

STATE OF SOUTH CAROLINA  
In The Supreme Court

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FEB 02 2018

CERTIORARI TO BEAUFORT COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Diane S. Goodstein, Trial Court  
The Honorable R. Scott Sprouse, PCR Judge

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Jabari M. Linnen ..... Respondent,

v.

State of South Carolina ..... Petitioner.

Appellate Case No. 2017-000970

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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JARED SULLIVAN NEWMAN  
1508 Paris Avenue  
Post Office Box 515  
Port Royal, South Carolina 29935  
(843) 522-1313  
S.C. Bar Id. No. 0012930

ATTORNEY FOR RESPONDENT

**INDEX**

RESPONDENT’S ISSUE PRESENTED .....1

STANDARD OF REVIEW ..... 2

STATEMENT OF THE CASE ..... 3

    Procedural History ..... 3

    Statement of the Facts at Trial ..... 3

    Statement of Facts at PCR Hearing ..... 4

ARGUMENT .....5

    The PCR Court had ample evidence to support its ruling that the Respondent’s counsel was deficient by resisting a mistrial motion made by the State and in failing to object to a highly prejudicial “curative” instruction by the Trial Court.

CONCLUSION ..... 6

## **ISSUE PRESENTED**

Whether the PCR Court had any evidence to support its ruling that the Respondent's counsel was deficient by resisting a mistrial motion made by the State and in failing to object to a highly prejudicial "curative" instruction by the Trial Court?

## STANDARD OF REVIEW

The post-conviction relief (PCR) court's findings of fact and conclusions of law are to receive "great deference" during appellate review. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). The proper standard of review of a post-conviction relief decision is whether "**any evidence** of probative value" exists to sustain the lower court's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 625, 626 (1989)(Emphasis added).

## STATEMENT OF THE CASE

### Procedural History

For ease of all concerned, the Respondent, Jabari Linnen, generally agrees with the Petitioner's outline of the procedural history in this case.

### Statement of Facts of Trial

The statement of facts offered by the State in this regard are generally correct in summary. The key question in the underlying trial was credibility. If the Respondent were to be believed, he made out a self-defense and/or stand-your-ground defense entitling him to an acquittal. If on the other hand, the alleged victim were to be believed to the exclusion of the Respondent's evidence and credibility, the jury could have had sufficient evidence to acquit or convict the Respondent. As a result of being unprepared by trial counsel, the Respondent in response to an open-ended question inadvertently mentioned arrest charges that the alleged victim had against him. The State moved for a mistrial and the trial court, not to mention the Solicitor, agreed that a mistrial was necessary.

The State persisted in moving for a mistrial because of Respondent's testimony, and inexplicably Respondent's trial counsel vehemently resisted such motion, even after being specifically warned several times by the trial judge, that any curative instruction would necessarily be prejudicial to the Respondent. The trial court stated in no uncertain terms that it was inclined to grant the State's motion for a mistrial. The trial court and the solicitor discussed the correct manifest necessity standard and the court tended to agree with the State. Respondent's counsel repeatedly requested a curative instruction, notwithstanding the court's admonitions that any such charge would be fashioned with extreme prejudice to the Respondent. Trial counsel admitted that he never

consulted with the Respondent about the ramifications pro or con of a mistrial. The State and the trial judge resisted such a “curative” instruction because its could not overcome the perceived prejudice to the State, unless such an instruction were given, it would have to be so harsh as to prejudice the Respondent. The court, in no uncertain terms announced that any curative instruction would be prejudicial to the Respondent, the State concurred with the court’s view

### Statement of Facts at PCR Hearing

Respondent’s attorney testified that he was “beat down” and did not recognize nor appreciate the peril his client faced while he [Respondent] was still on the witness stand. (R. p. 570, l. 13-18) Counsel did recognize that the entire case rested on the credibility of the alleged victim and the Respondent. Counsel testified that the Respondent would have been better off with a mistrial than a curative instruction. (R. p. 748). Counsel’s decision to vehemently resist a mistrial was not based upon strategy or benefit to the Respondent, but rather his assessment of the mistrial option was, “colored by what I’m going to say is personal issues with the judge holding me at fault on some of these things personally.” (R. p. 748). Trial counsel egotistically persisted in advancing issues personal to himself, rather than making a reasoned evaluation of the perilous situation the Respondent faced while on the witness stand in his own defense.

The trial record is abundantly clear that the trial court, were it to accede to Counsel’s personal wishes, was going to go “too far” in giving a curative instruction and that prejudice to the Respondent would surely result. (See, R. pp. 538-545). Trial counsel after finally recognizing or perceiving the prejudice problem asked the trial court for a preview of the proposed curative instruction. Trial counsel’s preview request was denied *de facto* when the trial court ignored the

request and summoned the jury panel to return to the courtroom. The trial court, in what looked like a contest of wills, gave a curative instruction which went “too far,” “telegraphed bias” against the Respondent, as feared by trial counsel, “prejudiced” the Respondent, was not consistent with the truth, and unconstitutionally commented on the facts. (RR. pp 748-751). Remarkably, trial counsel did not object to the curative instruction. Trial counsel could give no reason for not objecting other than, he was “beat down.”

### **ARGUMENT**

The PCR Court had ample evidence to support its ruling that the Respondent’s counsel was deficient by resisting a mistrial motion made by the State and in failing to object to a highly prejudicial “curative” instruction by the Trial Court.

The State overtly admits in its Petition that the “curative” instruction given during the Respondent’s trial was unduly prejudicial (*See* p. 15 Brief of Petitioner)(“Further, the strength of Judge Goodstein’s charge was necessary to correct Respondent’s improper assertion.”). As the PCR judge correctly asserted, “There is simply no way to give a curative instruction in these circumstances without prejudicing the Applicant.” (R. p. 849). The trial judge, likewise, repeatedly warned trial counsel of this fact to no avail. (R. pp. 748-751). Trial counsel failed to object to any portion of the curative instruction whether it be “bias,” “prejudice,” “unconstitutional” comments on the facts, or “untrue statements” as to the alleged victim’s prior criminal record as a whole. Trial counsel gave no rationally professional reasons for failing to object to the curative instruction as given, but rather testified that he acted for “personal reasons,” to the detriment of the Respondent and that he was, “beat down.” These facts represent the very reason as to why a mistrial was needed and a curative instruction which would go, “too far” as telegraphed by the trial court would

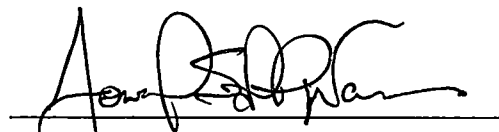
necessarily be unduly prejudicial to the Respondent.

The PCR court heard the testimony and judged the credibility of the witnesses at the hearing, and was thus in the best position to rule on these issues. The PCR court rationally found that, “[f]rom the testimony of the Applicant’s trial counsel, it appears that he was irritated with the trial court and this jaded his judgment.” (R. p. 848). The record factually and rationally supports the PCR court’s assessment of the evidence presented and the PCR court’s ruling that a new trial was soundly warranted pursuant to Strickland v. Washington, 466 U.S. 668 (1984) and Weik v. State, 409 S.C. 214, 761 S.E.2d 757 (SC 2014).

### CONCLUSION

WHEREFORE, the Respondent prays that this Honorable Court deny the State’s Petition Writ of Certiorari and remand this case to the Court of General Sessions for Beaufort County for a New Trial.

Respectfully Submitted,



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ATTORNEY FOR RESPONDENT

Port Royal, South Carolina

January 29, 2018.

STATE OF SOUTH CAROLINA  
In The Supreme Court

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S.C. SUPREME COURT

CERTIORARI TO BEAUFORT COUNTY  
Court of Common Pleas

The Honorable Diane S. Goodstein, Trial Court  
The Honorable R. Scott Sprouse, PCR Judge

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Jabari M. Linnen ..... Respondent,

v.

State of South Carolina ..... Petitioner.

Appellate Case No. 2017-000970

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**CERTIFICATE OF SERVICE**

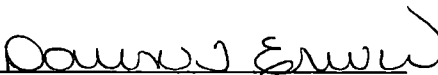
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The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari** has been served on opposing counsel by mailing two copies in the United States mail, sufficient postage prepaid:

ALAN WILSON  
Attorney General

RUSTON W. NEELEY  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

This 30<sup>th</sup> day of January, 2018



Dawn T. Erwin,  
Legal Assistant to Jared S. Newman

**Jared Sullivan Newman, P.A.**

*Trial Attorney*

*Certified Civil Court Mediator*

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January 30, 2018

Ruston W. Neeley  
Assistant Attorney General  
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Columbia, South Carolina 29211

RECEIVED

FEB 02 2018

S.C. SUPREME COURT

Re: Jabari M. Linnen v. State of South Carolina  
Appellate Case No.: 2017-000970

Dear Mr. Neeley:

Enclosed please find two copies of the Respondent's Return to Petition for Writ of Certioari, in the above referenced matter.

Should you have any questions regarding this matter, please feel free to contact our office. With kindest regards, I am

Sincerely,



Dawn T. Erwin, Paralegal to  
Jared Sullivan Newman, Esquire  
Attorney for Jabari M. Linnen

/dte  
Enclosures

**Jared Sullivan Newman, P.A.**

**Trial Attorney**

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January 30, 2018

Hon. Daniel E. Shearouse,  
Clerk of Court  
Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

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S.C. SUPREME COURT

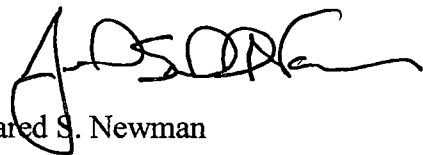
Re: *State v. Linnen*  
Appellate Case No.: 2017-000970

Dear Mr. Clerk;

Enclosed please find an original and six (6) copies of the Respondent's **Return to Petition for Writ of Certiorari and Certificate of Service** on opposing counsel.

If there are any questions or need for further information, please contact me at your convenience. With kind regards, I remain,

Sincerely,



Jared S. Newman

JSN/dte

encl.

cc: Ruston W. Neeley  
Assistant Attorney General