

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Spartanburg County

Honorable R. Ferrell Cothran, Circuit Court Judge

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APR 07 2017

S.C. SUPREME COURT

ANDREW BRENT SCOTT,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001569

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to interview store manager Regina Jones as a potential witness prior to trial and in failing to call her as a witness in order to present a consent to kidnapping defense on petitioner's behalf at trial.

STATEMENT

Petitioner Andrew Bent Scott was convicted of first degree assault and battery, kidnapping, armed robbery, and possession of a weapon during the commission of a violent crime per jury trial during the April 2012 term of the Spartanburg County General Sessions Court before Judge Roger L. Couch App. 1 – 521. Petitioner was sentenced to an aggregate thirty-five year prison term. Beverly Jones represented petitioner at trial, and Assistant Solicitor Zach Ellis appeared on behalf of the state. Petitioner appealed, but his convictions and sentences were affirmed by the South Carolina Court of Appeals. See State v. Scott, Op. No. 2013-UP-456 (filed December 11, 2013). David A. Alexander, Esquire, of the Office of Appellate Defense represented petitioner on direct appeal.

On January 24, 2014, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 523-534. The respondent filed a return dated August 20, 2014, requesting that a hearing be held in response to petitioner's PCR action. App. 535-538.

A PCR hearing was convened on January 13, 2016, at the Spartanburg County Courthouse before Judge R. Ferrell Cothran. App. 540-679. Petitioner was present at the hearing and represented by Leah B. Moody, and Assistant Attorney General Alicia A. Olive appeared on behalf of the state. On June 17, 2016, Judge Cothran signed an Order of Dismissal in the case. App. 681-698.

Petitioner appealed Judge Cothran's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to interview store manager Regina Jones as a potential witness prior to trial and in failing to call her witness in order to present a consent to kidnapping defense on petitioner's behalf at trial.

At trial, Money Tree Store employee Bridgette Jackson testified that she was preparing to close the store when a man dressed in all black and eye shades rode up to the store on a bicycle. Jackson stated that he entered the store and then slowly began opening the door to an area where employees only were allowed in and that at that point, she started pushing on the door to keep the male out, especially since he kept showing a knife while they were pushing on the door. Ultimately, the male was finally able to open the door and then produced a small handgun. Jackson stated that the man grabbed her by the ponytail and led her to the store safe where he gathered up the money (approximately \$2,000.00), and then hit her with his gun. Jackson stated that she was able to stumble her way to the bathroom, lock herself in from inside, and then escape by running to the back of the store until she arrived at the police station and the city hall building. App. 114, l. 9 – p. 150, l. 18. Jackson was shown a photographic line-up shortly thereafter and selected petitioner's photograph via her identification of him as the perpetrator. App. 171, l. 7 – p. 176, l. 18; App. 290, l. 1 – p. 292, l. 17.

Police Officer Kip Teal testified that he responded to the call regarding the events at the Money Tree Store and immediately remembered seeing a man in black riding on a bicycle earlier during his patrol route on that day. Officer Teal knew this man as petitioner. Therefore, Officer Teal located petitioner at the home of Verdia Copeland where he resided and arrested him there. App. 228, l. 11 – p. 245, l. 25; App. 254, l. 9 – p. 257, l. 25.

The blood that landed on Jackson's clothing as she fought the perpetrator (she hit him on the nose during her struggle with him at the scene) was taken and analyzed and found to have contained a match of petitioner's DNA. App. 476, l. – p. 477, l. .

During the PCR hearing, petitioner testified that trial counsel erred in failing to call store Manager Regina Jones¹ as a witness who would have been favorable to the defense because she could have explained that the inside door locks in the store had not been changed after petitioner, who was previously employed by Money Tree, was terminated as an employee there. App. 565, l. 22 – p. 566, l. 22; App. 616, l. 20 – p. 617, l. 2. Note that at trial, the owner of all the Money Tree stores in the area testified that petitioner was previously an employee in the store where Jackson and Jones worked, and that the locks on the inside doors where employees only were allowed had not been changed after petitioner was terminated, and that only the locks on the outside doors were changed. App. 303, l. 2 – p. 317, l. 9.

Trial counsel testified at the PCR hearing and stated that she neither spoke with nor interviewed Regina Jones as a potential witness in the case and that she didn't know her last name was Jones until the date of the PCR hearing, but that she knew she was a store manager. App. 644, l. 24 – p. 546, l. 13; App. 662, l. 16 – p. 663, l. 16. Counsel admitted that the store failed to change the locks to the door where only employees were allowed as a protected area and that this constituted negligence. App. 646, l. 7 – p. 647, l. 8. Also, Tony Crawford testified at trial that petitioner told him he was going to rob the store (and manager Jones) and that he (Crawford) informed Jones of this information. App. 374, l. 3 – App. 380, l. 19.

In State v. Taylor, 121 N.H. 489, 431 A.2d 775 (1981), the Supreme Court of New Hampshire held that the trial court properly charged the jury on the law of the issue of consent to

¹ Bridgette Jackson testified that Regina Jones was her store manager. App. 117, l. 4- 6.

kidnapping as it applied in that case to the effect that consent was a complete defense to the offense of kidnapping. In the case at bar, the store manager's failure to change the inside locks to the store after petitioner's termination from employment there clearly constituted consent to have Jackson, or any employee, subjected to kidnapping. Therefore, petitioner had a viable defense, i.e. consent, to the kidnapping charge. As a result, counsel erred in not interviewing and calling store manager Regina Jones as a witness to corroborate the testimony of the owner of the stores who admitted that the inside locks were not changed and also present a consent to kidnapping defense in the case.

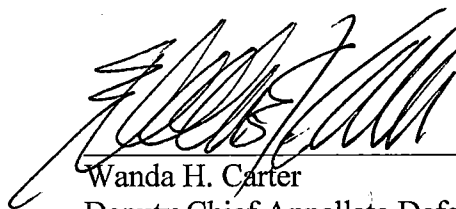
Counsel has a duty to conduct reasonable investigations in a criminal case. Strickland v. Washington, 466 U.S. 668 (1984). However, the duty to conduct reasonable investigations does not include as a standard the requirement for defense lawyers to interview every potential witness in a case. See Edwards. State, 392 S.C. 449, 710 S.E.2d 60 (2011). In Edwards, the Court held that as long as counsel conducts a reasonable investigation, which would include interviewing witnesses when reasonably required, then counsel's representation would not be considered deficient. The alleged accomplice in Edwards was not interviewed by Edwards' trial counsel, but said counsel was in attendance at the alleged accomplice's guilty plea and surmised that his presence as a witness at Edwards' trial would not have resulted in any beneficial value to the defense.

In petitioner's case, however, plea counsel conducted no investigation into the store manager's role in the case. This was crucial to perfecting a consent to kidnapping defense which could have been developed in the case but for counsel's failure to interview and call manager Jones as a witness at trial. Counsel's omission in this regard constituted deficient legal representation in petitioner's case. See Hill v. Lockhart, 484 U.S. 52 (1985). Counsel's ineffectiveness as outlined above violated petitioner's Sixth Amendment right to competent representation by counsel in a

criminal case, and but for counsel's deficient representation, a reasonable likelihood exists that the outcome of petitioner's case would have been different.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of April, 2017.

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RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Andrew Brent Scott states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's trial before Judge R. Ferrell Cothran, which was held on January 13, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
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 Andrew Brent Scott.

Respectfully Submitted,



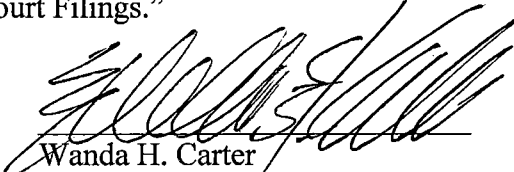
Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 5th day of April, 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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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix and Supplemental Appendix in the above referenced case has been served upon Caitlin Hastings, 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 and Supplemental Appendix have been served on Andrew Brent Scott, #192735, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 5th day of April, 2017.

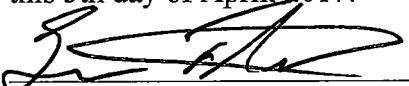


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 5th day of April, 2017.



Notary Public for South Carolina

(L.S)

My Commission Expires: October 30, 2022.