

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

ORIGINAL

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Certiorari to Spartanburg County

Honorable Robin B. Stilwell, Circuit Court Judge

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CHRISTOPHER PAUL MAHAFFEY,

RECEIVED

PETITIONER JUL 06 2010

S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002057

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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LaNelle Cantey DuRant  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Did the PCR court err in not finding trial counsel ineffective for failing to conduct a proper investigation into Petitioner Mahaffey's case by not interviewing significant witnesses which was prejudicial to Petitioner Mahaffey because the witnesses could have provided a defense for Mahaffey?

## STATEMENT

On the morning of January 14, 2012, Mahaffey was at his father's house for a cookout. App. 138, ll. 5 – 18. A man named “Ronald” arrived at the family cookout. App. 139, ll. 2 – 8. Mahaffey left the cookout at approximately 11:00 AM in his father's sport utility vehicle. App. 140, ll. 5 – 17. Ronald drove. App. 139, ll. 5 – 13.

Andrew Sustare (“Sustare”) was the State's first witness. App. 60, ll. 1 – 4. Sustare and a laborer named Richie Blackwell (“Blackwell”) were at Sustare’s house digging an asparagus patch. App. 62, ll. 2 – 12. When Sustare and Blackwell came around the front of Sustare’s house, Sustare noticed an unknown vehicle in his driveway. App. 63, ll. 17 – 65, l. 14. Sustare and Blackwell moved towards the front of the house. App. 65, ll. 6 – 12. Sustare claimed to see Mahaffey exiting his house. App. 65, ll. 13 – 16. Sustare claimed that Mahaffey's back was to him and Mahaffey was shutting the door. App. 65, ll. 13 – 16.

Sustare and Blackwell forcibly detained Mahaffey and questioned him. App. 65, l. 22 – 68, l. 24. While Blackwell held Mahaffey, Sustare took the keys out of the running vehicle. App. 67, l. 19 – 69, l. 2. Sustare claimed that he went into his house to get his pistol. App. 68, ll. 3 – 6. Sustare claimed that his pistol was not on his bedside table where he usually kept it. App. 68, l. 7 – 71, l. 12. At this point Sustare called 911. App. 69, l. 25 – 71, l. 1.

Sustare retrieved a different pistol from his house and went back outside after completing his 911 call. App. 72, ll. 8 – 24. He then held Mahaffey at gunpoint and made him get on his knees. App. 72, l. 25 – 74, l. 7. Sustare asked Mahaffey, “Where is it?” App. 73, ll. 9 – 10. Mahaffey did not answer. App. 73, ll. 11 – 12. Sustare then claimed he asked again “with more enthusiasm.” App. 73, ll. 13 – 14. Sustare claimed Mahaffey then responded, “Between the front seats.” App. 73, ll. 13 – 18.

Blackwell, who was 6'9" tall and weighs 250 pounds, claimed that while Sustare was in the house, Mahaffey "slipped loose and took off running." App. 89, ll. 10 – 11. Blackwell claimed that he tackled Mahaffey, held him down, and "dragged him back over to the front of the house." App. 89, ll. 14 – 17. Blackwell claimed that a money bag that was tucked into Mahaffey's waist fell to the ground during the fight. App. 89, ll. 14 – 22. Sustare claimed that the money bag belonged to his business. App. 76, ll. 3 – 10.

Canine officer James Rhodes ("Rhodes") responded to the scene. App. 117, l. 22 – 118, l. 7. Officer Rhodes was told there was a possible second suspect. App. 118, ll. 11 – 14. Officer Rhodes had his dog search for a track in the front yard and the dog did not find a track. App. 118, l. 10 – 119, l. 24. Officer Rhodes admitted on cross-examination that he did not take the dog into the backyard and did not take the dog into the vehicle. App. 122, ll. 13 – 18.

After the police arrived and arrested Mahaffey, one of the officers took an inventory of the SUV. App. 112, ll. 10 – 19. The officer saw what he said "appeared to be drug paraphernalia." App. 112, ll. 14 – 16. The officer claimed to find a plastic bag "with a white rock substance in it." App. 114, ll. 12 – 19. The substance later tested positive as crack cocaine. App. 128, l. 24 – 129, l. 1. The officer also found a bag with "green pills." App. 114, l. 25 – 115, l. 2. These pills were identified as oxycodone. App. 129, ll. 2 – 5.

On February 23, 2012, Christopher Paul Mahaffey was indicted by a Spartanburg County grand jury for first degree burglary, larceny, possession of crack cocaine, and possession of oxycodone. On August 27 – 28, 2012, Mahaffey was tried before the Honorable J. Derham Cole and a jury. App. 1. Jennifer A. J. Jordan represented the State. App. 1. Claire Hall and Clay Allen represented Mahaffey. App. 1.

Sustare testified as to the events as he had told the police. App. 60, ll.1 – App. 81, ll. 23. Mahaffey’s brother, John Mahaffey testified for the defense that he was at his father’s house the day of the incident. App.137, ll. 1 – App. 139, ll. 25.

The jury convicted Mahaffey on all four charges. App. 192, ll. 21 – 193, l. 22. Judge Cole sentenced Mahaffey to twenty-five years’ imprisonment for the burglary, ten years’ imprisonment for larceny, two years’ imprisonment for possession of crack cocaine, and two years’ imprisonment for possession of oxycodone. App. 199, ll. 12 – 22.

Mahaffey timely filed and served a notice of appeal. The appeal was perfected by the Division of Appellate Defense. The South Carolina Court of Appeals affirmed Mahaffey’s convictions and sentences on December 10, 2014. State v. Mahaffey, Op. No. 2014-UP-449 (Ct. App. filed December 10, 2014).

On October 15, 2015, Petitioner Mahaffey filed an application for post-conviction relief (PCR). The state filed a return on April 1, 2016. An evidentiary hearing was held on March 23, 2017 before the Honorable Robin B. Stilwell. Petitioner Mahaffey was represented by H. Michael Spivey and Melissa D. Spivey. The state was represented by Valerie G. Giovanoli. App. 221.

At the PCR hearing, Petitioner Mahaffey testified that his trial was his trial attorney’s first trial. If he had known that, he would have asked the judge for a different attorney App. 228, ll. 7 – App. 229, ll. 18. He never met with the co-chair, Clay Allen. App. 229, ll. 19 -25.

Mahaffey felt his attorney was ineffective because she did not meet with any of the possible witnesses in his case, and did not talk with any of them. He wanted her to talk with his whole family because they knew what happened. App. 232, ll. 5 – 13. He explained that he was at his father’s house the day of this incident. A man named Ronald Keiser was there also. Keiser had done some work for the victim, Sustare, who still owed Keiser money. Mahaffey and Keiser went to Sustare’s

house that day to collect Keiser's money. Mahaffey had a flat tire going down the driveway to Sustare's house. Mahaffey then called his father. Mahaffey denied breaking into Sustare's house. App. 237, ll. 1 – App. 239, ll. 24.

Mahaffey continued to testify that Keiser was the son of Mahaffey's former girlfriend. Mahaffey and his girlfriend had just broken up two weeks before this incident. His girlfriend was very angry with Mahaffey as his father had also evicted her. Mahaffey believed that his former girlfriend had "set him up." App. 240, ll. 1 – 25. His trial attorney never attempted to locate Ronald Keiser although Mahaffey believed that Keiser was in the Department of Corrections for burglary. App. 245, ll. 6 - 20.

Mahaffey believed that his trial attorney was ineffective because if she had brought all of the evidence before the jury, he believed that the jury would not have found him not guilty or his sentence would have been less. App. 243, ll. 9 – App. 244, ll. 24; App. 249, ll. 21 – App. 250, ll. 5. He testified that he was not armed but had only two pocketknives in his pocket. He explained that on the 911 call, Sustare said Mahaffey was not armed. App. 234, ll. 6 – App. 235, ll. 24.

Mahaffey believed that the outcome of his trial would have been different if he had received "proper representation." He believed that his sentence would have been less. App. 249, ll. 21 – App. 250, ll. 23.

Paul Mahaffey, father of Petitioner Mahaffey, testified at the PCR hearing that he would have testified at his son's trial but his attorney said that there were jail calls that could be used to impeach him but the trial attorney could not tell him what. App. 263, ll. 22 – App. 265, ll. 5. His testimony would have been that he was having a cook out for his mother's birthday on the day of this incident. Petitioner Mahaffey was dating Ronald Keiser's mother. Keiser came to the cook out and asked to borrow Paul Mahaffey's truck. Paul said no but that Petitioner could go with him.

Keiser told Paul that this man owed him money and Keiser was going to get it. Then Keiser and Petitioner left. He said that Petitioner called him shortly that he had a flat tire and wanted to know how to get the spare out. App. 266, ll. 5 – App. 267, ll. 16.

The trial attorney, Ms. Hall, testified at the PCR hearing that she had tried to obtain a plea offer; however, the solicitor would not make an offer. App. 277, ll. 3 – 24. She admitted that this was her first trial but that another attorney, Clay Allen, sat with her and helped her. App. 278, ll. 19 – App. 279, ll. 12.

Trial counsel admitted that she did not try to locate Keiser or talk to him. She thought he was in prison at the time, but she did not interview him. App. 282, ll. 9 – 23. Her theory of the case was that the state had the “wrong guy.” App. 287, ll. 19 – 25. She did not remember anything about a scheme of the ex-girlfriend to “get Mahaffey back.” Again, counsel admitted that she did not try to interview the ex-girlfriend. App. 288, ll. 12 – App. 289, ll. 7.

Clay Allen testified that he was the Seventh Circuit Public Defender. He sat with trial counsel, Ms. Hall, on the day of trial and had helped her some before trial. He admitted that he did not help investigate Petitioner’s case. App. 309, ll. 13 – App. 311, ll. 23.

Jennifer Jordan testified at the PCR hearing as she was the assistant solicitor who prosecuted Petitioner Mahaffey’s case at trial. She admitted that trial counsel did contact her about a plea offer, but Ms. Jordan said no. The reason she did not make an offer was because Petitioner Mahaffey had pled guilty a few days before this incident to habitual traffic offender. He was also on probation at the time. App. 323, ll. 1- App. 325, ll. 24.

The PCR judge issued an order on May 26, 2017 denying Petitioner Mahaffey’s PCR application and dismissing it with prejudice. App. 363 – App. 381. The judge found the testimony of trial counsel, Mr. Allen, and Ms. Jordan to be credible. The judge also found Petitioner

Mahaffey's testimony to be not credible. App. 374. The PCR judge found that Petitioner failed to prove that trial counsel was ineffective for not investigating his case. The order provided that trial counsel was well prepared at trial as shown by the record. The judge wrote that Mahaffey's statement that trial counsel had not interviewed was not credible as counsel knew what the father and brother would testify to at trial. App. 376 – App. 377.

PCR counsel filed a notice of appeal. This petition follows.

## ARGUMENT

The PCR court erred in not finding trial counsel ineffective for failing to conduct a proper investigation into Petitioner Mahaffey's case by not interviewing significant witnesses which was prejudicial to Petitioner Mahaffey because the witnesses could have provided a defense for Mahaffey.

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland v. Washington, *supra*; Butler v. State, *supra*.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant 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. 117-118, 386 S.E.2d 624 (1989).

A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

In Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), the Supreme Court held that a criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation. The Court found that for purposes of ineffective assistance of counsel, the scope of a reasonable investigation depended on a number of issues but at a minimum, counsel has the duty to

interview potential witnesses, and to make an independent investigation of the facts and circumstances of the case.

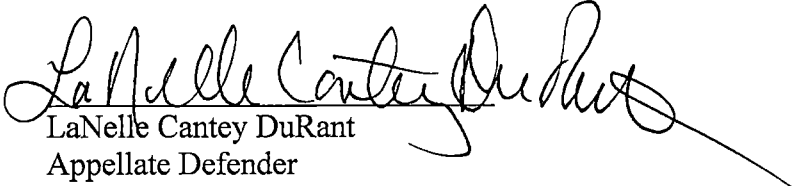
In Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991), the Supreme Court held that failure to investigate possible defenses constituted ineffective assistance of counsel.

In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), the Supreme Court reversed the PCR court and found that trial counsel was ineffective for failing to adequately prepare for trial so as to be able to call key witnesses. The court remanded for a new trial.

The PCR court erred in not finding trial counsel ineffective for not performing a sufficient investigation into Petitioner's case. If trial counsel had talked to the people who were at the father's house the day of the incident, someone else could have testified as to the events. Counsel was ineffective for not calling the father to testify regardless of the possibility of his being impeached. There was still a reasonable probability that the jury would have believed the father.

**CONCLUSION**

Based on the above, certiorari should be granted, and Petitioner's convictions and sentences reversed, and the case remanded for a new trial.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of July, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable Robin B. Stilwell, Circuit Court Judge

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CHRISTOPHER PAUL MAHAFFEY,

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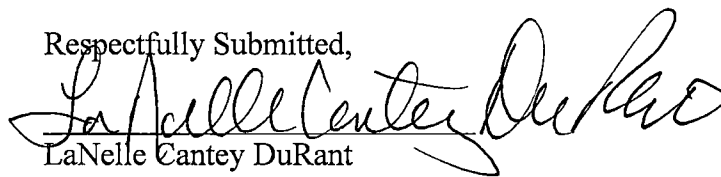
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Christopher Paul Mahaffey states:

1. She is 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 Robin B. Stilwell, which was held on February 23, 2017, 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 Christopher Paul Mahaffey.

Respectfully Submitted,



LaNelle Cantey DuRant

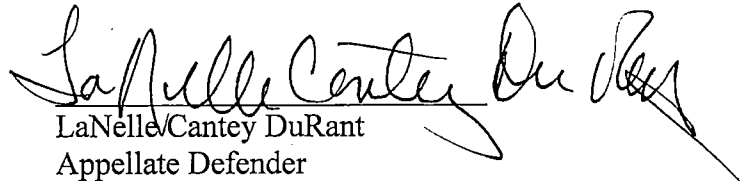
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of July, 2018.

**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."

  
LaNelle Cantey DuRant  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
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PO Box 11589  
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ATTORNEY FOR PETITIONER

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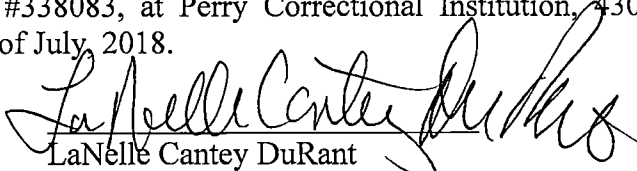
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STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_  
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 and a copy of the Supplemental Appendix in the above referenced case has been served upon Jordan Cox, 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 a copy of the Supplemental Appendix have been served on Christopher Paul Mahaffey, #338083, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 6th day of July, 2018.

  
LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 6th day of July, 2018.

 (L.S)

Notary Public for South Carolina

My Commission Expires: July 5, 2027.