

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Union County

Honorable J. Derham Cole, Circuit Court Judge  
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**ORIGINAL  
RECEIVED**

**MAR 30 2017**

**S.C. SUPREME COURT**

PATRICK RICE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001916  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Did trial counsel's failure to adequately investigate before trial violate Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel where counsel's lack of investigation prevented counsel from properly discrediting the state's critical witnesses, who claimed Petitioner admitted to being involved in the armed robbery and murder, on cross-examination?

## STATEMENT OF THE CASE

During the early morning hours of August 18, 2008, three or four armed men approached Kelvin Davis, who was sitting in a car parked in the carport outside his home in Union, and forced him inside the house at gunpoint. App. 81, ll. 5-22. Once inside, the men, who were all wearing camouflaged masks, repeatedly demanded, "Where's the money?" One of the armed men entered a bedroom where Kelvin's sister, Tinsley, was watching television with her three year old daughter. This man "fumbled" around Tinsley's bedroom while asking, "Where's the money?" App. 82, l. 4 – 83, l. 13. A second man then appeared at the bedroom doorway and pointed a gun at Tinsley. This man remained in the bedroom doorway during the entire encounter and gave orders to the other men. App. 83, l. 14 – 84, l. 4. The first man who entered the room tied up Tinsley with a bedsheet. App. 84, ll. 6-7; App. 85, ll. 6-18.

Tinsley heard her brother Kelvin "hollering" down the hallway, but could not "make out what he was saying." She eventually heard Kelvin say "something about the box." App. 84, l. 19 – 85, l. 5. A third man then entered Tinsley's bedroom and began "fumbling" around in her closet where she stored shoeboxes. After a few seconds, this third man left the bedroom and went back down the hallway. The man who first entered her bedroom also left the room and went down the hallway. App. 86, l. 13 – 87, l. 5. However, he returned shortly thereafter and grabbed a box from under Tinsley's bed. App. 87, ll. 4-14. After he grabbed the box, this man told the man who was still standing in the bedroom doorway, "Come on, man. I see a light. I see a light." App. 87, ll. 15-21; App. 89, ll. 13-15. Both men then left the bedroom and walked back down the hallway. App. 87, ll. 21-23; App. 89, ll. 16-18.

As the men were leaving the house through the carport, Tinsley heard a gunshot and then her brother Kelvin "hollering." After all was quiet for a few seconds, Tinsley "broke loose"

from the bedsheet and ran up the hallway. App. 89, ll. 19-24. When she reached the kitchen, she saw Kelvin coming into the house from the carport. App. 89, l. 24 – 90, l. 3. He had been shot in the back. He collapsed in the kitchen and later died at a hospital due to his injuries. App. 223, l. 2 – 224, l. 7.

The men stole approximately seventeen hundred dollars in cash from the home and about four pounds of marijuana. The cash was stored in a box under Tinsley's bed. App. 91, ll. 5-13; App. 93, ll. 6-24; App. 273, ll. 4-9.

For several days after the robbery, law enforcement had no suspects. While processing the scene, investigators found no physical evidence that could be used to identify the perpetrators. App. 361, ll. 10-15. Additionally, Tinsley Davis could not identify the men because they were wearing masks that concealed their faces during the robbery. App. 86, ll. 10-12. Eventually, a deputy with the Newberry County Sheriff's Office received some information from an unidentified source and shared that information with investigators from the Union County Sheriff's Office. Based on this information, the police wished to speak with Petitioner and his cousin, Michael Rice. App. 341, l. 19 – 342, l. 12.

Law enforcement located Michael Rice on Thursday, August 21, 2008 in Whitmire, and arrested him on an outstanding warrant for manufacturing crack cocaine. App. 204, l. 11 – 205, l. 10. Rice gave a statement that day claiming Petitioner told him he was involved in the armed robbery, along with Derrick Ruff and two men from Columbia. Rice claimed Petitioner told him that one of the men from Columbia shot Kelvin Davis. App. 211, l. 4 – 212, l. 25.

The following day, law enforcement also obtained a statement from Michael Rice's girlfriend, Sierra Braswell. Sierra likewise claimed in her statement that Petitioner told her he

was involved in the armed robbery, along with Derrick Ruff, but neither he nor Ruff was the “trigger person.” App. 322, ll. 17-21.

Based on the statements given by Michael Rice and Sierra Braswell, law enforcement obtained warrants for Petitioner, Derrick Ruff, and Petitioner’s then girlfriend, Miriam Dickert. App. 344, l. 20 – 345, l. 22.

Michael Rice, Sierra Braswell, and Miriam Dickert were all charged with accessory after the fact of murder. App. 123, ll. 17-20; App. 205, l. 22 – 206, l. 3; App. 309, ll. 19-25. Law enforcement alleged all three assisted Petitioner in traveling to Clinton, South Carolina and later to Charlotte and Thomasville, North Carolina in the days after the robbery. App.

Miriam Dickert also gave a statement to the police upon her arrest. In her statement, she likewise claimed Petitioner told her he was involved in the armed robbery of Kelvin Davis, along with Derrick Ruff and two men from Columbia, and that one of the men from Columbia shot Kelvin. She further claimed Petitioner told her that the robbery was “a set up” that was planned by Derrick Ruff and Kelvin Davis. The plan was to rob Chauncy “Jake” Sims, Tinsley Davis’ boyfriend who lived with Tinsley and Kelvin. Dickert said, “The plan was to make it look like it was a robbery to Jake, but really Plute [Kelvin Davis] had it set up the whole time.” App. 137, l. 1 – 138, l. 5.

Upon learning that the police were looking for him, Petitioner turned himself in to law enforcement. App. 421, l. 3 – 422, l. 3.

A Union County Grand Jury ultimately indicted Petitioner on January 29, 2009 for murder, first degree burglary, armed robbery, and two counts of kidnapping. App. 616-625. His case was called to trial on September 15, 2009 before the Honorable James Williams, and a jury.

App. 1. Assistant Solicitor John Anthony represented the state, and John Reckenbeil represented Petitioner. App. 1.

Petitioner presented an alibi defense at trial. He testified that he was at his grandmother's house in Whitmire at the time of the robbery. App. 413, l. 6 – 415, l. 1. His alibi was corroborated by Petitioner's family members, including his sister who said she was home with Petitioner at their grandmother's house watching television during the early morning hours of August 18, 2008 when the robbery was committed. App. 391, l. 8 – 393, l. 9.

Miriam Dickert, Michael Rice, and Sierra Braswell all testified against Petitioner. They repeated what they claimed in their respective statements concerning what Petitioner allegedly told them in the days after the robbery. They also testified about traveling to Clinton, South Carolina and later Charlotte and Thomasville, North Carolina with Petitioner. See App. 107, l. 13 – 142, l. 20; App. 184, l. 19 – 216, l. 18; App. 291, l. 1 – 323, l. 23.

On September 17, 2009, the jury found Petitioner guilty as indicted. App. 534, ll. 1-20. Judge Williams sentenced him to fifty years' imprisonment for murder, fifty years for first degree burglary, thirty years for armed robbery, and thirty years for each count of kidnapping. All sentences were ordered to be served concurrently. App. 547, l. 13 – 548, l. 9.

The Court of Appeals vacated Petitioner's sentence for the kidnapping of Kelvin Davis pursuant to S.C. Code Ann. § 16-3-910 because he was sentenced to life without parole for murder. State v. Rice, 2011-UP-584 (Ct. App. filed December 21, 2011).

Before Petitioner's trial, and even after he was convicted, the state sought his cooperation. Law enforcement wanted Petitioner's help in identifying the other individuals involved in the armed robbery, particularly the shooter. The police were never able to identify the two men from Columbia. The state offered to recommend Petitioner's fifty year sentence be

reduced to the mandatory minimum of thirty years' imprisonment if he cooperated. However, Petitioner has consistently maintained his innocence. App. 576, l. 4 – 577, l. 6; App. 591, ll. 1-4; App. 598, ll. 3-6; App. 601, l. 13 – 602, l. 25.

On January 8, 2013, Petitioner filed an application for post-conviction relief (PCR). App. 551-557. The state filed a return to this application dated July 11, 2013. App. 559-563. The matter proceeded to an evidentiary hearing on January 22, 2015 before the Honorable J. Derham Cole. App. 564. Assistant Attorney General J. Rutledge Johnson represented the state, and Leah Moody represented Petitioner. App. 564.

At the evidentiary hearing, Petitioner testified that trial counsel failed to adequately investigate his co-defendants, particularly Michael Rice, before trial. Petitioner asserted that counsel's lack of investigation prevented counsel from effectively cross-examining Rice and the other witnesses during trial. App. 598, ll. 7-23. Petitioner contended that if trial counsel would have interviewed the witnesses who gave statements implicating Petitioner and eventually testified against him, the outcome of his trial would have been different. App. 598, ll. 20-23.

John Reckenbeil, Petitioner's trial counsel, admitted that he did not hire an investigator to assist him with his investigation prior to trial. He also admitted that he did not interview any of the state's critical witnesses, including Miriam Dickert, Michael Rice, or Sierra Braswell, before trial. Instead, he relied on the statements these witnesses gave to law enforcement. App. 585, ll. 14-21. Reckenbeil said his strategy at trial was to "discredit" Michael Rice, and presumably the other witnesses, based on the "charges hanging over his head and . . . what he had to gain or lose by his testimony." App. 591, ll. 10-19.

By order filed August 31, 2016, the PCR court denied Petitioner relief. App. 609-615. The court found Petitioner failed to prove trial counsel's investigation was deficient or show what any further investigation would have revealed. App. 613.

Because the outcome of Petitioner's trial would have been different if trial counsel had adequately investigated before trial, this petition for writ of certiorari follows.

## ARGUMENT

Trial counsel's failure to adequately investigate before trial violated Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel where counsel's lack of investigation prevented counsel from properly discrediting the state's critical witnesses, who claimed Petitioner admitted to being involved in the armed robbery and murder, on cross-examination.

Trial counsel admitted that he failed to hire an investigator to assist with the investigation in this murder case before trial. Counsel further admitted that he did not interview Miriam Dickert, Michael Rice, or Sierra Braswell before trial. These witnesses were critical in the case against Petitioner as all three alleged Petitioner admitted to being involved in the robbery. Instead, counsel merely relied on the statements these witnesses gave to law enforcement shortly before Petitioner's arrest. Trial counsel's failure to adequately investigate prevented him from properly challenging and discrediting these witnesses on cross-examination.

In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d

624, 625 (1989) (citing Strickland, 466 U.S. at 688). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

The United States Supreme Court has held that “counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Strickland, 466 U.S. at 691; See Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007) (finding “[w]ithout a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation”) (internal quotation omitted). The United States Supreme Court has also held that “[i]n assessing the reasonableness of an attorney’s investigation, . . . a court must not only consider the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further.” Wiggins v. Smith, 539 U.S. 510, 527 (2003).

In this case, trial counsel’s performance was deficient, as it clearly fell below an objective standard of reasonableness. See Strickland, 466 U.S. at 687-688. Counsel was ineffective for failing to hire an investigator to assist with the investigation of this murder case before trial. Counsel was also ineffective for failing to interview the state’s critical witnesses, specifically, Miriam Dickert, Michael Rice, and Sierra Braswell. These witnesses all testified against Petitioner at trial and claimed Petitioner admitted to being involved in the robbery. Instead of interviewing these witnesses before trial, counsel admitted that he merely relied on the statements Dickert, Rice, and Braswell gave to the police shortly before Petitioner’s arrest.

Petitioner was prejudiced by trial counsel’s deficient performance because counsel’s inadequate investigation prevented him from effectively cross-examining these witnesses during Petitioner’s trial. Counsel’s failure to properly investigate hindered his ability to challenge and

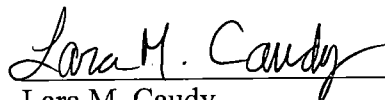
discredit the state's critical witnesses at trial. In a case where there was absolutely no physical evidence implicating Petitioner, counsel's deficient performance most certainly affected the outcome of Petitioner's trial.

Because of counsel's deficient performance and the resulting prejudice to Petitioner, this Court should reverse Petitioner's convictions and sentence and remand for a new trial.

**CONCLUSION**

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lara M. Caudy". The signature is written in black ink and is positioned above a horizontal line.

Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of March, 2017.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Union County  
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PETITION TO BE RELIEVED AS COUNSEL

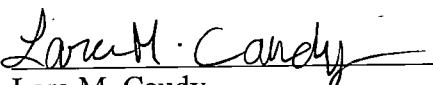
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Counsel for Patrick Troy Rice states:

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 that was held on January 22, 2015. 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 an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Patrick Troy Rice.

Respectfully Submitted,


  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of March, 2017.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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ATTORNEY FOR PETITIONER

This 30th day of March, 2017.

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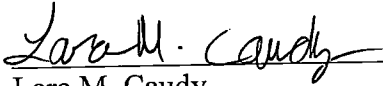
RESPONDENT

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CERTIFICATE OF SERVICE


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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case have been served upon Justin J. Hunter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served upon Patrick Troy Rice, #273296, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 30th day of March, 2017.

  
\_\_\_\_\_  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 30th day of March, 2017.

  
\_\_\_\_\_  
(L.S)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.