

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Hampton County

Roger L. Couch, Circuit Court Judge

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**RECEIVED**

**SEP 26 2016**

**S.C. SUPREME COURT**

JOSEPH DAVIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000274

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PETITION FOR WRIT OF CERTIORARI

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Although the PCR court correctly determined trial counsel performed deficiently by failing to object to the introduction of evidence that Petitioner’s co-defendants had been convicted following jury trials and sentenced accordingly, the PCR court erred in concluding trial counsel’s failure was not prejudicial because the evidence lessened the jury’s responsibility to return a just verdict in Petitioner’s case.....4

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### **ISSUE PRESENTED**

Although the PCR court correctly determined trial counsel performed deficiently by failing to object to the introduction of evidence that Petitioner's co-defendants had been convicted following jury trials and sentenced accordingly, did the PCR court err in concluding trial counsel's failure was not prejudicial because the evidence lessened the jury's responsibility to return a just verdict in Petitioner's case?

## STATEMENT

On December 5, 2008, a Hampton County grand jury indicted Petitioner for murder (2008-GS-25-0588), burglary in the second degree (2008-GS-25-0589), and armed robbery (2008-GS-25-590). App. 706-707; App. 709-710; App. 712-713. The state, represented by Sean Thornton and Tameaka Legette, called the case to trial on June 27-29, 2011 before the Honorable Perry M. Buckner, III, and a jury. App. 1. Stephanie Smart-Gittings and Kimberly Jordan represented Petitioner. App. 1. The jury found Petitioner guilty as charged. App. 481, l. 18 – App. 482, l. 4. Judge Buckner sentenced Petitioner to life imprisonment without the possibility of parole for murder, fifteen years' imprisonment for burglary, and thirty years' imprisonment for armed robbery. App. 492, ll. 12-21; App. 708; App. 711; App. 714.

Petitioner filed a timely notice of appeal, which was perfected by Breen Stevens and Benjamin Tripp of the South Carolina Office of Appellate Defense. App. 520-538. Anthony Mabry represented the state. App. 539-577. On May 3, 2013, the Supreme Court certified the case pursuant to Rule 204(b), SCACR. Petitioner raised on issue on appeal – whether the trial judge erred in admitting his statement in light of law enforcement's inducements. App. 520-538. After argument on October 1, 2013, the Supreme Court affirmed Petitioner's convictions and sentences in an unpublished opinion. App. 578-579; State v. Davis, 2013-MO-031 (S.C. Sup. Ct. filed Oct. 9, 2013). Remittitur was issued on October 25, 2013. App. 580-581.

On January 2, 2014, Petitioner filed an application for post-conviction relief (PCR). App. 582-589. On September 29, 2015, through counsel, Petitioner moved to amend his application. App. 595-606. The matter proceeded to an evidentiary hearing on October 22, 2015, before the Honorable Roger L. Couch. App. 607. J. Rutledge Johnson represented the state, and Marion Clyde Fairey, Jr., represented Petitioner. App. 608. By an order dated January 29, 2016, Judge

## STATEMENT

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Couch denied Petitioner relief. App. 697-705. Petitioner filed a notice of appeal. This petition for writ of certiorari follows.

## ARGUMENT

Although the PCR court correctly determined trial counsel performed deficiently by failing to object to the introduction of evidence that Petitioner's co-defendants had been convicted following jury trials and sentenced accordingly, the PCR court erred in concluding trial counsel's failure was not prejudicial because the evidence lessened the jury's responsibility to return a just verdict in Petitioner's case.

### **Relevant facts**

#### *Trial*

It was undisputed that Petitioner suffered from mental retardation and had a long history of serious mental illness, principally, schizophrenia and bipolar disorder. App. 504-519; App. 639, l. 20 – App. 640, l. 10. Prior to his trial, he had been found incompetent. App. 504-519. However, after hospitalization, his competency was restored and he proceeded to trial following a hearing pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981). App. 11, l. 23 – App. 16, l. 9; App. 504-519. The state's case against Petitioner was built upon statements law enforcement obtained from the co-defendants and Petitioner's final statement to police. The state had no physical evidence connecting Petitioner to the crime. App. 288, ll. 7-18.

In June 2007, Monty Wooten called 911 to report an emergency at Lena's Quick Stop in Hampton County. App. 207, l. 14 – App. 208, l. 25. When EMS arrived at 2:49 a.m. on June 24, 2007, they found the body of Ronnie Wooten in a pool of blood. App. 210, l. 10 – App. 211, l. 4; App. 222, ll. 1-3. Wooten was pronounced dead on arrival. App. 213, ll. 19-23. In the store, the police found at least thirteen different guns, but no evidence to assist in solving the crime. App. 270, l. 13 – App. 271, l. 18. After an autopsy on June 25, 2007, the pathologist determined Wooten died from a single gunshot wound to the face; however, he was unable to provide a time

of death. App. 241, ll. 13-15; App. 242, ll. 4-8 App. 250, ll. 24 – App. 251, ll. 2. The pathologist recovered the bullet – a .22 caliber – during the autopsy and provided it to law enforcement. App. 250, ll. 3-12; App. 260, l. 19 – App. 261, l. 3; App. 267, ll. 18-19. Although this bullet was submitted to SLED for ballistics testing, the bullet was lost prior to Petitioner’s trial. App. 261, ll. 4-15; App. 266, l. 5 - App. 267, l. 19. In fact, the investigating officer told the jurors that he had removed the bullet from the Clerk of Court’s office after a *previous trial*, but that the bullet had been lost while in his care. App. 266, l. 20 – App. 267, l. 17. The last time the officer saw the bullet was “a trial dealing with the co-defendants in this particular ... case.” App. 268, ll. 13-18.

Over the course of the investigation, the police charged David Freeman, James Carter, and Jeffrey Warren with Wooten’s murder. App. 285, l. 3 - App. 286, l. 15. According to the chief investigating officer, those three men gave statements admitting involvement in Wooten’s death, but blaming each other. App. 286, l. 16 – App. 287, l. 23. David Freeman testified that he was in jail for three years awaiting a trial on the charge of Wooten’s murder. App. 418, ll. 1-25. He told the jurors that the police tried to coerce him to confess, but he held steadfast. App. 418, ll. 6-10. However, the police were successful in getting others charged with him into confessing. App. 418, ll. 11-14. Ultimately, the charges against those three men were dismissed when Petitioner and his co-defendants were charged later. App. 290, l. 23 - App. 291, l. 5.

In June 2007, Shawn Davis sold a .22 caliber revolver for \$100 to Saul Benitez-Romero. App. 298, l. 14 - App. 300, l. 8. Davis told Benitez-Romero that he was selling the gun because he needed money. App. 304, ll. 4-6. The state’s toolmark examiner claimed that based on his examination of the markings on the recovered bullet, which had been lost and was unavailable for Petitioner’s trial, and the rifling of the .22 caliber revolver owned by Benitez-Romero,

purportedly sold to him by Davis, the revolver “could have” fired the bullet. App. 339, ll. 10-16. However, the bullet was very damaged and unsuitable for identification with a specific firearm. App. 336, ll. 1-3.

The toolmark examiner also compared the bullet to the thirteen firearms found in the store after Wooten’s death. The results were either negative or inconclusive. App. 342, ll. 3-8. In fact, the examiner determined that the rifling impressions on the bullet were similar to those created by one of the guns found in the store after Wooten’s death. However, he was unable to say the bullet was fired from that particular gun. App. 342, l. 17 – App. 343, l. 19.

Marquis Bryant told the jurors that the police promised him leniency if he gave a statement against Petitioner. App. 308, ll. 221-25; App. 309, ll. 7-9. In compliance with the police request, Bryant told the police that he took Petitioner, Derrick Adkins, and Shawn Davis to Lena’s store on June 24, 2007, and dropped them off. App. 306, ll. 5-17. He did not see them again until days later. App. 306, ll. 20-21. Bryant denied telling police that he was aware the group intended to rob Wooten or that Petitioner had threatened his life if he spoke of the events of that night. App. 307, ll. 3-13.

When the state called Shawn Davis, Petitioner’s brother, to the stand, Davis responded to the solicitor’s questioning by stating “The only thing I can say is I got - - I got 30 years. I ain’t got nothing to say.” App. 312, ll. 11-12. He repeated that he did not have anything to say. App. 312, l. 14. Davis told the jurors that he was found guilty following a jury trial. App. 321, ll. 7-14. Davis told the jurors that a police officer wrote the statement purportedly provided by Davis and that he did not recognize the statement being offered. App. 313, ll. 3-20. He told the prosecutor that the thirty-year sentence he received messed up his head. App. 315, ll. 15-19. Thereafter, the solicitor admitted the statement into evidence pursuant to Rule 613(b), SCRE.

App. 315, l. 21 – App. 316, l. 11. In the statement, given over a year after Wooten’s death, Davis stated that he, Petitioner, Derrick Adkins, and Marquis Bryant planned to go to the store to rob Wooten. App. 317, ll. 3-11. Bryant drove them to the store and dropped them off. App. 317, ll. 12-16. The other three entered the store. App. 317, ll. 16-18. Davis claimed Petitioner shot Wooten “with a .22 caliber revolver, black in color.” App. 317, ll. 18-20. Davis attempted to open the cash register, but could not. App. 317, ll. 21-22. He claimed Petitioner and Adkins checked Wooten’s pockets for money. App. 317, ll. 22-24. The three of them then ran through the woods back to Estill. App. 317, l. 25 – App. 318, l. 1.

Davis explained that when he was being interrogated, the police promised to reopen the investigation into his mother’s murder if he confessed to the Wooten murder and implicated Petitioner. App. 319, ll. 20-23; App. 320, ll. 20-23. Additionally, the police promised he would receive the minimum sentence. App. 320, l. 24 – App. 321, l. 1.

Similarly, when Adkins testified, he told the state he could not remember what happened in June of 2007. App. 323, ll. 7-15. Further, he did not remember the statement he purportedly made to police. App. 323, ll. 14-17. Thereafter, the state introduced Adkins’ statement into evidence and published it to the jury. According to Adkins, he, Petitioner, Shawn Davis, and Marquis Bryant were going to Hampton to “see some girls,” when they decided to rob Lena’s Store. App. 327, ll. 7-11. He, Davis, and Petitioner, wearing masks and gloves, were dropped off by the bridge and walked through woods to get to the store. App. 327, ll. 12-14. In direct contradiction to the statement made by Davis, Adkins claimed he and Davis remained outside while Petitioner entered the store. App. 327, ll. 15-16. He claimed Petitioner asked Wooten for money and then fired one shot in his head. App. 327, ll. 16-18. Only then did Adkins and Davis enter the store. App. 327, l. 19. While Davis tried to open the cash register, Adkins and

Petitioner looked for money elsewhere. App. 327, ll. 19-21. Getting no money, the threesome left the store. App. 327, ll. 22-24. They flagged down Bryant and the four of them returned to Adkins' sister's home. App. 327, ll. 24-25. After reading the statement to the jury, the solicitor elicited testimony to show Adkins was incarcerated at the time of the trial based on a conviction the prior year. App. 329, ll. 2-7. The solicitor also elicited testimony to indicate Adkins was convicted following a jury trial. App. 330, ll. 13-15.

Adkins revealed his statement to police was *not* true, that the only reason he gave the statement was because he had been promised leniency, and that the police instructed him what to say. App. 329, l. 21 – App. 330, l. 6.

Petitioner was interrogated numerous times by law enforcement and provided several statements; however, only one of those statements implicated Petitioner in this crime, and that was the only one video recorded. App. 348, l. 22 – App. 355, l. 18. Although the police denied “promising” to re-open the investigation into Petitioner’s mother’s death, the officers did admit to telling Petitioner they would “look into” his mother’s death investigation. App. 358, ll. 20-23; App. 359, ll. 24-25.<sup>1</sup> According to the video statement, Petitioner told police that he, Davis, Adkins, and Bryant went to the store. Bryant dropped them off near the bridge. The three went into the store, and Petitioner shot Wooten. Davis looked for money at the register while Adkins and Petitioner checked Wooten’s body for money. They got no money. They got scared, however, and left. App. 355, l. 19 – App. 356, l. 13; App. 377, ll. 20-22.

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<sup>1</sup> Petitioner presented evidence that the police promised him that if he cooperated in the investigation of Wooten’s murder by providing an incriminating statement, then the police would re-open the investigation into his mother’s murder through the testimony of his grandmother, Julia Davis, and his aunt, Vermill Morris. Both women testified the police promised to re-open the investigation and even contacted them about the investigation. App. 397, l. 23 – App. 398, l. 22; App. 401, l. 12 – App. 402, l. 20.

There were numerous inconsistencies within Petitioner's statements and among the statements of the alleged perpetrators. For example, Petitioner claimed he saw Wooten playing a video game from outside of the store, but this would have been impossible to see based on the geography of the location. App. 381, ll. 2-14. Petitioner at one point said Adkins turned off the lights, but later said he had done so. App. 381, ll. 15-22. Petitioner said he and Adkins searched both of Wooten's pockets for money, but found none; however, a large sum of money was found in Wooten's pocket by police. App. 382, ll. 1-21. Petitioner even told police that the sweater cap he had pulled down over his face did not have eye holes cut out so that he could see. App. 431, ll. 14-18.

The solicitor's closing relied, as it had to, on the statements of Davis and Adkins, and the testimony of Bryant in order to convince the jury that Petitioner had committed the charged offenses. App. 440, ll. 5-8. He told the jury that he had brought the two individuals "from SCDC" to tell their stories to the jury. App. 439, ll. 7-8. The solicitor admitted the statements were not consistent. App. 440, ll. 10-12. However, the solicitor tried to focus on the areas in which the statements were the same. App. 440, ll. 10-16; App. 441, ll. 12-13. According to the solicitor, Adkins and Petitioner talked about Wooten's injury. App. 443, ll. 12-14. Although Adkins claimed Petitioner shot Wooten in the head, Davis offered no information on this point. App. 443, ll. 17-18.

#### *PCR hearing*

During the PCR hearing, trial counsel admitted she did not object to the introduction of evidence that Petitioner's co-defendants had been found guilty following jury trials. App. 654, l. 16 – App. 655, l. 5; App. 655, ll. 16-25. Further, trial counsel admitted she did not object when Shawn Davis revealed he was serving a thirty-year sentence for his part in the crimes. App. 654,

l. 23 – App. 655, l. 13. Finally, trial counsel admitted she did not object to the solicitor’s closing argument highlighting the convictions. App. 674, ll. 4-16. Trial counsel testified that she did not object to the testimony or the closing argument because she was not aware of how the testimony would be objectionable. App. 673, ll. 11-16. Had she been aware of any law making the evidence inadmissible, she would have objected on that basis. App. 673, ll. 17-19.

At the conclusion of the hearing, Petitioner argued the state’s case “was a case built on confessions.” App. 679, ll. 10-11. According to Petitioner, the state’s introduction of evidence concerning the convictions and sentencing of the co-defendants following jury trials lessened the state’s burden of proof by relieving the jurors of their collective responsibility.

You have a jury who is sitting there and they are trying a case, and certainly at some point they are instructed, this is a case about this man, this is not a case about anybody else. And then you have two people who were brought in, identified as participants in the same thing, they both in front of the jury say, I was convicted, I got 30 years. It was emphasized by the state in closing that they had been convicted. And what that does without some specific instruction from the judge, it is very prejudicial because it tends to make a jury think, Well, we don’t have to think about this as much because they have already been convicted, another jury has already been here and they have already done this. They have already sifted through all of this and they have already determined that someone was guilty.

Therefore, it tends to create, and the cases talk about this, it tends to create a situation where the jury may feel, Well, we don’t have to analyze, we don’t have to - - our doubts, you know don’t have to - - a reasonable doubt is something less now because another jury has already considered all of this. We don’t have to re-visit all of this. We don’t have to challenge the evidence presented. We don’t have to worry about the credibility of the witness[es] that have testified because they have already been found not [*sic*] to be credible by another jury.

App. 680, l. 2 – App. 681, l. 6.

*Order denying relief*

In ruling on Petitioner’s application for post-conviction relief, the PCR judge held trial counsel’s failure “to object to, argue against, or request a limited instruction” as to the

introduction of the convictions of the codefendant by the assistant solicitor” was deficient performance. App. 700. However, the judge held the “deficiency was not sufficiently prejudicial in light of the overwhelming evidence” of guilt presented at trial. App. 700. In arriving at this conclusion, the PCR judge found the following:

[T]he state introduced into evidence [Petitioner]’s own voluntary verbal and video confessions fully implicating [Petitioner] as the perpetrator of these crimes. ... The state also introduced Shawn Davis’s statement to law enforcement, in where he fully implicated [Petitioner] as the shooter of [Wooten]. Additionally, the state introduced into evidence Mr. Derrick Adkins’ statement, another co-defendant. This statement also incriminated [Petitioner in the shooting death of [Wooten]. Further, Marquis Bryant, a fourth co-defendant and driver of the vehicle, testified he gave a statement in which he knew the other co-defendants were planning to rob [Wooten] and that [Petitioner] threatened to kill him with a gun if he ever told anyone about the incident.

App. 700-701. In light of the evidence presented, the PCR judge determined there was “overwhelming evidence” of Petitioner’s guilt, which “would negate any deficiency of [trial] counsel’s failure to object to the co-defendant’s statement concerning his conviction.” App. 701.

## **Discussion**

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668, 695 (1984). In a PCR action, the applicant must prove by a preponderance of the evidence that (1) counsel’s performance was deficient under prevailing professional norms and (2) there is a reasonable probability that, but for counsel’s errors, the result of the trial would have been different. Id. at 695.

Specifically, on the prejudice prong, the question to ask is “whether there is a reasonable probability that, absent the errors, the fact finding would have had a reasonable doubt respecting guilt.” Id. (emphasis added). The United States Supreme Court specifically ruled that “a defendant need not show that counsel’s deficient conduct more likely than not altered the outcome in the case.” Id. Moreover, the Court held that: “The ultimate focus of inquiry must be

on the fundamental fairness of the proceeding whose result is being challenged. In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results.” Id. at 696.

Most of the jurisprudence in this area arises in the death penalty context, but the principals are no less important and applicable in the non-capital setting. In Caldwell v. Mississippi, 472 U.S. 320, 328-329 (1985), the United States Supreme Court held it was “constitutionally impermissible to rest a death sentence on a determination made by a sentence who has been led to believe that the responsibility for determining the appropriateness of the defendant’s death rests elsewhere.” The Caldwell Court explained that the constitutional prohibition against the sort of argument offered by the prosecutor that would diminish a jury’s responsibility in returning a just verdict applied to noncapital cases as well, and in fact, had been applied by state courts in the noncapital context. Id. at 334.

This Court vacated a death sentence and remanded for re-sentencing where the solicitor’s argument “improperly drew attention to his own decision to seek the death penalty,” “urged that law officers who risked their lives in [the defendant’s] recapture would be aggrieved by a sentence less than death,” that the “citizens of Lexington County including himself would strongly disapprove of a life sentence,” and that “the death penalty statute might be ripe for repeal if a mere life sentence were returned in this case.” State v. Smart, 278 S.C. 515, 526, 299 S.E.2d 686, 692 (1982), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). “Jurors are simply not to consider the opinions of neighbors, officials or even other jurors.” Id. at 526, 299 S.E.2d at 693.

In State v. Tyner, 273 S.C. 646, 660, 258 S.E.2d 559, 566 (1979), this Court held a trial judge erred by overruling a defense objection to the solicitor's argument that lessened the jury's responsibility. The solicitor told the jurors that if they recommended the death penalty, the case would not "stop there" because it was a mere recommendation to the judge. Id. at 658, 258 S.E.2d at 565. He continued by explaining the judge could override the jury's determination and give a life sentence. Id. If the judge imposed a death sentence, such a sentence would be reviewed automatically by the state supreme court. Id. at 659, 258 S.E.2d at 566. There, the decision would be reviewed by "the five highest justices" in the state. Id. According to this Court, "[c]omments concerning appellate review of a death sentence imply to the [jury] that its responsibility for determining the fate of the defendant is lessened." Id. This Court concluded the solicitor's argument "diverted the jury from its duty to decide appellant's punishment on the basis of the evidence presented, and impermissibly suggested to the jury panel that the responsibility for [Tyner]'s sentence would rest with a higher tribunal." Id. at 660, 258 S.E.2d at 566. Thus, this Court, without engage in a harmless error analysis, set aside the death sentence and remanded for a new sentencing proceeding. Id.

This Court cautioned solicitors against arguing to jurors that appellate courts would review the jury's decisions or that previous courts had examined the case. State v. Thomas, 287 S.C. 411, 412, 339 S.E.2d 129, 129 (1986). The solicitor told the jury "the case had already been examined by a magistrate and a grand jury, and a preliminary hearing had been held." Id. Additionally, he "said an appeal would enable a higher court to review any decision made by them." Id. This Court noted it had "repeatedly condemned closing arguments that lessen the jury's sense of responsibility by reference to preliminary determinations of the facts." Id. Also, this Court explained it is error to inform a jury that its decision is subject to appellate review. Id.

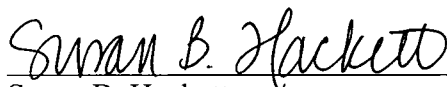
This Court explained such statements were “improper because they inject an arbitrary factor into jury deliberations. The danger is that a juror might be persuaded to rely on the opinion of others instead of exercising his independent judgment as to the facts.” Id. at 412-413, 339 S.E.2d at 129. In reversing Thomas’s convictions for armed robbery and assault and battery of a high and aggravated nature, the Court engaged in no harmless error analysis, and in fact, the Court warned “arguments of this kind can rarely be harmless.” Id.; see also State v. Gilbert, 273 S.C. 690, 697-698, 258 S.E.2d 890, 894 (1979) *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Rudd, 355 S.C. 543, 550, 586 S.E.2d 153, 156 (Ct. App. 2003).

Similarly, in State v. Sloan, 278 S.C. 435, 440-441, 298 S.E.2d 92, 95 (1982), this Court ordered a new trial, without any consideration of harmless error, where the “solicitor attempted to minimize the jury’s sense of responsibility” “by stressing that many others had already made the decision he was asking them to make.” Id. at 440, 298 S.E.2d at 95. In his argument, the solicitor noted that others had made certain decisions about the death penalty in general and about the defendant in particular. Id. at 441, 298 S.E.2d at 95. Specifically, the solicitor noted the legislature and the governor had approved the use of the death penalty by signing it into law. Id. Then, the arresting officers in the case had agreed with Petitioner’s guilt, as had the grand jury that indicted him. Id. Finally, the solicitor himself had signed the notice of intent to seek the death penalty, finding the case merited such a punishment. Id. He then asked the jurors to join the others before them who had signed their names. Id.; see also State v. Butler, 277 S.C. 543, 545-547, 290 S.E.2d 420, 421-422 (1982) *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Woomer, 277 S.C. 170, 174-175, 284 S.E.2d 357, 359-360 (1981).

The PCR judge erred in finding trial counsel's failure "to object to, argue against, or request a limited instruction as to the introduction of the convictions of the co-defendant" was not prejudicial pursuant to Strickland. As an initial matter, the judge failed to recognize this Court's holdings that when the jury's responsibility to return a just verdict is diminished, it is rarely harmless. Additionally, the PCR judge fully credited the statements by Petitioner's co-defendants to law enforcement, which implicated Petitioner, without consideration of the fact that the co-defendants disavowed those statements during the trial. The co-defendants explained how the police coerced the confessions through promises of leniency and promises to re-open old investigations. The co-defendants also explained how the police told them what to say and to implicate Petitioner. The PCR court failed to consider the inconsistencies among the statements as well. Finally, the PCR court gave too much credence to Petitioner's video recorded statement. Not only had Petitioner given multiple statements in which he denied involvement, but his video recorded statement was the product of coercion – a promise by police to re-open the investigation into his mother's death. Those coercive tactics were even more effective on a mentally retarded man who suffered from delusions and hallucinations. No physical evidence, inconsistent and recanted statements by alleged co-conspirators, and a confession from an intellectually disabled and mentally ill man simply could not amount to "overwhelming evidence of guilt" as found by the PCR judge. This is particularly true when the offending evidence is viewed in the correct light expressed by this court – "rarely harmless."

**CONCLUSION**

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented. In the event this Court grants the petition and dispenses with briefing, Petitioner respectfully requests this Court reverse the PCR court and grant Petitioner relief from his convictions and sentences.



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of September, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————  
Certiorari to Hampton County

Roger L. Couch, Circuit Court Judge  
—————

JOSEPH DAVIS,

PETITIONER,

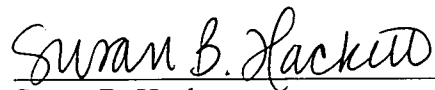
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE  
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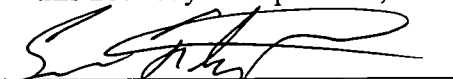
The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Ruston Neely, Esquire, at the Rembert C. Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Joseph Davis, #262813, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 26<sup>th</sup> day of September, 2016.



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 26th day of September, 2016.

 (L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022