 10). Further, the respondent does not argue that the adoption of this rule directly contradicts this Court's precedent. *See* Bruno v. State, 347 S.C. 446, 451, 556 S.E.2d 393, 395 (2001); State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007).

The respondent instead argues that the error preservation rules prohibit him from "discuss[ing]" the "results" of the polygraph before this Court. (Return at 10, fn. 2). However, error preservation rules only require a litigant to "fairly raise" an issue to preserve it. State v. Brannon, 388 S.C. 498, 502, 697 S.E.2d 593, 595-96 (2010) (citations omitted). Throughout this case, the petitioner fairly raised issues concerning the admission of polygraph evidence as a basis for a mistrial and new trial. Thus, whether the court of appeals erred in finding that the trial court properly denied the petitioner's motion for a mistrial and motion for a new trial due to the admission of the polygraph evidence, including whether that evidence consisted of the results of the polygraph, is properly before this Court.

At the trial court, the petitioner's counsel moved for a mistrial and a new trial due to the admission of the polygraph evidence. (R. p. 467, ln. 20 – 25; p. 523, ln. 8-9). In the petitioner's opening brief to the court of appeals, the petitioner discussed the results of the test:

> At trial, the [petitioner's] counsel implied that Michael Montgomery could have murdered the victim in retaliation for a robbery the night before. (R. p. 423, ln. 6-8; 425, ln. 12-25; 426, ln. 1-25; 427, ln. 1-25; 428, ln. 1-3). Over the objection of the appellant, the court permitted Montgomery's testimony that he took and successfully passed a polygraph exam, clearing himself of the murder. (R. p. 430, ln. 5-24).

(Final Brief of Appellant at 2). The petitioner's second issue for review was stated as follows: Did the trial court error in denying the appellant's motion for a mistrial and new trial after the admission of a witness taking and successfully passing a polygraph examination? (Final Brief of Appellant at 9). In further discussing the issue, the petitioner explained that [o]ver the objection of the appellant, the court permitted testimony that Montgomery took a polygraph exam and was "cleared" by the police ... The court held that since it was the appellant's trial, not Montgomery's trial, Montgomery's testimony that he took and passed a polygraph was admissible." (Final Brief of Appellant at 9). The petitioner thereafter relied on State v. Council,

335 S.C. 1, 23, 515 S.E.2d 508, 519 (1999), and various other cases to support its argument that "[t]he South Carolina Supreme Court has consistently held the results of polygraph examinations are generally not admissible because the reliability of the tests is questionable." (Final Brief of Appellant at 9-10) (internal quotations omitted).[1] This issue was fairly presented to the trial court and court of appeals.

Although the State did not ask the witness whether he "passed" or "failed" the polygraph, by its use of the term "cleared," it elicited evidence concerning the result of the test:

Q: You voluntarily submitted yourself to a polygraph right?

Mr. Ballinger: Objection.

The Court: No overruled.

Q: You voluntarily submitted yourself to a polygraph right?

A: Correct.

Q: Anything they asked of you, you gave it to them right?

A: That's correct.

Q: And you were cleared by the police?

A: Correct.

(R. p. 430, ln. 13-24). As explained in the petitioner's Petition for Writ of Certiorari, the term "cleared" is often used rather than "passed" when discussing polygraph results. (*See* Petition at 10). The unmistakable evidence is that the witness passed the polygraph.

Even if the results of the polygraph were not introduced into evidence at trial, or if error preservation rules prohibit the petitioner from discussing the results of the polygraph before this

[1] Importantly, in its briefing to the court of appeals, the respondent did not claim that the error preservation rules prohibited the petitioner from arguing that the results of the polygraph were discussed.

Court, the court of appeals incorrectly analyzed whether the above-quoted testimony created an impermissible inference. It stated that there was no prejudice to the petitioner because the jury could have inferred that the witness passed the polygraph or it could have made an "equally plausible inference" that petitioner was not asked to take a polygraph. (Appx. 9-10). The correct issue is whether it was "equally plausible" that the witness passed the polygraph as it was that he failed the polygraph. *See* Bruno, 347 S.C. at 451-52 556 S.E.2d at 396. The respondent does not dispute this, and in fact, this reasoning makes sense. If it plausible that the witness passed the polygraph, and it is not equally plausible that the witness failed the polygraph, the results of the polygraph would, in effect, be introduced as evidence. Here, the plausible inference from the above-quoted testimony was that the witness passed the polygraph.[2] There was not an "equally plausible inference" that the witness failed the polygraph. The *only* plausible inference is that the witness passed the polygraph.

In Johnson, this Court addressed a second impermissible inference created by a reference to a polygraph - - one that bolsters the credibility of the witness. Johnson, 376 S.C. at 11, 654 S.E.2d at 836. The court of appeals overlooked this point and did not address this issue. The respondent attempts to distinguish Johnson because in that case, when asked whether a third statement the witness gave to police was the whole truth, the witness answered "Well, the second statement was the truth as well, but, therefore, they kind of made me feel like I was lying because I didn't pass the polygraph test. And the second one ..." Johnson, 376 S.C. at 10, 654 S.E.2d at 836. However, the focus of the Court in Johnson was not whether the results of the polygraph were admitted. Rather, the focus was whether the witness' statement created an

[2] Nevertheless, as explained above, no inference had to be made, as being "cleared" with respect to a polygraph means "passing" a polygraph.

inference that bolstered the credibility of the State's witnesses. Johnson, 376 S.C. at 11, 654 S.E.2d at 836.

Like in Johnson, the case against the petitioner here essentially consisted of witness testimony, and the credibility of each witness was crucial to the verdict. Id. In opposition to the petitioner's motion for a new trial, the State even told the court that "we of course just reiterate the previous arguments made to the court obviously this case boiled down to issue of credibility." (R. p. 523, ln. 11-13). Despite the respondent's characterization, Montgomery was a key witness. The petitioner's counsel implied that Montgomery could have murdered the victim in retaliation for a robbery the night before. (R. p. 423, ln. 6-8; 425, ln. 12 – 428, ln. 2). On cross examination, the State elicited evidence that at the time of the murder, Montgomery did not have the same physical characteristics as the shooter. (R. p. 429, ln. 2-23). It also elicited testimony that Montgomery was not near the scene of the shooting on the night of the murder. (R. p. 430, ln. 2-4). It thereafter elicited the testimony that Montgomery submitted to the polygraph test and was "cleared by the police." (R. p. 430, ln. 13-24). This was improper bolstering evidence. The respondent does not dispute or attempt to distinguish any of the cases cited by the petitioner from other jurisdictions that hold this to be improper bolstering evidence.

Instead, the respondent argues that the purpose for the above-quoted testimony was to show that Montgomery cooperated with law enforcement. (Return at 10). However, even if this were true, it is still improper bolstering evidence and was inadmissible when analyzed under Rule 403. (*See* Petition for Writ of Certiorari at 13). The respondent does not dispute or attempt to distinguish any of the cases cited by the petitioner in support of this argument.

The respondent next argues that even if the trial court erred in permitting the polygraph evidence, the petitioner was not prejudiced and the introduction of this evidence was harmless.

(Return at 10-11). The petitioner does not need to show that he was prejudiced or harmed. The trial court here failed to ensure that no improper inference would be drawn from the polygraph evidence. *See* State v. McGuire, 272 S.C. 547, 551, 253 S.E.2d 103, 105 (1979) ("If such [polygraph evidence] is brought out in the testimony, the trial judge should be meticulous to see that no improper inference is created); Johnson, 654 S.E.2d at 836 (It is . . . incumbent upon the trial judge to ensure that should such a reference be made, no improper inference be drawn therefrom"). As held by the Court in State v. Britt, "[w]hat effect the testimony as to the reputation of the appellant . . . and of his failure to take a lie detector test had upon the jury is only known to the members thereof. We reach the conclusion that it could have affected the verdict in this case. When it is made to appear that anything has occurred which may have improperly influenced the action of the jury, the accused should be granted a new trial, although he may appear to be ever so guilty, because it may be said that his guilt has not been ascertained in the manner prescribed by law." State v. Britt, 235 S.C. 395, 425, 111 S.E.2d 669, 685 (1959), *reversed on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

Nevertheless, the petitioner was prejudiced and harmed by this evidence. As explained above and as acknowledged by the State, this entire case rested on the credibility of witnesses. (R. p. 523, ln. 11-13). Even during closing, the State focused on witness credibility. (R. p. 473, ln. 14-16, 18-25; 474, ln. 2-8). Montgomery's credibility was crucial because petitioner's counsel implied that Montgomery could have murdered the victim in retaliation for a robbery the night before. (R. p. 423, ln. 6-8; 425, ln. 12 – 428, ln. 2). In response to the State's questions, Montgomery testified that at the time of the murder, he did not have the same physical characteristics of the shooter, he was not near the scene of the shooting, he submitted to the polygraph, and he was cleared by the police. (R. p. 429, ln. 2-23; 430, ln. 2-4, 13-24). If the jury

believed that Montgomery was telling the truth, then Montgomery could not have been the shooter. The petitioner was prejudiced by this improper bolstering evidence. The petitioner should be granted a new trial.

III. Did the Court of Appeals error in finding that the trial court properly denied the petitioner's motion for a speedy trial?

The respondent argues, without any citation to the record, that the petitioner's trial was delayed because each of his new attorneys needed time to prepare for trial. (Return at 14-15). Similarly, the trial court stated that one of the reasons for the delay is that "it appears to be at least [the petitioner] being unsatisfied with his attorneys." (R. p. 55, ln. 7-9). The court of appeals also stated that "[a]n additional reason for the delay was due to [the petitioner] having four attorneys prior to trial." (Appx. 12). However, all of these conclusions were reached without any record evidence to support them. There is no evidence that any of the petitioner's attorneys requested a continuance, or indicated that they needed time to get up-to-speed on the case. *See* State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) (this Court may conduct its own review of the record to determine whether the trial judge's decision is supported by the evidence). Instead, the petitioner made numerous motions for a speedy trial, and each of them was denied.

The petitioner's continuous assertion of his right to a speedy trial are set forth at length in the Petition for Writ of Certiorari. (Petition at 14-19). In an attempt to excuse the State's conduct, the respondent argues that "[a]t the July 21, 2011 hearing, the solicitor noted that Palmer's case would not have been able to be tried until, at the earliest the Spring of 2012 because of other matters already scheduled." (Return at 14). However, even assuming other matters were scheduled, this would not absolve the State's responsibility to protect the petitioner's Constitutional right to a speedy trial. As recognized by the United States Supreme

Court, the "State" does not only encompass the Solicitor's Office, but also includes the Court, Court personnel, and other branches of government. Dickey v. Florida, 398 U.S. 30, 51, 90 S.Ct. 1564, 1575, 26 L.Ed.2d 26 (1970), J. Brennan, concurring ("If the defendant does not cause the delay of his prosecution, the responsibility for it will almost always rest with one or another governmental authority. The police and prosecutor are not the only governmental officials whose conduct is governed by the Speedy Trial Clause; it covers that of court personnel as well . . . And the public officials responsible for delay may not even be associated with law enforcement agencies or the courts. Delay, for example, may spring from a refusal by other branches of government to provide these agencies and the judiciary with the resources necessary for speedy trials"). It is the State of South Carolina that failed to ensure the petitioner's right to a speedy trial.

The respondent asserts that the trial court's finding that the petitioner did not suffer any prejudice from the delay is supported by the record because the petitioner was able to challenge "some witnesses' credibility with the use of their prior statements." (Return at 16). First, this reasoning is flawed because "affirmative proof of particularized prejudice is not essential to every speedy trial claim." Doggett v. United States, 505 U.S. 647, 655, 112 S.Ct. 2686, 2692, 120 L.Ed.2d 520 (1992) (citations omitted). Rather, "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify. While such presumptive prejudice cannot alone carry a Sixth Amendment Claim without regard to the other *Barker* criteria, it is part of the mix of relevant facts, and its importance increases with the length of delay." Id., 505 U.S. at 455-56, 112 S.Ct. at 2693 (internal citation omitted).

Although the petitioner's counsel was able to cross examine Maurice Smith at trial, it does not change the fact that Smith first implicated the petitioner in the murder *after* the petitioner's numerous requests for a speedy trial. In Smith's first statement, given close in time to the night of the murder, he never mentioned the petitioner being the shooter. (R. p. 134; ln. 17-25; 135, ln. 1-2). After giving this statement, Smith was charged with drug offenses. (R. p. 136, ln. 14-20). While in custody on the drug charges, Smith and the petitioner got into a verbal altercation, and Smith subsequently implicated the petitioner in the murder. (R. p. 136, ln. 21-25; 137, ln. 1-2, 18-25; 18, ln. 12-14). The ability to cross examine Smith did not negate the prejudice to the petitioner.

Similarly, the ability to cross examine Brittany Croskey did not negate the prejudice to the petitioner. When law enforcement asked Croskey about the shooter in November 2010, she did not have a feeling who it was. (R. p. 210, ln. 19-25; 211, ln. 1-6). She only began thinking that the petitioner could be the shooter when people started talking around town. (R. p. 211, ln. 7-22). However, when questioned about these statements to law enforcement during cross examination, Croskey testified that she did not remember. (R. p. 211, ln. 18-22). Barker, 407 U.S. at 532, 92 S.Ct. at 2193 ("There is also prejudice if defense witnesses are unable to recall accurately events of the distant past").

Even further, the petitioner was prejudiced by defense witness James Palmer's inability to remember what petitioner looked like before he left the house the night of the murder. (R. p. 357, ln. 25; 358, ln. 1-3). Barker, 407 U.S. at 532, 92 S.Ct. at 2193. This is not disputed by the respondent.

Moreover, despite the respondent's contention, the prejudice resulting from Elijah Kennedy's death is properly before the appellate courts. The petitioner's counsel argued that the

petitioner was prejudiced by the State's delay because this was an eye witness driven case. (R. p. 54, ln. 12-14). This was sufficient to preserve Elijah Kennedy's unavailability, as it relates to prejudice, for appellate review.[3] Brannon, 388 S.C. at 502, 697 S.E.2d at 595-96. The speedy trial error was brought before the trial court giving it an opportunity to rule on the issue.

The respondent asserts that the transcript reflects that Elijah Kennedy's testimony was likely more favorable to the State. (Return at 16). The State called Elijah's cousin, Glenn Kennedy, to testify at the trial. During proffer, Glenn Kennedy testified that "Mr. Palmer had asked [Elijah] about parking a car down to his house and that he heard that rumors that something was going on with that car. Pretty much just like that and he said that he didn't want to get mixed up in anything and asked me what did I think he should do." (R. p. 302, ln. 15-20). The trial court did not permit this testimony in evidence. Before the jury, Glenn Kennedy testified that he received a phone call from Elijah and went to Elijah's house. (R. p. 304, ln. 23 – p. 305, ln. 4). When Glenn arrived at Elijah's house, he saw a blueish greenish Dodge Neon parked behind a shed, which was unusual to him. (R. p. 305, ln. 9 – p. 306, ln. 14). Glenn was concerned so he spoke to Elijah and then called law enforcement. (R. p. 306, ln. 15-18). Law enforcement arrived and sometime later the car was gone. (R. p. 307, ln. 3 – p. 308, ln. 4). During cross examination, Glenn Kennedy could not remember when he received the phone call from Elijah, which prompted Glenn to go to Elijah's house where he saw the Neon. (R. p. 308, ln. 10-17). Officer McFadden subsequently testified for the State that the petitioner drove a teal Neon. (R. p. 319, ln. 25 – p. 320, ln. 8).

However, what the respondent does not mention is that James Palmer (the petitioner's father and a defense witness) testified that *he* was the "Mr. Palmer" referenced by Elijah. (R. p.

[3] Even if it was not preserved, the petitioner was still prejudiced, as discussed above and in the Petition for Writ of Certiorari.

355, ln. 18 – p. 356, ln. 2). It was James Palmer, *not the petitioner*, who called Elijah and moved the car to Elijah's house. (R. p. 356, ln. 6-25). James Palmer testified that when he moved the car to Elijah's house, the petitioner was in jail and the car had already been searched. (R. p. 357, ln. 1-13).

As acknowledged by the State, this case rested upon the credibility of witnesses. Elijah Kennedy was a crucial witness with respect to the above issues. He died just a few months prior to trial, long after the petitioner brought his numerous speedy trial requests. (R. p. 301, ln. 2-5). As acknowledged by the Supreme Court, "[i]f witnesses die or disappear during a delay, the prejudice is obvious." Barker, 407 U.S. at 532, 92 S.Ct. at 2193. It was the petitioner's right to meet the charges against him when the case was fresh. The petitioner was continually denied this right.

IV. Did the Court of Appeals error in finding that the trial court properly admitted into evidence the petitioner's statement to law enforcement after he invoked his right to counsel?

The petitioner's request for counsel was sufficiently clear that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. The transcript of the interview states in pertinent part:

Question by Officer Creech:	"Do you wish to talk to us."
Answer by petitioner:	"I wish to talk to you, but I need for you to call Charles Barr too."
Question by Officer Creech:	"You want him here?"
Answer by petitioner:	"I want him to come, yes."

(R. p. 11; R. p. 59, ln. 23-25, 60, ln. 1-8; R. p. 578).

There was no ambiguity or equivocation in the petitioner's statements. Questioning should have ceased at this point. *See* State v. Kennedy, 333 S.C. 426, 430, 510 S.E.2d 714, 715 (1998); State v. Conner, 821 N.W.2d 267, 273 (Ct. App. Wis. 2012) ("the record makes clear

that Conner unequivocally requested an attorney. The first time Conner requested counsel, he said 'I want to talk to ya'll, but I want an attorney present'"); Commonwealth v. Hilliard, 613 S.E.2d 579, 586 (Vir. 2005) (the following exchange was an unequivocal request for counsel: The defendant asked "Can I get a lawyer here? The detective responded "Do you want to do that?" The defendant then stated "I already have a lawyer. I mean, I can talk to you, don't get me wrong. But I just want to make sure I don't, like I said before, just jam myself up").

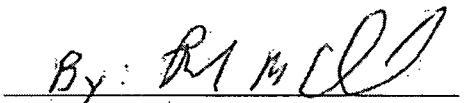
The ambiguity asserted by the respondent and the Court of Appeals came *after* the petitioner's unambiguous invocation of his right to counsel. The petitioner did not reinitiate the questioning. The petitioner's statement should have not been admitted into evidence.

CONCLUSION

By reason of the foregoing arguments, and for those stated in the petitioner's Petition for Writ of Certiorari, the Court should issue a writ of certiorari to allow full briefing on these issues.

Dated this 12th day of July, 2016

Respectfully Submitted,

By: 

Ryan L. Beasley, No. 68307
RYAN L. BEASLEY, P.A.
650 E. Washington Street
Greenville, SC 29601
(864) 679-7777 (Phone)
(864) 672-1406 (Fax)
rlb@ryanbeasleylaw.com

Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Appellate Division
1330 Lady Street, Suite 401
PO Box 11589
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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Williamsburg County
Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARC PALMER

PETITIONER

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the reply to return to petition for writ of certiorari to the Court of Appeals in the above referenced case has been served upon Alphonso Simon, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the reply to return to petition for writ of certiorari to the Court of Appeals has been served on Marc Palmer, 354634, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC, 29472, and the S.C. Court of Appeals this 12th day of July, 2016.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of July, 2016.

(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.